d/c

IN THE SUPREME COURT OF INDIA

EXTRA-ORDINARY ORIGINAL JURISDICTION

WRIT PETITION (C) NO._____OF 2024

[Under Article 32 of the Constitution of India]

PUBLIC INTEREST LITIGATION

IN THE MATTER OF:

THE VIDHI CENTRE FOR LEGAL POLICY **...PETITIONER**

VERSUS

UNION OF INDIA & ORS. **...RESPONDENTS**

VOL.I

(From Pages A to 486)

PAPER BOOK
(FOR INDEX KINDLY SEE INSIDE)

ADVOCATE FOR THE PETITIONER:

HARSH PARASHAR

DECLARATION

DIARY NO. 37477/2024

All defects have been duly cured. Whatever has been added/ deleted / modified in the petition is the result of curing of defects and nothing else. Except curing defects, nothing has been done, paper books are complete in all respects.

Signature
(HARSH PARASHAR)
Advocate on Record

Date 20/09/2024

Contact No. 9958317219

RECORD OF PROCEEDINGS

Sl. No.	Date of record of Proceedings	Pages
1.	Copy of the order dated	
2.	Copy of the order dated	
3.	Copy of the order dated	
4.	Copy of the order dated	
5.	Copy of the order dated	
6.	Copy of the order dated	
7.	Copy of the order dated	
8.	Copy of the order dated	
9.	Copy of the order dated	
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11.	Copy of the order dated	
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A

PROFORMA FOR FIRST LISTING

SECTION-II-A

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

Central Act: (Title): **Constitution of India**

Section: **Article 32;**

Central Rule: (Title): **NA**

Rule No: **NA**

State Act: (Title): **NA**

Section: **NA**

State Rule: (Title): **NA**

Rule Nos.: **NA**

Impugned interim order (date): **NA**

Impugned Final order/decree (date):

High Court: (name): **N.A.**

Name of Judge: **N.A.**

Tribunal/Authority (Name): **NA**

---

1. Nature of matter: Civil ☒ Criminal
2. (a) Petitioner/: Vidhi Centre for Legal Policy
   (b) e-mail ID:
   (c) Mobile Number:
3. (a) Respondent No.1: **UNION OF INDIA**
   (b) e-mail ID: **NA**
   (c) Mobile Number: **NA**
4. (a) Main category Classification: **14**
   (b) sub Classification: **1407**
5. Not to be listed before: **NA**
6. (a) Similar disposed of matter with citation, if any, & case details:
   No similar matter is disposed of

A1

(b) Similar Pending matter with case details: **No similar matter pending.**

7. **Criminal Matters**:

(a) Whether accused has surrendered: Yes No N.A.

(b) FIR No: _____ date:

(c) Police Station: District:

(d) Sentence Awarded: **N.A.**

(e) Period of sentence undergone including period of detention/ custody undergone: **N.A.**

8. **Land Acquisition Matters**:

(a) Date of Section 4 Notification: **N.A.**

(b) Date of Section 6 Notification: **NA**

(c) 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 No. (in case of Motor Accident Claim matters): **N.A.**

HPahas

HARSH PARASHAR
ADVOCATE FOR THE PETITIONER
I-11, FIRST FLOOR,
JANGPURA EXTENSTION, NEW DELHI-110014
9958317219
CC:2298

DATE:20.08.2024

B

SYNOPSIS

By way of this petition, the Petitioner prays that Section 53(2) of the Representation of the People Act, 1951, to the extent that it applies to direct elections, i.e., elections to the House of the People and State Legislative Assemblies, be *appropriately read down* or *read into* or *struck down* as it is unconstitutional.

Concomitantly, the Petitioner prays that Rule 11 read with Forms 21 and 21B of the Conduct of Election Rules, 1961 also be struck down as they are equally unconstitutional.

Section 53, read with Rule 11, essentially lays down the procedure to be followed by a returning officer in case of an 'uncontested' election – i.e. where the number of contesting candidates is equal to OR lesser than the number of seats to be filled in the election. In such a scenario, the provision prohibits the returning officer from conducting a poll and *instead*, instructs the officer to declare all the contesting candidates as duly elected by filling in Form 21 (in case it is a general election) or Form 21B (in case it is an election to fill a casual vacancy).

This consequent act of not conducting a poll completely prevents voters from choosing the 'None of the Above Option'

C

(NOTA) in such elections, thereby expressing their dissatisfaction with the contesting candidate(s). This is a violation of a fundamental right, as in its judgement in People's ***Union for Civil Liberties v Union of India (2013) 10 SCC 1*** this Hon'ble Court has held that the right to cast a negative vote by choosing the NOTA option on an EVM is protected in direct elections under Article 19(1)(a) of the Constitution of India.

On 26.004.2024, this Hon'ble Court was pleased to issue notice in the matter of Shiv Khera v The Election Commission of India WP(C) 252/2024, where the petitioner therein has sought a direction from this Hon'ble Court to the Election Commission of India to frame rules and set up a uniform framework for the NOTA option so that the judgement of this Hon'ble Court in *People's Union for Civil Liberties v Union of India (2013) 10 SCC 1* is given its full effect. Pointing to evidence of the State Election Commissions of Maharashtra and Haryana which have made a fresh poll mandatory in elections where 'NOTA' polls the most votes, the petitioner prays that the same principle be extended to elections conducted by the Election Commission of India.

SUBJECT MATTER IN THE PRESENT WRIT PETTION

However, the Petitioner submits that even if this Hon'ble Court were pleased to grant the said relief, i.e. directions to the Election Commission of India to conduct fresh polling where NOTA obtains the most votes in an election, *the fundamental right of voters under Article 19(1)(a) to cast a negative vote still cannot be given effect to completely.*

This is so because while the impugned provisions continue to remain on the statute book in their current form: **No polling can be conducted in any direct election which is 'uncontested', and as a result, voters cannot choose the NOTA option in such an election**.

Thus, it follows that this writ petition and the reliefs sought herein stand independently of the petition in the matter of Shiv Khera v The Election Commission of India WP(C) 252/2024.

As such, in order to give full and complete effect to the judgement in *People's Union for Civil Liberties v Union of India (2013) 10 SCC 1*, thereby upholding the rights of voters under Article 19(1)(a), this petitioner has prayed that this Hon'ble Court be pleased to find the impugned provisions as ultra vires

E

the Constitution, in as much as they apply to direct elections, and to appropriately read into them a requirement to the effect that the candidate in an uncontested election may only be declared elected after a poll is taken, read them down, or strike them down.

THE IMPUGNED PROVISION

Section 53 of the Representation of the People Act, 1951 applies to both direct and indirect elections and envisages 3 (three) situations - first, the number of candidates who are contesting the election is more than the number of seats to be filled; second, the number of contesting candidates is equal to the number of seats to be filled; and third, the number of contesting candidates is lesser than the number of seats to be filled.

As per section 53(1), a poll is to be conducted only in the first situation. As per sections 53(2) and 53(3) respectively, in the second and third situations, the returning officer must declare the contesting candidates to be duly elected.

In direct elections which are uncontested, the impugned sub-section prevents voters from being able to cast a 'negative vote' by choosing the NOTA option when there is only one candidate

F

In furtherance of the legislative policy laid down under the impugned sub-section, the First Respondent has framed the Conduct of Election Rules, 1961 where the Impugned Rule 11, in case of an uncontested election, instructs the returning officer to declare the candidate to be elected by filling in a Form and sending this to the appropriate authority, the Election Commission, and the chief electoral officer.

Further, the Second Respondent has published the Handbook for Returning Officers, 2023. This Handbook states that in case there is only one candidate standing for a seat, then that candidate will be automatically declared elected.

CHALLENGES IN THE PRESENT WRIT PETITON

(i) **Challenge under Article 19(1)(a) of the Constitution of India**

The right to cast a negative vote is a component of a voter's fundamental right to freedom of speech and expression under Article 19(1)(a) of the Constitution of India. By its very nature, this right, by which the voter indicates her disapproval of the entire field of candidates, must be agnostic to the number of candidates in the fray. The impugned provision clearly violates

this right. This infringement of the fundamental right is not justified by any of the grounds listed in Article 19(2) and is therefore unreasonable.

(ii) Challenge under Article 14 of the Constitution of India for failing the test of reasonable classification

A statutory provision as well as a piece of delegated legislation violate Article 14 of the Constitution of India if while classifying between persons, they do so in a manner that is unreasonable. This Hon'ble Court has held that in order to be reasonable, classifications must be based on intelligible differentia between the classes and there being a rational nexus between the exercise in classification and the object sought to be achieved. The impugned provisions effectively create 2 (two) distinct classes of voters: those in constituencies where there are multiple candidates, and those in constituencies where there is only one. While both classes of voters enjoy the same fundamental rights, one is denied their exercise. This state of affairs clearly falls afoul of the reasonable classification test.

H

(iii) Challenge under Article 14 of the Constitution of India for failing the test of manifest arbitrariness

This Hon'ble Court has held that a statutory provision as well as a piece of delegated legislation violate Article 14 if they are 'manifestly arbitrary' - in other words, if they are unfair, unreasonable, and not in pursuit of equitable treatment. This Hon'ble Court has held that a provision, although reasonable at the time of its enactment, can become unreasonable and hence arbitrary by virtue of passage of time. While the impugned provision may have been reasonable at the time of enactment, following the judgment of this Hon'ble Court in People's Union for Civil Liberties v Union of India (2013) 10 SCC 1 and the addition of the NOTA option, it is now out of step with the law and the constitution and as such, manifestly arbitrary.

RELIEFS SOUGHT

- On multiple occasions, this Hon'ble Court has held that there is a presumption in favour of the constitutionality of a statute, and if there are two interpretations available for a provision - one which makes the law valid and the other void - then a court must prefer the former. As such, this Hon'ble

I

Court has held that before striking down a provision, a court will preferably employ the principles of 'reading down' or 'reading into' to ensure that the provision can be held to be constitutional. In the course of doing so, the court may depart from the literal rule of interpretation.

Accordingly, this petitioner has first prayed that this Hon'ble Court be pleased to read into or read down the impugned sub-section and to interpret the words 'forthwith declare' contained therein to mean a declaration only after the conduct of a poll.

J

LIST OF DATES

July, 1951	The Representation of The People Act, 1951 enacted.
April, 1961	The Conduct of Election Rules, 1961 made.
March, 2003	This Hon'ble Court in *People's Union for Civil Liberties v Union of India (2003) 4 SCC 399*, declared the right to express political preferences via the vote to be derived from the right to freedom of speech and expression under Article 19(1)(a) of the Constitution of India.
September, 2013	This Hon'ble Court in ***People's Union for Civil Liberties v Union of India (2013) 10 SCC 1*** declared that a 'negative vote' by choosing the 'None of the Above' (NOTA) button on an Electronic Voting Machine is an equally valid instance of the right to express political preferences and ought to be protected in the same manner.
April, 2024	In the general election to the House of the People, a sole candidate from the Surat

K

constituency was declared the winner since the election was 'uncontested'.

April, 2024 — This Hon'ble Court issues notice in the matter of Shiv Khera v The Election Commission of India WP(C) 252/2024, wherein direction are sought from this Hon'ble Court to the Election Commission of India to frame rules and set up a uniform framework for the NOTA option so that the judgement of this Hon'ble Court in *People's Union for Civil Liberties v Union of India (2013) 10 SCC 1* is given its full effect.

August, 2024 — This present petition is filed herewith to look into the aspect of Section 53(2) of the Representation of the People Act, 1951, to the extent that it applies to direct elections, i.e., elections to the House of the People and State Legislative Assemblies and to see that as a result of the existing provisions and rules, *there should be no situation wherein an election goes uncontested.*

IN THE SUPREME COURT OF INDIA

EXTRA-ORDINARY ORIGINAL JURISDICTION

WRIT PETITION (C) NO._____OF 2024

[Under Article 32 of the Constitution of India]

PUBLIC INTEREST LITIGATION

POSITION OF PARTIES

IN THE MATTER OF	**BEFORE THIS HON'BLE COURT**
1) VIDHI CENTRE FOR LEGAL POLICY,THROUGH ITS RESEARCH DIRECTOR, DHVANI MEHTA, ADDRESS: A-232, RATAN LAL SAHDEV MARG, BLOCK A, DEFENCE COLONY, NEW DELHI, DELHI 110024. Email:vclp@vidhilegalpolicy.in Phone: 011 4310 2767	**PETITIONER**
VERSUS	

1. **UNION OF INDIA** THROUGH THE SECRETARY, MINISTRY OF LAW & JUSTICE, 4TH FLOOR A-WING, SHASTRI BHAVAN, 110001, NEW DELHI.	RESPONDENT NO.1
2) **ELECTION COMMISSION OF INDIA** THROUGH THE CHIEF ELECTION COMMISSIONER, NIRVACHAN SADAN, ASHOKA RD, PANDIT PANT MARG AREA, SANSAD MARG AREA,110011, NEW DELHI	RESPONDENT NO.2

3

IN THE SUPREME COURT OF INDIA
EXTRA-ORDINARY ORIGINAL JURISDICTION

WRIT PETITION (C) NO._____OF 2024

[Under Article 32 of the Constitution of India]

PUBLIC INTEREST LITIGATION

IN THE MATTER OF:

THE VIDHI CENTRE FOR LEGAL POLICY **...PETITIONER**

VERSUS

UNION OF INDIA & ORS. **...RESPONDENTS**

A WRIT PETITION IN PUBLIC INTEREST UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF AN APPROPRIATE WRIT, ORDER, OR DIRECTION IN THE NATURE OF CERTIORARI FOR QUASHING SECTION 53(2) OF THE REPRESENTATION OF THE PEOPLE ACT, 1951, TO THE EXTENT THAT IT DEPRIVES VOTERS OF THEIR FUNDAMENTAL RIGHT TO FREEDOM OF SPEECH AND EXPRESSION UNDER ARTICLE 19(1)(a) AND VIOLATES ARTICLE 14 OF THE CONSTITUTION OF INDIA.

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

THE HUMBLE PETITION OF
THE PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHOWETH

1. That, the Petitioner is a not-for-profit think tank established in 2013.

2. That, the Petitioner has, over the past ten years, produced 370 pieces of original research on key legal and governance issues, been engaged in 394 projects in the centre and across 17 states to draft Acts, Rules, and Regulations for both the Central Government and State Government as well as various regulatory agencies and has collaborated with six High Courts and this Hon'ble Court, and additionally, the petitioner is not involved in any adverse litigation.

3. The Petitioner has produced a significant corpus of research on electoral and parliamentary reforms in India in areas such as the law of anti-defection under the Tenth Schedule of the Constitution and electoral funding.

   True Copy of the Tenth Schedule to the Constitution of India which is marked and annexed herewith as **ANNEXURE P-1**. **(From Pages 49 to 53)**

4. That the research report produced by the Petitioner on electoral funding was cited by this Hon'ble Court in its judgement in *Association for Democratic Reforms v Union of India* 2024 INSC 113 (paragraph 50 of the concurring opinion).

5

True Copy of Judgment of this Hon'ble Court in *Association for Democratic Reforms v Union of India* 2024 INSC 113 is marked and annexed herewith as **ANNEXURE P-2** (From Pages 54 to 285)

DISCLOSURE

5. That the petitioner has no personal interest or motive in filing this petition, and the same is being done solely in public interest.

6. That there are no civil, criminal, or revenue litigation involving the petitioner which has or could have a legal nexus with the issues involved in the instant Public Interest Litigation.

7. That the petitioner is a not-for-profit company established under section 8 of the Companies Act, 2013 (No. 18 of 2023).

IMPUGNED PROVISION

8. That Section 53 of the Representation of the People Act, 1951, currently reads as follows:

"53. Procedure in contested and uncontested elections.—(1) If the number of contesting candidates is more than the number of seats to be filled, a poll shall be taken.

(2) If the number of such candidates is equal to the number of seats to be filled, the returning officer shall forthwith declare all such candidates to be duly elected to fill those seats.

(3) If the number of such candidates is less than the number of seats to be filled, the returning officer shall forthwith declare all such candidates to be elected and the Election Commission shall, by notification in the Official Gazette, call upon the constituency or the elected members or the members of the State Legislative Assembly or the members of the electoral college concerned as the case may be, to elect a person or persons to fill the remaining seat or seats:

> Provided that where the constituency or the elected members or the members of the State Legislative Assembly or the members of the electoral college having already been called upon under this sub-section, has or have failed to elect a person or the requisite number of persons, as the case may be, to fill the vacancy or vacancies, the Election Commission shall not be bound to call again upon the constituency, or such members to elect a person or persons until it is satisfied that if called upon again, there will be no such failure on the part of the constituency of such members." (emphasis supplied)

True Copy of Section 53 of the Representation of the People Act, 1951 is marked and annexed herewith as **ANNEXURE P-3** (From Pages 286 to 357)

9. That Section 53 applies to both direct elections - i.e. constituency-based elections to the House of the People and State Legislative Assemblies, as well as indirect elections - i.e. elections by proportional representation to the Council of States and State Legislative Councils.

10. Section 53, as a whole, lays down the course of action to be followed by a returning officer when three distinct situations arise in any such election - first, if the number of candidates who are contesting the election is *more* than the number of seats to be filled; second, if the number of contesting candidates is *equal* to the number of seats to be filled; and third, if the number of contesting candidates is *lesser* than the number of seats to be filled.

11. That, Section 53 mandates a poll to be conducted only in the first situation. In the second and third, it prevents a poll from taking place and instructs the returning officer to declare the contesting candidates to be duly elected.

12. That in direct elections (i.e. elections to the House of the People and State Legislative Assemblies) which are

uncontested, the impugned sub-section (2) prevents voters from being able to cast a 'negative vote' by choosing the 'None of the Above' ('NOTA') option if there is only one candidate.

13. In furtherance of the legislative policy laid down under the impugned sub-section impugned provision, the First Respondent has framed the Conduct of Election Rules, 1961 where the impugned rule 11, in case of an uncontested election, instructs the returning officer to declare the candidate to be elected by filling in a Form and sending this to the appropriate authority, the Election Commission, and the chief electoral officer. It states:

> "11. Publication of list of contesting candidates and declaration of result in uncontested election—
>
> (1) The returning officer shall, immediately after its preparation, cause a copy of the list of contesting candidates to be affixed in some conspicuous place in his office **and where the number of contesting candidates is equal to, or less than, the number of seats to be filled, he shall, immediately after such affixation, declare under sub-section (2) or as the case may be, sub-section (3) of section 53 the result of the election in such one of the**

Forms 21 to 21B as may be appropriate and send signed copies of the declaration to the appropriate authority, the Election Commission and the chief electoral officer.

(2) If a poll becomes necessary under sub-section (1) of section 53, the returning officer shall supply a copy of the list of contesting candidates to each such candidate or his election agent, and then shall also publish the list in the Official Gazette." (emphasis supplied)

14. That in furtherance of the legislative policy laid down under the impugned sub-section, the First Respondent has framed the Conduct of Election Rules, 1961 where the impugned rule 11, in case of an uncontested election, instructs the returning officer to declare the candidate to be elected by filling in a Form and sending this to the appropriate authority, the Election Commission, and the chief electoral officer. It states:

"11. Publication of list of contesting candidates and declaration of result in uncontested election.—

(3)The returning officer shall, immediately after its preparation, cause a copy of the list of contesting candidates to be affixed in some conspicuous place in his office and where the number of contesting candidates is equal to, or less than, the number of seats to be filled, he

shall, immediately after such affixation, declare under sub-section (2) or as the case may be, sub-section (3) of section 53 the result of the election in such one of the Forms 21 to 21B as may be appropriate and send signed copies of the declaration to the appropriate authority, the Election Commission and the chief electoral officer.

(4) If a poll becomes necessary under sub-section (1) of section 53, the returning officer shall supply a copy of the list of contesting candidates to each such candidate or his election agent, and then shall also publish the list in the Official Gazette." (emphasis supplied)

True Copy of Conduct of Election Rules, 1961 framed by Respondent No.1 is marked and annexed as **ANNEXURE-P-4 (From Pages** 352 **to** 486)

15. That, the Second Respondent has issued the Handbook for Returning Officer 2023 (the relevant portion of which is marked as ANNEXURE P-5. Under this Handbook, it has provided guidance to Returning Officers, instructing them to not conduct a poll where there is only one candidate standing in a constituency. The Handbook states:

"9.1.1. If in any constituency, there is only one contesting candidate, that candidate should be declared to have been duly elected immediately after the last hour for withdrawal of candidature. In that event, a poll is not necessary."

True Copy of the Handbook for Returning Officer 2023 published by the Respondent No.2-Election Commission of India is marked and annexed as **ANNEXURE P-5** (**From Pages** 487 **to** 937)

OPERATION OF THE IMPUGNED PROVISION

16. That, in practice, an appreciable number of seats in direct elections have been won uncontested, thus depriving a large number of persons of the opportunity to cast their vote. The table below, prepared on the basis of information sourced from the Statistical Reports on General Elections published since 1951 by the Second Respondent provides these figures only for direct elections to the House of the People (excluding bypolls):

Sr. No.	Year of general elections	No. of constituencies where the election was 'uncontested'	Name of the constituency	No. of electors who were registered to vote but were deprived of the opportunity
1.	1951	5	Coimbatore (Madras)	346405
			Rayagada Phulbani (Orissa)	393599
			Yadgir (Hyderabad)	362832

Sr. No.	Year of general elections	No. of constituencies where the election was 'uncontested'	Name of the constituency	No. of electors who were registered to vote but were deprived of the opportunity
			Halar (Saurashtra)	295369
			Bilaspur (Bilaspur)	68130
2.	1957	7	Rajamundry (Andhra Pradesh)	430056
			Rajampet (Andhra Pradesh)	417694
			Vicarabad (Andhra Pradesh)	393492
			Darrang (Assam)	309968
			Mandla (Madhya Pradesh)	366868
			Tiruchendur (Madras)	448411
			Hassan (Mysore)	367251
3.	1962	3	Tiruchendur (Madras)	460766
			Angul (Orissa)	445165
			Tehri Garhawal (Uttar Pradesh)	415051

Sr. No.	Year of general elections	No. of constituencies where the election was 'uncontested'	Name of the constituency	No. of electors who were registered to vote but were deprived of the opportunity
4.	1967	5	Vijayawada (Andhra Pradesh)	522116
			Kokrajhar (Assam)	415618
			Anantnag (Jammu & Kashmir)	1
			Ladakh (Jammu & Kashmir)	51381
			Nagaland (Nagaland)	214951
5.	1971	1	L M and A Islands (L M and A Islands)	14977
6.	1977	2	Sikkim (Sikkim)	124023
			Arunachal West (Arunachal Pradesh)	121887
7.	1980	1	Srinagar (Jammu & Kashmir)	519706
8.	1984	0	–	–
9.	1985	0	–	–
10.	1989	1	Srinagar (Jammu & Kashmir)	782715
11.	1991	0	–	–
12.	1992	0	–	–

Sr. No.	Year of general elections	No. of constituencies where the election was 'uncontested'	Name of the constituency	No. of electors who were registered to vote but were deprived of the opportunity
13.	1996	0	–	–
14.	1998	0	–	–
15.	1999	0	–	–
16.	2004	0	–	–
17.	2009	0	–	–
18.	2014	0	–	–
19.	2019	0	–	–
20.	2024	1	Surat (Gujarat)	information unavailable
Total	26	**82,88,432** (excluding the election in 2024)		

17. That in total, since 1952, over 82 lakh voters have been deprived of the opportunity to exercise their franchise in elections to the House of the People owing to the operation of the impugned sub-section.

18. That in all the constituencies where polls were not conducted, the 'poll percentage' - i.e. the number of voters as a percentage of the number of electors - referred to in popular parlance as 'voter turnout' - could not be recorded.

15

19. That admittedly, since 1989, there has been a decline in the number of seats which are uncontested in the elections to the House of the People. However, in the recently concluded general elections to the House of the People in 2024, the constituency of Surat in the state of Gujarat saw only one contesting candidate. This made the election 'uncontested', and as such, the impugned Section 53(2) of the Representation of the People Act, 1951, read with the impugned clause of the Handbook for Returning Officer 2023 issued by the Second Respondent came into operation. The sole candidate was therefore declared the winner by default, as was widely reported in media publications.

True Copy of Article dated 22.04.2024 published in the Hindustan Times is marked and annexed herewith as **ANNEXURE P-6.** **(From Pages 938 to 946)**

20. That in elections to the State Legislative Assemblies, uncontested seats are a common occurrence. In the elections to the Legislative Assembly of Arunachal Pradesh which were recently concluded in 2024, 10 of the 60 seats were won uncontested. In the same state, 11 seats were

won uncontested in the State Assembly elections held in 2014.

True Copy of Article dated 30.03.2024 published in the online edition of The Hindu is been marked and annexed herewith as **ANNEXURE P-7**). **(From Pages 947 to 948)**

According to information available on reputed news publications, since the first elections to the House of the People and State Legislative Assemblies were held in 1952, a total of 298 candidates have been elected as Members of Legislative Assemblies through uncontested elections.

True Copy of Article dated 06.04.2024 published in the online edition of The Indian Express is marked and annexed herewith as **ANNEXURE P-8**. **(From Pages 949 to 955)**

21. That, the impugned Section 53(2) of the Representation of the People Act, 1951, in as much as it prevents voters from exercising their right to choose the NOTA option in direct elections which are uncontested, is *ultra vires* the Constitution, and is liable to be read down or struck down to ensure conformity with the same.

I. Violative of the right to freedom of speech and expression under Article 19(1)(a) of the Constitution

22. That in its judgement in ***People's Union for Civil Liberties v Union of India (2013) 10 SCC 1***, this Hon'ble Court has held that the right of a voter to cast a negative vote in an election by pressing the 'NOTA' button on an EVM is a part of their fundamental right to freedom of speech and expression under Article 19(1)(a) of the Constitution. Subsequently, in its judgement in ***Shailesh Manubhai Parmar v Election Commission of India*** **(2018) 9 SCC 100**, this Hon'ble Court has clarified that this right extends only to direct elections which are constituency-based (i.e. elections to the House of the People and the State Legislative Assemblies) and not to indirect elections which are based on proportional representation (i.e. elections to the Council of States and state Legislative Councils.

23. That by preventing a poll from taking place when the number of candidates is equal to the number of seats to be filled in a direct election, the impugned sub-section, read

with the impugned rule, wholly defeats the right of voters to cast a neutral/ negative vote.

24. That the impugned provisions do not legitimately curtail the right under Article 19(1)(a) as they do not fall under any of the grounds enlisted under Article 19(2) which are exhaustive in nature, and the restriction that they impose is unreasonable, as it arbitrarily and excessively invades a fundamental right.

II. Violative of the right to equality under Article 14 of the Constitution

25. That a statutory provision as well as a delegated legislation violates Article 14 of the Constitution of India if while classifying between persons, they do so in a manner that is 'unreasonable'.

26. That this Hon'ble Court has held, on multiple occasions, that the permissibility of a classification will be determined by reference to whether there is an intelligible differentia between two classes, and whether this differentia has a rational nexus to the objective that is sought to be achieved.

27. That the impugned sub-section and rule distinguish between two classes of voters in a direct election: first, those enrolled in a constituency where the number of candidates is more than the number of seats to be filled, and second, those enrolled in a constituency where the number of candidates is equal to the number of seats to be filled.

28. That both classes enjoy the fundamental right to freedom of speech and expression (which includes the right to express their views through the ballot as well as casting a negative vote), and both classes have undergone the process of enrolling themselves in their respective constituencies, and as such, there exists no intelligible differentia between the two classes in as far as the impugned sub-section and rule are concerned.

29. That the only evident purpose for which the impugned sub-section and rule were enacted was to promote the efficient economic utilization of national resources - by saving on the financial outlay and administrative arrangements involved in organizing a single poll.

30. That a Constitution Bench of this Hon'ble Court in ***Ashoka Kumar Thakur v Union of India (2008) 6 SCC 1*** has held that financial considerations are not sufficient to outweigh fundamental rights guaranteed by the Constitution of India, and as such, the impugned sub-section and rule are in furtherance of an illegitimate and unfair object.

31. That this Hon'ble Court has also held, on multiple occasions, that the right to equality is violated when a provision is manifestly arbitrary, and further, that a provision can become manifestly arbitrary when it has become unreasonable with the passage of time.

32. That, after the judgement in ***People's Union for Civil Liberties v Union of India*** **(2013) 10 SCC 1** and the mandatory incorporation of the NOTA option on EVMs, the impugned sub-section and rule have become unreasonable with the passage of time and hence manifestly arbitrary. True Copy of Judgment of this Hon'ble Court in People's Union for Civil Liberties v Union of India (2013) 10 SCC 1 is marked and annexed herewith as **ANNEXURE P-9**. **(From Pages** 956 **to** 993 **)**

33. That this Hon'ble Court in its judgment in the case of ***ML Kamra* v. *Chairman-cum-Managing Director, New India Assurance Co.* 1992 AIR 1072** has held that there is a presumption in favour of the constitutionality of an impugned instrument, and if there are two interpretations available for a provision - one which makes the law valid and the other void - then a court must prefer the former.

34. That, in ***Indra Das v State of Assam* (2011) 3 SCC 380, relying on its own decision in *Government of Andhra Pradesh v P. Laxmi Devi* (2008) 4 SCC 720**, this Hon'ble Court has held that before striking down a provision, a court will preferably employ the principles of 'reading down' or 'reading into' to ensure that the provision can be held to be constitutional. In doing so, the court may depart from the literal rule of interpretation so as to interpret the statute in a manner that its constitutionality can be upheld.

35. That, accordingly, this petitioner has first prayed that this Hon'ble Court be pleased to read into or read down the impugned Section 53(2) and to interpret the words 'forthwith declare' contained therein to mean a declaration of the result immediately after the conduct of a poll.

36. That the impugned Section 53(2), read with rule 11 and Forms 21 and 21B, in as much as they apply to direct, constituency-based elections (i.e. elections to the House of the People and the State Legislative Assemblies), are ultra vires the Constitution of India, and are therefore liable to be read down or struck down on the following grounds:

GROUNDS

I. VIOLATIVE OF THE RIGHT TO FREEDOM OF SPEECH AND EXPRESSION UNDER ARTICLE 19(1)(a) OF THE CONSTITUTION

(a) The right to cast a negative vote is protected under Article 19(1)(a)

A. BECAUSE it is well-settled that the right to cast a negative vote is a component of a voter's fundamental right to freedom of speech and expression under Article 19(1)(a) of the Constitution of India.

B. BECAUSE in its judgement in ***Lily Thomas v Speaker, Lok Sabha (1993) 4 SCC 234***, this Hon'ble Court held:

> "2...Voting is a formal expression of will or opinion by the person entitled to exercise the right on the subject or issue in question [and that] 'right to vote means right to exercise the right in favour of or against the motion or the resolution. Such a right implies right to remain neutral as well."

C. BECAUSE in its judgement in **Union of India v Association for Democratic Reforms (2002) 5 SCC 294**, this Hon'ble Court held:

> "46 (7). Under our Constitution, Article 19(1)(a) provides for freedom of speech and expression. Voter's speech or expression in case of election would include casting of votes, that is to say, voter speaks out or expresses by casting vote."

D. BECAUSE in its judgement in *People's Union for Civil Liberties (PUCL) v Union of India* (2003) 4 SCC 399, this Hon'ble Court reaffirmed this position stating the ambit of the right to freedom of expression must be interpreted

broadly enough to encompass the voter's expression of his choice at the ballot box .

E. BECAUSE in its judgement in ***People's Union for Civil Liberties v Union of India (2013) 10 SCC 1***, this Hon'ble Court relied on its previous judgements in *Lily Thomas v Speaker, Lok Sabha (1993) 4 SCC 234, Union of India v Association for Democratic Reforms (2002) 5 SCC 294 and People's Union for Civil Liberties v Union of India (2003) 4 SCC 399* to hold that:

> "28....The casting of a vote is a facet of the right of expression of an individual and the said right is provided under Article 19(1)(a) of the Constitution of India."

F. BECAUSE in the same judgement, this Hon'ble Court also observed:

> "39...A positive "right not to vote" is a part of expression of a voter in a parliamentary democracy and it has to be recognised and given effect to in the same manner as "right to vote". A voter may refrain from voting at an election for several reasons including the reason that he does not consider any of the candidates in the field worthy of his vote."

G. BECAUSE in its judgement in **Krishnamoorthy v Sivakumar (2015) 3 SCC 467**, this Hon'ble Court

reaffirmed its observations in ***People's Union for Civil Liberties v Union of India*** **(2003) 4 SCC 399**. This Hon'ble Court held:

> "19. P. Venkatarama Reddi, J. adverted to freedom of expression and right to information in the context of voters' right to know the details of contesting candidates and right of the media and others to enlighten the voter. **As a principle, it was laid down by him that right to make a choice by means of a ballot is a part of freedom of expression.**" (emphasis supplied)

H. BECAUSE in its judgement in *Anoop Baranwal v Union of India*, (2023) 6 SCC 16, this Hon'ble Court recently observed:

> "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 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).**" (emphases supplied)

I. BECAUSE in its judgement in Shailesh Manubhai Parmar v Election Commission of India (2018) 9 SCC 100, this

Hon'ble Court clarified that the right to cast a negative vote by choosing the NOTA button only to direct elections which are constituency-based (i.e. elections to the House of the People and the State Legislative Assemblies) and not to indirect elections which are based on proportional representation (i.e. elections to the Council of States and state Legislative Councils.

J. BECAUSE as such, the right to cast a negative vote in a direct election is a component of a voter's freedom of speech and expression - a fundamental right under Article 19(1)(a) of the Constitution of India.

K. BECAUSE a negative vote can be cast in a direct election even if the number of contesting candidates is equal to the number of seats to be filled in the election. In other words, even if there is only a single candidate who is contesting the elections, a voter has the right to not vote for this person, but instead to cast a negative vote.

L. BECAUSE in as much as the impugned sub-section and rule explicitly prevent this from taking place, they violates Article 19(1)(a) of the Constitution of India.

(b) The impugned provisions fail to satisfy the test for legitimately restricting Article 19(1)(a)

M. BECAUSE further, this Hon'ble Court has held, following closely the text of Article 19(2), that the right under Article 19(1)(a) can only be restricted if the restriction is *first*, imposed by law and not through executive action, *second*, is in furtherance of one of the grounds mentioned under Article 19(2), and *third*, if it is reasonable.

N. BECAUSE preliminarily, the restriction on Article 19(1)(a) in the instant case has been imposed through the operation of law and not executive action.

O. BECAUSE the impugned sub-section and rule fail to meet the second and third tests above.

The impugned provisions do not fulfil any of the grounds enlisted under Article 19(2)

P. BECAUSE the impugned sub-section and rule do not fulfil any of the grounds enlisted in Article 19(2). In its judgement in *Kaushal Kishor v State of Uttar Pradesh* (2023) 4 SCC 1, this Hon'ble Court has held that these grounds are

exhaustive and that any law which does not expressly fall within these grounds must be held to be unconstitutional.

Q. BECAUSE the grounds enlisted in Article 19(2) are:

> "...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."

R. BECAUSE the impugned provisions fulfil none of the grounds contained in Article 19(2).

S. BECAUSE additionally, this Hon'ble Court has held on multiple occasions that the burden of proof of satisfying whether a particular restriction imposed by an impugned provision falls under the grounds enlisted under Article 19(2) is on the State, and that a petitioner is only expected to demonstrate the violation of the right under Article 19(1).

T. BECAUSE in its judgement in *Saghir Ahmad v State of Uttar Pradesh* (1954) 2 SCC 399, a Constitution Bench of this Hon'ble Court observed that when a provision of law *prima facie* is violative of a fundamental right, it is for the state to prove that it falls within the exemptions afforded by Article 19(6) and not on the petitioners to prove the negative.

U. BECAUSE in its judgement in *Deena v Union of India* (1983) 4 SCC 645, this Hon'ble Court has extended the *ratio decidendi* of *Saghir Ahmad v State of Uttar Pradesh* with respect to Article 19(1)(g) to all rights enumerated under Article 19(1) of the Constitution of India and has observed:

> *"17. ... In a challenge based on the violation of Articles 19 and 21, the petitioner has undoubtedly to plead that, for example, his right to free speech and expression is violated or that he is deprived of his right to life and personal liberty. But once he shows that, which really is not a part of the "burden of proof", it is for the State to justify the impugned law or action by proving that, for example, the deprivation of the petitioner's right to free speech and expression is saved by clause (2) of Article 19 since it is in the nature of a reasonable restriction on that right in the interests of matters mentioned in clause (2), or that, the petitioner has been deprived of his life or personal liberty according to a just, fair and reasonable procedure established by law. In cases arising under Article 19, the burden is never on the petitioner to prove that the restriction is not reasonable or that the restriction is not in the interests of matters mentioned in clause (2)."*

V. BECAUSE, if this Hon'ble Court is pleased to find that the fundamental right under Article 19(1)(a) has in fact been violated, then the burden lies wholly on the State to show which of the grounds enumerated under Article 19(2) the restriction can be related to.

The impugned provision does not impose a restriction which is reasonable in nature

W. BECAUSE in any case, even if the impugned sub-section and rule can be shown to fulfil one of the grounds in Article 19(2), they do not meet the test of reasonableness.

X. BECAUSE in ***Kaushal Kishor v State of Uttar Pradesh (2023) 4 SCC 1***, this Hon'ble Court reaffirmed its judgement in ***State of Madras v VG Row (1952) 1 SCC 410*** where this Hon'ble Court had held that it is difficult to lay down an abstract test of reasonableness and that a court must examine:

> "The underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, **the prevailing conditions at the time**." (emphasis supplied)

Y. BECAUSE in its judgement in *Superintendent, Central Prison v Dr Ram Manohar Lohia* AIR 1960 SC 633, this Hon'ble Court held:

> "13. Apart from the said phrase, another limitation in the clause, namely, that the restrictions shall be reasonable, brings about the same result. The word "reasonable" has been defined by this Court in more than one decision. It has been held that in order to be reasonable, "restrictions must have reasonable relation to the object which the legislation seeks to

> achieve and must not go in excess of that object". The restriction made "in the interests of public order" must also have reasonable relation to the object to be achieved i.e. the public order. If the restriction has no proximate relationship to the achievement of public order, it cannot be said that the restriction is a reasonable restriction within the meaning of the said clause."

Z. BECAUSE in its judgement in *Chintaman Rao v State of Madhya Pradesh* AIR 1951 SC 118, this Hon'ble Court provided a clear enunciation of the proportionality test in the following terms:

> "6. The phrase 'reasonable restriction' connotes that the 'limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public'. The word 'reasonable' implies intelligent care and deliberation, that is, the choice of a course which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness."

ZAA. BECAUSE as such, for a restriction on Article 19(1)(a) to be considered 'reasonable': *first*, it must be proximate to the object it seeks to achieve, i.e. the restriction must have a close relation to the object, and *second*, it must not be disproportionate or excessive.

ZAB. BECAUSE this standard was used by this Hon'ble Court to adjudicate a challenge under Article 19(1)(a) in its judgement in *Sahara India Real Estate Corporation Ltd v Securities and Exchange Board of India* (2012) 10 SCC 603.

ZAC. BECAUSE by depriving all voters enrolled in a particular constituency from being able to exercise their franchise, and thereby totally extinguishing their fundamental right to freedom of speech and expression under Article 19(1)(a), the impugned provisions perform an arbitrary and excessive invasion into a fundamental right.

ZAD. BECAUSE this restriction is not in alignment with the prevailing conditions at the current time, as it offends both the law - under which a voter's right to cast a negative vote is protected under Article 19(1)(a) of the Constitution - as well as practice - whereby EVMs now have a 'NOTA' option - giving all voters a second choice even when there is one contesting candidate.

ZAE. BECAUSE as such, the restriction imposed by the impugned provisions is not reasonable in nature, and for

these reasons, they are violative of Article 19(1)(a) of the Constitution of India.

II. VIOLATIVE OF THE RIGHT TO EQUALITY UNDER ARTICLE 14 OF THE CONSTITUTION

ZAF. BECAUSE Article 14 of the Constitution of India grants all persons the fundamental right to equality and protects persons against discriminatory state action.

ZAG. BECAUSE the impugned provisions fail to meet both the tests laid down by this Hon'ble Court to determine whether Article 14 has been violated, i.e. the reasonable classification test and the manifest arbitrariness test.

(a) The impugned provision fails the test of reasonable classification

ZAH. BECAUSE Article 14 permits the law to make a reasonable classification and the underlying principle behind this doctrine is that two persons who, for all relevant purposes of the legislative or administrative action, are equally placed, must be treated equally.

ZAI. BECAUSE beginning with its judgements in *State of West Bengal v Anwar Ali Sarkar* (1952) 1 SCC 1, as well as *RK Dalmia v Justice Tendolkar* AIR 1958 SC 538,, this

Hon'ble Court has laid down a clear test to assess this reasonableness - *first*, there must be an 'intelligible differentia' between the classes which are sought to be created - in other words, the differentiating criteria between the categories should be real and substantial and not arbitrary or artificial; *second*, the differential treatment of the two classes must have a 'rational nexus' with the object of the classification; and *third*, the object of the classification itself must be legitimate.

ZAJ. BECAUSE in *State of West Bengal v Anwar Ali Sarkar* (1952) 1 SCC 1, this Hon'ble Court observed that in order to pass the test of reasonable classification under Article 14 of the Constitution:

> *"...two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others, and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act."*

ZAK. BECAUSE in *RK Garg v Union of India* (1981) 4 SCC 675, this Hon'ble Court observed:

"6. It is clear that Article 14 does not forbid reasonable classification of persons, objects and transactions by the

legislature for the purpose of attaining specific ends. **What is necessary in order to pass the test of permissible classification under Article 14 is that the classification must not be "arbitrary, artificial or evasive" but must be based on some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the legislature.**" (emphasis supplied)

ZAL. BECAUSE in *Budhan Choudhry v State of Bihar* (1954) 2 SCC 791, this Hon'ble Court held:

> "5. ... It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) **that the classification must be founded on an intelligible differentia** which distinguishes persons or things that are grouped together from others left out of the group, and (ii) that **that differentia must have a rational relation to the object sought to be achieved by the statute in question.** The classification may be founded on different bases, namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration." (emphases supplied)

ZAM. BECAUSE in *Kerala Hotel and Restaurant Association v State of Kerala* (1990) 2 SCC 502, this Hon'ble Court observed:

> "23. It is settled that classification founded on intelligible differentia is permitted provided the classification made has a rational nexus with the object sought to be achieved. **In other words, those grouped together must possess a common characteristic justifying their inclusion in the group, but distinguishing them from those excluded; and performance of this exercise must bear a rational nexus with the reason for the exercise.**" (emphasis supplied)

The classification is not based on any intelligible differentia

ZAN. BECAUSE in the instant case, the impugned provisions distinguish between two kinds of voters - one who is registered to vote in a constituency where the number of candidates is more than the number of seats to be filled, and the other who is registered to vote in a constituency where number of candidates is equal to the number of seats to be filled.

ZAO. BECAUSE in the first instance, the impugned provisions mandate a poll to take place and in the second, it instructs the returning officer to declare the contesting candidate as the winner without a poll.

ZAP. BECAUSE in so doing, they differentiate between two voters on the basis of the number of candidates who are contesting from each voter's constituency.

ZAQ. BECAUSE both voters enjoy the same fundamental right under Article 19(1)(a) of the Constitution of India to express their views by casting their votes and both voters underwent the process of enrolling themselves in the electoral rolls in their respective constituencies.

ZAR. BECAUSE the number of candidates who are contesting from a constituency has no bearing on whether a poll should be conducted or not, as even if there is only one candidate, the voter still has the fundamental right to cast a negative vote by pressing the 'NOTA' button on the EVM.

ZAS. BECAUSE as such, for the purposes of the Representation of the People Act, 1951, the two voters are equally placed.

ZAT. BECAUSE as a result, for the purposes of the impugned provisions, there is no intelligible differentia

between the two groups of voters, since the number of candidates who are contesting from each constituency is an artificial criterion for distinction in as far as a voter is concerned.

The object of the classification is itself illegitimate

ZAU. BECAUSE in its judgement in ***Deepak Sibal v Punjab University*** **(1989) 2 SCC 145**, this Hon'ble Court held:

> "20. In considering the reasonableness of classification from the point of view of Article 14 of the Constitution, the court has also to consider the objective for such classification. If the objective be illogical, unfair and unjust, necessarily the classification will have to be held as unreasonable."

ZAV. BECAUSE the object which the impugned section evidently seeks to achieve is saving of the financial outlay and elimination of administrative arrangements involved in organising an election and mere financial constraints are not a logical, fair, or just ground for the denial of fundamental rights.

ZAW. BECAUSE as such, the impugned sub-section violates Article 14 of the Constitution of India as it does not

fulfil the requirements of the test of reasonable classification.

(b) The impugned provision is manifestly arbitrary

ZAA. BECAUSE further, this Hon'ble Court has affirmed that a provision violates Article 14 if it is 'manifestly arbitrary' - in other words, if it is unfair, unreasonable, and not in pursuit of equitable treatment.

ZAB. BECAUSE in its judgement in ***Shayara Bano v Union of India (2017) 9 SCC 1***, this Hon'ble Court held that a statute may become arbitrary with the passage of time even if not so at the time of its original enactment.

ZAC. BECAUSE the judgement in ***Shayara Bano v Union of India* (2017) 9 SCC 1** was subsequently cited by this Hon'ble Court in its judgement in **Navtej Singh Johar v Union of India (2018) 10 SCC 1**, where this Hon'ble Court observed that *"a statutory provision can be struck down on the ground of manifest arbitrariness, when the provision is capricious, irrational and/or without adequate determining principle, as also if it is excessive or disproportionate."*;

ZAD. BECAUSE the test of manifest arbitrariness has been further cemented by this Hon'ble Court as an integral part of equality jurisprudence in its judgement in *Joseph Shine v Union of India* (2019) 3 SCC 39, where this Hon'ble Court observed "*That legislation can be struck down on the ground of manifest arbitrariness is no longer open to any doubt.*"

ZAE. BECAUSE in its judgement in *Association for Democratic Reforms v Union of India* 2024 INSC 113, this Hon'ble Court has relied on its judgments in *Shayara Bano v Union of India* (2018) 9 SCC 1, *Navtej Singh Johar v Union of India* (2018) 10 SCC 1, and *Joseph Shine v Union of India* (2019) 3 SCC 39 to entrench the test of manifest arbitrariness in Indian constitutional law as a *distinct* test to adjudicate the constitutionality of legislation. This Hon'ble Court observed:

> "194. It is now a settled position of law that a statute can be challenged on the ground it is manifestly arbitrary. The standard laid down by Justice Nariman in Shayara Bano (supra), has been citied [*sic*] with approval by the Constitution Benches in Navtej Singh Johar (supra) and Joseph Shine (supra). Courts while testing the validity of a law on the ground of manifest arbitrariness have to determine if the statute is capricious, irrational and without adequate determining principle, or something which is excessive and

disproportionate. This Court has applied the standard of "manifest arbitrariness" in the following manner:
a. A provision lacks an "adequate determining principle" if the purpose is not in consonance with constitutional values. In applying this standard, Courts must make a distinction between the "ostensible purpose", that is, the purpose which is claimed by the State and the "real purpose", the purpose identified by Courts based on the available material such as a reading of the provision; and
b. A provision is manifestly arbitrary even if the provision does not make a classification."

ZAF. BECAUSE this Hon'ble Court has held that a provision, although reasonable at the time of its enactment, can become unreasonable and hence arbitrary by virtue of passage of time, and any such legislation will be violative of Article 14 of the Constitution. Hence, in its judgement in ***Malpe Vishwanath Acharya v State of Maharashtra (1998) 2 SCC 1***, this Hon'ble Court observed as follows:

"8. There is considerable judicial authority in support of the submission of learned counsel for the appellants that with the passage of time a legislation which was justified when enacted may become arbitrary and unreasonable with the change in circumstances."

ZAG. BECAUSE when the Representation of the People Act was enacted in 1951, voting did not form part of the freedom of speech and expression under the extant position of law. Although voters were permitted to abstain from

voting, this could not be done in a manner that would preserve the secrecy of the ballot. In the polling booth, once a voter had decided to not record their vote, a remark to this effect was to be recorded against their name by the Presiding Officer and the signature/thumb impression of the voter was also to be obtained.

ZAH. BECAUSE it is only in 2013 that this Hon'ble Court *vide* its judgement in ***People's Union for Civil Liberties v Union of India*** **(2013) 10 SCC 1** held that although this permitted a voter to refrain from voting even after coming to the polling booth, it does not maintain the secrecy of the ballot, which is integral to free and fair elections. Accordingly, this Hon'ble Court directed that the 'NOTA' button be added to all Electronic Voting Machines ('EVMs'). This direction was issued based on the understanding that the right to cast a negative vote is protected under Article 19(1)(a) of the Constitution, and also that the vote cast - whether it be for a candidate or 'NOTA', must be secret. Following this judgement, the Second Respondent of India added the option of 'NOTA' to EVMs - giving voters the right to cast a negative vote.

ZAI. BECAUSE prior to the 'NOTA' option being available as a result of the directions issued by this Hon'ble Court in 2013, the impugned section could legitimately prevent a poll from taking place if the number of candidates equals the number of seats to be filled. For e.g. in a situation where there is no 'NOTA' button on an EVM, and there is only a single contesting candidate, the only option available to the voter was to press the button corresponding to the candidate's name. However, following the introduction of this button on EVMs, a voter can now vote not only for the single candidate, but also for 'NOTA'. The impugned provisions prevent a voter from exercising this choice.

ZAJ. BECAUSE as such, the impugned provisions are in misalignment with not only the law of the land with respect to the right to cast a negative vote.

ZAK. BECAUSE the impugned provisions are excessive and disproportionate as they explicitly prohibit a returning officer from conducting a poll, thereby resulting in a

situation where all voters enrolled in a particular constituency are unable to exercise their franchise.

ZAL. BECAUSE this Hon'ble Court has held, on multiple occasions, that economic considerations cannot be used to justify the violations of fundamental rights guaranteed by Part III of the Constitution of India. The Supreme Court in ***Brij Mohan Lal v. Union of India* (2012) 6 SCC 502** relied on the opinion of Justice Pasayat in ***Ashoka Kumar Thakur v Union of India* (2008) 6 SCC 1** wherein it was held that financial constraints cannot be a ground to deny fundamental rights. The impugned provisions are not backed by any 'adequate determining principle' as laid down in ***Association for Democratic Reforms (Electoral Bonds) v. Union of India*, (2024) 5 SCC 1.**

ZAM. BECAUSE since this is the only objective underlying the impugned provisions, they are manifestly arbitrary as they are made without adequate determining principle.

ZAN. BECAUSE for the reasons enumerated above, the impugned provisions are manifestly arbitrary and therefore violative of Article 14 of the Constitution of India.

37. That the petitioner has no other efficacious and appropriate remedy except to approach this Hon'ble Court under Article 32 of the Constitution of India.

38. That the petitioner has not filed any such or similar petition before this Hon'ble Court or any other Court.

MAIN PRAYER

39. In the facts and circumstances the above Petitioner respectfully prays that this Hon'ble Court may be graciously pleased to:-

(i) Hold and declare that the impugned Section 53(2) of the Representation of the People Act, 1951, and rule 11 read with Forms 21 and 21B of the Conduct of Election Rules, 1961, in as much as they apply to direct elections (i.e. elections to the House of the People and State Legislative Assemblies) which are uncontested, as being *ultra vires* of the Constitution of India for being violative

of the fundamental right to freedom of speech and expression under article 19(1)(a);

(ii) Accordingly, to Declare and read down or read into section 53(2) - interpreting the words 'forthwith declare' contained therein to mean a declaration immediately after a poll is conducted even if the election is uncontested - and to interpret the impugned rules in the same fashion.

(iii) Alternatively, to strike down the impugned provisions for suffering from an incurable vice of unconstitutionality.

(iv) Issue a Writ of Manadamus directing the Respondent No. 02 to amend the Handbook for Returning Officers, 2023 to remove clause 9.1.1. therein.

(v) Alternatively, Issue a Writ of mandamus directing the Respondent No. 02 to prominently publish, as part of its statistical reports, the names of the seats where the election was uncontested.

(vi) Issue a Writ of Mandamus directing the Respondent No. 02 to take all other necessary steps to give effect to any directions issued by this Hon'ble Court.

(vii) Grant other such reliefs, including the cost of this writ petition, which this Hon'ble Court may deem fit and proper in the interests of justice.

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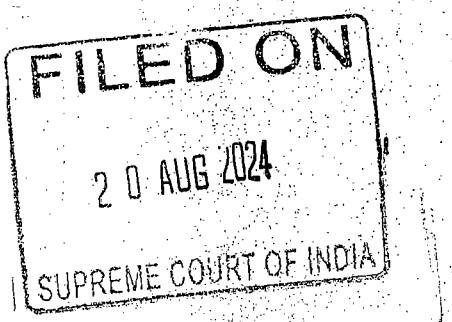
AND FOR THIS ACT OF KINDNESS YOUR HUMBLE PETITIONER AS IN DUTY BOUND SHALL EVER PAY

Drawn by
and Filed by:

HPahar
HARSH PARASHAR
Advocate for Petitioner

Settled by:



Drawn on: 26.07.2024.
Filed on: 20.08.2024.
New Delhi

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IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL WRIT JURISDICTION
WRIT PETITION (CIVIL) NO: OF 2024

FILED ON
20 AUG 2024
SUPREME COURT OF INDIA

IN THE MATTER OF:
THE VIDHI CENTRE FOR LEGAL POLICY **...PETITIONER**

VERSUS

UNION OF INDIA & OTHERS **...RESPONDENTS**

AFFIDAVIT

I, Dr. Dhvani Mehta, aged about 38 years, working as the Co-founder at the Vidhi Centre for Legal Policy, having registered office at A-313, 1st Floor, Defence Colony, New Delhi, 110024 do hereby solemnly affirm and state as under:

1. That, I am the Co-founder at the Petitioner-organization and as such fully acquainted with the facts of the case, hence competent to swear this affidavit.
2. That, the accompanying Writ-Petition and accompanying applications have been drafted under my instructions and the contents thereof are true and correct to my knowledge and belief and nothing material has been concealed thereof.
3. That, the Annexures filed along with the accompanying Writ-Petition are true copies of their respective originals.
4. That, the contents of the above affidavit are true and correct and no part of it is false and nothing material has been concealed therefrom.

I identify the deponent who has Signed/Put T.I. in my presence

Dhvani Mehta
VIDHI CENTRE FOR LEGAL POLICY
DEPONENT

VERIFICATION

I, the above named deponent above named do hereby verify that the contents of para 1 to of my affidavit are true to the best of my knowledge and belief and no parts of it is false and nothing material has been concealed therefrom.

Verified at New Delhi **on this** 26 JUL 2024 **26th day of July, 2024**

Dhvani Mehta
VIDHI CENTRE FOR LEGAL POLICY
DEPONENT

NOTARY
A.N. SINGH
Supreme Court of India
Regd. No. 16959
Exp. Date: 31.01.2025
GOVT. OF INDIA

ATTESTED
A.N. Singh, Adv.
Notary Public
Govt. of India, New Delhi
26 JUL 2024

ANNEXURE/P 1

[1][TENTH SCHEDULE

[Articles 102(2) and 191(2)]

Provisions as to disqualification on ground of defection

1. **Interpretation.**—In this Schedule, unless the context otherwise requires,—

(*a*) "House" means either House of Parliament or the Legislative Assembly or, as the case may be, either House of the Legislature of a State;

(*b*) "legislature party", in relation to a member of a House belonging to any political party in accordance with the provisions of paragraph 2 or [2]*** paragraph 4, means the group consisting of all the members of that House for the time being belonging to that political party in accordance with the said provisions;

(*c*) "original political party", in relation to a member of a House, means the political party to which he belongs for the purposes of sub-paragraph (1) of paragraph 2;

(*d*) "paragraph" means a paragraph of this Schedule.

2. **Disqualification on ground of defection.**—(1) Subject to the provisions of [3][paragraphs 4 and 5], a member of a House belonging to any political party shall be disqualified for being a member of the House—

(*a*) if he has voluntarily given up his membership of such political party; or

(*b*) if he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by it 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 fifteen days from the date of such voting or abstention.

---

[1]Added by the Constitution (Fifty-second Amendment) Act, 1985, s. 6 (w.e.f. 1-3-1985).

[2]Certain words omitted by the Constitution (Ninety-first Amendment) Act, 2003, s. 5.

[3]Sub. by s. 5, *ibid*, for "paragraphs 3, 4 and 5".

Explanation.—For the purposes of this sub-paragraph,—

(*a*) an elected member of a House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member;

(*b*) a nominated member of a House shall,—

(*i*) where he is a member of any political party on the date of his nomination as such member, be deemed to belong to such political party;

(*ii*) in any other case, be deemed to belong to the political party of which he becomes, or, as the case may be, first becomes, a member before the expiry of six months from the date on which he takes his seat after complying with the requirements of article 99 or, as the case may be, article 188.

(2) An elected member of a House who has been elected as such otherwise than as a candidate set up by any political party shall be disqualified for being a member of the House if he joins any political party after such election.

(3) 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 after complying with the requirements of article 99 or, as the case may be, article 188.

(4) Notwithstanding anything contained in the foregoing provisions of this paragraph, a person who, on the commencement of the Constitution (Fifty-second Amendment) Act, 1985, is a member of a House (whether elected or nominated as such) shall,—

(*i*) where he was a member of political party immediately before such commencement, be deemed, for the purposes of sub-paragraph (1) of this paragraph, to have been elected as a member of such House as a candidate set up by such political party;

(*ii*) in any other case, be deemed to be an elected member of the House who has been elected as such otherwise than as a candidate set up by any political party for the purposes of sub-paragraph (2) of this paragraph or, as the case may be, be deemed to be a nominated member of the House for the purposes of sub-paragraph (3) of this paragraph.

[1]* * * * *

[1]Paragraph 3 omitted by the Constitution (Nienty-first Amendment) Act, 2003, s. 5.

4. **Disqualification on ground of defection not to apply in case of merger.**—(1) A member of a House shall not be disqualified under sub-paragraph (1) of paragraph 2 where his original political party merges with another political party and he claims that he and any other members of his original political party—

(*a*) have become members of such other political party or, as the case may be, of a new political party formed by such merger; or

(*b*) have not accepted the merger and opted to function as a separate group,

and from the time of such merger, such other political party or new political party or group, as the case may be, shall be deemed to be the political party to which he belongs for the purposes of sub-paragraph (1) of paragraph 2 and to be his original political party for the purposes of this sub-paragraph.

(2) For the purposes of sub-paragraph (1) of this paragraph, the merger of the original political party of a member of a House shall be deemed to have taken place if, and only if, not less than two-thirds of the members of the legislature party concerned have agreed to such merger.

5. **Exemption.**—Notwithstanding anything contained in this Schedule, a person who has been elected to the office of the Speaker or the Deputy Speaker of the House of the People or the Deputy Chairman of the Council of States or the Chairman or the Deputy Chairman of the Legislative Council of a State or the Speaker or the Deputy Speaker of the Legislative Assembly of a State, shall not be disqualified under this Schedule,—

(*a*) if he, by reason of his election to such office, voluntarily gives up the membership of the political party to which he belonged immediately before such election and does not, so long as he continues to hold such office thereafter, rejoin that political party or become a member of another political party; or

(*b*) if he, having given up by reason of his election to such office his membership of the political party to which he belonged immediately before such election, rejoins such political party after he ceases to hold such office.

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:

Provided that 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.

*7. **Bar of jurisdiction of courts.**—Notwithstanding anything in this Constitution, no court shall have any jurisdiction in respect of any matter connected with the disqualification of a member of a House under this Schedule.

8. **Rules.**—(1) Subject to the provisions of sub-paragraph (2) of this paragraph, the Chairman or the Speaker of a House may make rules for giving effect to the provisions of this Schedule, and in particular, and without prejudice to the generality of the foregoing, such rules may provide for—

(a) the maintenance of registers or other records as to the political parties, if any, to which different members of the House belong;

(b) the report which the leader of a legislature party in relation to a member of a House shall furnish with regard to any condonation of the nature referred to in clause (*b*) of sub-paragraph (1) of paragraph 2 in respect of such member, the time within which and the authority to whom such report shall be furnished;

(*c*) the reports which a political party shall furnish with regard to admission to such political party of any members of the House and the officer of the House to whom such reports shall be furnished; and

(*d*) the procedure for deciding any question referred to in sub-paragraph (1) of paragraph 6 including the procedure for any inquiry which may be made for the purpose of deciding such question.

(2) The rules made by the Chairman or the Speaker of a House under sub-paragraph (1) of this paragraph shall be laid as soon as may be after they are made before the House for a total period of thirty days which may be comprised in one session or in two or more successive sessions and shall take effect upon the expiry of the said period of thirty days unless they are sooner

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*Paragraph 7 declared invalid for want of ratification in accordance with the proviso to clause (2) of article 368 as per majority opinion in *Kihoto Hollohon Vs. Zachilhu and others* (1992) 1 S.C.C. 309.

approved with or without modifications or disapproved by the House and where they are so approved, they shall take effect on such approval in the form in which they were laid or in such modified form, as the case may be, and where they are so disapproved, they shall be of no effect.

(3) The Chairman or the Speaker of a House may, without prejudice to the provisions of article 105 or, as the case may be, article 194, and to any other power which he may have under this Constitution direct that any wilful contravention by any person of the rules made under this paragraph may be dealt with in the same manner as a breach of privilege of the House.]

H Pahadi
(T.C.)

ANNEXURE/P-2

2024 INSC 113

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

Writ Petition (C) No. 880 of 2017

Association for Democratic Reforms & Anr. ...Petitioners

Versus

Union of India & Ors. ...Respondents

With
Writ Petition (C) No. 59 of 2018

With
Writ Petition (C) No. 975 of 2022

And With
Writ Petition (C) No. 1132 of 2022

Signature Not Verified
Digitally signed by
CHETAN KUMAR
Date: 2024.02.16
13:11:32 IST
Reason:

JUDGMENT

Dr Dhananjaya Y Chandrachud, CJI

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PART A

1. The petitioners have instituted proceedings under Article 32 of the Constitution challenging the constitutional validity of the Electoral Bond Scheme[1] which introduced anonymous financial contributions to political parties. The petitioners have also challenged the provisions of the Finance Act 2017[2] which, among other things, amended the provisions of the Reserve Bank of India Act 1934[3], the Representation of the People Act 1951[4], the Income Tax Act 1961[5], and the Companies Act 2013[6].

A. Background

2. Section 31 of the RBI Act stipulates that only the RBI or the Central Government authorized by the RBI Act shall draw, accept, make, or issue any bill of exchange or promissory note for payment of money to the bearer of the note or bond. The Finance Act amended the RBI Act by including Section 31(3) which permits the Central Government to authorize any scheduled bank to issue electoral bonds.

3. To understand the context in which the legislative amendments were introduced, it is necessary to juxtapose the amendments with the regime on financial contributions to political parties. The law relating to financial contributions to political parties focusses on (a) contributions by corporate

[1] "Electoral Bond Scheme" or "Scheme"
[2] "Finance Act"
[3] Section 135 of the Finance Act 2017; "RBI Act"
[4] Section 137 of the Finance Act 2017;"RPA"
[5] Section 11 of the Finance Act 2017; "IT Act"
[6] Section 154 of the Finance Act 2017; "Companies Act"

entities; (b) disclosure of information on contributions; and (c) income tax exemptions for donations.

i. Corporate Contributions

4. The Companies Act 1956 and the provisions of the RPA, when they were enacted did not regulate contributions to political parties by companies and individuals. The Companies (Amendment) Act 1960 included Section 293A[7] to regulate contributions by companies. The provision stipulated that companies cannot contribute to (a) any political party; and (b) to any individual or body for any political purpose, amounts exceeding twenty-five thousand rupees in a financial year or five percent of its average net profits during the three financial years immediately preceding the contribution, whichever is greater. Companies were also required to disclose the amount contributed in a financial year in their profit and loss accounts and furnish particulars of the total amount contributed and the name of the party, individual or entity to which or to whom such amount was contributed. Companies defaulting in

[7] "293A. (1) Notwithstanding anything contained in section 293, neither a company in general meeting nor its Board of directors shall, after the commencement of the Companies (Amendment) Act, 1960, contribute-
(a) To any political party, or
(b) For any political purpose to any individual or body, any amount or amounts which or the aggregate of which will, in any financial year, exceed twenty-five thousand rupees or five per cent of its average net profits as determined in accordance with the provisions of sections 349 and 350 during the three financial years immediately preceding, whichever is greater.
Explanation- Where a portion of a financial year of the company falls before the commencement of the Companies (Amendment) Act, 1960, and a portion falls after such commencement, the latter portion shall be deemed to be a financial year within the meaning, and for the purposes, of this sub-section.
(2) Every company shall disclose in its profit and loss account any amount or amounts contributed by it under sub-section (1) to any political party or for any political purpose to any individual or body during the financial year to which the account relates, giving particulars of the total amount contributed and the name of the party, individual or body to which or to whom such amount has been contributed.
(3) If a company makes a default in complying with the provisions of sub-section (2), the company, and every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees."

complying with the disclosure requirement were punishable with a fine which could extend to rupees five thousand.

5. The Companies (Amendment) Act 1969 amended Section 293A[8] so as to ban contributions to political parties and for political purposes. Companies acting in contravention of the prohibition were punishable with a fine which could extend to five thousand rupees, and every officer who defaulted was punishable with imprisonment which could extend to three years, besides being liable to fine.

6. The Companies (Amendment) Act 1985 amended Section 293A[9] to permit contributions to political parties and for political purposes once again. The

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[8] "Section 293A. (1) Notwithstanding anything contained in any other provision of this Act, neither a company in general meeting nor its Board of directors shall, after the commencement of the Companies (Amendment) Act 1960 contribute any amount or amounts-

(a) To any political party or

(b) For any political purpose to an individual or body.

(2) If a company contravenes the provisions of sub-section (1) then-

(i) the company shall be punishable with fine which may extend to five thousand rupees; and

(ii) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine"

[9] "293A. (1) Notwithstanding anything contained in any other provision of this Act-

(a) No Government company; and

(b) No other company which has been in existence for less than three financial years,

shall contribute any amount or amounts, directly or indirectly, -

(i) To any political party; or

(ii) For any political purpose to any person.

(2) A company, not being a company referred to in clause (a) or clause (b) of sub-section (1), may contribute any amount or amounts directly or indirectly-

(a) to any political party,-

(b) for any political purpose to any person:

Provided that the amount or, as the case may be, the aggregate of the amounts which may be so contributed by a company in any financial year shall not exceed five percent of its average net profits determined in accordance with the provisions of sections 349 and 350 during the three preceding financial years.

Explanation.- Where a portion of a financial year of the company falls before the commencement of the Companies (Amendment) Act, 1985, and a portion falls after such commencement, the latter portion shall be deemed to be a financial year within the meaning, and for the purposes of this sub-section:

Provided further that no such contribution shall be made by a company unless a resolution authorizing 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 authorized by it.

(3) Without prejudice to the generality of the provisions of sub-sections (1) and (2)-

(a) a donation or subscription or payment caused to be given by a company on its behalf or on its account to a person who, to its knowledge, is carrying on any activity which, at the time at which such donation or subscription or payment was given or made, can reasonably be regarded as likely to effect public support for

explanation of the phrase "political purpose" included donations made to a person who in the knowledge of the donor is carrying out any activity at the time of donation which can be regarded as public support to a political party. Further, the direct or indirect expenditure by companies on advertisements by or on behalf of political parties or publications for the advantage of a political party were also regarded as contributions for political purposes. Three other restrictions, in addition to the earlier restriction prescribing a cap on contributions and disclosure requirement were included. First, the company (which is not a government company) should have been in existence for more than three years; second, contributions could only be made when a resolution authorizing the contributions had been passed at a meeting of the Board of Directors; and third, the penal consequences attached to the violations of the provision were made more stringent. A fine extendable to three times the amount contributed could be imposed, and every officer of the company who

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a political party shall also be deemed to be contribution of the amount of such donation, subscription or payment to such person for a political purpose;

(b) the amount of expenditure incurred, directly or indirectly, by a company on advertisement in any publication (being a publication in the nature of a souvenir brochure, tract, pamphlet or the like) by or on behalf of a political party or for its advantage, shall also be deemed,-

(i) where such publication is by or on behalf of a political party, to be a contribution of such amount to such political party, and

(ii) where such publication is not by or on behalf of but for the advantage of a political party, to be a contribution for a political purpose to the publishing it.

(4) Every company shall disclose in its profit and loss account any amount or amounts contributed by it to any political party or for any political purpose to any person during the financial year to which that account relates, giving particulars of the total amount contributed and the name of the party or person to which or to whom such amount has been contributed.

(5) If a company makes any contribution in contravention of the provisions of this section-

(a) the company shall be punishable with fine which may extend to three times the amount so contributed; and

(b) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

was in default of the provision was punishable for a term which could extend to three years and be liable for fine.

7. Section 182 of the Companies Act 2013 substantively incorporated the provisions of Section 293-A of the 1956 Act, as amended in 1985. Section 182 enables a company to contribute any amount directly or indirectly to any political party. The provision bars a Government company and a company which has been in existence for less than three financial years from contributing to a political party. The provisos to the provision prescribe the following two conditions:

   a. The aggregate of the amount 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;[10] and

   b. A contribution can be made only if the Board of Directors issues a resolution authorizing the contribution at a meeting. Such a resolution shall, subject to the other provisions of the Section, be deemed to be a justification in law for the making and acceptance of the contribution authorized by the Board.[11]

8. Sub-section (3) of Section 182 mandates every company to disclose in its profit and loss account any amount contributed by it to any political party during the financial year with specific particulars of the total amount

[10] Companies Act, First proviso to Section 182(1).
[11] Companies Act, second proviso to Section 182(1)

contributed along with the name of the political party to which the contribution was made.

9. Section 182 of the Companies Act 2013 made two modifications from Section 293-A of the Companies Act 1956: (a) the cap on the contributions which can be made by companies was increased from 5 % to 7.5% of their average net profits; and (b) more stringent consequences for violation of were imposed. The fine was extendable to five times (instead of three times prescribed in the earlier provision) of the contribution.

10. The Finance Act 2017 made three changes to Section 182 of the Companies Act:

    a. The first proviso to Section 182(1) which prescribed a cap on corporate funding was omitted;

    b. Section 182(3) was amended to only require a disclosure of the **total** amount contributed to political parties by a company in a financial year and excluded the requirement to disclose the particulars of the amount contributed to each political party; and

    c. Sub-section 3A was introduced, by which a company could contribute to a political party only by a cheque, bank draft, or electronic clearing system. The proviso to the sub-section states that a company may also contribute through any instrument issued pursuant to any scheme notified under any law for the time being in force for contribution to political parties.

ii. Curbing black money

11. The Taxation Laws (Amendment) Act 1978 included Section 13A to the IT Act exempting the income of political parties through financial contributions and investments from income tax. The objects and reasons of the Amending Act stipulated that tax exemption would increase disposable funds from "legitimate sources". However, to secure the benefit of exemption, the following conditions prescribed in the proviso were required to be fulfilled:

a. The political party was required to keep and maintain books of account and other documents which would enable the Assessing Officer to properly deduce its income;[12]

b. The political party had to maintain a record of voluntary contributions in excess of twenty thousand rupees[13], along with the name and address of the person who made such contributions;[14] and

c. The accounts of the political party were required to be audited by an accountant.[15]

[12] IT Act, Proviso (a) to Section 13A
[13] It was ten thousand rupees when Section 13A was introduced. It was increased to twenty thousand rupees by the Election and Other Related Laws (Amendment) Act 2003
[14] IT Act, Proviso (b) to Section 13A
[15] IT Act, Proviso (c) to Section 13A

12. By the Election and Other Related Laws (Amendment) Act 2003, Sections 80GGB[16] and 80GGC[17] were inserted in the IT Act making contributions made to political parties tax deductible. The speech of Mr Arun Jaitley, the then Minister of Law and Justice while moving the Bill indicates that contributions were made tax deductible to "incentivize contributions" through cheque and other banking channels.

13. The Finance Act 2017 made the following amendments to Section 13A of the IT Act:

    a. The political party was not required to maintain a record of contributions if the contribution was received by electoral bonds;[18] and

    b. The political party must receive a donation in excess of two thousand rupees only by a cheque, bank draft, electronic clearing system or through an electoral bond.[19]

iii. Transparency

14. The Election and Other Related Laws (Amendment) Act 2003 amended the provisions of the RPA. Section 29C of the RP Act was introduced for requiring each political party to declare the details of the contributions received. The

[16] 80GGB. "Deduction in respect of contributions made by companies to political parties-In computing the total income of an assessee, being an Indian company, there shall be deducted any sum contributed by it, in the previous year to any political party or an electoral trust:
Provided that no deduction shall be allowed under this section in respect of any sum contributed by way of cash."
[17] 80 GGC. "Deduction in respect of contributions made by any person to political parties- In computing the total income of an assessee, being any person, except local authority and every artificial juridical person wholly or partly funded by the Government, there shall be deducted any amount of contribution made by him, in the previous year, to a political party [or an electoral trust] :
[Provided that no deduction shall be allowed under this section in respect of any sum contributed by way of cash.]
Explanation.—For the purposes of sections 80GGB and 80GGC, "political party" means a political party registered under section 29A of the Representation of the People Act, 1951 (43 of 1951)."
[18] IT Act, amendment to Proviso (b) to Section 13A
[19] IT Act, Proviso (d) to Section 13A

treasurer of a political party or any other person authorized by the political party must in each financial year prepare a report in respect of the contributions in excess of twenty thousand rupees received by the party from a person or company other than Government companies in that financial year. The report prepared must be submitted to the Election Commission before the due date for furnishing a return of income of that financial year under the IT Act.[20] A political party which fails to submit the report shall not be entitled to any tax relief as provided under the IT Act.[21]

15. The provision was amended by the Finance Act 2017 to include a proviso by which the political party was not required to disclose details of contributions received by electoral bonds.

Annexure I to this Judgment depicts in a tabular form the amendments to the provisions of the RP Act, the IT Act, the Companies Act, and the RBI Act by the Finance Act 2017.

16. The effect of the amendments introduced by the Finance Act to the above legislations is that:

    a. A new scheme for financial contribution to political parties is introduced in the form of electoral bonds;

    b. The political parties need not disclose the contributions received through electoral bonds;

[20] RPA, Section 29C (3)
[21] RPA, Section 29C (4)

c. Companies are not required to disclose the details of contributions made in any form; and

d. Unlimited corporate funding is permissible.

iv. Objections of RBI and ECI to the Electoral Bond Scheme

17. On 2 January 2017, the RBI wrote a letter to the Joint Secretary in the Ministry of Finance on the proposal of the Government of India to enable Scheduled Banks to issue electoral bearer bonds for the purpose of donations to political parties before the Finance Act 2017 was enacted. The RBI objected to the proposal on the ground that:

a. The amendment would enable multiple non-sovereign entities to issue bearer instruments. The proposal militated against RBI's sole authority for issuing bearer instruments which has the potential of becoming currency. Electoral bonds can undermine the faith in banknotes issued by the Central Bank if the bonds are issued in sizable quantities;

b. Though the identity of the person or entity purchasing the bearer bond will be known because of the Know Your Customer[22] requirement, the identities of the intervening persons/entities will not be known. This would impact the principles of the Prevention of Money Laundering Act 2002; and

[22] "KYC"

c. The intention of introducing electoral bonds can be accomplished by cheque, demand draft, and electronic and digital payments. There is no special need for introducing a new bearer bond in the form of electoral bonds.

18. On 30 January 2017, the Finance Ministry responded to the observations of RBI and stated that:

a. RBI has not understood the core purpose of electoral bonds which is to keep the identity of the donor secret while at the same time ensuring that the donation is only made from tax paid money; and

b. The fear that electoral bonds might be used as currency is unfounded because there is a time limit for redeeming the bonds.

19. By a letter dated 4 August 2017, the Deputy Governor of the RBI stated that India can consider issuing the electoral bonds on a transitional basis through the RBI under the existing provisions of Section 31(1) of the RBI Act. The RBI recommended the incorporation of the following safeguards to minimize the inherent scope of misuse of the bonds for undesirable activities:

a. The electoral bonds may have a maximum tenure of fifteen days;

b. The electoral bonds can be purchased for any value in multiples of a thousand, ten thousand, or a lakh of rupees;

c. The purchase of electoral bonds would be allowed from a KYC compliant bank account of the purchaser;

d. The electoral bonds can be redeemed only upon being deposited into the designated bank account of an eligible political party;

e. The sale of electoral bonds will be open only for a limited period, may be twice a year for seven days each; and

f. The electoral bonds will be issued only at RBI, Mumbai.

20. The draft of the Electoral Bond Scheme was circulated to the RBI for its comments. The draft conferred notified scheduled commercial banks, apart from the RBI, with the power to issue electoral bonds. The RBI objected to the draft Scheme by a letter dated 14 September 2017. The RBI stated that permitting a commercial bank to issue bonds would "have an adverse impact on public perception about the Scheme, as also the credibility of India's financial system in general and the central bank in particular." The RBI again flagged the possibility of shell companies misusing bearer bonds for money laundering transactions. The RBI recommended that electoral bonds may be issued in electronic form because it would (a) reduce the risk of their being used for money laundering; (b) reduce the cost; and (c) be more secure.

21. The Electoral Bond Scheme was placed for deliberation and guidance by the RBI before the Committee of the Central Board. The Committee conveyed serious reservations on the issuance of electoral bonds in the physical form. The reservations were communicated by the RBI to the Finance Minister by a letter dated 27 September 2017. The reservations are catalogued below:

a. Issuance of currency is a 'monopolistic function' of a central authority which is why Section 31 of the RBI Act bars any person other than the RBI from issuing bearer bonds;

b. Issuance of electoral bonds in the scrips will run the risk of money laundering since the consideration for transfer of scrips from the original subscriber to a transferee will be paid in cash. This will not leave any trail of transactions. While this would provide anonymity to the contributor, it will also provide anonymity to several others in the chain of transfer;

c. Issuance of electoral bonds in the scrip form could also expose it to the risk of forgery and cross-border counterfeiting besides offering a convenient vehicle for abuse by "aggregators"; and

d. The electoral bond may not only be seen as facilitating money laundering but could also be projected (albeit wrongly) as enabling it.

22. On 26 May 2017, the Election Commission of India[23] wrote to the Ministry of Law and Justice that the amendments to the IT Act, RPA, and Companies Act introduced by the Finance Act 2017 will have a "serious impact on transparency of political finance/funding of political parties." The letter notes that the amendment to the RPA by which donations through electoral bonds were not required to be disclosed is a retrograde step towards transparency of donations:

> "2(ii) It is evident from the Amendment which has been made, that any donation received by a political party through

[23] "ECI"

> electoral bond has been taken out of the ambit of reporting under the Contribution Report as prescribed under Section 29C of the Representation of the People Act 1951 and therefore, this is a retrograde step as far as transparency of donations is concerned and this proviso needs to be withdrawn.
>
> (iii) Moreover, in a situation where contributions received through Electoral Bonds is not reported, on perusal of the Contribution reports of the political parties, it cannot be ascertained whether the political party has taken any donation in violation of provisions under Section 29B of the Representation of the People Act 1951 which prohibits the political parties from donations from Government Companies and Foreign sources."

23. Referring to the deletion of the provision in the Companies Act requiring companies to disclose particulars of the amount contributed to specific political parties, the ECI recommended that companies contributing to political parties must declare party-wise contributions in the profit and loss account to maintain transparency in the financial funding of political parties. Further, the ECI also expressed its apprehension to the deletion of the first proviso to Section 182(1) by which the cap on corporate donations was removed. The ECI recommended that the earlier provision prescribing a cap on corporate funding be reintroduced because:

a. Unlimited corporate funding would increase the use of black money for political funding through shell companies; and

b. Capped corporate funding ensured that only profitable companies with a proven track record could donate to political parties.

v. Electoral Bond Scheme

24. On 2 January 2018, the Ministry of Finance in the Department of Economic Affairs notified the Electoral Bond Scheme 2018 in exercise of the power under Section 31(3) of the RBI Act. The Electoral Bond is a bond issued in the nature of promissory note which is a bearer banking instrument and does not carry the name of the buyer.[24] The features of the Scheme are as follows:

a. The Bond may be purchased by a person who is (i) a citizen of India; or (ii) incorporated or established in India.[25] 'Person' includes (a) an individual; (b) a Hindu undivided family; (c) a company; (c) a firm; (d) an association of persons or a body of individuals, whether incorporated or not; (e) every artificial juridical person, not falling within any of the above categories; and (f) any agency, office, or branch owned or controlled by such a person. An individual can buy bonds either singly or jointly with other individuals;[26]

b. An Electoral Bond can only be encashed by an eligible political party.[27] A political party, to be eligible to receive an electoral bond, has to be registered under Section 29A of the RP Act, and ought to have secured not less than one per cent of the votes polled in the last general election to the House of the People or the Legislative Assembly of the State.[28] An eligible political party can encash a bond only through a bank account

[24] Electoral Bond Scheme, Clause 2(a)
[25] Electoral Bond Scheme, Clause 3(1)
[26] Electoral Bond Scheme, clause 3(3)
[27] Electoral Bond Scheme, Clause 12
[28] Electoral Bond Scheme, Clause 3(3)

with an authorised bank.[29] The scheme has notified the State Bank of India as the bank authorised to issue and encash bonds;[30]

c. The instructions issued by the Reserve Bank of India regarding KYC apply to buyers of the bond. The authorised bank may call for additional KYC documents if necessary;[31]

d. Payments for the issuance of the bond are accepted in Indian rupees, through demand draft, cheque, Electronic Clearing System or direct debit to the buyer's account. Where payment is made by cheque or demand draft, it must be drawn in favour of the issuing bank at the place of issue;[32]

e. The bonds are issued in denominations of Rs 1000, 10,000, 1,00,000, 10,00,000 and 1,00,00,000;[33]

f. The bond is valid for fifteen days from the date of issue. No payment will be made to a political party if the bond is deposited after the expiry of fifteen days[34]. If the bond is not encashed within fifteen days, it will be deposited by the authorised bank with the Prime Minister's Relief Fund;[35]

g. A buyer who wishes to purchase electoral bond(s) can apply in the format specified in Annexure II of the Scheme.[36] The issuing branch shall

[29] Electoral Bond Scheme, Clause 3(4)
[30] Electoral Bond Scheme, Clause 2(b)
[31] Electoral Bond Scheme, Clause 4(2)
[32] Electoral Bond Scheme, Clause 11
[33] Electoral Bond Scheme, Clause 5
[34] Electoral Bond Scheme, Clause 6
[35] Electoral Bond Scheme, Clause 12(2)
[36] Electoral Bond Scheme, Clause 7(1)

issue the bond if all the requirements are fulfilled.[37] The application shall be rejected if the application is not KYC compliant or if the application does not meet the requirements of the scheme;[38]

h. The bond issued is non-refundable;[39]

i. The information furnished by the buyer is to be treated as confidential by the authorized bank. It shall be disclosed only when demanded by a competent court or upon the registration of criminal case by any law enforcement agency;[40]

j. The bond shall be available for purchase for a period of ten days on a quarterly basis, in the months of January, April, July, and October as specified by the Central Government.[41] Bonds will be available for an additional period of thirty days as specified by the Central Government in a year when General Elections to the House of People are to be held;[42]

k. No interest is payable on the bond.[43] No commission, brokerage, or any other charges for issue of a bond shall be payable by the buyer against purchase of the bond;[44]

l. The value of the bonds shall be considered as income by way of voluntary contributions received by an eligible political party for the

[37] Electoral Bond Scheme, Clause 7(3)
[38] Electoral Bond Scheme, Clause 7(4)
[39] Electoral Bond Scheme, Clause 7(6)
[40] Electoral Bond Scheme, Clause 7(4)
[41] Electoral Bond Scheme, Clause 8(1)
[42] Electoral Bond Scheme, Clause 8(2)
[43] Electoral Bond Scheme, Clause 9
[44] Electoral Bond Scheme, Clause 10

purpose of exemption from Income Tax under Section 13A of the IT Act;[45] and

m. The bonds are not eligible for trading.[46]

25. The petitioners instituted proceedings under Article 32 seeking a declaration that Electoral Bond Scheme and the following provisions be declared unconstitutional:

a. Section 135 of the Finance Act 2017 and the corresponding amendment in Section 31 of the RBI Act;

b. Section 137 of the Finance Act 2017 and the corresponding amendment in Section 29C of the RP Act;

c. Section 11 of the Finance Act 2017 and the corresponding amendment in Section 13A of the IT Act; and

d. Section 154 of the Finance Act 2017 and the corresponding amendment to Section 182 of the Companies Act.

26. In its order dated 13 April 2019, this Court observed that the amendments which have been challenged give rise to weighty issues which have a bearing on the sanctity of the electoral process. This Court directed all political parties, in the interim to submit details of contributions received through electoral bonds (with particulars of the credit received against each bond, date of credit, and particulars of the bank account to which the amount has been credited)

[45] Electoral Bond Scheme, Clause 13
[46] Electoral Bond Scheme, Clause 14

to the ECI in a sealed cover. The prayer for interim relief was rejected by observing that the operations under the scheme are not placed behind "iron curtains incapable of being pierced":

> "25. The financial statements of companies registered under the Companies Act, 2013 which are filed with the Registrar of Companies, are accessible online on the website of the Ministry of Corporate Affairs for anyone. They can also be obtained in physical form from the Registrar of Companies upon payment of prescribed fee. Since the Scheme mandates political parties to file audited statement of accounts and also since the Companies Act requires financial statements of registered companies to be filed with the Registrar of Companies, the purchase as well as encashment of the bonds, happening only through banking channels, is always reflected in documents that eventually come to the public domain. All that is required is a little more effort to cull out such information from both sides (purchaser of bond and political party) and do some "match the following". Therefore, it is not as though the operations under the Scheme are behind iron curtains incapable of being pierced."

27. The petitioners have also challenged the introduction of the Finance Act as a Money Bill under Article 110 of the Constitution. The issue of the scope of Article 110 has been referred to a seven-Judge Bench and is pending adjudication.[47] The petitioners submitted that they would press the grounds of challenge to the Finance Act independent of the issue on Money Bills in view of the upcoming elections to Parliament.

28. By an order dated 31 October 2023, the batch of petitions was directed to be listed before a Bench of at least five-Judges in view of the provisions of Article 145(3) of the Constitution. It is in this background that the challenge to the

[47] Roger Mathew v. South Bank of India, CA No. 8588/2019

Electoral Bond Scheme and the amendments is before the Constitution Bench.

B. Issues

29. The present batch of petitions gives rise to the following issues:

a. Whether unlimited corporate funding to political parties, as envisaged by the amendment to Section 182(1) of the Companies Act infringes the principle of free and fair elections and violates Article 14 of the Constitution; and

b. Whether the non-disclosure of information on voluntary contributions to political parties under the Electoral Bond Scheme and the amendments to Section 29C of the RPA, Section 182(3) of the Companies Act and Section 13A(b) of the IT Act are violative of the right to information of citizens under Article 19(1)(a) of the Constitution.

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C. Submissions

i. Submissions of petitioners

30. Mr Prashant Bhushan, learned counsel made the following submissions:

a. There is no rational basis for the introduction of electoral bonds. The main objective of introducing the Electoral Bond Scheme as reflected in the article written by the then Finance Minister, Mr. Arun Jaitley was that it would enhance transparency in electoral funding since electoral bond transactions can only be made through legitimate banking channels. However, cash donations are still permitted even after the introduction of the Electoral Bond Scheme;

b. The Central Government ignored the objections which were raised by both the RBI and the ECI to the Electoral Bond Scheme;

c. The statutory amendments and the Electoral Bond Scheme which mandates non-disclosure of information of electoral funding are unconstitutional because:

i. They defeat the purpose of introducing provisions mandating disclosure of information on political funding in the RPA and the Companies Act which was to enhance transparency in electoral funding;

ii. They violate Article 19(1)(a) which guarantees to the voter the right to information concerning the affairs of the public and the

government.[48] This includes the right to information about financial contributions to political parties because the Constitution through the Tenth Schedule recognizes that political parties have a decisive control over the formation of Government and voting by members of the Legislature in the Legislative Assembly;

iii. They violate Article 21 because the non-disclosure of information of political contributions promotes corruption[49] and *quid pro quo* arrangements. The available data indicates that more than ninety four percent of the total electoral bonds are purchased in denominations of rupees one crore. This indicates that bonds are purchased by corporates and not individuals. The limited disclosure clause in the Electoral Bond Scheme prevents investigating agencies such as the Central Bureau of Investigation and Enforcement Directorate from identifying corruption; and

d. They violate the rights of shareholders of Companies who are donating money to political parties by preventing disclosure of information to them; and

e. The statutory amendments and the Electoral Bond Scheme subvert democracy and interfere with free and fair elections because the huge difference in the funds received by ruling parties in the States and Centre

[48] Relied on PUCL v. Union of India, (2003) 4 SCC 399; ADR v. Union of India, (2002) 5 SCC 294; Anjali Bhardwaj v. Union of India, (2019) 18 SCC 246
[49] Relied on Kanwar Lal Gupta v. Amar Nath Chawla, 1975 SCC (3) 646

vitiates a level playing field between different parties and between parties and independent candidates.

31. Mr Kapil Sibal, learned senior counsel made the following submissions:

a. The amendments and the Electoral Bond Scheme skew free and fair elections by permitting unlimited contributions to political parties by corporate entities and removing the requirement of disclosure of information about political funding;

b. Freedom of a voter in the negative connotation refers to the freedom to cast their vote without interference and intimidation. Freedom in the positive connotation includes the freedom to vote on the basis of complete and relevant information. This includes information about financial contributions to political parties;

c. The argument of the Union of India that Courts should show judicial restraint is erroneous because the amendments in question relate to the electoral process and do not pertain to economic policy;

d. The presumption of constitutionality should not apply to statutes which alter the ground rules of the electoral process. The principle underlying the presumption of constitutionality is that the legislature represents the will of the people and that it is validly constituted through free and fair elections. It would be paradoxical to accord a presumption of

constitutionality to the very laws or rules that set the conditions under which the legislature comes into being[50];

e. Corporate funding *per se* is violative of the Constitution because corporate entities are not citizens and thus, are not entitled to rights under Article 19(1)(a);

f. The funds contributed to the Electoral Bond Scheme can be used in any manner and their use is not restricted to electoral campaigns;

g. The Electoral Bond Scheme severs the link between elections and representative democracy because those elected are inclined to fulfill the wishes of the contributors and not the voters. This could be through direct *quid pro quo* where an express promise is made to enact a policy in favour of the donor and indirect *quid pro quo* where there is an influence through *access* to policy makers;

h. The Scheme promotes information asymmetry where the information about political donations is not disclosed to voters but the Central Government is privy to such information through the State Bank of India which is the authorized bank under the Scheme. The information asymmetry will ensure that a larger portion of the donations would be made to the ruling party at the Centre. According to the data, the political party at the center has received fifty seven percent of the total contributions made through electoral bonds;

[50] Relied on Subash Chandra v. Delhi Subordinate Services Selection Board, (2009) 15 SCC 458

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i. The Electoral Bond Scheme skews the principle of one person, one vote because it gives the corporates a greater opportunity to influence political parties and electoral outcomes;

j. The amendment to Section 182(3) permits: (i) loss making companies to contribute to political parties; (ii) unlimited contributions to political parties enabling significant policy influence; and (iii) non-disclosure of information on political funding to shareholders;

k. The amendments permitting non-disclosure of information on political funding are violative of the right to information under Article 19(1)(a). The right to information on funding of political parties is a natural consequence of the judgment of this Court in **ADR** (supra) and **PUCL** (supra) because the underlying principle in the judgments is that an informed voter is essential for a functioning democracy. Information about funding to political parties is necessary for an informed voter since the Symbols Order 1968 and the provisions of the Tenth Schedule allow political parties to influence legislative outcomes and policies;

l. The infringement of the right to information does not satisfy the proportionality standard vis-à-vis the purpose of curbing black money. Even if the argument that the Electoral Bond Scheme fulfills the purpose is accepted, non-disclosure of information on political funding is not the least restrictive means to achieve the purpose;

m. The infringement of the right to information does not satisfy the proportionality standard vis-à-vis the purpose of guaranteeing informational privacy because:

i. Protecting donor privacy is not a legitimate purpose. There is no legitimate expectation of informational privacy to political contributions. The argument that it lies at the heart of privacy conflates speech with money. Secrecy of voting cannot be equated to political donations because while the former is an expression of political equality, the latter is contrary to political equality because it depends on the economic capacity of the contributor;

ii. Political funding is made to influence public policy. They are public acts which are by their very nature subject to public scrutiny; and

iii. Even if donor privacy is necessary, on a balance, the public interest in free and fair elections trumps the private interest in confidentiality. Further, this Court has to balance between the *possibility* of victimization on the disclosure of information and the *infringement* of the right to know; and

n. The amendment to Section 31 of the RBI Act is unconstitutional because of excessive delegation since it does not set out the contours of the Scheme.

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32. Mr Shadan Farasat, learned counsel made the following submissions:

a. The Scheme does not effectively curb black money. Clause 14 of the Electoral Bond Scheme prohibits *de jure* trading of the bonds. However, trading is *de facto* permissible. Nothing prevents person A from purchasing the bond and trading it with person B who pays through cash;

b. The right to information on political funding which is traceable to Article 19(1)(a) can only be restricted on the grounds stipulated in Article 19(2). The purposes of curbing black money and recognizing donor privacy is not traceable to the grounds in Article 19(2);

c. Even if the purposes are traceable to Article 19(2), the Scheme is unreasonable and disproportionate to the purpose of "increasing political funding through banking channels and reducing political funding through non-banking channels" because:

i. The purpose is not satisfied: The regime still permits cash funding up to Rupees two thousand. The operation of the Scheme increases anonymous funding through electoral bonds at the cost of contributions through regular banking channels;

ii. There is no rational nexus between the means and the purpose;

iii. Other less restrictive means of contributing through banking channels are available; and

iv. The fifth prong of the proportionality analysis as laid down in **Gujarat Mazdoor Sabha** v. **State of Gujarat**[51] and **Ramesh Chandra Sharma** v. **State of Uttar Pradesh**[52] that the legislation should have sufficient safeguard to prevent abuse has also not been satisfied.

d. The statutory amendments and the Scheme are manifestly arbitrary because (i) large scale corruption and *quid pro quo* arrangements would go unidentified due to the non-disclosure of information about political funding; (ii) they enable capture of democracy by wealthy interests; and (iii) they infringe the principle of 'one person-one vote' because a selected few overpower the voice of the masses because of their economic wealth;

e. The deletion of the limit on corporate contributions is manifestly arbitrary[53] because it (i) permits donations by loss making companies; (ii) removes the control of shareholders over the decisions of the Board; (iii) permits unlimited contribution by corporates and thereby abrogates democratic principles;

f. The provision permitting non-disclosure of funding by companies is violative of the shareholders' rights under:

i. Article 25 which includes the right of the shareholder to know how the resources generated from their property are utilized. Once a

[51] (2020) 10 SCC 459
[52] 2023 SCC OnLine SC 162
[53] Relied on Shayara Bano v. Union of India, (2017) 9 SCC 1

shareholder comes to know that a company is financing a political party and their conscience does not permit it, as an exercise of the right to conscience, the shareholder should be entitled to sell those shares; and

ii. If the shareholder feels that the political contributions are not a sound business decision, they must be entitled to exit the business by selling the shares. The information that would enable the shareholder to make such a decision is not disclosed, thus, infringing upon their right under Article 19(1)(g).

33. Mr Nizam Pasha, learned counsel made the following submissions:

a. The Electoral Bond Scheme and the amendments are arbitrary as they permit Indian registered companies to purchase electoral bonds without considering their ownership and control. This goes against foreign investment laws in India, treating companies owned or controlled by non-resident Indian citizens as *'foreign owned or controlled companies,'* without rational justification;

b. The Electoral Bond Scheme is arbitrary due to its discriminatory and non-transparent nature. It contradicts existing laws requiring transparency and verification of the beneficial ownership and source of funds; and

c. The amendments to Section 29C of the RPA and Section 182 of the Companies Act serve no purpose other than perpetuating illegal ends,

as they exempt companies' purchase of electoral bonds from public disclosure. This fails to achieve the scheme's stated objective of curbing cash donations.

34. Mr Vijay Hansaria, learned senior counsel made the following submissions:

a. The objects and reasons of the Election and Other Related Laws (Amendment) Act 2003 which amended the Companies Act 1956, IT Act 1961, and the RPA indicates that the amendments were made to incentivize contributions through banking channels. Thus, the amendments to Section 13A of the Income Tax Act and Section 29C of the RPA are contrary to the object of inserting Section 13A and Section 80GGB and Section 80GGC of the Income Tax Act;

b. Since 1959, when companies were permitted to contribute to political parties, all companies were required to mandatorily disclose the total contributions made and the name of party to which they have contributed. Further, ceiling limits for total contribution by companies were prescribed. The Finance Act 2017 does away with these transparency requirements; and

c. International perspectives on political funding regulations, including those from the United States, the United Kingdom, Switzerland and Singapore, emphasize the importance of transparency, disclosure, and reporting in political contributions. These examples underscore the global consensus on transparency in the political funding process.

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35. Mr Sanjay R. Hegde, learned senior counsel made the following submissions:

a. Public listed companies are subject to scrutiny since they raise funds from the public. Information pertaining to the company is essential to be brought to the public domain. This will enable informed debates and discussions regarding the use of money by such companies. Such information must particularly be made available to shareholders to enable them to make an informed choice with regard to trading of securities. Thus, the amendment to the Companies Act which removes the requirement of disclosure of information about political contributions is violative of the right to information of shareholders which flows from Article 19(1)(a);

b. Public listed companies should not be allowed to make contributions without the consent of the majority of the shareholders or the consent of three-fourths of shareholders;

c. Non-disclosure of information about political funding denies shareholders the right to choice that flows from Article 21. Shareholders are incapacitated from making a choice about whether they wish to invest in shares of a company which has contributed to a political party whose ideology that shareholder does not agree with; and

d. The amendment to Section 182(3) perpetuates the pre-existing inequality in power between shareholders and the Board/Promoters/management and puts the shareholders in an even

weaker position violating the right to substantive equality under Article 14.

36. Mr PB Suresh, learned counsel made the following submissions:

a. The Scheme and amendments violate Articles 14 and 15 by disproportionately impacting regional political parties and political parties which represent marginalised and backward sections of the society. The representation of the backward classes is low in the corporate sector. Thus, the Scheme has a disparate impact on parties whose social base is derived from the SC/STs and backward classes;

b. The presumption of constitutionality does not apply in full rigour to electoral laws because the incumbent legislators have a vested interest in shaping the laws that would make it easier for them to be re-elected;

c. The removal of the cap on corporate donations has strengthened the position of major political parties and created more barriers for the entry of new political parties; and

d. Political parties have a right to know the funding sources of rival political parties to enable them to critique it before the public.

ii. Submissions of Union of India

37. The learned Attorney General for India made the following submissions:

a. Political parties are an integral product of a free and open society and play an important role in the administration of the affairs of the community. Accordingly, they are entitled to receive all support, including financial contributions;

b. The Electoral Bond Scheme allows any person to transfer funds to political parties of their choice through legitimate banking channels instead of other unregulated ways such as direct transfer through cash;

c. The Scheme ensures confidentiality of the contributions made to political parties. The benefit of confidentiality to contributors ensures and promotes contribution of clean money to political parties;

d. Citizens do not have a general right to know regarding the funding of political parties. Right to know is not a general right available to citizens;

e. This Court has evolved the right to know for the specific purpose of enabling and furthering the voter's choice of electing candidates free from blemish; and

f. The influence of contributions by companies to political parties ought not to be examined by this Court. It is an issue of democratic significance and should be best left to the legislature.

38. The learned Solicitor General of India made the following submissions:

a. The legal framework prior to the enactment of the Electoral Bond Scheme was mostly cash-based which incentivized infusion of black money into political parties, and consequently, into the electoral process in India. The Electoral Bond Scheme is an improvement on the prior legal framework;

b. Donors to a political party often apprehended retribution from other political parties. Such apprehension incentivized donors to contribute unaccounted money to political parties to avoid identification and victimization by other political parties. The Electoral Bond Scheme maintains the confidentiality of donors and thereby incentivizes them to contribute clean money to political parties;

c. In case the donor is a public company, they will have to declare the amount contributed in their books of account without disclosing the name of the political party. Similarly, the political parties will also have to disclose the total amount received through electoral bonds in their annual audited accounts filed before the Election Commission of India. This framework ensures a balance between clean money coming into the system as against the right to information of citizens;

d. The state has a positive obligation to safeguard the privacy of its citizens, which necessarily includes the citizens' right to political affiliation. The right of a buyer to purchase electoral bonds without having to disclose their preference of political party secures the buyer's right to privacy;

e. The Electoral Bond Scheme has been enacted in pursuance of a legitimate state interest - to shift from cash driven, unregulated and unaccounted cash based political donations to a regulated, digital and legal political donation framework. The provisions of the Electoral Bond Scheme have a specific object and purpose of curbing black money and protecting donor privacy:

i. Clause 3(3) imposes a pre-condition that only a registered political party which has secured at least 1 per cent of the votes polled in the last general election would be eligible to receive bonds. This provision ensures that ghost political parties are barred from seeking and receiving political funding;

ii. Clause 4 requires a buyer of electoral bonds to meet the requisite KYC Norms. This ensures that only KYC compliant persons are entitled to buy electoral bonds;

iii. The limited validity period of fifteen days ensures that the bond is not used as a parallel currency;

iv. Clause 7(4) mandates the authorized bank to treat the information furnished by a buyer as confidential which shall not be disclosed to any authority, except when directed by a competent court or upon registration of criminal case by any law enforcement agency. This provision protects the privacy and personal details of the buyer vis-à-vis the state; and

v. Clause 11 mandates that all payments for the purchase of electoral bonds shall be accepted through banking channels. This provision curbs the circulation of black money.

f. The right of a citizen to know how political parties are being funded must be balanced against the right of a person to maintain privacy of their political affiliations. Donating money to one's preferred party is a form political self-expression, which lies at the heart of privacy;

g. Maintaining anonymity of donations to political parties is a part of the concept of secret ballot because it enables a person to make political choices without any fear of victimization or retaliation;

h. The right to information only operates against information in the possession or in the knowledge of the state. It cannot operate for seeking information not in the knowledge or possession of the state;

i. The amendments to the RBI Act, RPA, and the IT Act are intended to curb donations made by way of cash and other means to political parties and secure the anonymity of donors;

j. The amendment to Section 182 of the Companies Act removes the limitation of seven and a half percent of the net profits on the amount contributed by political parties. The removal of the contribution limit was intended to disincentivize creation of shell companies;

k. This Court has recognized that the legislature has a wide latitude in matters concerning economic policy. Further, the mere possibility that

the law might be abused cannot be a ground for holding the provision procedurally or substantially unreasonable; and

l. The fact that one party receives substantially more support through donations than other parties cannot in itself be a legal ground to challenge the validity of the Electoral Bond Scheme.

D. The Scope of Judicial Review

39. The Union of India submitted that this Court must exercise judicial restraint while deciding the challenge to the Electoral Bond Scheme and the statutory amendments because they relate to economic policy. For this purpose, the Union of India relied on a series of decisions where this Court has held that Courts must follow judicial restraint in matters concerning economic and financial policy.[54]

40. It is a settled position of law that Courts must adopt a less stringent form of judicial review while adjudicating challenges to legislation and executive action which relate to economic policy as compared to laws relating to civil rights such as the freedom of speech or the freedom of religion.[55] More recently, in **Swiss Ribbons** v. **Union of India**[56], this Court while deciding a challenge to the constitutional validity of provisions of the Insolvency and Bankruptcy Code 2016 observed that the legislature must be given "free play" in the joints to experiment with economic policy. This position was also

[54] Rustom Cavasjee Cooper v. Union of India, (1970) 1 SCC 248; R.K Garg v. Union of India, (1981) 4 SCC 675; Premium Granites v. State of Tamil Nadu, (1994) 2 SCC 691; Peerless General Finance and Investment Co v. RBI, (1992) 2 SCC 343, BALCO Employees Union v. Union of India, (2002) 2 SCC 333.
[55] RK Garg v. Union of India, (1981) 4 SCC 675 [8]; See Balco Employees Union v. Union of India, (2002) 2 SCC 333; DG of Foreign Trade v. Kanak Exports, (2016) 2 SCC 226
[56] (2019) 4 SCC 17

followed in **Pioneer Urban Land and Infrastructure Limited** v. **Union of India**[57], where amendments to the Insolvency and Bankruptcy Code were challenged.

41. The question is whether the amendments under challenge relate to economic policy. While deciding on a constitutional challenge, the Court does not rely on the ipse dixit of the government, that a legislation is an economic legislation. Courts before classifying the policy underlying a legislation as economic policy must undertake an analysis of the true nature of the law. The amendment to Section 31 of the RBI Act can be classified as a financial provision to the extent that it seeks to introduce a new form of a bearer banking instrument. However, any resemblance to an economic policy ends there. The amendments in question can be clubbed into two heads: first, provisions mandating non-disclosure of information on electoral financing; and second, provisions permitting unlimited corporate funding to political parties. Both these amendments relate to the electoral process.

42. In fact, it is evident from the correspondence between the Ministry of Finance and RBI (which have been summarized above) on the apprehensions of the Bonds being used as an alternative currency that the Bonds were introduced only to curb black money in the electoral process, and protect informational privacy of financial contributors to political parties. The Union of India has itself classified the amendments as an "electoral reform". Thus, the

[57] (2019) 8 SCC 416

submission of the Union of India that the amendments deal with economic policy cannot be accepted.

43. The second argument that this Court needs to address is to determine the scope of judicial review to decide this batch of petitions. The petitioners submitted that the presumption of constitutionality does not apply since the Scheme deals with the electoral process. The premise of the argument is that the presumption of constitutionality is based on the principle that the elected body must be trusted to make decisions and that principle should not be applied when the rules changing the electoral process are themselves in challenge.[58] It was submitted that in such cases if a *prima facie* case of constitutional violation is made out, the State bears a heavy burden of justifying the law.

44. The presumption of constitutionality is based on two premises. First, it is based on democratic accountability, that is, legislators are *elected* representatives who are aware of the needs of the citizens and are best placed to frame policies to resolve them[59]. Second, legislators are privy to information necessary for policy making which the Courts as an adjudicating authority are not. However, the policy underlying the legislation must not violate the freedoms and rights which are entrenched in Part III of the Constitution and other constitutional provisions. It is for this reason that previous judgments of this Court have held that the presumption of

[58] For this purpose, the petitioners referred to the representation-reinforcement model of judicial review propounded by John Hart Ely in his book Democracy and Distrust: A Theory of Judicial Review (Harvard University Press, 2002) and the judgment of this Court in Subash Chandra v. Delhi Subordinate Service Selection Board, (2009) 15 SCC 458

[59] See State of Bombay v. FN Balsara, 1951 SCR 682

constitutionality is rebutted when a *prima facie* case of violation of a fundamental right is established. The onus then shifts on the State to prove that the violation of the fundamental right is justified. In **Dharam Dutt** v. **Union of India**[60], a two-Judge Bench of this Court elucidated the principle in the following terms:

> "49. In spite of there being a general presumption in favour of the constitutionality of the legislation, in a challenge laid to the validity of any legislation allegedly violating any right or freedom guaranteed by clause (1) of Article 19 of the Constitution, on a prima facie case of such violation having been made out, the onus would shift upon the respondent State to show that the legislation comes within the permissible limits of the most relevant out of clauses (2) to (6) of Article 19 of the Constitution, and that the restriction is reasonable. The Constitutional Court would expect the State to place before it sufficient material justifying the restriction and its reasonability. On the State succeeding in bringing the restriction within the scope of any of the permissible restrictions, such as, the sovereignty and integrity of India or public order, decency or morality etc. the onus of showing that restriction is unreasonable would shift back to the petitioner. Where the restriction on its face appears to be unreasonable, nothing more would be required to substantiate the plea of unreasonability. Thus the onus of proof in such like cases is an ongoing shifting process to be consciously observed by the Court called upon to decide the constitutional validity of a legislation by reference to Article 19 of the Constitution."

45. The broad argument of the petitioners that the presumption of constitutionality should not apply to a specific class of statutes, that is, laws which deal with electoral processes cannot be accepted. Courts cannot carve out an exception to the evidentiary principle which is available to the legislature based on the democratic legitimacy which it enjoys. In the challenge to

[60] AIR 2004 SC 1295; Also see Ramlila Maidan Incident, In re, (2012) 5 SCC 1; State of Bombay v. FN Balsara, 1951 SCR 682; Ameerunissa Begum v. Mahboob Begum, 1952 2 SCC 697

electoral law, like all legislation, the petitioners would have to *prima facie* prove that the law infringes fundamental rights or constitutional provisions, upon which the onus would shift to the State to justify the infringement.

E. The close association of politics and money

46. The law does not bar electoral financing by the public. Both corporates and individuals are permitted to contribute to political parties. The legal regime has not prescribed a cap on the financial contributions which can be received by a political party or a candidate contesting elections. However, Section 77 of the RPA read with Rule 90 of the Conduct of Election Rules 1961[61] prescribes a cap on the total expenditure which can be incurred by a candidate or their agent in connection with Parliamentary and Assembly elections between the date on which they are nominated and the date of the declaration of the result. The maximum limit for the expenditure in a Parliamentary constituency is between Rupees seventy five lakhs to ninety five lakhs depending on the size of the State and the Union Territory.[62] The maximum limit of election expenses in an Assembly constituency varies between rupees twenty eight lakhs and forty lakhs depending on the size of the State.[63] However, the law does not prescribe any limits for the expenditure by a **political party**. Explanation 1 to

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[61] Section 77 of the RPA read with Section 169 provides the Central Government in consultation with the Election Commission, the power to prescribe the amount over which the total expenditure incurred by the candidate or their agent in connection with Parliamentary election and Assembly election shall not be exceeded. The total expenditure cap is prescribed in Rule 90 of the Conduct of Election Rules 1961 which is amended from time to time.

[62] The expenditure limit is capped at seventy-five Lakhs for the states of Arunachal Pradesh, Goa, and Sikkim, and the Union Territories of Andaman and Nicobar Islands, Chandigarh, Dadra and Nagar Haveli and Daman and Diu, Lakshadweep, Puducherry, and Ladakh. For the remaining States and Union Territories, the expenditure limit is capped at ninety-five Lakhs.

[63] For State Assembly elections, the expenditure is capped at twenty-eight lakhs for the States of Arunachal Pradesh, Goa, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, and Tripura. Amongst the Union Territories, the expenditure is capped at twenty-eight Lakhs for Puducherry and forty Lakhs for Delhi and Jammu and Kashmir.

Section 77 stipulates that the expenditure incurred by "leaders of a political party" on account of travel for propagating the programme of the political party shall not be deemed to be election expenditure. Thus, there is an underlying dicohotomy in the legal regime. The law does not regulate contributions to candidates. It only regulates contributions to political parties. However, expenditure by the candidates and not the political party is regulated. Be that as it may, the underlying understanding of the legal regime regulating electoral finance is that finance is crucial for the sustenance and progression of electoral politics.

47. It is believed that money does not vote but people do. However, studies have revealed the direct and indirect influence of money on electoral politics.[64] The primary way through which money directly influences politics is through its impact on electoral outcomes.

48. One way in which money influences electoral outcomes is through vote buying. Another way in which money influences electoral outcomes is through incurring electoral expenditure for political campaigns. Campaigns have a measurable influence on voting behavior because of the impact of television advertisements, campaign events, and personal canvassing.[65] An informed voter is one who is assumed to be aware of the policy positions of the candidate or the party they represent and votes on a thorough analysis of the pros and cons of electing a candidate. On the other hand, an uninformed voter

[64] See Conrad Foreman, Money in Politics: Campaign Finance and its Influence over the Political Process and Public Policy, 52 UIC J. Marshall L. Rev. 185 (2018)
[65] See D Sunshine Hillygus, Campaign Effects on Vote Choice in "The Oxford Handbook of American Elections and Political Behavior" (Ed. Jan E. Leighley 2010)

is assumed to not possess knowledge of the policy positions of the candidates.[66] Campaigns have an effect on the voting behavior of both an informed and an uninformed voter. The impact of campaigns on an informed voter is supplementary because campaign activities enable an informed voter to be further informed about the policies and ideology of the political party and the candidate, and their views on specific issues. Electoral campaigns reduce the uncertainty about candidates for an informed voter. For an uninformed voter, electoral campaigns play a much more persuasive role in influencing electoral behavior because campaigns throw more light on candidates.

49. Political parties use innovative techniques of campaigning by going beyond the traditional methods of advertisements, door-to-door campaigning and processions to increase outreach. For example, political parties sponsor religious festivals and community fairs, organize sporting matches and literary competitions where cash awards are given.[67] These outreach techniques leave a lasting impression on the minds of uninformed voters. Thus, enhanced campaign expenditure proportionately increases campaign outreach which influences the voting behavior of voters.

50. Money also creates entry-barriers to politics by limiting the kind of candidates and political parties which enter the electoral fray. Studies have shown that money influences the selection of candidates by political parties because parties would prefer fielding candidates who would be able to substantially

[66] See David P. Baron, Electoral Competition with informed and uninformed voters, American Political Science Review, Vol. 88, No. 1 March 1994

[67] Michael A. Collins, Navigating Fiscal Constraints in "Costs of Democracy: Political Finance in India" (edited by Devesh Kapur and Milan Vaishnav) OUP 2018

self-finance their campaign without relying on the party for finance.[68] In this manner, candidates who belong to socio-economically weaker sections face added barriers because of the close association of money and politics.

51. Money also excludes parties which are new to the electoral fray, and in particular, parties representing the cause of marginalized communities. Political parties which do not have enough finance have had to form electoral coalitions with other established political parties who would in exchange shoulder a lion's share of the campaign expenditure of the newly established political party extending to costs related to coalition propaganda, print and digital advertising, vehicle and equipment hire, political rallies, food transportation, and daily expenditure for party cadres[69]. The compromises which newly formed political parties have to make lead to a dilution of the ideology of the party in exchange of its political sustenance. In this manner, money creates an exclusionary impact by reducing the democratic space for participation for both candidates and newer and smaller political parties.

52. The judgments of this Court have recognized the influence of money on politics. They take a critical view of the role played by big business and "big money" in the electoral process in India. The decision in **Kanwar Lal Gupta v. Amar Nath Chawla**,[70] notices that money serves as an asset for advertising and other forms of political solicitation that increases a candidate's exposure to the public. The court observed that the availability of large funds allows a

[68] See Neelanjan Sircar, Money in Elections: the Role of Personal Wealth in Election Outcomes in Costs of Democracy: Political Finance in India (ed. By Devesh Kapur and Milan Vaishnav) OUP 2018
[69] Michael A. Collins, Navigating Fiscal Constraints in "Costs of Democracy: Political Finance in India" (edited by Devesh Kapur and Milan Vaishnav) OUP 2018
[70] (1975) 3 SCC 646

candidate or political party "significantly greater opportunity for the propagation of its programme" in comparison to their political rivals. Such political disparity, it was observed, results in "serious discrimination between one political party or individual and another on the basis of money power and that in turn would mean that "some voters are denied an 'equal' voice and some candidates are denied an 'equal chance'".

53. In **Vatal Nagaraj** v. **R Dayanand Sagar**,[71] Justice V R Krishna Iyer noted that candidates often evade the legal ceiling on expenditure by using big money channelled by political parties. The court acknowledged that large monetary inputs are "necessary evils of modern elections", which they hoped would be eradicated sooner rather than later. In **P Nalla Thampy Terah** v. **Union of India**,[72] a Constitution Bench of this Court was called upon to decide the validity of Explanation 1 to Section 77 of the RPA which allowed unlimited channelling of funds by political parties for the election of their candidates. While upholding the constitutional validity of the explanation, the Court noted that the petitioners were justified in criticizing the statute for "diluting the principle of free and fair elections."

54. In **Common Cause (A Registered Society)** v. **Union of India**,[73] this Court dwelt on the ostentatious use of money by political parties in elections to further the prospects of candidates set up by them. Justice Kuldip Singh

[71] (1975) 4 SCC 127
[72] 1985 Supp SCC 189
[73] (1996) 2 SCC 752

described the role of money in the electoral process, which is relevant for contextualizing the issue:

> "18. ... [The General Elections] is an enormous exercise and a mammoth venture in terms of money spent. Hundreds and thousands of vehicles of various kinds are pressed on to the roads in 543 parliamentary constituencies on behalf of thousands of aspirants to power, many days before the general elections are actually held. Millions of leaflets and many million posters are printed and distributed or pasted all over the country. Banners by the lakhs are hoisted. Flags go up, walls are painted, and hundreds of thousands of loudspeakers play out the loud exhortations and extravagant promises. VIPs and VVIPs come and go, some of them in helicopters and air-taxis. The political parties in their quest for power spend more than one thousand crore of rupees on the General Election (Parliament alone), yet nobody accounts for the bulk of money so spent and there is no accountability anywhere. Nobody discloses the source of the money. There are no proper accounts and no audit. From where does the money come from nobody knows. In a democracy where rule of law prevails this naked display of black money, by violating the mandatory provisions of law, cannot be permitted."

55. The challenge to the statutory amendments and the Electoral Bond Scheme cannot be adjudicated in isolation without a reference to the actual impact of money on electoral politics. This Court has in numerous judgments held that the *effect* and not the *object* of the law on fundamental rights and other constitutional provisions must be determined while adjudicating its constitutional validity. The effect of provisions dealing with electoral finance cannot be determined without recognizing the influence of money on politics. Therefore, we must bear in mind the nexus between money and electoral democracy while deciding on the issues which are before us in this batch of petitions.

F. The challenge to non-disclosure of information on electoral financing

56. Section 29C of the RPA as amended by the Finance Act 2017 stipulates that the political party need not disclose financial contributions received through electoral bonds. Similarly, Section 13A of the IT Act as amended does not require the political party to maintain a record of contributions for contributions received through electoral bonds. Section 182 of the Companies Act 2013 as amended by the Finance Act 2017 by which the earlier requirement of disclosure of particulars of the amount contributed by companies to political parties in their profit and loss accounts was deleted. The company which has made financial contributions is now only required to disclose the total amount contributed to political parties without disclosing specific particulars about the political party to which the contribution was made.

57. Maintaining the anonymity of the contributor is a crucial and primary characteristic of the Electoral Bond Scheme. The electoral bond is defined as a bearer banking instrument which does not carry the name of the buyer.[74] The law mandates the authorized bank to not disclose the information furnished by the buyer except when demanded by a competent court or upon the registration of a criminal case by law enforcement agencies.[75]

58. The amendments introduced by the Finance Act 2017 and the Electoral Bond Scheme are challenged on the ground that the non-disclosure of information

[74] Electoral Bond Scheme, Clause 2(a)
[75] Electoral Bond Scheme, Clause 7(4)

about electoral contributions is violative of the right to information of the voter which is traceable to Article 19(1)(a) of the Constitution.

i. Infringement of the right to information of the voter

59. This segment of the judgment will discuss whether the amendments and the Electoral Bond Scheme infringe the right to information of the voter. For this purpose, we will discuss the scope of the right to information, and whether the right extends to information on contributions to political parties.

a. *The scope of Article 19(1)(a): tracing the right to information*

60. Article 19(1)(a) has been held to guarantee the right to information to citizens. The judgments of this Court on the right to information can be divided into two phases. In the first phase, this Court traced the right to information to the values of good governance, transparency and accountability. These judgments recognize that it is the role of citizens to hold the State accountable for its actions and inactions and they must possess information about State action for them to accomplish this role effectively.

61. In the first phase, this Court delineated the scope of the right to information in the context of deciding the disclosure of evidence relating to affairs of the State. Provisions of the Indian Evidence Act stipulate that evidence which is relevant and material to proceedings need not be disclosed to the party if the disclosure would violate public interest.[76] In the 1960's, this Court framed the issue of disclosure of documents related to the affairs of the State in terms of

[76] Indian Evidence Act 1872, Section 124

a conflict between public interest and private interest. This Court observed that the underlying principle in the provisions of the Indian Evidence Act bearing on the disclosure of evidence related to the affairs of the State is that if such disclosure is denied, it would violate the private interest of the party.[77] So, when a party seeks the disclosure of documents, and when such disclosure is denied on the ground that it would violate public interest, there is a conflict between private interest and public interest. In subsequent cases, the courts cast the principle underlying the provisions of disclosure in the Indian Evidence Act as a conflict between two conceptions of public interest. This Court held that disclosure of information aids the party to the proceedings. But beyond that, disclosure also serves the public interest in the administration of justice.[78]

62. In **State of Uttar Pradesh** v. **Raj Narain**[79], the respondent sought to summon documents in an election petition. The State made a claim of privilege from disclosure of documents. In his concurring opinion in the Constitution Bench, Justice KK Mathew observed that there is a public interest in the impartial administration of justice which can only be secured by the disclosure of relevant and material documents. The learned Judge reaffirmed this proposition by tracing the right to information to Article 19(1)(a) of the Constitution:

> "74. In a Government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have

[77] See State of Punjab v. Sodhi Sukhdev Singh, (1961) 2 SCR 371 [13]
[78] See State of Punjab v. Sodhi Sukhdev Singh, (1961) 2 SCR 371 [Subba Rao J]
[79] (1975) 4 SCC 428

> a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security.[...]"

63. This principle was further elucidated in **SP Gupta** v. **Union of India**[80]. The Union of India claimed immunity against the disclosure of the correspondence between the Law Minister, the Chief Justice of the High Court of Delhi, and the Chief Justice of India on the reappointment of Additional Judges. Justice P N Bhagwati while discussing the position of law on claims of non-disclosure, observed that the Constitution guarantees the "right to know" which is necessary to secure "true facts" about the administration of the country. The opinion recognised accountability and transparency of governance as important features of democratic governance. Democratic governance, the learned Judge remarked, is not restricted to voting once in every five years but is a continuous process by which the citizens not merely choose the members to represent themselves but also hold the government accountable for their actions and inactions for which citizens need to possess information[81].

64. Our discussion indicates that the first phase of the jurisprudence on the right to information in India focussed on the close relationship between the right and open governance. The judgments in this phase were premised on the

[80] 1981 Supp SCC 87
[81] Also see Dinesh Trivedi v. Union of India, (1997) 4 SCC 306 where this Court observed that sunlight is the best disinfectant.

principle that the citizens have a duty to hold the government of the day accountable for their actions and inactions, and they can effectively fulfil this duty only if the government is open and not clothed in secrecy.

65. In the second phase of the evolution of the jurisprudence on the right to information, this Court recognised the importance of information to form views on social, cultural and political issues, and participate in and contribute to discussions.[82] Courts recognised that the relevance of information is to not only to hold the government accountable but also to discover the truth in a marketplace of ideas which would ultimately secure the goal of self-development.[83] This Court also recognised that freedom of speech and expression includes the right to acquire information which would enable people to debate on social, moral and political issues. These debates would not only foster the spirit of representative democracy but would also curb the prevalence of misinformation and monopolies on information. Thus, in the second phase, the Court went beyond viewing the purpose of freedom of speech and expression through the lens of holding the government accountable, by recognising the inherent value in effective participation of the citizenry in democracy. This Court recognised that effective participation in democratic governance is not just a means to an end but is an end in itself. This interpretation of Article 19(1)(a) is in line with the now established position that fundamental freedoms and the Constitution as a whole seek to

[82] Secy., Ministry of Information & Broadcasting, Govt. of India v. Cricket Assn. of Bengal, (1995) 2 SCC 161; Indian Express Newspapers v. Union of India, AIR 1986 SC 515 ; Romesh Thappar v. State of Madras, AIR 1950 SC 124
[83] DC Saxena v. Hon'ble The Chief Justice of India, (1996) 5 SCC 216 [29]

secure conditions for self-development at both an individual and group level.[84] A crucial aspect of the expansion of the right to information in the second phase is that right to information is not restricted to information about state affairs, that is, public information. It includes information which would be necessary to further participatory democracy in other forms and is not restricted to information about the functioning of public officials. The right to information has an instrumental exegesis, which recognizes the value of the right in facilitating the realization of democratic goals. But beyond that, the right to information has an intrinsic constitutional value; one that recognizes that it is not just a means to an end but an end in itself.

b. *Right to information of a voter: exploring the judgments in ADR and PUCL*

66. In **Union of India** v. **Association for Democratic Reforms**[85] **("ADR")**, this Court traced the right of voters to have information about the antecedents, including the criminal past, of candidates contesting elections, to Article 19(1)(a) of the Constitution. In **ADR** (supra), proceedings under Article 226 of the Constitution were instituted before the High Court of Delhi seeking a direction to implement the Law Commission's recommendations to (a) debar candidates from contesting elections if charges have been framed against them by a Court in respect of certain offences; and (b) ensure that candidates furnish details regarding criminal cases which are pending against them. The High Court held that the Court cannot direct Parliament to implement the recommendations of the Law Commission. However, the High Court directed

[84] See Supriyo v. Union of India, 2023 INSC 920 [213, 214]
[85] (2002) 5 SCC 294.

the ECI to secure information relating to (a) the details of cases in which a candidate is accused of any offences punishable with imprisonment;(b) assets possessed by a candidate, their spouse and dependents; (c) facts bearing on the candidate's competence, capacity, and suitability for representing the people; and (d) any other information which ECI considers necessary for judging the capacity of the candidate fielded by the political party.

67. The Union of India appealed against the decision of the High Court before this Court. This Court held that voters have a right to be sufficiently informed about candidates so as to enable them to exercise their democratic will through elections in an intelligent manner. Such information was held to be necessary for elections to be conducted in a "free and fair manner":

> "34. ...the members of a democratic society should be sufficiently informed so that they may influence intelligently the decisions which may affect themselves and this would include their decision of casting votes in favour of a particular candidate. If there is a disclosure by a candidate as sought for then it would strengthen the voters in taking appropriate decision of casting their votes.
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> [...] we fail to understand why the right of a citizen/voter — a little man — to know about the antecedents of his candidate cannot be held to be a fundamental right under Article 19(1)(a). In our view, democracy cannot survive without free and fair election, without free and fairly informed voters. Votes cast by uninformed voters in favour of X or Y candidate would be meaningless. As stated in the aforesaid passage, one-sided information, disinformation, misinformation and non-information, all equally create an uninformed citizenry which makes democracy a farce. Therefore, casting of a vote by a misinformed and non-informed voter or a voter having one-sided information only is bound to affect the democracy seriously. Freedom of speech and expression includes right to

impart and receive information which includes freedom to hold opinions."

68. This Court rejected the argument that information about a candidate contesting elections cannot be compelled to be disclosed because it is not "public information". The three-Judge Bench held that information that candidates are required to disclose is only limited to aiding the voters in assessing whether they could cast their vote in a candidate's favour. The Court observed that the criminal background of a candidate and assets of the candidate (through which it could be assessed if the candidate has amassed wealth through corruption when they were elected previously) would aid the voters to cast their vote in an informed manner. This Court directed the ECI to call for the following information on affidavit as a part of nomination:

a. Whether the candidate has been convicted, acquitted or discharged of any criminal offence in the past and if convicted, whether they are punished with imprisonment or fine;

b. In the six months prior to the filling of nomination papers, whether the candidate was accused in any pending case for an offence punishable with imprisonment for two years or more, and in which a charge is framed or cognizance is taken by the court of law;

c. The assets (immovable, movable, bank balances and others) of a candidate and of his/her spouse and that of dependents;

d. Liabilities, if any, particularly whether there are any over dues to any public financial institution or government dues; and

e. The educational qualifications of the candidate.

69. This Court observed that the ECI can ask candidates to disclose information about the expenditure incurred by political parties to maintain the purity of elections.[86] However, the operative portion of the judgment did not reflect this observation.

70. Pursuant to the decision of this Court in **ADR** (supra), Parliament amended the RPA to incorporate some of the directions issued by this Court.[87] Section 33-B of RPA stipulated that the candidate need not disclose any other information (other than the information required by law) notwithstanding any judgment. In **PUCL** v. **Union of India**[88], proceedings were initiated before this Court under Article 32 for challenging Section 33-B of the RPA. Justice M B Shah, writing for the majority, noted that the decision of the three-Judge Bench in **ADR** (supra) tracing the right to know the antecedents of candidates contesting elections had attained finality and Section 33-B was unconstitutional because it had the effect of rendering the judgment of this Court inoperative. The learned Judge on an independent interpretation also held that the right to information of a voter is a facet of Article 19(1)(a).[89]

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[86] Paragraph 64(4): "To maintain the purity of elections and in particular to bring transparency in the process of election, the Commission can ask the candidates about the expenditure incurred by the political parties and this transparency in the process of election would include transparency of a candidate who seeks election or re-election. In a democracy, the electoral process has a strategic role. The little man of this country would have basic elementary right to know full particulars of a candidate who is to represent him in Parliament where laws to bind his liberty and property may be enacted."

[87] Section 33-A of the RPA required the candidate to furnish the following information:
(a) He is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the court of competent jurisdiction; and
(b) He has been convicted of an offence other than any offence referred to in sub-section (1) or sub-section (2), or covered in sub-section (3), of Section 8 and sentenced to imprisonment for one year or more.

[88] (2003) 4 SCC 399

[89] (2003) 4 SCC 399 [18, 27]

71. Justice Venkatarama Reddi observed in his concurring opinion that there are two postulates which govern the right to vote : first, the formulation of an opinion about candidates, and second, the expression of choice based on the opinion formulated by casting votes in favour of a preferred candidate. A voter must possess relevant and essential information that would enable them to evaluate a candidate and form an opinion for the purpose of casting votes.[90] The learned Judge observed that the Constitution recognises the right of a voter to know the antecedents of a candidate though the right to vote is a statutory right[91] because the **action** of voting is a form of expression protected by Article 19(1)(a):

> "Though the initial right cannot be placed on the pedestal of a fundamental right, but, at the stage when the voter goes to the polling booth and casts his vote, his freedom to express arises. The casting of vote in favour of one or the other candidate tantamounts to expression of his opinion and preference and that final stage in the exercise of voting right marks the accomplishment of freedom of expression of the voter. That is where Article 19(1)(a) is attracted."

72. In the context of the decision of this Court in **ADR** (supra), the learned Judge observed that the Court issued specific directions for the disclosure of certain information about candidates because of a legislative vacuum, and that the directions issued to the ECI will fill the vacuum until Parliament legislates on the subject. Thus, the five directions which were issued by this Court in **ADR** (supra) were not construed to be inflexible and immutable theorems. The learned Judge observed that though the voters have a fundamental right to

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[90] (2003) 4 SCC 399 [96]

[91] The right to vote is classified as a statutory vote because only citizens who fulfill certain conditions (such as the age) laid down in a statute can vote.

know the antecedents of candidates, all the conceptions of this right formulated by this Court in **ADR** (supra) cannot be elevated to the realm of fundamental rights.

73. The majority was of the view that the voters have a fundamental right to **all** the information which was directed to be declared by this Court in **ADR** (supra). Justice Venkatarama Reddi disagreed. In the opinion of the learned Judge, only certain information directed to be disclosed in **ADR** (supra) is "crucial" and "essential" to the right to information of the voter:

> "109. In my view, the points of disclosure spelt out by this Court in Assn. for Democratic Reforms case [Ed.: See full text at 2003 Current Central Legislation, Pt. II, at p. 3] should serve as broad indicators or parameters in enacting the legislation for the purpose of securing the right to information about the candidate. The paradigms set by the Court, though pro tempore in nature as clarified supra, are entitled to due weight. If the legislature in utter disregard of the indicators enunciated by this Court proceeds to make a legislation providing only for a semblance or pittance of information or omits to provide for disclosure on certain essential points, the law would then fail to pass the muster of Article 19(1)(a). Though certain amount of deviation from the aspects of disclosure spelt out by this Court is not impermissible, a substantial departure cannot be countenanced. The legislative provision should be such as to promote the right to information to a reasonable extent, if not to the fullest extent on details of concern to the voters and citizens at large. While enacting the legislation, the legislature has to ensure that the fundamental right to know about the candidate is reasonably secured and information which is crucial, by any objective standards, is not denied. [...] The Court has to take a holistic view and adopt a balanced approach, keeping in view the twin principles that the citizens' right to information to know about the personal details of a candidate is not an unlimited right and that at any rate, it has no fixed concept and the legislature has freedom to choose between two reasonable alternatives. [...] But, I reiterate that the shape of the legislation need not be solely controlled by the directives issued to the Election Commission to meet an ad hoc situation. As I said earlier, the right to information cannot be placed in straitjacket formulae and the perceptions

regarding the extent and amplitude of this right are bound to vary."

74. Justice Reddi held that Section 33-B was unconstitutional because:

a. Parliament cannot impose a blanket ban on the disclosure of information other than the disclosure of information required by the provisions of RPA. The scope of the fundamental right to information may be expanded in the future to respond to future exigencies and necessities. The provision had the effect of emasculating the freedom of speech and expression of which the right to information is a facet; and

b. The provision failed to give effect to an essential aspect of the fundamental right, namely the disclosure of assets and liabilities of the candidates.

75. Justice Reddi then proceeded to juxtapose the directions for disclosure issued by this Court in **ADR** (supra) with the scope of the provisions of the RPA mandating disclosure. The learned judge observed that the extent of disclosure mandated in RPA is fairly adequate with respect to past criminal records but not with regard to pending cases.[92] With respect to assets and liabilities, the learned Judge observed that the disclosure of assets and

[92] ADR required disclosure related to information of whether the candidate has been convicted/acquitted or discharged of any criminal offence in the past, and whether six months prior to the filing of the nomination paper, whether the candidate has been accused in any pending case for an offence punishable with imprisonment for more than two years and in which charge has been framed or cognizance is taken by the Court. With respect to the first direction, law created a distinction between serious and non-serious offences and mandates disclosure only if a candidate has been convicted of a serious offence. With respect to the second direction, the provision only mandated the disclosure of cases in which charge has been framed and excluded the disclosure of cases in which cognizance has been taken. The learned Judge held that while the non-disclosure of conviction in a serious offence is a reasonable balance which does not infringe the right to information, the non-disclosure of cases in which cognizance has been taken would seriously violate the right to information of the voter particularly because framing of charges gets delayed in a lot of cases.

liabilities is essential to the right to information of the voter because it would enable voters to form an opinion about whether the candidate, upon being elected in the past, had amassed wealth in their name or their family Additionally, information about dues which are payable by the candidate to public institutions would enable voters to know the candidate's dealing with public money in the past.

76. Justice Reddi observed that the requirement to disclose assets of the candidate's family was justified because of the prevalence of *Benami* transactions. Though mandating the disclosure of assets and liabilities would infringe the right to privacy of the candidate and their family, the learned Judge observed that disclosure which is in furtherance of the right to information would trump the former because it serves the larger public interest. Justice Reddi then observed that disclosure of the educational qualifications of a candidate is not an essential component of the right to information because educational qualifications do not serve any purpose for the voter to decide which candidate to cast a vote for since the characteristics of duty and concern of the people is not "monopolised by the educated". A conclusion to the contrary, in the learned Judge's opinion, would overlook the stark realities of the society.[93]

77. The following principles can be deduced from the decisions of this Court in **ADR** (supra) and **PUCL** (supra):

[93] (2003) 4 SCC 399 [122]

a. The right to information of voters which is traced to Article 19(1)(a) is built upon the jurisprudence of both the first and the second phases in the evolution of the doctrine, identified above. The common thread of reasoning which runs through both the first and the second phases is that information which furthers democratic participation must be provided to citizens. Voters have a right to information which would enable them to cast their votes rationally and intelligently because voting is one of the foremost forms of democratic participation;

b. In **ADR** (supra), this Court observed that while the disclosure of information may violate the right to privacy of candidates and their families, such information must be disclosed because it furthers public interest.[94] The opinion of Justice Venkatarama Reddi in **PUCL** (supra) also followed the same line of reasoning. Justice M B Shah writing for himself and Justice D M Dharmadhikari held that the right to privacy would not be infringed because information about whether a candidate is involved in a criminal case is a matter of public record. Similarly, the assets or income are normally required to be disclosed under the provisions of the Income Tax Act; and

c. The voters have a right to the disclosure of information which is "essential" for choosing the candidate for whom a vote should be cast.

[94] In **ADR** (supra), this Court notes that such information would enable voters to determine if the candidate is corrupt and would further openness in democracy. [Paragraph 41].

The learned Judges in **PUCL** (supra) differed to the extent of what they considered "essential" information for exercising the choice of voting.

78. While relying on the judgments of this Court in **ADR** (supra) and **PUCL** (supra) the petitioners argue that non-disclosure of information on the funding of political parties is violative of the right to information under Article 19(1)(a). This Court needs to consider the following two issues to answer the question:

a. Whether the requirements of disclosure of information about "candidates" can be extended to "political parties"; and

b. If the answer to (a) above is in the affirmative, whether information on the funding of political parties is "essential" for exercising choice on voting.

c. *The focal point of the electoral process: candidate or political party*

79. The decisions in **ADR** (supra) and **PUCL** (supra) recognise the right to information of a voter about **candidates,** which enables them to cast their vote in an effective manner. The relief which was granted by this Court in **PUCL** (supra) and **ADR** (supra) was restricted to the disclosure of information about **candidates** contesting the election because of the limited nature of the reliefs sought. The ratio decidendi of the two judgments of this Court is that voters have a right to receive information which is **essential** for them to cast their votes. This Court has to first analyse if the 'political party' is a relevant 'political unit' in the electoral process to answer the question whether funding details of political parties are essential information for the voter to possess.

80. The Constitution of India did not make a reference to political parties when it was adopted. A reference was made when the Tenth Schedule was included in the Constitution by the Constitution (Fifty-Second) Amendment Act 1985. However, even though the Constitution on its adoption did not make a reference to political parties, statutory provisions relating to elections accorded considerable importance to political parties, signifying that political parties have been the focal point of elections.

81. The ECI notified the Election Symbols (Reservation and Allotment) Order 1968[95] in exercise of the powers conferred by Article 344 of the Constitution read with Section 29A of the RPA and Rules 5[96] and 10[97] of the Conduct of Election Rules 1961. In terms of the provisions of the Symbols Order, the ECI shall allot a symbol to every candidate contesting the election. The Symbols Order classifies political parties into recognised political parties and unrecognised political parties. The difference in the procedure under the Symbols Order for allotting symbols to recognised political parties, registered but unrecognised political parties and independent candidates indicates both the relevance and significance of political parties in elections in India.

82. A party is classified a National[98] or a State recognised party[99] based on the total percentage of votes secured at the last general elections and (or) the

[95] "Symbols Order 1968"
[96] Rule 5 provides the ECI the power to specify by notification, the symbols which may be chosen by candidates at elections in parliamentary or assembly constituencies.
[97] Rule 10 deals with the preparation of list of contesting candidates. Rule 10(5) states that the allotment of the returning officer of any symbol to a candidate shall be final except where it is inconsistent with the directions issued by the ECI, in which case the ECI may revise the allotment. Rule 10(6) states that every candidate shall be informed of the symbol allotted to the candidate.
[98] Symbols Order 1968, Rule 6B
[99] Symbols Order 1968, Rule 6A

number of candidates who have been returned to the Legislative Assembly. Symbols are reserved for allocation to recognised political parties.[100] All candidates who are being set up by a national or a State recognised party are to be allotted the symbol reserved for that party for the purpose of contesting elections.[101]

83. Symbols other than those reserved for recognised political parties shall be available for allotment to independent candidates and candidates set up by political parties which are not recognised political parties in terms of the Symbols Order.[102] Candidates set up by a registered but unrecognised political party may also be allotted a common symbol if they fulfil certain conditions laid down in the Symbols Order.[103]

84. Thus, the Symbols Order creates a demarcation between candidates set up by political parties and candidates contesting individually. Political parties are allotted a Symbol such that all candidates who are set up by that political party are allotted the Symbol of their political party while contesting elections. Even within candidates who are set up by political parties, the Symbols Order creates a distinction between unrecognised but registered political parties and recognised political parties. Recognised political parties shall continue to be allotted the same symbol for all General elections until the time these political parties fulfil the conditions for recognition under the Symbols Order.[104] The

[100] Symbols Order 1968, Rule 5
[101] Symbols Order 1968, Rule 8(1)
[102] Ibid.
[103] Symbols Order 1968, Rule 10B. The party is required to set up candidates in at least five percent of the assembly constituencies.
[104] A recognised National or a State Party shall continue to be treated as a recognised party even if the political party does not fulfil the conditions at the next election to the General Assembly stipulated for recognition as a

effect of the provisions of the Symbols Order is that the symbols of certain political parties, particularly those which have enjoyed the status of a recognised political party for long are entrenched in the minds of the voters that they associate the symbol with the political party.

85. For unrecognised but registered political parties, though a common symbol is allotted for all candidates being set up by the political parties, the symbol is not "reserved" for the Party. The ECI could allot different symbols to that political party in each General election. The candidates of a registered but unrecognised political party may be represented by a common symbol but the people would not attach a specific symbol to the political party because the symbol by which it is represented may change with every election.

86. The purpose of allotting symbols to political parties is to aid voters in identifying and remembering the political party. The law recognises the inextricable link between a political party and the candidate though the vote is cast for a candidate. The literacy rate in India was 18.33 percent when the first General Election was held in 1951. Most of the voters identified a political party only with its symbol and this still continues to the day. In a few cases, the voters would not possess any knowledge of the candidate being set up by the political party. They would vote solely based on the symbol which is allotted to the political party; knowledge of which they have obtained through campaigning activities or its sustained presence in the electoral fray. Gayatri Devi, the third Maharani consort of Jaipur who was later set up as a candidate

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recognised political party. However, it shall continue to be treated as a recognised political party at the subsequent general election only if the party fulfils the conditions laid down.

by the Swatantra Party, recalls in her Autobiography that her team spent hours trying to persuade the voters that they had to vote for the Symbol Star (which was the symbol of the Swatantra Party) and not a symbol showing a horse and a rider because she also rode a horse:[105]

> "Since most of India is illiterate, at the polls people vote according to a visual symbol of their party. [...] The Swatantra Party had a star. Baby, all my other helpers and I spent endless frustrating hours trying to instruct the women about voting for the star. On the ballot sheet, we said, over and over again, this is where the Maharani's name will appear and next to it will be a star. But it was not as simple as that. They noticed a symbol showing a horse and a rider, agree with each other that the Maharani rides so that must be her symbol. Repeatedly we said, "No, no, that's not the right one." Then they caught sight of the emblem of a flower. Ah, the flower of Jaipur – who else could it mean but the Maharani? "No, no, no, not the flower." All right, the star. Yes, that seems appropriate for the Maharani, but look, here is the sun. If the Maharani is a star, then the sun must certainly mean the Maharaja. We'll vote for both. Immediately the vote would have been invalidated. Even up to the final day, Baby and I were far from sure that we had managed to get our point across."

87. Symbols also gain significance when the names of political parties sound similar. For example, political parties by the names of "Dravida Munnetra Kazhagam", "All Indian Anna Dravida Munnetra Kazhagam", "Dravida Kazhagam", "Desiya Murpokku Dravida Kazhagam", "Makkal Desiya Murpokku Dravida Kazhagam", "Kongu Desa Makkal Katchi", "Kongunadu Makkal Desia Katchi", and "Kongunadu Makkal Katchi" contest elections in Tamil Nadu. The names of all the political parties bear similarities due to the usage of the same words with certain additions or deletions. The allocation of

[105] Gayatri Devi and Santha Rama Rau, A Princess remembers: The Memoirs of the Maharani of Jaipur, (Rupa Publications 1995) [301].

Symbols to political parties would help voters identify and distinguish between political parties which have similar sounding names. It is precisely because of the close association of the symbol with the political party by voters that both factions of the party vie for the symbol that is allotted to the Party when there is a split in a recognised political party.

88. India follows the open-list first past the post form of election in which votes are cast for a candidate and the candidate who secures the highest number of votes is chosen to represent the people of that constituency. It could be argued that this system of elections gives prominence to candidates and not political parties unlike the system of closed list of elections where the voters do not have any knowledge of the candidates that are set up by the Political Party.[106]

89. However, it cannot be concluded that the decision of voting is solely based on the individual candidate's capabilities and not the political party merely because the voter has knowledge of the candidate who has been set up by the political party. Such a conclusion cannot be definitively drawn particularly in view of the design of the electoral voting machine which has a list of the names of the candidates who are contesting the election from the constituency along with the symbol of the political party which is fielding the candidate. Voters casts their votes based on two considerations: the

[106] See Dominik Hangartner, Nelson A Ruiz, Janne Tukiainen, Open or Closed? How List Type Affects Electoral Performance, Candidate Selection, and Campaign Effort, VAT Institute for Economic Research Working Papers 120 (2019)

capability of the candidate as a representative and the ideology of the political party.

90. Political parties publish electoral manifestos containing the ideology of the party, major policies of the political party, plans, programmes and other considerations of governance which would be implemented if they came to power.[107] While political manifestos do not necessarily always translate to policies when the party is elected to power, they throw light upon the integral nature of political parties in the electoral system. By publishing an election manifesto, a political party communicates to the voters that they must accord preference to the political party. Party manifestos prod voters to look away from a candidate centric and towards a party centric perception of elections.

91. Lastly, the prominence of political parties as electoral units is further heightened by the form of government in India. India follows a Westminister system of government which confers prominence to political parties without strictly separating between the legislature and the executive. The time-honoured convention of the cabinet form of government is that the leader of the political party with absolute majority must be called to form the government.[108] The Council of Ministers is appointed by the President on the aid and advice of the Prime Minister.[109] Political parties are intrinsic to this form of government because of the very process of government formation. The recommendations of the Sarkaria Commission on the exercise of

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[107] Election Commission of India, Instructions to political parties on manifestos dated 24.04.2015, https://www.eci.gov.in/election-manifestos/

[108] Constitution of India 1950, Article 75. See, Aradhya Sethia, "Where's the party?: towards a constitutional biography of political parties, Indian Law Review, 3:1, 1-32 (2019)

[109] Ibid.

discretion by the Governor when no single political party commands an absolute majority, which has been given judicial recognition in **Rameshwar Prasad** v. **Union of India,**[110] also prioritises political parties making them central to the governance structure.[111]

92. The centrality of political parties in the electoral system is further accentuated by the inclusion of the Tenth Schedule. The Tenth Schedule deals with disqualification on the ground of defection from the political party which set up the elected individual as its candidate. Paragraph 2 provides the following grounds of defection:

a. Voluntarily giving up membership of the political party; and

b. Voting or abstaining from voting in the House contrary to direction issued by the political party without obtaining prior permission from the political party and when such voting has not been condoned by the political party.

93. The underlying principle of anti-defection law which has been recognised by a seven-Judge Bench of this Court in **Kihoto Hollohon** v. **Zachillhu,**[112] is that a candidate set up by a political party is elected on the basis of the programme of that political party. In the course of years, while deciding disputes related to the Tenth Schedule, judgments of this Court have further strengthened the

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[110] (2006) 2 SCC 1

[111] 65. "Para 4.11.04 of the Sarkaria Commission Report specifically deals with the situation where no single party obtains absolute majority and provides the order of preference the Governor should follow in selecting a Chief Minister. The order of preference suggested is:

a. An alliance of parties that was formed prior to the elections.;
b. The largest single party staking a claim to form the Government with the support of others, including "independents";
c. A post-electoral coalition of parties, with all the partners in the coalition joining the Government;
d. A post-electoral alliance of parties, with some of the parties in the alliance forming a Government and the remaining parties, including "Independents" supporting the Government from outside."

[112] (1992) Supp (2) SCC 651 [4]

centrality of political parties in the electoral system. In **Ravi S Naik** v. **Union of India**[113], this Court observed that voluntarily giving up membership of a political party has a wider connotation and includes not just resignation of the member from the party and an inference can also be drawn from the conduct of the member. In **Subash Desai** v. **Principal Secretary, Governor of Maharashtra,**[114] a Constitution Bench of this Court while interpreting the provisions of the Tenth Schedule held that the political party and not the legislature party (which consists of the members of the House belonging to a particular political party) appoints the Whip of a political party for the purposes of Paragraph 2(1)(b) of the Tenth Schedule.[115]

94. In summation, a 'political party' is a relevant political unit in the democratic electoral process in India for the following three reasons:

a. Voters associate voting with political parties because of the centrality of symbols in the electoral process;

b. The form of government where the executive is chosen from the legislature based on the political party or coalition of political parties which has secured the majority; and

c. The prominence accorded to political parties by the Tenth Schedule of the Constitution.

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[113] AIR 1994 SC 1558
[114] WP (C) No. 493 of 2022
[115] Subash Desai [113]

d. *The essentiality of information about political funding for the effective exercise of the choice of voting*

95. In **ADR** (supra) and **PUCL** (supra), this Court held that a voter has a right to information which is **essential** for them to exercise their freedom to vote. In the previous section, we have concluded that political parties are a relevant political unit. Thus, the observations of this Court in **PUCL** (supra) and **ADR** (supra) on the right to information about a **candidate** contesting elections is also applicable to **political parties**. The issue whether information about the funding received by political parties is **essential** for an informed voter must be answered in the context of the core tenets of electoral democracy. The Preamble to the Constitution resolves to constitute a social, economic, and politically just society where there is equality of status and opportunity. The discourse which has emanated within and outside the Courts is often restricted to the ideals of social and economic justice and rarely includes political inequality.

96. Electoral democracy in India is premised on the principle of political equality which the Constitution guarantees in two ways. First, by guaranteeing the principle of "one person one vote" which assures equal representation in voting. The Constitution prescribes two conditions with respect to elections to seats in Parliament which guarantee the principle of "one person one vote" with respect to every voter and amongst every State:

a. Each State shall be divided into territorial constituencies in such a manner that the ratio between the population of each constituency and

the number of seats allotted to it shall be the same throughout the State;[116] and

b. The total number of seats allotted to each State in Parliament should be such that the ratio between the number of seats, and the population of the State is the same for all States.[117]

97. Second, the Constitution ensures that socio-economic inequality does not perpetuate political inequality by mandating reservation of seats for Scheduled Castes and Scheduled Tribes in Parliament[118] and State Assemblies.[119]

98. The Constitution guarantees political equality by focusing on the 'elector' and the 'elected'. These two constitutional precepts foster political equality in the following two ways. First, the Constitution mandates that the value of each vote is equal. This guarantee ensures formal political equality where every person's vote is accorded equal weightage. Second, the Constitution ensures that members of socially marginalized groups are not excluded from the political process. This guarantee ensures (a) equality in *representation*; and (b) equality in *influence* over political decisions.

99. However, political inequality continues to persist in spite of the constitutional guarantees. One of the factors which contributes to the inequality is the

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[116] Constitution of India 1950, Article 81 (2)(b). Also see Constitution of India, Article 170(2) where the Constitution prescribes the same principle with respect to the composition of seats in Legislative Assemblies of State

[117] Constitution of India 1950, Article 81(2)(b)

[118] Constitution of India 1950, Article 330 guarantees "as nearly as may be" proportional representation for Scheduled Castes and Scheduled Tribes in Parliament.

[119] Constitution of India 1950, Article 332 guarantees "as nearly as may be" proportional representation for Scheduled Castes and Scheduled Tribes in Legislative Assemblies of the States.

difference in the ability of persons to influence political decisions because of economic inequality. In a politically equal society, the citizens must have an equal voice to influence the political process.[120] We have already in the preceding section elucidated the close association of money and politics where we explained the influence of money over electoral outcomes. However, the influence of money over electoral politics is not limited to its impact over electoral outcomes. It also spills over to governmental decisions. It must be recalled here that the legal regime in India does not distinguish between campaign funding and electoral funding. The money which is donated to political parties is not used by the political party only for the purposes of electoral campaign. Party donations are also used, for instance, to build offices for the political party and pay party workers. Similarly, the window for contributions is not open for a limited period only prior to the elections. Money can be contributed to political parties throughout the year and the contributed money can be spent by the political party for reasons other than just election campaigning. It is in light of the nexus between economic inequality and political inequality, and the legal regime in India regulating party financing that the essentiality of the information on political financing for an informed voter must be analyzed.

100. Economic inequality leads to differing levels of political engagement because of the deep association between money and politics. At a primary level, political contributions give a "seat at the table" to the contributor. That is, it

[120] See Ben Ansell and Jean Gingrich J (2021). Political Inequality. The IFS Deaton Review of Inequalities, London: Institute for Fiscal Studies

enhances access to legislators.[121] This access also translates into influence over policy-making. An economically affluent person has a higher ability to make financial contributions to political parties, and there is a legitimate possibility that financial contribution to a political party would lead to *quid pro quo* arrangements because of the close nexus between money and politics. *Quid pro quo* arrangements could be in the form of introducing a policy change, or granting a license to the contributor. The money that is contributed could not only influence electoral outcomes but also policies particularly because contributions are not merely limited to the campaign or pre-campaign period. Financial contributions could be made even after a political party or coalition of parties form Government. The possibility of a *quid pro quo* arrangement in such situations is even higher. Information about political funding would enable a voter to assess if there is a correlation between policy making and financial contributions.

101. For the information on donor contributions to be relevant and essential, it is not necessary that voters have to take the initiative to peruse the list of contributors to find relevant information which would enable them to cast their vote effectively. Electronic and print media would present the information on contributions received by political parties, and the probable link between the contribution and the licenses which were given to the company in an

[121] See Joshua L. Kalla and David E. Broockman, "Campaign Contributions Facilitate Access to Congressional Officials: A Randomized Field Experiment" (2016 60(3)) American Journal of Political Science. A political organization conducted an experiment to determine if there is a link between political contributions and access to the policy makers. The Organization scheduled meetings between 191 Congressional offices and the organization's members who were campaign donors. When the Congressional offices were informed that prospective attendees were political donor, policymakers made themselves available for the meeting three to four times more often.

accessible format. The responses to such information by the Government and political parties would go a long way in informing the voter.

102. However, to establish the argument of quid pro quo arrangements between the contributor and the political party, it is necessary that the political party has knowledge of the particulars of funding to its party. The political party to whom contributions are made cannot enter into a *quid pro quo* arrangements if it is unaware of the donor. The Scheme defines electoral bond "as a bond issued in the nature of promissory note which shall be a bearer banking instrument and shall not carry the name of the buyer or payee."[122] The Scheme also stipulates that the information furnished by the buyer shall be treated as confidential which shall not be disclosed by any authority except when demanded by a competent court or by a law enforcement agency upon the registration of criminal case.[123]

103. The submission of the Union of India is that the political party which receives the contribution does not know of identity of the contributor because neither the bond would have their name nor could the bank discloses such details to the political party. We do not agree with this submission. While it is true that the law prescribes anonymity as a central characteristic of electoral bonds, the *de jure* anonymity of the contributors does not translate to *de facto* anonymity. The Scheme is not fool-proof. There are sufficient gaps in the Scheme which enable political parties to know the particulars of the contributions made to them. Clause 12 of the Scheme states that the bond

[122] Electoral Bond Scheme; Clause 2(a)
[123] Electoral Bond Scheme; Clause 7(4)

can be encashed only by the political party by depositing it in the designated bank account. The contributor could physically hand over the electoral bond to an office bearer of the political party or to the legislator belonging to the political party, or it could have been sent to the office of the political party with the name of the contributor, or the contributor could after depositing the electoral bond disclose the particulars of the contribution to a member of the political party for them to cross-verify. Further, according to the data on contributions made through electoral bonds, ninety four percent of the contributions through electoral bonds have been made in the denomination of one crore. Electoral bonds provide economically resourced contributors who already have a seat at the table selective anonymity vis-à-vis the public and not the political party.

104. In view of the above discussion, we are of the opinion that the information about funding to a political party is essential for a voter to exercise their freedom to vote in an effective manner. The Electoral Bond Scheme and the impugned provisions to the extent that they infringe upon the right to information of the voter by anonymizing contributions through electoral bonds are violative of Article 19(1)(a).

ii. Whether the infringement of the right to information of the voter is justified

105. The next issue which falls for analysis is whether the violation of the right to information is justified. This Court has laid down the proportionality standard

to determine if the violation of the fundamental right is justified.[124] The proportionality standard is as follows:

a. The measure restricting a right must have a legitimate goal (legitimate goal stage);

b. The measure must be a suitable means for furthering the goal (suitability or rational connection stage);

c. The measure must be least restrictive and equally effective (necessity stage); and

d. The measure must not have a disproportionate impact on the right holder (balancing stage).

106. The legitimate goal stage requires this Court to analyze if the objective of introducing the law is a legitimate purpose for the infringement of rights. At this stage, the State is required to discharge two burdens. First, the State must demonstrate that the objective is legitimate. Second, the State must establish that the law is indeed in furtherance of the legitimate aim that is contended to be served.[125]

107. The then Finance Minister, Mr. Arun Jaitley encapsulated the objective of introducing the Electoral Bond Scheme thus:

a. An attempt was made in the past to incentivize donations to political party through banking channels. Both the donor and the donee were

[124] Modern Dental College & Research Centre v. State of Madhya Pradesh, (2016) 4 SCC 346
[125] See Media One v. Union of India, Civil Appeal No. 8129 of 2022 [77-79]

granted exemption from payment of tax if accounts of contributions were maintained and returns were filed. However, the situation had only marginally improved. Political parties continued to receive funds through anonymous sources; and

b. Donors have been reluctant in donating through the banking channel because the disclosure of donor identity would entail adverse consequences.

108. In other words, Mr. Jaitley stated that the main purpose of the Scheme is to curb black money in electoral financing and this purpose could be achieved only if information about political donations is kept confidential. That is, donor privacy is a **means** to incentivize contributions through the banking channel. However, Mr. Tushar Mehta argued that protecting donor privacy is an end in itself. We will now proceed to determine if the infringement of the right to information of the voters is justified vis-à-vis the purposes of (a) curbing black money; and (b) protecting donor privacy.

a. *Curbing Black money*

109. The petitioners argue that the infringement of the right to information which is traceable to Article 19(1)(a) can only be justified if the purpose of the restriction is traceable to the grounds stipulated in Article 19(2). They argue that the purpose of curbing of black money cannot be traced to any of the grounds in Article 19(2), and thus, is not a legitimate purpose for restricting the right to information.

110. Article 19(2) stipulates that the right to freedom of speech and expression can only be restricted on the grounds of: (a) the sovereignty and integrity of India; (b) the security of the State; (c) friendly relations with foreign states, (d) public order; (e) decency or morality; (f) contempt of court; (g) defamation; and (h) incitement to an offence. The purpose of curbing black money is traceable to public interest. However, public interest is not one of the grounds stipulated in Article 19(2). Of the rights recognized under Article 19, only Article 19(1)(g) which guarantees the freedom to practice any profession or to carry on any occupation, trade or business can be restricted on the ground of public interest.[126]

111. In **Sakal Papers** v. **The Union of India**[127], the constitutional validity of the Newspaper (Price and Page) Act 1965 and the Daily Newspaper (Price and Page) Order 1960 which regulated the number of pages according to the price charged, prescribed the number of supplements to be published and regulated the area for advertisements in the newspapers was challenged on the ground that it violated the freedom of press under Article 19(1)(a). The Union of India submitted that the restriction on the freedom of press was justified because the purpose of the law was to prevent unfair competition which was in furtherance of public interest. It was argued that the restriction was justified because the activities carried out by newspapers were also traceable to the freedom to carry out a profession which could be restricted on the ground of public interest under Article 19(6). Justice JR Mudholkar

[126] Constitution of India 1950; Article 19(6)
[127] AIR 1962 SC 305

writing for the Constitution Bench observed that the impugned legislation "directly and immediately" curtails the freedom of speech guaranteed under Article 19(1)(a), and the freedom cannot be restricted on any ground other than the grounds stipulated in Article 19(2).[128] In **Express Newspapers** v. **Union of India**,[129] a Constitution Bench while deciding the constitutional challenge to the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act 1955 held that a law violating Article 19(1)(a) would be unconstitutional unless the purpose of the law falls "squarely within the provisions of Article 19(2)".[130] In **Kaushal Kishor** v. **State of Uttar Pradesh**,[131] a Constitution Bench of this Court answered the issue whether the grounds stipulated in Article 19(1)(a) are exhaustive of the restrictions which can be placed on the right to free speech under Article 19(1)(a) affirmatively.

112. However, in the specific context of the right to information, this Court has observed that the right can be restricted on grounds not traceable to Article 19(1)(a). In **PUCL** (supra), one of the submissions was that dangerous consequences would follow if the right to information is culled out from Article 19(1)(a) because the grounds on which the right can be restricted as prescribed in Article 19(2) are very limited. Justice Reddi in his concurring opinion in **PUCL** (supra) observed that the right under Article 19(1)(a) can be

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[128] Ibid; Paragraph 36:"If a law directly affecting it is challenged, it is no answer that the restriction enacted by it are justifiable under clauses (3) to (6). For the scheme of Article 19 is to enumerate different freedoms separately and then to specify the extent of restrictions to which they may be subjected and the objects for securing which this could be done."

[129] AIR 1958 SC 578

[130] Also see, Indian Express Newspapers (Bombay) Pvt Limited v. Union of India, AIR 1986 SC 515;Sodhi Shamsher v. State of Pepsu, AIR 1954 SC 276; Romesh Thappar v. State of Madras, (1950) SCR 594

[131] Writ Petition (Criminal) No. 113 of 2016

restricted on grounds which are not "strictly within the confines of Article 19(2)".[132] For this purpose, Justice Reddi referred to the observations of Justice Jeevan Reddy in **The Secretary, Ministry of Information** v. **Cricket Association of Bengal**[133]:

> "99. [...] This raises the larger question whether apart from the heads of restriction envisaged by sub-article (2) of Article 19, certain inherent limitations should not be read into the article, if it becomes necessary to do so in national or societal interest. The discussion on this aspect finds its echo in the separate opinion of Jeevan Reddy, J. in Cricket Assn. case [(1975) 4 SCC 428] . The learned Judge was of the view that the freedom of speech and expression cannot be so exercised as to endanger the interest of the nation or the interest of the society, even if the expression "national interest" or "public interest" has not been used in Article 19(2). It was pointed out that such implied limitation has been read into the First Amendment of the US Constitution which guarantees the freedom of speech and expression in unqualified terms."

113. In **Cricket Association of Bengal** (supra), one of the submissions of the petitioner (Union of India) was that the right to broadcast can be restricted on grounds other than those stipulated in Article 19(2). Justice P B Sawant writing for himself and Justice S Mohan observed while summarizing the law on freedom of speech and expression that Article 19(1)(a) can only be restricted on the grounds mentioned in Article 19(2).[134] The learned Judge specifically refuted the argument that the right can be restricted on grounds other than those stipulated in Article 19(2). Such an argument, the learned Judge states, is to plead for unconstitutional measures. However, while observing so, Justice P B Sawant states that the right to telecast can be

[132] PUCL (supra), [111]
[133] 1995 AIR 1236
[134] Ibid; [45].

restricted on the grounds mentioned in Article 19(2) and the "dictates of public interest":

> "78. [...] If the right to freedom of speech and expression includes the right to disseminate information to as wide a section of the population as is possible, the access which enables the right to be so exercised is also an integral part of the said right. The wider range of circulation of information or its greater impact cannot restrict the content of the right nor can it justify its denial. The virtues of the electronic media cannot become its enemies. It may warrant a greater regulation over licensing and control and vigilance on the content of the programme telecast. However, this control can only be exercised within the framework of Article 19(2) and **the dictates of public interest.**"
>
> (emphasis supplied)

114. Justice Jeevan Reddy in the concurring opinion segregated the grounds stipulated in Article 19(2) into grounds in furtherance of "national interest" and "societal interest". The learned Judge observed that the grounds of sovereignty and integrity of India, the security of the State, friendly relations with foreign State and public order are grounds referable to national interest, and the grounds of decency, morality, contempt of court, defamation and incitement of offence are referable to state interest. The learned Judge then referred to the judgment of the Supreme Court of the United States in **FCC** v. **National Citizens Committee for Broadcasting**[135], where it was held that a station license can be denied on the ground of public interest. Justice Reddy observed that public interest is synonymous to state interest which is one of the grounds underlying Article 19(2):

[135] 436 US 775 (1978)

> "189. Reference may also be made in this connection to the decision of the United States Supreme Court in *FCC* v. *National Citizens Committee for Broadcasting* [56 L Ed 2d 697 : 436 US 775 (1978)] referred to hereinbefore, where it has been held that "to deny a station licence because the public interest requires it is not a denial of free speech". It is significant that this was so said with reference to First Amendment to the United States Constitution which guarantees the freedom of speech and expression in absolute terms. The reason is obvious. **The right cannot rise above the national interest and the interest of society which is but another name for the interest of general public.** It is true that Article 19(2) does not use the words "national interest", "interest of society" or "public interest" but as pointed hereinabove, **the several grounds mentioned in clause (2) are ultimately referable to the interests of the nation and of the society.**"
>
> (emphasis supplied)

115. The observations of Justice Sawant and the concurring opinion of Justice Jeevan Reddy in **Cricket Association of Bengal** (supra) that the right under Article 19(1)(a) can be restricted on the ground of public interest even though it is not stipulated in Article 19(2) must be understood in the specific context of that case. **Cricket Association of Bengal** (supra), dealt with the access to and use of a public good (that is, airwaves) for dissemination of information. The Court distinguished airways from other means of dissemination of information such as newsprint and held that since broadcasting involves the use of a public good, it must be utilized to advance free speech rights and plurality of opinion (that is, public interest).[136] The observations in **Cricket Association of Bengal** (supra) cannot be interpreted to mean that other implied grounds of restrictions have been read into Article 19(2).

[136] Cricket Association of Bengal [201 (1)(a) and 201(1)(b)]

116. From the above discussion, it is clear that the right to information under Article 19(1)(a) can only be restricted based on the grounds stipulated in Article 19(2). It could be argued that curbing black money can be traced to the ground of "public order". However, a Constitution Bench of this Court has interpreted the ground "public order" to mean "public safety and tranquility" and "disorder involving breaches of local significance in contradistinction to national upheavals, such as civil strife, war, affecting the security of the State."[137] Thus, the purpose of curbing black money is not traceable to any of the grounds in Article 19(2).

117. We proceed to apply the subsequent prongs of the proportionality standard, even assuming that curbing black money is a legitimate purpose for restricting the right to information. The second prong of the proportionality analysis requires the State to assess whether the means used are rationally connected to the purpose. At this stage, the court is required to assess whether the means, if realised, would increase the likelihood of curbing black money. It is not necessary that the means chosen should be the only means capable of realising the purpose. It is sufficient if the means used constitute one of the many methods by which the purpose can be realised, even if it only partially gives effect to the purpose.[138]

118. The respondents submit that before the introduction of the Electoral Bond Scheme, a major portion of the total contributions received by political parties was from "unknown sources". For example, immediately preceding the

[137] Superintendent, Central Prison, Fatehgarh v. Dr Ram Manohar Lohia, AIR 1960 SC 633 [18]
[138] Media One (supra) [100]

financial year (2016-17) in which the Electoral Bond Scheme was introduced, eighty one percent of the contributions (Rupees 580.52 Crores) were received by political parties through voluntary contributions. Since the amount of voluntary contributions is not regulated, it allowed the circulation of black money. However, after the introduction of the Electoral Bond Scheme, forty-seven percent of the contributions were received through electoral bonds which is regulated money. The Union of India submitted that providing anonymity to the contributors incentivizes them to contribute through the banking channel. Assuming, for the purpose of hypothesis that the Union of India is right on this prong, what it urges is that non-disclosure of information about political expenditure has a rational nexus with the goal, that is, curbing black money or unregulated money.

119. The next stage of the proportionality standard is the least restrictive means stage. At this stage, this Court is required to determine if the means adopted (that is, anonymity of the contributor) is the least restrictive means to give effect to the purpose based on the following standard:[139]

a. Whether there are other possible means which could have been adopted by the State;

b. Whether the alternative means identified realise the objective in a 'real and substantial manner';

[139] See Justice KS Puttaswamy (5J) (supra) and Media One Broadcasting (supra) [103];

c. Whether the alternative identified and the means used by the State impact fundamental rights differently; and

d. Whether on an overall comparison (and balancing) of the measure and the alternative, the alternative is better suited considering the degree of realizing the government objective and the impact on fundamental rights.

120. Before we proceed to determine if the Electoral Bond Scheme is the least restrictive means to curb black money in electoral funding, it is important that we recall the regime on electoral funding. After the amendments introduced by the Finance Act 2017, donations to political parties exceeding rupees two thousand can only be made by an account payee cheque drawn on a bank, an account payee bank draft, the use of electronic clearing system through a bank account or through an electoral bond.[140] All contributions to political parties through cash cannot be assumed to be black money. For example, individuals who contribute to political parties in small donations during party rallies usually contribute through cash. On the other hand, contributions through the banking channel are certainly a form of accounted transaction. Restricting the contributions to political parties in cash to less than rupees two thousand and prescribing that contributions above the threshold amount must only be made through banking channels is itself intended to curb black money. Thus, the legal regime itself provides other alternatives to curb black money: contributions through cheques, bank draft, or electronic clearing system. The Union of India submits that though there are other alternatives through which

[140] IT Act, Section 13A(d)

circulation of black money in electoral financing can be curbed, these alternatives do not realize the objective in a "substantial manner" because most contributors resort to cash donations as they "fear consequences from political opponents" to whom donations were not made.

121. In addition to the alternatives identified above, the existing legal regime provides another alternative in the form of Electoral Trusts through which the objective of curbing black money in electoral financing can be achieved. Section 2(22AA) of the IT Act defines an Electoral Trust as a trust approved by the Board in accordance with the scheme made in this regard by the Central Government. Section 13B of the IT Act states that any voluntary contributions received by an electoral trust shall not be included in the total income of the previous year of such electoral trust if the it distributes ninety five percent of the aggregate donations received during the previous year. In terms of Rule 17CA of the IT Rules 1962, the features of an electoral trust are as follows:

a. An Electoral Trust may receive voluntary contribution from (i) an individual who is a citizen of India; (ii) a company registered in India; (iii) a firm or Hindu undivided family or an Association of persons or a body of individuals residing in India;

b. When a contribution is made to an electoral trust, a receipt recording the following information shall, *inter alia,* be provided: (i) Name and address of the contributor; (ii) Permanent account number of the contributor or the passport number if the contributor is not a resident of India; (iii)

Amount contributed; (iv) The mode of contribution including the name and branch of the bank and the date of receipt of such contribution; and (v) PAN of the electoral trust;

c. Contributions to the electoral trust can only be made through cheque, bank draft and electronic transfer. Contributions made in cash shall not be accepted by the Electoral Trust;

d. The Electoral Trust shall spend five percent of the total contributions received in a year subject to a limit of Rupees five hundred thousand in the first year of incorporation and Rupees three hundred thousand in the second year.[141] The remaining money (that is, ninety five percent of the total contributions received in that financial year along with any surplus from the previous year) shall be distributed to political parties registered under Section 29A of the RP Act;[142]

e. The political party to which the trust donated money shall provide a receipt indicating the name of the political party, the PAN and the amount of contribution received from the trust;[143]

f. The trust shall also maintain a list of persons from whom contributions have been received and to whom they have been distributed;[144] and

[141] IT Rules 1962, Rule 17CA(8)(i)
[142] IT Rules 1962, Rule 17CA(7) and Rules 17CA(8)(ii)
[143] IT Rules 1962, Rule 17CA(9)
[144] IT Rules 1962, Rule 17CA(11)(ii)

g. The trust shall furnish a certified copy of the list of contributors and list of political parties to whom contributions have been made to the Commissioner of Income Tax along with the audit report.[145]

122. In summary, an Electoral Trust is formed only for collecting political contributions from donors. An electoral trust can contribute to more than one party. To illustrate, if ten individuals and one company have contributed to an Electoral Trust and the donations are contributed to three political parties equally or unequally, the information about which of the individuals contributed to which of the political parties will not be disclosed. In this manner, the purpose of curbing black money in electoral financing will be met. At the same time, there would be no fear of consequences from political opponents because the information as to which political party were made is not disclosed.

123. On 6 June 2014, the ECI circulated Guidelines for submission of contribution reports of Electoral Trusts mandating in the interest of transparency that all Electoral Trusts shall submit an Annual Report containing details of contributions received and disbursed by them to political parties. Pursuant to the Guidelines, Electoral Trusts submit Annual Reports to the ECI every year. For example, according to the Annual Report of the Prudent Electoral Trust for the financial year 2021-22, the Trust received contributions of a total of Rupees 4,64,83,00,116 from seventy contributors including individuals and companies. The contributions were unequally distributed to the Aam Aadmi

[145] IT Rules 1962, Rule 17CA(14)

Party, All India Congress Committee, Bharatiya Janata Party, Goa Congress Committee, Goa Forward Party, Indian National Congress, Punjab Lok Congress, Samajwadi Party, Shiromani Akali Dal, Telangana Rashtra Samiti, and YSR Congress. From the report, it cannot be discerned if contributor 'A' contributed to a particular political party. It can only be concluded that contributor 'A' could have contributed to the Party.

124. Thus, even if the argument of the Union of India that the other alternative means such as the other modes of electronic transfer do not realize the objective of curbing black money substantially because contributors would resort to cash donations due to the fear of consequences is accepted, Electoral Trusts are an effective alternative. There will be a lesser degree of "political consequences" for contributions made to the Electoral Trust because the information about which of the contributors contributed to which of the parties will not be disclosed. It is only where the Electoral Trust contributes to one political party, would there be a possibility of political consequences and witch-hunting (assuming that there is a link between anonymity and contributions). However, in that case, it is a choice expressly made by the contributors. Additionally, the law mandates disclosure only of contributions made above twenty thousand in a financial year. So, for contributions less than twenty-five thousand, cheques and other modes of electronic transfer are an effective alternative.

125. When these three methods of political contribution (electronic transfer other than electoral bonds, contribution to Electoral Trust, and Electoral Bonds) are

placed on a continuum, transfer through electronic means (other than electoral bonds) would be placed on one end and Electoral Bonds would be placed on the other end. A voter would receive complete information about contributions made above twenty thousand to a political party in the case of electronic transfer made directly to a political party other than through electoral bonds.[146]

126. With respect to contributions through electoral bonds, the voter would not receive any information about financial contributions in terms of Section 29C of RPA as amended by the Finance Act. This Court in the interim order dated 31 October 2023 in the specific context of contributions made by companies through electoral bonds *prima facie* observed the voter would be able to secure information about the funding by matching the information of the aggregate sum contributed by the Company (as required to be disclosed under Section 182(3) of the Companies Act as amended by the Finance Act) with the information disclosed by the political party. However, on a detailed analysis of the Scheme and the amendments we are of the opinion that such an exercise would not reveal the particulars of the donations because the Company under the provisions of Section 182 and the political party are only required to disclose the consolidated amount contributed and received through Electoral Bonds respectively. The particulars about the political party to which the contributions were made which is crucial to the right to

[146] RPA; Section 29A

information of political funding cannot be identified through the matching exercise.

127. With respect to contributions to an Electoral Trust, a voter receives partial information. The voter would know the total amount contributed by the donor and that the donor contributed to one of the political parties (in case the Electoral Trust has made contributions to multiple parties). But the donor would not be aware of the exact details of the contribution.

128. Assuming that anonymity incentivizes contributions through banking channels (which would lead to curbing black money in the electoral process), electoral bonds would be the most effective means in curbing black money, followed by Electoral Trust, and then other means of electronic transfer. This conclusion is premised on the belief that the Electoral Bond curbs black money. However, the Scheme is not fool-proof. The Electoral Bond Scheme does not provide any regulatory check to prevent the trading of bonds though Clause 14 of the Electoral Bond Scheme states that the bonds shall not be eligible for trading.

129. On an overall balance of the impact of the alternative means on the right to information and its ability to fulfill the purpose, for contributions below twenty thousand rupees, contributions through other means of electronic transfer is the least restrictive means. For contributions above twenty thousand rupees, contributions through Electoral Trust is the least restrictive means. Having concluded that the Electoral Bond Scheme is not the least restrictive means

to achieve the purpose of curbing black money in electoral process, there is no necessity of applying the balancing prong of the proportionality standard.

130. Based on the above discussion, we conclude that Electoral Bond Scheme does not fulfill the least restrictive means test. The Electoral Bond Scheme is not the *only* means for curbing black money in Electoral Finance. There are other alternatives which substantially fulfill the purpose and impact the right to information minimally when compared to the impact of electoral bonds on the right to information.

b. *Donor Privacy*

131. The Union of India submitted that information about financial contributions to political parties is not disclosed to protect the contributor's informational privacy to political affiliation. There are two limbs to the argument of the Union of India with respect to the purpose of donor privacy. First, that the State interest in introducing the Electoral Bond Scheme which guarantees confidentiality (or anonymity) to financial contributions is that it furthers donor privacy; and second, this State interest facilitates a guaranteed fundamental right. Thus, the submission of the State is that the right to information can be restricted even if donor privacy is not traceable to the grounds in Article 19(2) because privacy is a fundamental right in itself. This Court needs to decide the following issues to determine if the right to information of voters can be restricted on the ground of donor privacy:

a. Whether the fundamental right to informational privacy recognized by this Court in **Justice KS Puttaswamy (9J)** v. **Union of India**[147], includes information about a citizen's political affiliation; and

b. If (a) above is answered in the affirmative, whether financial contribution to a political party is a facet of political affiliation.

If the right to informational privacy extends to financial contributions to a political party, this Court needs to decide if the Electoral Bond Scheme adequately balances the right to information and right to informational privacy of political affiliation.

I. Informational privacy of financial contributions to political parties

132. In **Justice KS Puttaswamy (9J)** (supra), a nine-Judge Bench of this Court held that the Constitution guarantees the right to privacy. This Court traced the right to privacy to the constitutional ideals of dignity, liberty, and the thread of non-arbitrariness that runs through the provisions of Part III. The scope of the right to privacy discussed in **Justice KS Puttaswamy (9J)** (supra) is summarized below:

a. The right to privacy includes "repose", that is, the freedom from unwanted stimuli, "sanctuary", the protection against intrusive observation into intimate decisions and autonomy with respect to personal choices;

[147] (2017) 10 SCC 1

b. Privacy over intimate decisions includes decisions related to the mind and body. Privacy extends to both the decision and the **process** of arriving at the decision. A lack of privacy over **thought** (which leads to decision-making) would suppress voices and lead to homogeneity which is contrary to the values that the Constitution espouses[148];

c. Privacy over decisions and choices would enable the exercise of fundamental freedoms such as the freedom of thought, expression, and association freely without coercion;[149]

d. Privacy is attached to a person and not a space. The scope of privacy cannot be restricted only to the "private" space; and

e. Privacy includes informational privacy. Information which may seem inconsequential in silos can be used to influence decision making behavior when aggregated.[150]

133. The content of privacy is not limited to "private" actions and decisions such as the choice of a life partner, procreation and sexuality. Neither is privacy merely defined from the point of direct State intrusion. Privacy is defined as essential protection for the exercise and development of other freedoms protected by the Constitution, and from direct or indirect influence by both State and non-

[148] Justice Chandrachud (Paragraph 168), Justice Kaul (Paragraph 19)
[149] Justice Chandrachud, Justice Chellameshwar, Justice Bobde (paragraph 25 and 29)
[150] Justice Chandrachud (paragraph 170): "[...] Individually, these information silos may seem inconsequential. In aggregation, they disclose the nature of the personality: food habits, language, health, hobbies, sexual preferences, friendships, ways of dress and political affiliation. Justice Chelameshwar (Paragraph 38), Justice Kaul (Paragaph 19)

State actors. Viewed in this manner, privacy takes within its fold, decisions which also have a 'public component'.

134. The expression of political beliefs is guaranteed under Article 19(1)(a). Forming political beliefs and opinion is the first stage of political expression. The freedom of political expression cannot be exercised freely in the absence of privacy of political **affiliation**. Information about a person's political beliefs can be used by the State at a political level, to suppress dissent, and at a personal level, to discriminate by denying employment or subjecting them to trolls. The lack of privacy of political affiliation would also disproportionately affect those whose political views do not match the views of the mainstream.

135. In the specific context of exercising electoral franchise, the lack of privacy of political affiliation would be catastrophic. It is crucial to electoral democracy that the exercise of the freedom to vote is not subject to undue influence. It is precisely for this reason that the law recognizes certain 'corrupt practices' by candidates. These 'corrupt practices' do not merely include 'financial' corrupt practices such as bribery. They also include undue influence of the voters by an attempt to interfere with the free exercise of electoral right[151], publication of false information about the personal character of any candidate[152], and providing vehicles for the free conveyance of electors[153]. The law penalizes practices which have the effect of dis-franchising the voter through illegitimate means.

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[151] RPA, Section 123(2). The provision includes the threatening with injury including social ostracism and ex-communication from any caste or community.
[152] RPA; Section 123(4)
[153] RPA; Section 123(5)

136. Information about a person's political affiliation can be used to dis-enfranchise voters through voter surveillance.[154] Voter databases which are developed through surveillance identify voting patterns of the electors and attempt to interfere with their opinions based on the information. For example, the data of online purchase histories such as the books purchased (which would indicate the ideological leaning of the individual), clothing brands used (which would indicate the social class to which the individual belongs) or the news consumed or the newspapers subscribed (which would indicate the political leanings or ideologies) can be used to draw on the relative political affiliation of people. This information about the political affiliation of individuals can then be used to influence their votes. Voter surveillance gains particular significance when fewer people have attachments to political parties.[155]

137. At a systemic level, information secured through voter surveillance could be used to invalidate the foundation of the electoral system. Information about political affiliation could be used to engage in gerrymandering, the practice by which constituencies are delimited based on the electoral preference of the voters.

138. Informational privacy to political affiliation is necessary to protect the freedom of political affiliation and exercise of electoral franchise. Thus, it follows from the judgment of this Court in **Justice KS Puttaswamy (9J)** (supra) and the

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[154] See Philip N Howard and Daniel Kreiss, Political Parties and Voter privacy: Australia, Canada, the United Kingdom, and United States in Comparative Perspective, *First Monday* 15(12) 2010

[155] Colin Bennet, The politics of privacy and privacy of politics: Parties, elections, and voter surveillance in Western Democracies. *First Monday*, *18*(8) 2013

observations above that the Constitution guarantees the right to informational privacy of political affiliation.

139. Having concluded that the Constitution guarantees a right to informational privacy of political affiliation, it needs to be decided if the right can be extended to the contributions to political parties. The Electoral Bond Scheme has two manifestations of privacy: first, informational privacy by prescribing confidentiality vis-à-vis the political party; and second, informational privacy by prescribing non-disclosure of the information of political contributions to the public. The Union of India submitted that contributions made to political parties must be protected both from the political party itself and the public because donor privacy is an extension of the principle of secret ballot and is a facet of free and fair elections. The petitioners argue that equating political contributions with expression of political preference through voting is flawed because it conflates money with speech. The petitioners also argue that informational privacy does not extend to political contributions because they are by their very nature **public acts** which influence public policy, and thus, must be subject to public scrutiny.

140. The issue before this Court is not whether public funding of political parties is permissible. Neither is the issue whether a restriction can be placed on the contribution which can be made by a citizen to a political party. If it was, then the question of whether financial contribution to a political party is in furtherance of the right to freedom of political speech and expression under Article 19(1)(a) or the right to freedom to form associations under Article

19(1)(c) would arise. However, that not being the case, this Court is not required to decide whether financial contribution to a political party is protected by Articles 19(1)(a) and 19(1)(c).

141. This Court in **Justice KS Puttaswamy (9J)** (supra) did not trace the right to privacy to a particular provision of the Constitution such as Article 21. Rather, this Court observed that privacy is crucial for the fulfilment of the constitutional values of self-determination, autonomy and liberty in addition to its essentiality for realizing the fundamental freedoms such as the freedom of speech and expression. This Court further held that the non-intrusion of the mind (the ability to preserve beliefs, thoughts and ideologies) is as important as the non-intrusion of the body. This Court (supra) did not hold that privacy is extendable to the **action** of speech or the **action** of expression, both of which are required to possess a communicative element to receive the protection under Article 19(1)(a).[156] Rather, the proposition in **Justice KS Puttaswamy (9J)** is that privacy (including informational privacy) is extendable to thoughts, beliefs, and opinions formed for the exercise of speech and action. Thus, informational privacy would extend to financial contributions to political parties even if contributions are not traceable to Article 19(1)(a) provided that the information on political contributions indicates the political affiliation of the contributor.

142. Financial contributions to political parties are usually made for two reasons. First, they may constitute an expression of support to the political party and

[156] See Romesh Thappar v. State of Madras, (1950) SCR 594 (602)

second, the contribution may be based on a *quid pro quo*. The law as it currently stands permits contributions to political parties by both corporations and individuals. The huge political contributions made by corporations and companies should not be allowed to conceal the reason for financial contributions made by another section of the population: a student, a daily wage worker, an artist, or a teacher. When the law permits political contributions and such contributions could be made as an expression of political support which would indicate the political affiliation of a person, it is the duty of the Constitution to protect them. Not all political contributions are made with the intent of attempting to alter public policy. Contributions are also made to political parties which are not substantially represented in the legislatures. Contributions to such political parties are made purely with the intent of expressing support. At this juncture, the close association of money and politics which has been explained above needs to be recounted. Money is not only essential for electoral outcomes and for influencing policies. It is also necessary for true democratic participation. It is necessary for enhancing the number of political parties and candidates contesting the elections which would in-turn impact the demographics of representatives in the Assembly. It is true that contributions made as *quid pro quo* transactions are not an expression of political support. However, to not grant the umbrella of informational privacy to political contributions only because a portion of the contributions is made for other reasons would be impermissible. The Constitution does not turn a blind eye merely because of the possibilities of misuse.

II. Privacy vis-à-vis political party

143. The second issue is whether the right to privacy of political contributions can be extended to include privacy vis-à-vis the political party to which contributions are made since according to the Union of India under the Electoral Bond Scheme, the political party to which the contribution is made would not know the particulars of the contributor. Hence, it is submitted that the scheme is akin to the secret ballot.

144. We are unable to see how the disclosure of information about contributors to the political party to which the contribution is made would infringe political expression. The disclosure of the particulars of the contributions may affect the freedom of individuals to the limited extent that the political party with the information could coerce those who have not contributed to them. However, we have already held above that the scheme only grants *de jure* and not *de facto* confidentiality vis-à-vis the political party. Under the current Scheme, it is still open to the political party to coerce persons to contribute. Thus, the argument of the Union of India that the Electoral Bond Scheme protects the confidentiality of the contributor akin to the system of secret ballot is erroneous.

III. Balancing the right to information and the right to informational privacy

a) Judicial Approach towards balancing fundamental rights: establishing the double proportionality standard

PART F

145. At the core of governance is the conflict between different constitutional values or different conceptions of the same constitutional value. Countries with a written Constitution attempt to resolve these conflicts by creating a hierarchy of rights within the constitutional order where a few fundamental rights are subjected to others. For example, Article 25 of the Indian Constitution which guarantees the freedom of conscience, and the profession, practice and propagation of religion is subject to public order, morality, health and **other provisions of Part III**. The first exercise that the Court must undertake while balancing two fundamental rights is to determine if the Constitution creates a hierarchy between the two rights in conflict. If the Constitution does not create a hierarchy between the conflicting rights, the Courts must use judicial tools to balance the conflict between the two rights.

146. The judicial approach towards balancing fundamental rights has evolved over the course of years. Courts have used the collective interest or the public interest standard, the single proportionality standard, and the double proportionality standard to balance the competing interests of fundamental rights.

147. Before the proportionality standard was employed to test the validity of the justification for the infringement of fundamental rights, Courts balanced conflicting fundamental rights by according prominence to one fundamental right over the other based on public interest. This approach was undertaken through two modalities. In the first modality, the Court while identifying the fundamental rights in conflict circumscribed one of the fundamental rights in

question such that there was no **real** conflict between the rights. The Court while circumscribing the right undertook an exercise of weighing the relative constitutional values of the rights based on public interest. **In Re Noise Pollution**[157], writ petitions were filed seeking to curb noise pollution. A two-Judge Bench of this Court observed that those who make noise often justify their actions based on freedom of speech and expression guaranteed under Article 19(1)(a). However, this Court observed that the right to freedom of speech and expression does not include the freedom to "engage in aural aggression". In this case, there was no necessity for this Court to "balance" two fundamental rights because the right in question (freedom of speech and expression) was circumscribed to not include the actions challenged (noise pollution). In **Subramanian Swamy** v. **Union of India**[158], Sections 499 and 500 of the Indian Penal Code 1860 which criminalized defamation were challenged. A two-Judge Bench of this Court framed the issue as a conflict between the right to speech and expression under Article 19(1)(a) and the right to reputation traceable to Article 21. In this case, the two Judge Bench held that the right to speech and expression does not include the right to defame a person. Justice Dipak Misra (as the learned Chief Justice then was) observed that a contrary interpretation would completely abrogate the right to reputation.[159]

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[157] (2005) 5 SCC 733

[158] (2016) 7 SCC 221; Paragraph 11 "While one has a right to speech, others have a right to listen or decline to listen. [...] Nobody can indulge in aural aggression. If anyone increases his volume of speech and that too with the assistance of artificial devices so as to compulsorily expose unwilling persons to hear a noise raised to unpleasant or obnoxious levels, then the person speaking is violating the right of others to a peaceful, comfortable and pollution-free life guaranteed by Article 21. Article 19(1)(*a*) cannot be pressed into service for defeating the fundamental right guaranteed by Article 21."

[159] 144: "[...] Reputation being an inherent component of Article 21, we do not think it should be allowed to be sullied solely because another individual can have its freedom. It is not a restriction that has an inevitable

PART F

148. In the second modality of the public interest approach, the Courts undertook a comparison of the values which the rights (and the conceptions of the rights) espouse and gave more weightage to the right which was in furtherance of a higher degree of public or collective interest. In **Asha Ranjan** v. **State of Bihar**[160], this Court held that when there is a conflict between two individuals with respect to their right under Article 21, the facts and circumstances must be weighed "on the scale of constitutional norms and sensibility and larger public interest." In **PUCL** (supra), one of the issues before this Court was whether the disclosure of the assets of the candidates contesting the elections in furtherance of the right to information of the voters violates the right to privacy of candidates.[161] Justice Reddi authoring the concurring opinion observed that the right to information of the assets of candidates contesting elections trumps the right to privacy because the former serves a larger public interest. In **Mazdoor Kisan Shakti Sangathan** v. **Union of India**[162], proceedings under Article 32 were initiated challenging orders issued under Section 144 of the Code of Criminal Procedure prohibiting protests in certain areas in Delhi. The issue before this Court was whether the total ban of protests at the Jantar Mantar Road would violate the right to protest which is traceable to Articles 19(1)(a) and 19(1)(b). One of the inter-related issues was whether the right to hold peaceful demonstrations violates the right of

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consequence which impairs circulation of thought and ideas. In fact, it is control regard being had to another person's right to go to court and state that he has been wronged and abused. He can take recourse to a procedure recognised and accepted in law to retrieve and redeem his reputation. Therefore, the balance between the two rights needs to be struck. "Reputation" of one cannot be allowed to be crucified at the altar of the other's right of free speech. The legislature in its wisdom has not thought it appropriate to abolish criminality of defamation in the obtaining social climate."

[160] (2017) 4 SCC 397

[161] Ibid, [121]

[162] (2018) 17 SCC 324

peaceful residence under Article 21, and if it does, how this Court should balance the conflicting fundamental rights. This Court observed that the Court must while balancing two fundamental rights examine where the larger public interest lies.[163] This Court framed the following issue in the specific context of the case: whether disturbances caused to residents by the protest is a larger public interest which outweighs the rights of protestors. The two-Judge Bench held that "demonstrations as it has been happening" are causing serious discomfort to the residents, and that the right to protest could be balanced with the right to peaceful residence if authorities had taken adequate safeguards such as earmarking specific areas for protest, placing restrictions on the use of loudspeakers and on parking of vehicles around residential places.

149. The judgment of this Court in **Mazdoor Kisan Shakti** (supra), represents the gradual shift from the pre-proportionality phase to the proportionality stage which signifies a shift in the degree of justification and the employment of a structured analysis for balancing fundamental rights. In **Mazdoor Kisan Shakti** (supra), this Court applied one of the prongs of the proportionality standard (the least restrictive means prong) while balancing the right to protest and the right to peaceful residence. The Court identified other means which would have infringed the right to a peaceful residence to a lesser extent.

150. In 2012, a five-Judge Bench of this Court in **Sahara India Real Estate Corporation Limited** v. **Securities and Exchange Board of India**[164], used

[163] (2018) 17 SCC 324 [58]
[164] (2012) 10 SCC 603

a standard which resembled the structured proportionality standard used in **Justice KS Puttaswamy (5J)** v. **Union of India**[165] to balance the conflict between two fundamental rights. This judgment marked the first departure from the series of cases in which this Court balanced two fundamental rights based on doctrinal predominance. In **Sahara** (supra), the petitioner submitted a proposal for the repayment of OFCDs (optionally fully convertible bonds) to the investors. The details of the proposals were published by a news channel. Interlocutory applications were filed in the Court praying for the issuance of guidelines for reporting matters which are sub-judice. This Court resolved the conflict between the freedom of press protected under Article 19(1)(a) and the right to free trial under Article 21 by evolving a neutralizing device. This Court held that it has the power to evolve neutralizing devices such as the postponement of trial, retrial, change of venue, and in appropriate cases, grant acquittal in case of excessive media prejudicial publicity to neutralize the conflicting rights. This Court followed the Canadian approach in evolving a two prong standard to balance fundamental rights through neutralizing devices which partly resembled the structured proportionality standard. The two-pronged test was as follows:[166]

a. There is no other reasonable alternative measure available (necessity test); and

[165] (2019) 1 SCC 1
[166] (2012) 10 SCC 603 [42, 22]

b. The salutary effects of the measure must outweigh the deleterious effects on the fundamental rights (proportionality standard).

151. Finally, this Court in **Justice KS Puttaswamy (5J)** (supra) applied the structured proportionality standard to balance two fundamental rights. In this case, a Constitution Bench of this Court while testing the validity of the Aadhar Act 2016 had to resolve the conflict between the right to informational privacy and the right to food. Justice Sikri writing for the majority held that the Aadhar Act fulfills all the four prongs of the proportionality standard. In the final prong of the proportionality stage, that is the balancing stage, this Court held that one of the considerations was to balance the right to privacy and the right to food. On balancing the fundamental rights, this Court held that the provisions furthering the right to food satisfy a larger public interest whereas the invasion of privacy rights was minimal.[167]

152. However, the single proportionality standard which is used to test whether the fundamental right in question can be restricted for the **State interest** (that is, the legitimate purpose) and if it can, whether the measure used to restrict the right is proportional to the objective is insufficient for balancing the conflict between two fundamental rights. The proportionality standard is an effective standard to test whether the infringement of the fundamental right is justified. It would prove to be ineffective when the State interest in question is also a reflection of a fundamental right.

[167] (2019) 1 SCC 1 [308]

153. The proportionality standard is by nature curated to give prominence to the fundamental right and minimize the restriction on it. If this Court were to employ the single proportionality standard to the considerations in this case, at the suitability prong, this Court would determine if non-disclosure is a suitable means for furthering the right to privacy. At the necessity stage, the Court would determine if non-disclosure is the least restrictive means to give effect to the right to privacy. At the balancing stage, the Court would determine if non-disclosure has a disproportionate effect on the right holder. In this analysis, the necessity and the suitability prongs will inevitably be satisfied because the purpose is substantial: it is a fundamental right. The balancing stage will only account for the disproportionate impact of the measure on the right to information (the right) and not the right to privacy (the purpose) since the Court is required to balance the impact on the right with the fulfillment of the purpose through the selected means. Thus, the Court while applying the proportionality standard to resolve the conflict between two fundamental rights preferentially frames the standard to give prominence to the fundamental right which is alleged to be violated by the petitioners (in this case, the right to information).[168] This could well be critiqued for its limitations.

154. In **Campbell** v. **MGM Limited**[169], Baroness Hale adopted the double proportionality standard to adequately balance two conflicting fundamental rights. In this case, the claimant, a public figure, instituted proceedings against a newspaper for publishing details of her efforts to overcome drug addiction.

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[168] Hon'ble Mr Justice Andrew Cheung PJ, Conflict of fundamental rights and the double proportionality test, A lecture in the Common Law Lecture Series 2019 delivered at the University of Hong Kong (17 September 2019)
[169] [2004] UKHL 22

Baroness Hale applied the following standard to balance the right to privacy of the claimant and the right to a free press:

> "141. [...] This involved looking first at the comparative importance of the actual rights being claimed in the individual case; then at the justifications for interfering with or restricting each of those rights; and applying the proportionality test to each"

155. In **Central Public Information Officer, Supreme Court of India** v. **Subash Chandra Agarwal**[170], one of us (Justice D Y Chandrachud) while authoring the concurring opinion adopted the double proportionality standard as formulated in **Campbell** (supra). Referring to the double proportionality standard, the concurring opinion observes that the Court while balancing between two fundamental rights must identify the precise interests weighing in favour of both disclosure and privacy and not merely undertake a doctrinal analysis to determine if one of the fundamental rights takes precedence over the other:

> "113. Take the example of where an information applicant sought the disclosure of how many leaves were taken by a public employee and the reasons for such leave. The need to ensure accountability of public employees is of clear public interest in favour of disclosure. The reasons for the leave may also include medical information with respect to the public employee, creating a clear privacy interest in favour of non-disclosure. It is insufficient to state that the privacy interest in medical records is extremely high and therefore the outcome should be blanket non-disclosure. The principle of proportionality may necessitate that the number of and reasons for the leaves be disclosed and the medical reasons for the leave be omitted. This would ensure that the interest in accountability is only abridged to the extent necessary to

[170] Civil Appeal No. 10044 of 2010

protect the legitimate aim of the privacy of the public employee."

156. Baroness Hale in **Campbell** (supra) employed a three step approach to balance fundamental rights. The first step is to analyse the comparative importance of the actual rights claimed. The second step is to lay down the justifications for the infringement of the rights. The third is to apply the proportionality standard to both the rights. The approach adopted by Baroness Hale must be slightly tempered to suit our jurisprudence on proportionality. The Indian Courts adopt a four prong structured proportionality standard to test the infringement of the fundamental rights. In the last stage of the analysis, the Court undertakes a balancing exercise to analyse if the cost of the interference with the right is proportional to the extent of fulfilment of the purpose. It is in this step that the Court undertakes an analysis of the comparative importance of the considerations involved in the case, the justifications for the infringement of the rights, and if the effect of infringement of one right is proportional to achieve the goal. Thus, the first two steps laid down by Baroness Hale are subsumed within the balancing prong of the proportionality analysis.

157. Based on the above discussion, the standard which must be followed by Courts to balance the conflict between two fundamental rights is as follows:

a. Does the Constitution create a hierarchy between the rights in conflict? If yes, then the right which has been granted a higher status will prevail over the other right involved. If not, the following standard must be

employed from the perspective of both the rights where rights A and B are in conflict:

b. Whether the measure is a suitable means for furthering right A and right B;

c. Whether the measure is least restrictive and equally effective to realise right A and right B; and

d. Whether the measure has a disproportionate impact on right A and right B.

b) Validity of the Electoral Bond Scheme, Section 11 of the Finance Act and Section 137 of the Finance Act

158. To recall, Section 13A of the IT Act before the amendment mandated that the political party must maintain a record of contributions in excess of rupees twenty thousand. Section 11 of the Finance Act 2017 amended Section 13A creating an exception for contributions made through Electoral Bonds. Upon the amendment, political parties are not required to maintain a record of any contribution received through electoral bonds. Section 29C of the RPA mandated the political party to prepare a report with respect to contributions received in excess of twenty thousand rupees from a person or company in a financial year. Section 137 of the Finance Act amended Section 29C of the RPA by which a political party is now not required to include contributions received by electoral bonds in its report. As explained earlier, the feature of anonymity of the contributor vis-à-vis the public is intrinsic to the Electoral

Bond Scheme. Amendments had to be made to Section 13A of the IT Act and Section 29C of the RPA to implement the Electoral Bond Scheme because the EBS mandates anonymity of the contributor. In this Section, we will answer the question of whether the EBS adequately balances the right to informational privacy of the contributor and the right to information of the voter.

159. In **Justice KS Puttaswamy (9J)** (supra), this Court did not trace the right to privacy only to Article 21. This Court considered privacy as an essential component for the effective fulfillment of the all entrenched rights. Article 25 of the Constitution is the only provision in Part III which subjects the right to other fundamental rights. Article 25 guarantees the freedom of conscience which means the freedom to judge the moral qualities of one's conduct.[171] Financial contributions to a political party (as a form of expression of political support and belief) can be traced to the exercise of the freedom of conscience under Article 25.[172] It can very well be argued that the right to information of the voter prevails over the right to anonymity of political contributions which may be traceable to the freedom of conscience recognized under Article 25 since it is subject to all other fundamental rights, including Article 19(1)(a). However, the right to privacy of financial contributions to political parties can also be traced to Article 19(1) because the informational privacy of a person's political affiliation is necessary to enjoy the right to political speech under Article 19(1)(a), the right to political protests under Article 19(1)(b), the right to form a political association under Article 19(1)(c), and the right to life and

[171] See Supriyo (supra) [238 , 239]; Aishat Shifa v. State of Karnataka, (2023) 2 SCC 1;
[172] See Justice KS Puttaswamy v. Union of India, (2017) 10 SCC 1 [372] (opinion of Justice Chelameswar);

liberty under Article 21. The Constitution does not create a hierarchy amongst these rights. Thus, there is no constitutional hierarchy between the right to information and the right to informational privacy of political affiliation.

160. This Court must now apply the double proportionality standard, that is, the proportionality standard to both the rights (as purposes) to determine if the means used are suitable, necessary and proportionate to the fundamental rights. The Union of India submitted that Clause 7(4) of the Electoral Bond Scheme balances the right to information of the voter and the right to informational privacy of the contributor. Clause 7(4) stipulates that the information furnished by the buyer shall be treated as confidential by the authorized bank. The bank has to disclose the information when it is demanded by a competent court or upon the registration of a criminal case by a law enforcement agency. It needs to be analyzed if the measure employed (Clause 7(4)) balances the rights or tilts the balance towards one of the fundamental rights.

161. The first prong of the analysis is whether the means has a rational connection with both the purposes, that is, informational privacy of the political contributions and disclosure of information to the voter. It is not necessary that the means chosen should be the only means capable of realising the purpose of the state action. This stage of the analysis does not prescribe an efficiency standard. It is sufficient if the means constitute one of the many methods by

which the purpose can be realised, even if it only partially gives effect to the purpose.[173]

162. This Court while applying the suitability prong to the purpose of privacy of political contribution must consider whether the non-disclosure of information to the voter and its disclosure only when demanded by a competent court and upon the registration of criminal case has a rational nexus with the purpose of achieving privacy of political contribution. Undoubtedly, the measure by prescribing non-disclosure of information about political funding shares a nexus with the purpose. The non-disclosure of information grants anonymity to the contributor, thereby protecting information privacy. It is certainly one of the ways capable of realizing the purpose of informational privacy of political affiliation.

163. The suitability prong must next be applied to the purpose of disclosure of information about political contributions to voters. There is no nexus between the balancing measure adopted with the purpose of disclosure of information to the voter. According to Clause 7(4) of the Electoral Bond Scheme and the amendments, the information about contributions made through the Electoral Bond Scheme is exempted from disclosure requirements. This information is **never** disclosed to the voter. The purpose of securing information about political funding can never be fulfilled by absolute non-disclosure. The measure adopted does not satisfy the suitability prong vis-à-vis the purpose of information of political funding. However, let us proceed to apply the

[173] Media One Broadcasting (supra), [101]

subsequent prongs of the double proportionality analysis assuming that the means adopted has a rational nexus with the purpose of securing information about political funding to voters.

164. The next stage of the analysis is the necessity prong. At this stage, the Court determines if the measure identified is the least restrictive and equally effective measure. To recall, the Court must determine if there are other possible means which could have been adopted to fulfill the purpose, and whether such alternative means (a) realize the purpose in a real and substantial manner; (b) impact fundamental rights differently; and (c) are better suited on an overall comparison of the degree of realizing the purpose and the impact on fundamental rights.

165. The provisions of the RPA provide an alternative measure. Section 29C states that contributions in excess of rupees twenty thousand received from a person or company for that financial year must be disclosed by the political party through a report. The report must be filled in the format prescribed in Form 24A of the Conduct of Election Rules 1961. The form is annexed as Annexure II to this judgment. A crucial component of this provision when juxtaposed with Section 13A of the IT Act must be noted. Section 13A of the IT Act requires the political party to maintain a record of the contributions made in excess of rupees twenty thousand. Section 29C of the RPA requires the political party to disclose information about contributions in excess of rupees twenty thousand made by a person or company **in a financial year**. Section 13A mandates record keeping of every contribution. On the other hand, Section

29C mandates disclosure of information of contributions beyond rupees twenty thousand per person or per company in one financial year.

166. Section 29C(1) is one of the means to achieve the purpose of protecting the informational privacy of political affiliation of individuals. Parliament in its wisdom has prescribed rupees twenty thousand as the threshold where the considerations of disclosure of information of political contribution outweigh the considerations of informational privacy. It could very well be debated whether rupees twenty thousand is on the lower or higher range of the spectrum. However, that is not a question for this Court to answer in this batch of petitions. The petitioners have not challenged the threshold of rupees twenty thousand prescribed for the disclosure of information prescribed by Section 29C. They have only raised a challenge to the disclosure exception granted to contributions by Electoral Bonds. Thus, this Court need not determine if the threshold tilts the balance in favour of one of the interests. We are only required to determine if the disclosure of information on financial contributions in a year beyond rupees twenty thousand is an alternative means to achieve the purposes of securing the information on financial contributions and informational privacy regarding political affiliation.

167. It must be recalled that we have held above that the right to information of the voter includes the right to information of financial contributions to a political party because of the influence of money in electoral politics (through electoral outcomes) and governmental decisions (through a seat at the table and *quid pro quo* arrangements between the contributor and the political party). The

underlying rationale of Section 29C(1) is that contributions below the threshold do not have the ability to influence decisions, and the right to information of financial contributions does not extend to contributions which do not have the ability to influence decisions. Similarly, the right to privacy of political affiliations does not extend to contributions which may be made to influence policies. It only extends to contributions made as a genuine form of political support that the disclosure of such information would indicate their political affiliation and curb various forms of political expression and association.

168. It is quite possible that contributions which are made beyond the threshold could also be a form of political support and not necessarily a *quid pro quo* arrangement, and contributions below the threshold could influence electoral outcomes. However, the restriction on the right to information and informational privacy of such contributions is minimal when compared to a blanket non-disclosure of information on contributions to political parties. Thus, this alternative realizes the objective of securing disclosure for an informed voter and informational privacy to political affiliation in a 'real and substantial manner'. The measure in the Electoral Bond Scheme completely tilts the balance in favor of the purpose of informational privacy and abrogates informational interests. On an overall comparison of the measure and the alternative, the alternative is better suited because it realizes the purposes to a considerable extent and imposes a lesser restriction on the fundamental rights. Having concluded that Clause 7(4) of the Scheme is not the least

restrictive means to balance the fundamental rights, there is no necessity of applying the balancing prong of the proportionality standard.

169. The Union of India has been unable to establish that the measure employed in Clause 7(4) of the Electoral Bond Scheme is the least restrictive means to balance the rights of informational privacy to political contributions and the right to information of political contributions. Thus, the amendment to Section 13A(b) of the IT Act introduced by the Finance Act 2017, and the amendment to Section 29C(1) of the RPA are unconstitutional. The question is whether this Court should only strike down the non-disclosure provision in the Electoral Bond Scheme, that is Clause 7(4). However, as explained above, the anonymity of the contributor is intrinsic to the Electoral Bond Scheme. The Electoral Bond is not distinguishable from other modes of contributions through the banking channels such as cheque transfer, transfer through the Electronic Clearing System or direct debit if the anonymity component of the Scheme is struck down. Thus, the Electoral Bond Scheme 2018 will also consequentially have to be struck down as unconstitutional.

c. *Validity of Section 154 of the Finance Act amending Section 182(3) to the Companies Act*

170. Before the 2017 amendment, Section 182(3) of the Companies Act, mandated companies to disclose the details of the amount contributed to a political party along with the name of the political party to which the amount was contributed in its profit and loss account. After the amendment, Section

182(3) only requires the disclosure of the total amount contributed to political parties in a financial year. For example, under Section 182(3) as it existed before the amendment, if a Company contributed rupees twenty thousand to a political party, the company was required to disclose in its profit and loss account, the details of the specific contributions made to that political party. However, after the 2017 amendment, the Company is only required to disclose that it contributed rupees twenty thousand to a political party under the provision without disclosing the details of the contribution, that is, the political party to which the contribution was made. The profit and loss account of a company is included in the financial statement which companies are mandated to prepare.[174] A copy of the financial statement adopted at the annual general meeting of the company must be filed with the Registrar of Companies.[175]

171. As discussed in the earlier segment of this judgment, the Companies Act 1956 was amended in 1960 to include Section 293A by which contributions by companies to political parties and for political purposes were regulated. Companies were permitted to contribute within the cap prescribed. All such contributions were required to be disclosed by the Company in its profit and loss account with details. Companies which contravened the disclosure requirement were subject to fine. It is crucial to note here that contributions to political parties by companies were regulated long before the IT Act was amended in 1978 to exempt the income of political parties through voluntary

[174] The Companies Act 2013; Section 2(40)
[175] The Companies At 2013; Section 137

contributions for tax purposes (ostensibly to curb black money). It is clear as day light that the purpose of mandating the disclosure of contributions made by companies was not merely to curb black money in electoral financing but crucially to make the financial transactions between companies and political parties transparent. Contributions for "political purposes" was widely defined in the 1985 amendment (which was later incorporated in Section 182 of the Companies Act 2013) to include expenditure (either directly or indirectly) for advertisement on behalf of political parties and payment to a person "who is carrying activity which can be regarded as likely to affect public support to a political party". This indicates that the legislative intent of the provision mandating disclosure was to bring transparency to political contributions by companies. Companies have always been subject to a higher disclosure requirement because of their huge financial presence and the higher possibility of *quid pro quo* transactions between companies and political parties. The disclosure requirements in Section 182(3) were included to ensure that corporate interests do not have an undue influence in electoral democracy, and if they do, the electorate must be made aware of it.

172. Section 182(3) as amended by the Finance Act 2017 mandates the disclosure of **total** contributions made by political parties. This requirement would ensure that the money which is contributed to political parties is accounted for. However, the deletion of the mandate of disclosing the **particulars** of contributions violates the right to information of the voter since they would not possess information about the political party to which the contribution was made which, as we have held above, is necessary to identify corruption and

quid pro quo transactions in governance. Such information is also necessary for exercising an informed vote.

173. Section 182(3) of the Companies Act and Section 29C of the RPA as amended by the Finance Act must be read together. Section 29C exempts political parties from disclosing information of contributions received through Electoral Bonds. However, Section 182(3) not only applies to contributions made through electoral bonds but through all modes of transfer. In terms of the provisions of the RPA, if a company made contributions to political parties through cheque or ECS, the political party had to disclose the details in its report. Thus, the information about contributions by the company would be in the public domain. The only purpose of amending Section 182(3) was to bring the provision in tune with the amendment under the RPA exempting disclosure requirements for contributions through electoral bonds. The amendment to Section 182(3) of the Companies Act becomes otiose in terms of our holding in the preceding section that the Electoral Bond Scheme and relevant amendments to the RPA and the IT Act mandating non-disclosure of particulars on political contributions through electoral bonds is unconstitutional.

174. In terms of Section 136 of the Companies Act, every shareholder in a company has a right to a copy of the financial statement which also contains the profit and loss account. The petitioners submitted that the non-disclosure of the details of the political contributions made by companies in the financial statement would infringe upon the right of the shareholders to decide to sell

the shares of a company if a shareholder does not support the political ideology of the party to which contributions were made. This it was contended, violates Articles 19(1)(a), 19(1)(g), 21 and 25. We do not see the necessity of viewing the non-disclosure requirement in Section 182(3) of the Companies Act from the lens of a shareholder in this case when we have identified the impact of non-disclosure of information on political funding from the larger compass of a citizen and a voter. In view of the above discussion, Section 182(3) as amended by the Finance Act 2017 is unconstitutional.

G. Challenge to unlimited corporate funding

175. The Companies Act 1956,[176] as originally enacted, did not contain any provision relating to political contributions by companies. Regardless of the same, many companies sought to make contributions to political parties by amending their memorandum. In **Jayantilal Ranchhoddas Koticha** v. **Tata Iron and Steel Co. Ltd.**,[177] the decision of the company to amend its memorandum enabling it to make contributions to political parties was challenged before the High Court of Judicature at Bombay. The High Court upheld the decision of the company to amend its memorandum on the ground that there was no law prohibiting companies from contributing to the funds of a party. Chief Justice M C Chagla, cautioned against the influential role of "big business and money bags" in throttling democracy. The learned Judge emphasized that it is the duty of Courts to "prevent any influence being

[176] "1956 Act"
[177] AIR 1958 Bom 155

exercised upon the voter which is an improper influence or which may be looked at from any point of view as a corrupt influence." Chief Justice Chagla highlighted the grave danger inherent in permitting companies to donate to political parties and hoped Parliament would "consider under what circumstances and under what limitations companies should be permitted to make these contributions".

176. Subsequently, Parliament enacted the Companies (Amendment) Act 1960 to incorporate Section 293A in the 1956 Act. The new provision allowed a company to contribute to: (a) any political party; or (b) for any political purpose to any individual or body. However, the amount of contribution was restricted to either twenty-five thousand rupees in a financial year or five percent of the average net profits during the preceding three financial years, whichever was greater. The provision also mandated every company to disclose in its profit and loss account any amount contributed by it to any political party or for any political purpose to any individual or body during the financial year to which that account relates by giving particulars of the total amount contributed and the name of the party, individual, or body to which or to whom such amount has been contributed.

177. In 1963, the Report of the Santhanam Committee on Prevention of Corruption highlighted the prevalence of corruption at high political levels due to unregulated collection of funds and electioneering by political parties.[178] The Committee suggested "a total ban on all donations by incorporated bodies to

[178] Report of the Committee on Prevention of Corruption, 1964 [11.5].

political parties." Subsequently, Section 293A of the 1956 Act was amended through the Companies (Amendment) Act 1969 to prohibit companies from contributing funds to any political party or to any individual or body for any political purpose.

178. In 1985, Parliament again amended Section 293A, in the process reversing its previous ban on political contributions by companies. It allowed a company, other than a government company and any other company with less than three years of existence, to contribute any amount or amounts to any political party or to any person for any political purpose. It further provided that the aggregate of amounts which may be contributed by a company in any financial year shall not exceed five percent of its average net profits during the three immediately preceding financial years. This provision was retained under Section 182 of the Companies Act 2013. The only change was that the aggregate amount donated by a company was increased to seven and a half percent of its average net profits during the three immediately preceding financial years. Section 154 of the Finance Act 2017 amended Section 182 of the 2013 Act to delete this limit contained in the first proviso of the provision.

179. At the outset, it is important to be mindful of the fact that the petitioners are not challenging the vires of Section 182 of the 2013 Act. Neither are the petitioners challenging the legality of contributions made by companies to political parties. The challenge is restricted to Section 154 of the Finance Act 2017 which amended Section 182 of the 2013 Act.

PART G

i. The application of the principle of non-arbitrariness

180. The petitioners argue that Section 154 of the Finance Act 2017 violates Article 14 of the Constitution. The primary ground of challenge is that the amendment to Section 182 of the 2013 Act is manifestly arbitrary as it allows companies, including loss-making companies, to contribute unlimited amounts to political parties. It has also been argued that the law now facilitates the creation of shell companies solely for the purposes of contributing funds to political parties. On the other hand, the respondent has questioned the applicability of the doctrine of manifest arbitrariness for invalidating legislation.

a. *Arbitrariness as a facet of Article 14*

181. At the outset, the relevant question that this Court has to answer is whether a legislative enactment can be challenged on the sole ground of manifest arbitrariness. Article 14 of the Constitution provides that the State shall not deny to any person equality before the law or the equal protection of laws within the territory of India. Article 14 is an injunction to both the legislative as well the executive organs of the State to secure to all persons within the territory of India equality before law and equal protection of the laws.[179] Traditionally, Article 14 was understood to only guarantee non-discrimination. In this context, Courts held that Article 14 does not forbid all classifications but only that which is discriminatory. In **State of West Bengal** v. **Anwar Ali Sarkar**,[180] Justice S R Das (as the learned Chief Justice then was) laid down

[179] Basheshar Nath v. CIT, (1959) Supp 1 SCR 528
[180] (1951) 1 SCC 1; Also see State of Bombay v. FN Balsara, 1951 SCR 682

the following two conditions which a legislation must satisfy to get over the inhibition of Article 14: first, the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others; and second, the differentia must have a rational relation to the object sought to be achieved by the legislation. In the ensuing years, this Court followed this "traditional approach" to test the constitutionality of a legislation on the touchstone of Article 14.[181]

182. In **E P Royappa** v. **State of Tamil Nadu**,[182] this Court expanded the ambit of Article 14 by laying down non-arbitrariness as a limiting principle in the context of executive actions. Justice P N Bhagwati (as the learned Chief Justice then was), speaking for the Bench, observed that equality is a dynamic concept with many aspects and dimensions which cannot be confined within traditional and doctrinaire limits. The opinion declared that equality is antithetic to arbitrariness, further finding that equality belongs to the rule of law in a republic, while arbitrariness belongs to the whim and caprice of an absolute monarch. In **Ajay Hasia** v. **Khalid Mujib Seheravardi**,[183] a Constitution Bench of this Court considered it to be well settled that any action that is arbitrary necessarily involves negation of equality. Justice Bhagwati observed that the doctrine of non-arbitrariness can also be extended to a legislative action. He observed that:

> "[w]herever therefore there is arbitrariness in State action whether it be of the legislature or of the executive or of an

[181] Kathi Raning Rawat v. State of Saurashtra, (1952) 1 SCC 215; Budhan Chowdhury v. State of Bihar, (1955) 1 SCR 1045; Ram Krishna Dalmia v. S R Tendolkar, 1959 SCR 279.
[182] (1974) 4 SCC 3
[183] (1981) 1 SCC 722

"authority" under Article 12, Article 14 immediately springs into action and strikes down such State action."

183. Immediately after the judgment in **Ajay Hasia** (supra), Justice E S Venkataramaiah (as the learned Chief Justice then was) in **Indian Express Newspapers (Bombay) (P) Ltd**. v. **Union of India**,[184] laid down the test of manifest arbitrariness with respect to subordinate legislation. It was held that a subordinate legislation does not carry the same degree of immunity enjoyed by a statute passed by a competent legislature. Therefore, this Court held that a subordinate legislation "may also be questioned on the ground that it is unreasonable, unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary." In **Sharma Transport** v. **Government of Andhra Pradesh**,[185] this Court reiterated **Indian Express Newspapers** (supra) by observing that the test of arbitrariness as applied to an executive action cannot be applied to delegated legislation. It was held that to declare a delegated legislation as arbitrary, "it must be shown that it was not reasonable and manifestly arbitrary." This Court further went on to define "arbitrarily" to mean "in an unreasonable manner, as fixed or done capriciously or at pleasure, without adequate determining principle, not founded in the nature of things, non-rational, not done or acting according to reason or judgment, depending on the will alone."

184. While this Court accepted it as a settled proposition of law that a subordinate legislation can be challenged on the ground of manifest arbitrariness, there

[184] (1985) 1 SCC 641
[185] (2002) 2 SCC 188

was still some divergence as to the doctrine's application with respect to plenary legislation. In **State of Tamil Nadu** v. **Ananthi Ammal**,[186] a three-Judge Bench of this Court held that a statute can be declared invalid under Article 14 if it is found to be arbitrary or unreasonable. Similarly, in **Dr. K R Lakshmanan** v. **State of Tamil Nadu**,[187] a three-Judge Bench of this Court invalidated a legislation on the ground that it was arbitrary and in violation of Article 14. However, in **State of Andhra Pradesh** v. **McDowell & Co.**,[188] another three-Judge Bench of this Court held that a plenary legislation cannot be struck down on the ground that it is arbitrary or unreasonable. In **McDowell** (supra), this Court held that a legislation can be invalidated on only two grounds: first, the lack of legislative competence; and second, on the violation of any fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provision.

185. This divergence became more apparent when a three-Judge Bench of this Court in **Malpe Vishwanath Acharya** v. **State of Maharashtra**,[189] invalidated certain provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act 1947 relating to the determination and fixation of the standard rent. This Court declared the provisions in question unreasonable, arbitrary, and violative of Article 14. However, the Court did not strike down the provisions on the ground that the extended period of the statute was to come to an end very soon, requiring the government to reconsider the statutory

[186] (1995) 1 SCC 519
[187] (1996) 2 SCC 226
[188] (1996) 3 SCC 709
[189] (1998) 2 SCC 1

provisions. Similarly, in **Mardia Chemicals Ltd.** v. **Union of India**,[190] another three-Judge Bench of this Court invalidated Section 17(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 for being unreasonable and arbitrary.

186. In **Natural Resources Allocation, In Re Special Reference No. 1 of 2012**,[191] a Constitution Bench of this Court referred to **McDowell** (supra) to observe that a law may not be struck down as arbitrary without a constitutional infirmity. Thus, it was held that a mere finding of arbitrariness was not sufficient to invalidate a legislation. The Court has to enquire whether the legislation contravened any other constitutional provision or principle.

b. Beyond Shayara Bano: entrenching manifest arbitrariness in Indian jurisprudence

187. In **Shayara Bano** v. **Union of India**,[192] a Constitution Bench of this Court set aside the practice of Talaq-e-Bidaat (Triple Talaq). Section 2 of the Muslim Personal Law (Shariat) Act 1937 was also impugned before this Court. The provision provides that the personal law of the Muslims, that is Shariat, will be applicable in matters relating to marriage, dissolution of marriage and talaq. Justice R F Nariman, speaking for the majority, held that Triple Talaq is manifestly arbitrary because it allows a Muslim man to capriciously and whimsically break a marital tie without any attempt at reconciliation to save it.

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[190] (2004) 4 SCC 311
[191] (2012) 10 SCC 1
[192] (2017) 9 SCC 1

Thus, Justice Nariman applied the principle of manifest arbitrariness for the purpose of testing the constitutional validity of the legislation on the touchstone of Article 14.

188. Justice Nariman traced the evolution of non-arbitrariness jurisprudence in India to observe that **McDowells** (supra) failed to consider two binding precedents, namely, **Ajay Hasia** (supra) and **K R Lakshmanan** (supra). This Court further observed that **McDowells** (supra) did not notice **Maneka Gandhi** v. **Union of India**,[193] where this Court held that substantive due process is a part of Article 21 which has to be read along with Articles 14 and 19 of the Constitution. Therefore, Justice Nariman held that arbitrariness of a legislation is a facet of unreasonableness in Articles 19(2) to (6) and therefore arbitrariness can also be used as a standard to strike down legislation under Article 14. It held **McDowells** (supra) to be per incuriam and bad in law.

189. **Shayara Bano** (supra) clarified **In Re Special Reference No. 1 of 2012** (supra) by holding that a finding of manifest arbitrariness is in itself a constitutional infirmity and, therefore, a ground for invalidating legislation for the violation of Article 14. Moreover, it was held that there is no rational distinction between subordinate legislation and plenary legislation for the purposes of Article 14. Accordingly, the test of manifest arbitrariness laid down by this Court in **Indian Express Newspapers** (supra) in the context of subordinate legislation was also held to be applicable to plenary legislation. In conclusion, this Court held that manifest arbitrariness "must be something

[193] (1978) 1 SCC 248

done by the legislature capriciously, irrationally and/or without adequate determining principle." It was further held that a legislation which is excessive and disproportionate would also be manifestly arbitrary. The doctrine of manifest arbitrariness has been subsequently reiterated by this Court in numerous other judgments.

190. The standard of manifest arbitrariness was further cemented by the Constitution Bench of this Court in **Navtej Singh Johar** v. **Union of India.**[194] In **Navtej Singh Johar** (supra), Section 377 of the Indian Penal Code 1860 was challenged, *inter alia,* on the ground it is manifestly arbitrary. Section 377 criminalized any person who has had "voluntary carnal intercourse against the order of nature". Chief Justice Dipak Misra (writing for himself and Justice AM Khanwilkar) held that Section 377 is manifestly arbitrary for failing to make a distinction between consensual and non-consensual sexual acts between consenting adults.[195] Justice Nariman, in the concurring opinion, observed that Section 377 is manifestly arbitrary for penalizing "consensual gay sex". Justice Nariman faulted the provision for (a) not distinguishing between consensual and non-consensual sex for the purpose of criminalization; and (b) criminalizing sexual activity between two persons of the same gender.[196] Justice DY Chandrachud noted that Section 377 to the extent that it penalizes physical manifestation of love by a section of the population (the LGBTQ+ community) is manifestly arbitrary.[197] Similarly, Justice Indu Malhotra

[194] (2018) 10 SCC 1
[195] WP (Criminal) 76 of 2016 [Chief Justice Misra, 239]
[196] Ibid,[Justice Nariman, 82]
[197] Ibid, [Justice DY Chandrachud, 29]

observed that the provision is manifestly arbitrary because the basis of criminalization is the sexual orientation of a person which is not a "rationale principle"[198].

191. In **Joseph Shine** v. **Union of India**,[199] a Constitution Bench of this Court expressly concurred with the doctrine of manifest arbitrariness as evolved in **Shayara Bano** (supra). In **Joseph Shine** (supra), one of us (Justice D Y Chandrachud) observed that the doctrine of manifest arbitrariness serves as a check against state action or legislation "which has elements of caprice, irrationality or lacks an adequate determining principle." In **Joseph Shine** (supra), the validity of Section 497 of the Indian Penal Code was challenged. Section 497 penalized a man who has sexual intercourse with a woman who is and whom he knows or has a reason to believe to be the wife of another man, without the "consent and connivance of that man" for the offence of adultery. Justice Nariman observed that the provision has paternalistic undertones because the provision does not penalize a married man for having sexual intercourse with a married woman if he obtains her husband's consent. The learned Judge observed that the provision treats a woman like a chattel:

> "23. [...] This can only be on the paternalistic notion of a woman being likened to chattel, for if one is to use the chattel or is licensed to use the chattel by the —licensorll, namely, the husband, no offence is committed. Consequently, the wife who has committed adultery is not the subject matter of the offence, and cannot, for the reason that she is regarded only as chattel, even be punished as an abettor. This is also for the chauvinistic reason that the third-party male has seduced her, she being his victim. What is clear, therefore, is that this archaic law has long outlived its purpose and does not square

[198] Ibid, [Justice Malhotra, paragraph 14.9]
[199] (2019) 3 SCC 39

> with today's constitutional morality, in that the very object with which it was made has since become manifestly arbitrary, having lost its rationale long ago and having become in today's day and age, utterly irrational. On this basis alone, the law deserves to be struck down, for with the passage of time, Article 14 springs into action and interdicts such law as being manifestly arbitrary."

192. The learned Judge further observed that the "ostensible object of Section 497" as pleaded by the State which is to preserve the sanctity of marriage is not in fact the object of the provision because: (a) the sanctity of marriage can be destroyed even if a married man has sexual intercourse with an unmarried woman or a widow; and (b) the offence is not committed if the consent of the husband of the woman is sought.

193. Justice DY Chandrachud in his opinion observed that a provision is manifestly arbitrary if the determining principle of it is not in consonance with constitutional values. The opinion noted that Section 497 makes an "ostensible" effort to protect the sanctity of marriage but in essence is based on the notion of marital subordination of women which is inconsistent with constitutional values.[200] Chief Justice Misra (writing for himself and Justice AM Khanwilkar) held that the provision is manifestly arbitrary for lacking "logical consistency" since it does not treat the wife of the adulterer as an aggrieved person and confers a 'license' to the husband of the woman.

194. It is now a settled position of law that a statute can be challenged on the ground it is manifestly arbitrary. The standard laid down by Justice Nariman in **Shayara Bano** (supra), has been citied with approval by the Constitution

[200] (2019) 3 SCC 39 [Paragraph 35]

Benches in **Navtej Singh Johar** (supra) and **Joseph Shine** (supra). Courts while testing the validity of a law on the ground of manifest arbitrariness have to determine if the statute is capricious, irrational and without adequate determining principle, or something which is excessive and disproportionate. This Court has applied the standard of "manifest arbitrariness" in the following manner:

a. A provision lacks an "adequate determining principle" if the purpose is not in consonance with constitutional values. In applying this standard, Courts must make a distinction between the "ostensible purpose", that is, the purpose which is claimed by the State and the "real purpose", the purpose identified by Courts based on the available material such as a reading of the provision[201]; and

b. A provision is manifestly arbitrary even if the provision does **not** make a classification.[202]

195. This Court in previous judgments has discussed the first of the above applications of the doctrine by distinguishing between the "ostensible purpose" and the "real purpose" of a provision with sufficient clarity. The application of the doctrine of manifest arbitrariness by Chief Justice Misra and Justice Nariman in **Navtej Singh Johar** (supra) to strike down a provision for **not** classifying between consensual and non-consensual sex must be understood in the background of two jurisprudential developments on the

[201] Justice Chandrachud, Justice Malhotra, and Justice Nariman in Navtej Singh Johar (supra); Justices Chandrachud and Nariman in Joseph Shine (supra).
[202] Chief Justice Misra in Navtej Singh Johar (supra)

interpretation of Part III of the Constitution. The first, is the shift from reading the provisions of Part III of the Constitution as isolated silos to understanding the thread of reasonableness which runs through all the provisions and elevating unreasonable (and arbitrary) action to the realm of fundamental rights. The second is the reading of Article 14 to include the facets of formal equality and substantive equality. Article 14 consists of two components. "Equality before the law" which means that the law must treat everybody equally in the formal sense. "Equal protection of the laws" signifies a guarantee to secure factual equality. The legislature and the executive makes classifications to achieve factual equality. The underlying premise of substantive equality is the recognition that not everybody is equally placed and that the degree of harm suffered by a group of persons (or an individual) varies because of unequal situations. This Court has in numerous judgments recognized that the legislature is free to recognize the degrees of harm and confine its benefits or restrictions to those cases where the need is the clearest.[203] The corollary of the proposition that it is reasonable to identify the degrees of harm, is that it is unreasonable, unjust, and arbitrary if the Legislature does not identify the degrees of harm for the purpose of law.

196. It is undoubtedly true that it is not the constitutional role of this Court to second guess the intention of the legislature in enacting a particular statute. The legislature represents the democratic will of the people, and therefore, the courts will always presume that the legislature is supposed to know and will

[203] Mohd. Hanif Quareshi v. State of Bihar, AIR 1958 SC 731; Binoy Viswam v. Union of India, (2017) 7 SCC 59; Charanjit Lal Chowdhuri v. Union of India, 1950 SCC 833

be aware of the needs of the people. Moreover, this Court must be mindful of falling into an error of equating a plenary legislation with a subordinate legislation. **In Re Delhi Laws Act 1912**,[204] Justice Fazl Ali summed up the extent and scope of plenary legislation and delegated legislation, in the following terms:

> "32. The conclusions at which I have arrived so far may now be summed up:
>
> (1) The legislature must normally discharge its primary legislative function itself and not through others.
>
> (2) Once it is established that it has sovereign powers within a certain sphere, it must follow as a corollary that it is free to legislate within that sphere in any way which appears to it to be the best way to give effect to its intention and policy in making a particular law, and that it may utilise any outside agency to any extent it finds necessary for doing things which it is unable to do itself or finds it inconvenient to do. In other words, it can do everything which is ancillary to and necessary for the full and effective exercise of its power of legislation.
>
> (3) It cannot abdicate its legislative functions, and therefore while entrusting power to an outside agency, it must see that such agency acts as a subordinate authority and does not become a parallel legislature.
>
> (4) The doctrine of separation of powers and the judicial interpretation it has received in America ever since the American Constitution was framed, enables the American courts to check undue and excessive delegation but the courts of this country are not committed to that doctrine and cannot apply it in the same way as it has been applied in America. Therefore, there are only two main checks in this country on the power of the legislature to delegate, these being its good sense and the principle that it should not cross

[204] 1951 SCC 568

the line beyond which delegation amounts to "abdication and self-effacement".

197. In **Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd.** v. **Assistant Commissioner of Sales Tax and others**,[205] a Constitution Bench of this Court held that a subordinate legislation is ancillary to the statute. Therefore, the delegate must enact the subordinate legislation "consistent with the law under which it is made and cannot go beyond the limits of the policy and standard laid down in the law." Since the power delegated by a statute is limited by its terms, the delegate is expected to "act in good faith, reasonably, intra vires the power granted and on relevant consideration of material facts."[206] This Court has to be cognizant of this distinction. In fact, the doctrine of manifest arbitrariness, as developed by this Court in **Indian Express Newspapers** (supra) in the context of subordinate legislation, was applicable to the extent that "it is so arbitrary that it could not be said to be in conformity with the statute or that it offends Article 14 of the Constitution."[207]

198. The above discussion shows that manifest arbitrariness of a subordinate legislation has to be primarily tested vis-a-vis its conformity with the parent statute. Therefore, in situations where a subordinate legislation is challenged on the ground of manifest arbitrariness, this Court will proceed to determine

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[205] (1974) 4 SCC 98

[206] Shri Sitaram Sugar Co. Ltd. v. Union of India, (1990) 3 SCC 223

[207] In Khoday Distilleries Ltd. V. State of Karnataka, (1996) 10 SCC 304, this Court reiterated **Indian Express Newspapers** (supra) by holding that a delegated legislation is manifestly arbitrary if it "could not be reasonably expected to emanate from an authority delegated with the law-making power." Similarly, in **State of Tamil Nadu** v. **P Krishnamurthy**, (2006) 4 SCC 517 this Court held that subordinate legislation can be challenged on the ground of manifest arbitrariness to an extent "where the court might well say that the legislature never intended to give authority to make such rules."

whether the delegate has failed "to take into account very vital facts which either expressly or by necessary implication are required to be taken into consideration by the statute or, say, the Constitution."[208] In contrast, application of manifest arbitrariness to a plenary legislation passed by a competent legislation requires the Court to adopt a different standard because it carries greater immunity than a subordinate legislation. We concur with **Shayara Bano** (supra) that a legislative action can also be tested for being manifestly arbitrary. However, we wish to clarify that there is, and ought to be, a distinction between plenary legislation and subordinate legislation when they are challenged for being manifestly arbitrary.

ii. Validity of Section 154 of the Finance Act 2017 omitting the first proviso to Section 182 of the Companies Act

199. We now turn to examine the vires of Section 154 of the Finance Act 2017. The result of the amendment is that: (a) a company, other than a government company and a company which has been in existence for less than three financial years, can contribute unlimited amounts to any political party; and (b) companies, regardless of the fact whether they are profit making or otherwise, can contribute funds to political parties. The issue that arises for consideration is whether the removal of contribution restrictions is manifestly arbitrary and violates Article 14 of the Constitution.

200. As discussed in the earlier section, this Court has consistently pointed out the pernicious effect of money on the integrity of the electoral process in India.

[208] Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India, (1985) 1 SCC 641

The Law Commission of India in its 170th Report also observed that "most business houses already know where their interest lies and they make their contributions accordingly to that political party which is likely to advance their interest more."[209] This issue becomes particularly problematic when we look at the avenues through which political parties accumulate their capital. Section 182 of the 2013 Act is one such legal provision allowing companies to contribute to political parties. The question before us is not how political parties expend their financial resources, but how they acquire their financial resources in the first instance.

201. The Preamble to the Constitution describes India as a "democratic republic": a democracy in which citizens are guaranteed political equality irrespective of caste and class and where the value of every vote is equal. Democracy does not begin and end with elections. Democracy sustains because the elected are responsive to the electors who hold them accountable for their actions and inactions. Would we remain a democracy if the elected do not heed to the hue and cry of the needy? We have established the close relationship between money and politics above where we explained the importance of money for entry to politics, for winning elections, and for remaining in power. That being the case, the question that we ask ourselves is whether the elected would truly be responsive to the electorate if companies which bring with them huge finances and engage in *quid pro quo* arrangements with parties are permitted to contribute **unlimited** amounts. The reason for political

[209] Law Commission of India, 170th Report on the Reform of the Electoral Laws (1999)

contributions by companies is as open as day light. Even the learned Solicitor General did not deny during the course of the hearings that corporate donations are made to receive favors through *quid pro quo* arrangements.

202. In **Kesavananda Bharati** v. **State of Kerala**,[210] the majority of this Court held that "republican and democratic form of government" form the basic elements of the constitutional structure. Subsequently, in **Indira Nehru Gandhi** v. **Raj Narain**,[211] Justice H R Khanna reiterated that the democratic set up of government is a part of the basic features of the Constitution. Elections matter in democracy because they are the most profound expression of the will of the people. Our parliamentary democracy enables citizens to express their will through their elected representatives. The integrity of the electoral process is a necessary concomitant to the maintenance of the democratic form of government.[212]

203. This Court has also consistently held that free and fair elections form an important concomitant of democracy.[213] In **Kuldip Nayar** v. **Union of India**,[214] a Constitution Bench of this Court held that a democratic form of government depends on a free and fair election system. In **People's Union for Civil Liberties** v. **Union of India**,[215] this Court held that free and fair elections

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[210] (1973) 4 SCC 225
[211] 1975 Supp SCC 1
[212] In **Indira Nehru Gandhi** v. **Raj Narain**, 1975 Supp SCC 1, Justice Khanna observed that periodical elections are a necessary postulate of a democratic setup as it allows citizens to elect their representatives. He further observed that democracy can function "only upon the faith that elections are free and fair and not rigged and manipulated, that they are effective instruments of ascertaining popular will both in reality and form and are not mere rituals calculated to generate illusion of defence to mass opinion."
[213] Digvijay Mote v. Union of India, (1993) 4 SCC 175; Union of India v. Association for Democratic Reforms, (2002) 5 SCC 294.
[214] (2006) 7 SCC 1
[215] (2013) 10 SCC 1

denote equal opportunity to all people. It was further observed that a free and fair election is one which is not "rigged and manipulated and the candidates and their agents are not able to resort to unfair means and malpractices."

204. The integrity of the election process is pivotal for sustaining the democratic form of government. The Constitution also places the conduct of free and fair elections in India on a high pedestal. To this purpose, Article 324 puts the Election Commission in charge of the entire electoral process commencing with the issue of the notification by the President to the final declaration of the result.[216] However, it is not the sole duty of the Election Commission to secure the purity and integrity of the electoral process. There is also a positive constitutional duty on the other organs of the government, including the legislature, executive and the judiciary, to secure the integrity of the electoral process.

205. During the course of the arguments, the learned Solicitor General submitted that the limit of seven and a half percent of the **average net profits** in the preceding three financial years was perceived as a restriction on companies who would want to donate in excess of the statutory cap. The learned Solicitor General further submitted that companies who wanted to donate in excess of the statutory cap would create shell companies and route their contributions through them. Therefore, it was suggested that the statutory cap was removed to discourage the creation of shell companies.

[216] Mohinder Singh Gill v. Chief Election Commissioner, (1978) 1 SCC 405

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206. The limit on restrictions to political parties was incorporated in Section 293A of the 1956 Act through the Companies (Amendment) Bill 1985. The original restriction on contribution was five per cent of a company's average net profits during the three immediately preceding financial years. The Lok Sabha debates pertaining to the Companies Bill furnish an insight into why contribution restrictions were imposed in the first place. The then Minister of Chemicals and Fertilizers and Industry and Company Affairs justified the contribution restrictions, stating that:

> "Since companies not having profits should not be encouraged to make political contributions, monetary ceiling as an alternative to a certain percentage of profits for arriving at the permissible amount of political donation has been done away with."[217]

207. Thus, the object behind limiting contributions was to discourage loss-making companies from contributing to political parties. In 1985, Parliament prescribed the condition that only companies which have been in existence for more than three years can contribute. This condition was also included to prevent loss-making companies and shell companies from making financial contributions to political parties. If the ostensible object of the amendment, as contended by the learned Solicitor General, was to discourage the creation of shell companies, there is no justification for removing the cap on contributions which was included for the very same purpose: to deter shell companies from making political contributions. In fact, when the proposal to amend Section 182 of the 2013 Act was mooted by the Government in 2017, the Election

[217] Lok Sabha Debates, Companies Bill (16 May 1985).

Commission of India opposed the amendment and suggested that the Government reconsider its decision on the ground that it would open up the possibility of creating shell companies. The relevant portion of the opinion of the ECI is reproduced below:

> "Certain amendments have been proposed in Section 182 of the Companies Act, where the first proviso has been omitted and consequently the limit of seven and a half percent (7.5 %) of the average net profits in the preceding three financial years on contributions by companies has been removed from the statute. This opens up the possibility of shell companies being set up for the sole purpose of making donations to political parties with no other business of consequence having disbursable profits."[218]

208. After the amendment, companies similar to individuals, can make unlimited contributions and contributions can be made by both profit-making and loss-making companies to political parties. Thus, in essence, it could be argued that the amendment is merely removing classification for the purpose of political contribution between companies and individuals on the one hand and loss-making and profit-making companies on the other.

209. The proposition on the principle of manifest arbitrariness culled out above needs to be recalled. The doctrine of manifest arbitrariness can be used to strike down a provision where: (a) the legislature fails to make a classification by recognizing the degrees of harm; and (b) the purpose is not in consonance with constitutional values.

[218] Election Commission of India, Letter dated 26 May 2017, No. 56/PPEMS/Transparency/2017

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210. One of the reasons for which companies may contribute to political parties could be to secure income tax benefit.[219] However, companies have been contributing to political parties much before the Indian legal regime in 2003 exempted contributions to political parties. Contributions are made for reasons other than saving on the Income Tax. The chief reason for corporate funding of political parties is to influence the political process which may in turn improve the company's business performance.[220] A company, whatever may be its form or character, is principally incorporated to carry out the objects contained in the memorandum. However, the amendment now allows a company, through its Board of Directors, to contribute unlimited amounts to political parties without any accountability and scrutiny. Unlimited contribution by companies to political parties is antithetical to free and fair elections because it allows certain persons/companies to wield their clout and resources to influence policy making. The purpose of Section 182 is to curb corruption in electoral financing. For instance, the purpose of banning a Government company from contributing is to prevent such companies from entering into the political fray by making contributions to political parties. The amendment to Section 182 by permitting unlimited corporate contributions (including by shell companies) authorizes unrestrained influence of companies on the electoral process. This is violative of the principle of free and fair elections and political equality captured in the value of "one person one vote".

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[219] IT Act, Section 80 GGB

[220] Jayantilal Ranchhoddas Koticha v. Tata Iron & Steel Co. Ltd (supra)

211. The amendment to Section 182 of the Companies Act must be read along with other provisions on financial contributions to political parties under the RPA and the IT Act. Neither the RPA nor the IT Act place a cap on the contributions which can be made by an individual. The amendment to the Companies Act when viewed along with other provisions on electoral funding, seek to equalize an individual and a company for the purposes of electoral funding.

212. The ability of a company to influence the electoral process through political contributions is much higher when compared to that of an individual. A company has a much graver influence on the political process, both in terms of the quantum of money contributed to political parties and the purpose of making such contributions. Contributions made by individuals have a degree of support or affiliation to a political association. However, contributions made by companies are purely business transactions, made with the intent of securing benefits in return. In **Citizens United** v. **Federal Election Commission**,[221] the issue before the Supreme Court of the United States was whether a corporation can use the general treasury funds to pay for electioneering communication. The majority held that limitations on corporate funding bans political speech (through contributions) based on the corporate identity of the contributor. Justice Steven writing for the minority on the issue of corporate funding observed that companies and natural persons cannot be treated alike for the purposes of political funding:

[221] 558 U.S 310

> "In the context of election to public office, the distinction between corporate and human speakers is significant. Although they make enormous contributions to our society, corporations are not actually members of it. They cannot vote or run for office. Because they may be managed and controlled by non-residents, their interests may conflict in fundamental respects with the interests of eligible voters. The financial resources, legal structure, and instrumental orientation of corporations raise legitimate concerns about their role in the electoral process."

213. In view of the above discussion, we are of the opinion that companies and individuals cannot be equated for the purpose of political contributions.

214. Further, Companies before the amendment to Section 182 could only contribute a certain percentage of the net aggregate **profits**. The provision classified between loss-making companies and profit-making companies for the purpose of political contributions and for good reason. The underlying principle of this distinction was that it is more plausible that loss-making companies will contribute to political parties with a *quid pro quo* and not for the purpose of income tax benefits. The provision (as amended by the Finance Act 2017) does not recognize that the harm of contributions by loss-making companies in the form of *quid pro quo* is much higher. Thus, the amendment to Section 182 is also manifestly arbitrary for not making a distinction between profit-making and loss-making companies for the purposes of political contributions.

215. Thus, the amendment to Section 182 is manifestly arbitrary for (a) treating political contributions by companies and individuals alike; (b) permitting the unregulated influence of companies in the governance and political process violating the principle of free and fair elections; and (c) treating contributions

made by profit-making and loss-making companies to political parties alike. The observations made above must not be construed to mean that the Legislature cannot place a cap on the contributions made by individuals. The exposition is that the law must not treat companies and individual contributors alike because of the variance in the degree of harm on free and fair elections.

H. Conclusion and Directions

216. In view of the discussion above, the following are our conclusions:

a. The Electoral Bond Scheme, the proviso to Section 29C(1) of the Representation of the People Act 1951 (as amended by Section 137 of Finance Act 2017), Section 182(3) of the Companies Act (as amended by Section 154 of the Finance Act 2017), and Section 13A(b) (as amended by Section 11 of Finance Act 2017) are violative of Article 19(1)(a) and unconstitutional; and

b. The deletion of the proviso to Section 182(1) of the Companies Act permitting unlimited corporate contributions to political parties is arbitrary and violative of Article 14.

217. We direct the disclosure of information on contributions received by political parties under the Electoral Bond Scheme to give logical and complete effect to our ruling. On 12 April 2019, this Court issued an interim order directing that the information of donations received and donations which will be received must be submitted by political parties to the ECI in a sealed cover. This Court directed that political parties submit detailed particulars of the

donors as against each Bond, the amount of each bond and the full particulars of the credit received against each bond, namely, the particulars of the bank account to which the amount has been credited and the date on which each such credit was made. During the course of the hearing, Mr Amit Sharma, Counsel for the ECI, stated that the ECI had only collected information on contributions made in 2019 because a reading of Paragraph 14 of the interim order indicates that the direction was only limited to contributions made in that year. Paragraphs 13 and 14 of the interim order are extracted below:

> "13. In the above perspective, according to us, the just and proper interim direction would be to require all the political parties who have received donations through Electoral Bonds to submit to the Election Commission of India in sealed cover, detailed particulars of the donors as against each bond; the amount of each such bond and the full particulars of the credit received against each bond, namely, the particulars of the bank account to which the amount has been credited and the date of each such credit.
>
> 14. The above details will be furnished forthwith in respect of Electoral Bonds received by a political party till date. The details of such other bonds that may be received by such a political party upto the date fixed for issuing such bonds as per the Note of the Ministry of Finance dated 28.2.2019, i.e 15.5.2019 will be submitted on or before 30th May, 2019. The sealed covers will remain in the custody of the Election Commission of India and will abide by such orders as may be passed by the Court."

218. Paragraph 14 of the interim order does not limit the operation of Paragraph 13. Paragraph 13 contains a direction in unequivocal terms to political parties to submit particulars of contributions received through Electoral Bonds to the ECI. Paragraph 14 only prescribes a timeline for the submission of particulars on contributions when the window for Electoral Bond contributions was open in 2019. In view of the interim direction of this Court, the ECI must have

collected particulars of contributions made to political parties through Electoral Bonds.

219. In view of our discussion above, the following directions are issued:

a. The issuing bank shall herewith stop the issuance of Electoral Bonds;

b. SBI shall submit details of the Electoral Bonds purchased since the interim order of this Court dated 12 April 2019 till date to the ECI. The details shall include the date of purchase of each Electoral Bond, the name of the purchaser of the bond and the denomination of the Electoral Bond purchased;

c. SBI shall submit the details of political parties which have received contributions through Electoral Bonds since the interim order of this Court dated 12 April 2019 till date to the ECI. SBI must disclose details of **each** Electoral Bond encashed by political parties which shall include the date of encashment and the denomination of the Electoral Bond;

d. SBI shall submit the above information to the ECI within three weeks from the date of this judgment, that is, by 6 March 2024;

e. The ECI shall publish the information shared by the SBI on its official website within one week of the receipt of the information, that is, by 13 March 2024; and

f. Electoral Bonds which are within the validity period of fifteen days but that which have not been encashed by the political party yet shall be returned by the political party or the purchaser depending on who is in possession of the bond to the issuing bank. The issuing bank, upon the

return of the valid bond, shall refund the amount to the purchaser's account.

220. Writ petitions are disposed of in terms of the above judgment.

221. Pending application(s), if any, stand disposed of.

.....CJI.
[Dr Dhananjaya Y Chandrachud]

.....J.
[B R Gavai]

.....J.
[J B Pardiwala]

.....J.
[Manoj Misra]

New Delhi;
February 15, 2024

ANNEXURE I

Section 29C, Representation of the People Act 1951	
Prior to Amendment by the Finance Act 2017	Upon Amendment by Section 137 of the Finance Act, 2017
29C. Declaration of donation received by the political parties. - (1) The treasurer of a political party or any other person authorized 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 subsection (1) shall be submitted by the treasurer of a political party or any other person authorized by the political party in this behalf before the due date for furnishing a return of 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 authorized 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.	Section 29C. Declaration of donation received by the political parties. – (1) The treasurer of a political party or any other person authorized 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. **Provided that nothing contained in this subsection shall apply to the contributions received by way of an electoral bond. Explanation – For the purposes of this subsection, "electoral bond" means a bond referred to in the Explanation to sub-section (3) of section 31 of the Reserve Bank of India Act, 1934.** (2) The report under sub-section (1) shall be in such form as may be prescribed. (3) The report for a financial year under subsection (1) shall be submitted by the treasurer of a political party or any other person authorized by the political party in this behalf before the due date for furnishing a return of 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 authorized 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.
Section 182, Companies Act 2013	
Prior to Amendment by the Finance Act, 2017	Upon Amendment by Section 154 of the Finance Act, 2017
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 subsection (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.	**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: **(First proviso omitted)** Provided 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 of the contribution authorised by it.
Section 182 (3) Every company shall disclose in its profit and loss account **any amount** or amounts contributed by it to any political party during the financial year to which that account relates, **giving particulars of the total amount contributed and the name of the party to which such amount has been contributed.**	**Section 182 (3)** Every company shall disclose in its profit and loss account the total amount contributed by it under this section during the financial year to which the account relates. (3A) Notwithstanding anything contained in subsection (1), the contribution under this section shall not be made except by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account:

	Provided that a company may make contribution through any instruments, issued pursuant to any scheme notified under any law for the time being in force, for contribution to the political parties.
Section 13A, Income Tax Act 1995	
Prior to Amendment by the Finance Act, 2017	Upon Amendment by Section 11 of the Finance Act, 2017
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 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 ten 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. Explanation.- For the purposes of this section, "political party" means an association or body of individual citizens of India registered with the Election Commission of India as a political party under paragraph 3 of the Election Symbols (Reservation and Allotment) Order, 1968, and includes a political party deemed to	**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 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 **other than contribution by way of electoral bond** in excess of ten 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; and **(d) no donation exceeding two thousand rupees is received by such political party otherwise than by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a**

be registered with that Commission under the proviso to subparagraph (2) of that paragraph.	**bank account or through electoral bond.** Explanation.- For the purposes of this proviso, **"electoral bond" means a bond referred to in the Explanation to sub- section (3) of section 31 of the Reserve Bank of India Act, 1934;** Provided also that such political party furnishes a return of income for the previous year in accordance with the provisions of sub-section (4B) of section 139 on or before the due date under that section.
Section 31, Reserve Bank of India Act 1931	
Prior to Amendment by the Finance Act, 2017	Upon Amendment by Section 11 of the Finance Act, 2017
31. Issue of demand bills and notes. 1) No person in India other than the Bank or, as expressly authorized by this Act, the Central Government shall draw, accept, make or issue any bill of exchange, hundi, promissory note or engagement for the payment of money payable to bearer on demand, or borrow, owe or take up any sum or sums of money on the bills, hundis or notes payable to bearer on demand of any such person: Provided that cheques or drafts, including hundis, payable to bearer on demand or otherwise may be drawn on a person's account with a banker, shroff or agent. (2) Notwithstanding anything contained in the Negotiable Instruments Act, 1881, no person in India other than the Bank or, as expressly authorised by this Act, the Central Government shall make or issue any promissory note expressed to be payable to the bearer of the instrument.	**31. Issue of demand bills and notes.** 1) No person in India other than the Bank or, as expressly authorized by this Act, the Central Government shall draw, accept, make or issue any bill of exchange, hundi, promissory note or engagement for the payment of money payable to bearer on demand, or borrow, owe or take up any sum or sums of money on the bills, hundis or notes payable to bearer on demand of any such person: Provided that cheques or drafts, including hundis, payable to bearer on demand or otherwise may be drawn on a person's account with a banker, shroff or agent. 2) Notwithstanding anything contained in the Negotiable Instruments Act, 1881, no person in India other than the Bank or, as expressly authorised by this Act, the Central Government shall make or issue any promissory note expressed to be payable to the bearer of the instrument.

	3) Notwithstanding anything contained in this section, the Central Government may authorise any scheduled bank to issue electoral bond Explanation.-For the purposes of this subsection, 'electoral bond' means a bond issued by any scheduled bank under the scheme as may be notified by the Central Government.

ANNEXURE II

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

[222][FORM 24A
(See rule 85B)

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

1. Name of Political Party:

2. Status of the Political Party:
(recognised/unrecognised)

3. Address of the headquarters of the Political Party:

4. Date of registration of Political Party with Election Commission:

5. Permanent Account Number (PAN) and Income-tax Ward/Circle where return of the political party is filed:_____

6. Details of the contributions received, in excess of rupees twenty thousand, during the Financial Year:20 – . –20 .

Serial number	Name and complete address of the contributing person/company	PAN (if any_ and Income-Tax Ward/Circle	Amount of contribution (Rs.)	Mode of contribution *(cheque/demand draft/cash)	Remarks

*In case of payment by cheque/demand draft, indicate name of the bank and branch of the bank on which the cheque/demand draft has been drawn.

7. In case the contributor is a company, whether the conditions laid down under section 293A of the Companies Act, 1956 (1 of 1956) have been complied with (A copy of the certificate to this obtained from the company should be attached).

Verification

I,_____(full name in Block letters), son/daughter of _____solemnly declare that to the best of my knowledge and belief, the information given in this Form is correct, complete and truly stated.

I further declare that I am verifying this form in my capacity as _____on behalf of the Political Party above named and I am also competent to do so.

(Signature and name of the Treasurer/Authorised person)]

Date:_____
Place:_____

[222] Ins. By Notifin. No. S.O. 1283(E), dated the 10th November, 2003.

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 880 OF 2017

ASSOCIATION FOR DEMOCRATIC REFORMS AND ANOTHER ..... PETITIONERS

VERSUS

UNION OF INDIA AND OTHERS ..... RESPONDENTS

WITH

WRIT PETITION (CIVIL) NO. 59 OF 2018

WRIT PETITION (CIVIL) NO. 975 OF 2022

AND

WRIT PETITION (CIVIL) NO. 1132 OF 2022

JUDGMENT

SANJIV KHANNA, J.

I have had the benefit of perusing the judgment authored by Dr. D.Y. Chandrachud, the Hon'ble Chief Justice. I respectfully agree with the findings and conclusions recorded therein. However, since my reasoning is different to arrive at the same conclusion,

including application of the doctrine of proportionality, I am penning down my separate opinion.

2. To avoid prolixity, the contentions of the parties are not referred to separately and the facts are narrated in brief.

3. Corporate funding of political parties has been a contentious issue with the legislature's approach varying from time to time. The amendments to the Companies Act, 1956 reveal the spectrum of views of the legislature. It began with regulations and restrictions in 1960[1] to a complete ban on contributions to political parties in 1969[2]. The ban was partially lifted in 1985 with restrictions and stipulations.[3] The aggregate amount contributed to a political party in a financial year could not exceed 5% of the average net profit during the three immediately preceding financial years.[4] A new condition stipulated that the board of directors[5] in their meeting would pass a resolution giving legitimacy and authorisation to contributions to a political party.[6]

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[1] The Companies (Amendment) Act 1960, s 100 inserted into the Companies Act 1956, s 293A which stipulates that contributions to political parties cannot exceed 5% of the average net profit of the company during the three immediately preceding financial years.
[2] The Companies (Amendment) Act 1969, s 3 substituted of the Companies Act 1956, s 293A introducing a ban on contributions to political parties.
[3] The Companies (Amendment) Act 1985, s 2 replaced of the Companies Act 1956, s 293A bringing back the 5% cap on contributions to political parties.
[4] The Companies Act 1956, s 293A.
[5] For short, the "Board".
[6] Second *proviso* to Section 293A(2), Companies Act, 1956.

4. The Companies Act of 2013 replaced the Companies Act of 1956. Section 182(1) of the Companies Act, 2013[7] permitted contributions by companies of any amount to any political party, if the said company had been in existence for more than three immediately preceding financial years and is not a government company. The requirement of authorisation *vide* Board resolution is retained.[8] The cap of 5% is enhanced to 7.5% of the average net profits during the three immediately preceding financial years.[9] It is also mandated that the company must disclose the amount contributed by it to political parties in the profit and loss account, including particulars of name of political party and the amount contributed.[10] In case of violation of the terms, penalties stand prescribed.

5. The Finance Act, 2017 made several amendments to the Companies Act, 2013, Income Tax Act, 1961, Reserve Bank of India[11] Act, 1934, the Representation of the People Act, 1951, and the Foreign Contribution Regulation Act, 2010. These changes were brought in to allow contributions/donations through Electoral Bonds[12]. The changes made by the Finance Act, 2017 to these

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[7] As originally enacted.
[8] Unamended second *proviso* to Section 182(1) of the Companies Act, 2013. This condition continues to remain.
[9] Unamended first *proviso* to Section 182(1) of the Companies Act, 2013.
[10] Unamended Section 182(3) of the Companies Act, 2013.
[11] For short, "RBI".
[12] For short, "Bonds".

legislations were provided in a tabular format by the petitioners. For clarity, I have reproduced the table below. The specific changes are highlighted in bold and italics for ease of reference:

Section 182 of the Companies Act, 2013	
Prior to Amendment by the Finance Act, 2017	*Post Amendment by Section 154 of the Finance Act, 2017*
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 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.	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: ***[First proviso omitted]*** Provided 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 of the contribution authorised by it.
182 (3) Every company shall disclose in its profit and loss account ***any amount or amounts*** contributed by it to any political party during the financial year to which that account relates, ***giving particulars of the total amount contributed and the name of the party to which such amount has been*** contributed.	182 (3) Every company shall disclose in its profit and loss account ***the total amount*** contributed by it under this section during the financial year to which the account relates. ***(3A) Notwithstanding anything contained in sub-section (1), the contribution under this section shall not be made except by an account payee cheque drawn on a bank or an account payee bank draft or use of***

	electronic clearing system through a bank account: ***Provided that a company may make contribution through any instrument, issued pursuant to any scheme notified under any law for the time being in force, for contribution to the political parties.***

Section 13-A of the Income Tax Act, 1961	
Prior to Amendment by the Finance Act, 2017	*Post Amendment by Section 11 of the Finance Act, 2017*
13-A. 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 29-C 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.	13-A. 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 ***other than contribution by way of electoral bond*** 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; (*c*) the accounts of such political party are audited by an accountant as defined in the Explanation below sub-section (2) of Section 288 and: ***(d)*** **no donation exceeding two *thousand* rupees is received by such political party otherwise than by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account or through electoral bond.**

Explanation.—For the purposes of this section, "political party" means a political party registered under Section 29-A of the Representation of the People Act, 1951 (43 of 1951).	*Explanation.*— For the purposes of this proviso, **"electoral bond" means a bond referred to in the *Explanation* to sub-section (3) of Section 31 of the Reserve Bank of India Act, 1934 (2 of 1934).** 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 29-C 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. Provided also that such political party furnishes a return of income for the previous year in accordance with the provisions of sub-section (*4B*) of Section 139 on or before the due date under that section. *Explanation.*—For the purposes of this section, "political party" means a political party registered under Section 29-A of the Representation of the People Act, 1951 (43 of 1951).

Section 31 of the Reserve Bank of India Act, 1934	
Prior to Amendment by the Finance Act 2017	*Post Amendment by Section 135 of the Finance Act 2017*
Section 31. Issue of demand bills and notes.— (1) No person in India other than the Bank, or, as expressly authorized by this Act the Central Government shall draw, accept, make or issue any bill of exchange, hundi, promissory note or engagement for the payment of money payable to bearer on demand, or borrow, owe or take up any sum or sums of money on the bills, hundis or notes payable to bearer on demand of any such person: Provided that cheques or drafts, including hundis, payable to bearer on demand or otherwise may be drawn on a person's account with a banker, shroff or agent. (2) Notwithstanding anything contained in the Negotiable Instruments Act, 1881	Section 31. Issue of demand bills and notes.— (1) No person in India other than the Bank, or, as expressly authorized by this Act the Central Government shall draw, accept, make or issue any bill of exchange, hundi, promissory note or engagement for the payment of money payable to bearer on demand, or borrow, owe or take up any sum or sums of money on the bills, hundis or notes payable to bearer on demand of any such person: Provided that cheques or drafts, including hundis, payable to bearer on demand or otherwise may be drawn on a person's account with a banker, shroff or agent. 2) Notwithstanding anything contained in the Negotiable Instruments Act, 1881 (26 of 1881), no person in India other than the Bank or, as expressly authorised by this

(26 of 1881), no person in India other than the Bank or, as expressly authorised by this Act, the Central Government shall make or issue any promissory note expressed to be payable to the bearer of the instrument.	Act, the Central Government shall make or issue any promissory note expressed to be payable to the bearer of the instrument. ***(3) Notwithstanding anything contained in this section, the Central Government may authorise any scheduled bank to issue electoral bond.*** ***Explanation.— For the purposes of this sub-section, "electroal bond" means a bond issued by any scheduled bank under the scheme as may be notified by the Central Government.***

Section 29-C of the Representation of the People Act 1951	
Prior to Amendment by the Finance Act 2017	*Post Amendment by Section 137 of the Finance Act 2017*
29-C. Declaration of donation received by the political parties.— (1) The treasurer of the 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, 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),	29-C. Declaration of donation received by the political parties.— (1) ~~The~~ treasurer of the 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. ***Provided that nothing contained in this sub-section shall apply to the contributions received by way of an electoral bond.*** ***Explanation.— For the purposes of this sub-section, "electoral bond" means a bond referred to in the Explanation to sub-section (3) of Section 31 of the Reserve Bank of India Act, 1934 (2 of 1934).*** (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

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.	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, 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.

Section 2 of the Foreign Contribution Regulation Act, 2010	
Prior to Amendment by the Finance Act 2017	*Post Amendment by Section 236 the Finance Act 2017*
Section 2 (1) (j) (*j*) "foreign source" includes,— (*i*) the Government of any foreign country or territory and any agency of such Government; (*ii*) any international agency, not being the United Nations or any of its specialised agencies, the World Bank, International Monetary Fund or such other agency as the Central Government may, by notification, specify in this behalf; (*iii*) a foreign company; (*iv*) a corporation, not being a foreign company, incorporated in a foreign country or territory; (*v*) a multi-national corporation referred to in sub-clause (*iv*) of clause (*g*); (*vi*) a company within the meaning of the Companies Act, 1956 (1 of 1956), and more than one-half of the nominal value of its share capital is held, either singly or in the aggregate, by one or more of the following, namely— (A) the Government of a foreign country or territory; (B) the citizens of a foreign country or territory; (C) corporations incorporated in a foreign country or territory; (D) trusts, societies or other associations of individuals (whether incorporated or not), formed or registered in a foreign country or territory;	Section 2 (1) (j) (*j*) "foreign source" includes,— (*i*) the Government of any foreign country or territory and any agency of such Government; (*ii*) any international agency, not being the United Nations or any of its specialised agencies, the World Bank, International Monetary Fund or such other agency as the Central Government may, by notification, specify in this behalf; (*iii*) a foreign company; (*iv*) a corporation, not being a foreign company, incorporated in a foreign country or territory; (*v*) a multi-national corporation referred to in sub-clause (*iv*) of clause (*g*); (*vi*) a company within the meaning of the Companies Act, 1956 (1 of 1956), and more than one-half of the nominal value of its share capital is held, either singly or in the aggregate, by one or more of the following, namely— (A) the Government of a foreign country or territory; (B) the citizens of a foreign country or territory; (C) corporations incorporated in a foreign country or territory; (D) trusts, societies or other associations of individuals (whether incorporated or not), formed or registered in a foreign country or territory; (E) foreign company;

(E) foreign company;	***Provided that where the nominal value of share capital is within the limits specified for foreign investment under the Foreign Exchange Management Act, 1999 (42 of 1999), or the rules or regulations made thereunder, then, notwithstanding the nominal value of share capital of a company being more than one-half of such value at the time of making the contribution, such company shall not be a foreign source.***

6. The amended Companies Act, 2013 removes the cap on corporate funding.[13] The requirement that the contribution will require a resolution passed at the meeting of the Board is retained. In the profit and loss account, a company is now only required to disclose the total amount contributed to political parties in a financial year.[14] The requirement to disclose the specific amounts contributed and the names of the political parties is omitted. Section 182(3A), as introduced, stipulates that the company could contribute to a political party only by way of a cheque, Electronic Clearing System[15], or demand draft.[16] The *proviso* to Section 182(3A) permits a company to contribute through any instrument issued pursuant to any scheme notified under the law, for the time being in force, for contribution to political parties.

[13] First *proviso* to Section 182(1), Companies Act, 2013 has been omitted *vide* the Finance Act, 2017.
[14] Section 182(3) of the Companies Act, 2013.
[15] For short, "ECS".
[16] Section 182(3A) of the Companies Act, 2013 was introduced *vide* Section 154 of the Finance Act, 2017.

7. Section 13A of the Income Tax Act, 1961,[17] exempts income of political parties, including financial contributions and investments, from income tax. The object of providing a tax exemption is to increase the funds of political parties from legitimate sources. However, conditions imposed require political parties to maintain books of accounts and other documents to enable the assessing officer to properly deduce their income.[18] Political parties are required to maintain records of the name and addresses of persons who make voluntary contributions in excess of Rs.20,000/-.[19] Accounts of the political parties are required to be audited.[20]

8. In 2003, Section 80GGB and 80GGC were inserted in the Income Tax Act, 1961, permitting contributions to political parties. These contributions are tax deductible, though they are not expenditure for purposes of business, to incentivise contributions through banking channels.[21]

9. By the Finance Act, 2017, Section 13A of the Income Tax Act, 1961, was amended. Section 13A now stipulates that a political party is not required to maintain a record of the contributions received by

[17] As amended in 1978.
[18] First *proviso* 1(a) to the unamended Section 13A of the Income Tax Act, 1961.
[19] Second *proviso* to the unamended Section 13A of the Income Tax Act, 1961.
[20] Third *proviso* to Section 13A Income Tax Act, 1961.
[21] See Section 37 of the Income Tax Act, 1961.

Bonds.[22] Further, donations over Rs.2,000/- are only permitted through cheques, bank drafts, ECS or Bonds.[23]

10. Section 29C of the Representation of the People Act, 1951 was introduced in 2003.[24] The section requires each political party to file a report for all contributions over Rs.20,000/- to the Election Commission of India.[25] The report is required to be filed before the due date of filing income tax returns of the financial year under the Income Tax Act, 1961. Failure to submit a report disentitles a political party from any tax relief, as provided under the Income Tax Act, 1961. Section 29C of the Finance Act, 2017, as amended, stipulates that political parties are not required to disclose the details of contributions received by Bonds.[26]

11. Section 31(3) of the RBI Act, 1934 was added by the Finance Act, 2017 to effectuate the issuance of the Bonds which, as envisaged, are not to mention the name of the political party to whom they are payable, and hence are in the nature of bearer demand bill or note.

12. On 02.01.2018, the Department of Economic Affairs, Ministry of Finance, notified the Electoral Bonds Scheme, 2018[27] in terms of

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[22] Second *proviso* to Section 13A of the Income Tax Act, 1961.
[23] Fourth *proviso* to Section 13A of the Income Tax Act, 1961.
[24] Introduced *vide* Section 2, Election and Other Related Laws (Amendment) Act, 2003.
[25] For short, "ECI".
[26] *Proviso* to Section 29C(1) of the Representation of the People Act, 1951.
[27] For short, "the Scheme".

Section 31(3) of the RBI Act, 1934.[28] The salient features of this Scheme are:

⇒ Bonds are in the nature of a promissory note and bearer instrument.[29] They do not carry the name of the buyer or payee.[30]

⇒ Bonds can be purchased by any 'person'[31] who is a citizen of India or who is a body corporate incorporated or established in India.[32] Any 'person' who is an individual can purchase Bonds either singly or jointly with other individuals.[33]

⇒ Bonds are to be issued in denominations of Rs.1,000/-, Rs.10,000/-, Rs.1,00,000/-, Rs.10,00,000/- and Rs.1,00,00,000/-.[34] They are valid for a period of 15 days from the date of issue.[35] The amount of Bonds not encashed within the validity period of 15 days, would be deposited by the authorised bank to the Prime Minister Relief Fund.[36]

⇒ The Bond is non-refundable.[37]

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[28] Finance Act, 2017 has also amended and added Section 31(3) to the RBI Act, 1934 as the Bonds in question are bearer bonds like Indian currency. However, we do not think this amendment is required to be separately adjudicated as it merely effectuates the Bonds scheme.
[29] Paragraph 2(a) of the Scheme.
[30] *Ibid.*
[31] Paragraph 2(d) of the Scheme defines a 'person' to include an individual, Hindu undivided family, company, firm, an association of persons or body of individuals, whether incorporated or not. It also includes every artificial judicial person and any agency, office or branch owned by such 'person'.
[32] Paragraph 3(1) of the Scheme.
[33] Paragraph 3(2) of the Scheme.
[34] Paragraph 5 of the Scheme.
[35] Paragraph 6 of the Scheme.
[36] Paragraph 12(2) of the Scheme.
[37] Paragraph 7(6) of the Scheme.

⇒ A 'person' who wishes to purchase a Bond is required to apply in the specified format.[38] Non-compliant applications are to be rejected.

⇒ To purchase Bonds, a buyer is required to apply to the authorised bank.[39] RBI's Know Your Customer[40] requirements apply and the authorised bank could ask for additional KYC documents, if necessary.[41]

⇒ The payments for the issuance of Bonds are required to be made in Indian rupees through demand draft, cheque, ECS or direct debit to the buyer's account.[42]

⇒ The identity and information furnished by the buyer for the issuance of Bonds is to be treated as confidential by the authorised issuing bank.[43] The details, including identity, can be disclosed only when demanded by a competent court or on registration of any criminal case by any law enforcement agency.[44]

⇒ Only eligible political parties, meaning a party that is registered under Section 29A of the Representation of the People Act,

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[38] Paragraph 7 of the Scheme.
[39] Paragraph 2(b) of the Scheme defines an authorized bank as the State Bank of India and its specified branches.
[40] For short, "KYC".
[41] Paragraph 4 of the Scheme.
[42] Paragraph 11 of the Scheme.
[43] Paragraph 7(4) of the Scheme.
[44] *Ibid.*

1951, and has secured not less than 1% of the votes polled in the last general election to the House of People or the Legislative Assembly, can receive a Bond.[45]

⇒ The eligible political party can encash the Bond through their bank account in the authorised bank.[46]

⇒ The Bonds are made available for purchase for a period of 10 days every quarter, in the months of January, April, July and October, as may be specified by the Central Government.[47] They are also made available for an additional period of 30 days, as specified by the central government in a year where general elections to the House of People are held.[48]

⇒ The Bonds are not eligible for trading,[49] and commission, brokerage or other charges are not chargeable/payable for issuance of a Bond.[50]

⇒ The value of the Bond is considered as income by way of voluntary contributions to eligible political parties for the purposes of tax exemption under Section 13A of the Income Tax Act, 1961.[51]

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[45] Paragraph 3(3) of the Scheme.
[46] Paragraph 3(4) of the Scheme.
[47] Paragraph 8(1) of the Scheme.
[48] Paragraph 8(2) of the Scheme.
[49] Paragraph 14 of the Scheme.
[50] Paragraph 12 of the Scheme.
[51] Paragraph 13 of the Scheme.

13. In the afore-mentioned writ petitions filed under Article 32 of the Constitution of India,[52] the petitioners are seeking a declaration that the Scheme and the relevant amendments made by the Finance Act, 2017, are unconstitutional.

14. The question of the constitutional validity of the Scheme and the amendments introduced by the Finance Act, 2017 are being examined by us. The question of introducing these amendments through a money bill under Article 110 of the Constitution is not being examined by us.[53] The scope of Article 110 of the Constitution has been referred to a seven-judge Bench and is *sub-judice*.[54] Further, a batch of petitions challenging the amendments to the Foreign Contribution Regulation Act, 2010 by the Finance Acts of 2016 and 2018 are pending. The challenge to the said amendments is not being decided by us.

15. I fully agree with the Hon'ble Chief Justice, that the Scheme cannot be tested on the parameters applicable to economic policy. Matters of economic policy normally pertain to trade, business and commerce, whereas contributions to political parties relate to the democratic polity, citizens' right to know and accountability in our

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[52] For short, "the Constitution".
[53] The Finance Act, 2017 was introduced and passed as a money bill by the Parliament under Article 110 of the Constitution.
[54] *Rojer Matthew* v. *South Indian Bank Ltd. and Ors.*, Civil Appeal No. 8588 of 2019.

democracy. The primary objective of the Scheme, and relevant amendments introduced by the Finance Act, 2017, is electoral reform and not economic reform. Thus, the dictum and the principles enunciated by this Court in ***Swiss Ribbons (P.) Ltd. and Another*** v. ***Union of India and Others***,[55] and ***Pioneer Urban Land and Infrastructure and Another*** v. ***Union of India and Others***,[56] relating to judicial review on economic policy matters have no application to the present case. To give the legislation the latitude of economic policy, we will be diluting the principle of free and fair elections. Clearly, the importance of the issue and the nexus between money and electoral democracy requires us to undertake an in-depth review, albeit under the settled powers of judicial review.

16. Even otherwise, it is wrong to state as a principle that judicial review cannot be exercised over every matter pertaining to economic policy.[57] The law is that the legislature has to be given latitude in matters of economic policy as they involve complex financial issues.[58] The degree of deference to be shown by the court while

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[55] (2019) 4 SCC 17.
[56] (2019) 8 SCC 416.
[57] *R.K. Garg* v. *Union of India and Others*, (1981) 4 SCC 675.
[58] *Ibid.* See also *Bhavesh D. Parish and Others* v. *Union of India and Others*, (2000) 5 SCC 471, and *Directorate General of Foreign Trade and Others* v. *Kanak Exports and Another*, (2016) 2 SCC 226.

exercising the power of judicial review cannot be put in a straitjacket.

17. On the question of burden of proof, I respectfully agree with the observations made by the Hon'ble Chief Justice, that once the petitioners are able to *prima facie* establish a breach of a fundamental right, then the onus is on the State to show that the right limiting measure pursues a proper purpose, has rational nexus with that purpose, the means adopted were necessary for achieving that purpose, and lastly proper balance has been incorporated.

18. The doctrine of presumption of constitutionality has its limitations when we apply the test of proportionality. In a way the structured proportionality places an obligation on the State at a higher level, as it is a polycentric examination, both empirical and normative. While the courts do not pass a value judgment on contested questions of policy, and give weight and deference to the government decision by acknowledging the legislature's expertise to determine complex factual issues, the proportionality test is not based on preconceived notion or presumption. The standard of proof is a civil standard or a balance of probabilities;[59] where scientific or social science evidence is available, it is examined; and

[59] *R.* v. *Oakes*, (1986) 1 S.C.R. 103.

where such evidence is inconclusive or does not exist and cannot be developed, reason and logic may suffice.[60]

19. The right to vote is a constitutional and statutory right,[61] grounded in Article 19(1)(a) of the Constitution, as the casting of a vote amounts to expression of an opinion by the voter.[62] The citizens' right to know stems from this very right, as meaningfully exercising choice by voting requires information. Representatives elected as a result of the votes cast in their favour, enact new, and amend existing laws, and when in power, take policy decisions. Access to information which can materially shape the citizens' choice is necessary for them to have a say in how their lives are affected. Thus, the right to know is paramount for free and fair elections and democracy.

20. The decisions in ***Association for Democratic Reforms*** (supra) and ***People's Union of Civil Liberties (PUCL)*** (supra) should not be read as restricting the right to know the antecedents of a candidate contesting the elections.[63] The political parties select

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[60] See *Libman* v. *Quebec (A.G.)*, [1997] 3 S.C.R. 569; *RJR-MacDonald Inc.* v. *Canada (Attorney General)*, [1995] 3 S.C.R. 199; *Thomson Newspapers Co.* v. *Canada (A.G.)*, [1998] 1 S.C.R. 877; *R.* v. *Sharpe*, [2001] 1 S.C.R. 45; *Harper* v. *Canada (A.G.)*, [2004] 1 S.C.R. 827, at paragraph 77; *R.* v. *Bryan*, [2007] 1 S.C.R. 527, at paragraphs 16-19, 29; *Mounted Police Association of Ontario* v. *Canada (Attorney General)*, [2015] 1 S.C.R. 3, at paragraphs 143-144.

[61] Article 326, Constitution.

[62] *Union of India v. Association for Democratic Reforms and Another*, (2002) 5 SCC 294, and *People's Union of Civil Liberties (PUCL) and Another v. Union of India and Another*, (2003) 4 SCC 399.

[58] *Ibid.*

candidates who contest elections on the symbol allotted to the respective political parties[64]. Upon nomination, the candidates enjoy the patronage of the political parties, and are financed by them. The voters elect a candidate with the objective that the candidate's political party will come to power and fulfil the promises.

21. The Hon'ble Chief Justice has referred to the Tenth Schedule of the Constitution. The Schedule incorporates a provision for the disqualification of candidates on the ground of defection, which reflects the importance of political parties in our democracy. Section 77 of the Representation of the People Act, 1951, requires monetary limits to be prescribed for expenditures incurred by candidates.[65] As political parties are at the helm of the electoral process, including its finances, the argument that the right of the voter does not extend to knowing the funding of political parties and is restricted to antecedents of candidates, will lead to an incongruity. I, respectfully, agree with Hon'ble the Chief Justice, that denying voters the right to know the details of funding of political parties would lead to a dichotomous situation. The funding of

[64] The Representation of the People Act, 1951 permits candidates not set up by a recognized political party, that is independent candidates, to contest elections as well.
[65] Under Explanation 1 to Section 77 of the Representation of the People Act, 1951, the expenditure incurred by 'leaders of political parties' on account of travel for propagating the programme of the political party, is not deemed to be election expenditure.

political parties cannot be treated differently from that of the candidates who contest elections.[66]

22. Democratic legitimacy is drawn not only from representative democracy but also through the maintenance of an efficient participatory democracy. In the absence of fair and effective participation of all stakeholders, the notion of representation in a democracy would be rendered hollow. In a democratic set-up, public participation is meant to fulfil three functions; the epistemic function of ensuring reasonably sound decisions,[67] the ethical function of advancing mutual respect among citizens, and the democratic function of promoting "an inclusive process of collective choice".[68] James Fishkin lists five criteria which define the quality of a deliberative process.[69] These are:

- Information (the extent to which participants are given access to accurate and reliable information);

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[66] See observations of this court in *Kanwar Lal Gupta* v. *Amar Nath Chawla & Ors.*, (1975) 3 SCC 646.
[67] This function is elaborated as to "produce preferences, opinions, and decisions that are appropriately informed by facts and logic and are the outcome of substantive and meaningful consideration of relevant reasons(...). Because the topics of these deliberations are issues of common concern, epistemically well-grounded preferences, opinions, and decisions must be informed by, and take into consideration, the preferences and opinions of fellow citizens", Jane Mansbridge and others, 'A Systemic Approach to Deliberative Democracy' in John Parkinson and Jane Mansbridge (eds), *Deliberative Systems* (1st edn, Cambridge University Press 2012) 11.
[68] *Ibid* at 12.
[69] James S Fishkin, *When the People Speak: Deliberative Democracy and Public Consultation* (Oxford University Press 2011) 33– 34.

- Substantive balance (the extent to which arguments offered by one side are answered by considerations offered by those who hold other perspectives);
- Diversity (the extent to which major positions in the public are represented by participants);
- Conscientiousness, (the degree to which participants sincerely weigh the merits of the arguments); and
- Equal consideration (the extent to which arguments offered by all participants are considered on its merits regardless of who offered them).[70]

23. The State has contested the writ petitions primarily on three grounds:

(i) Donors of a political party often apprehend retribution from other political parties or actors and thus their identities should remain anonymous. The Bonds uphold the right to privacy of donors by providing confidentiality. Further, donating money to one's preferred political party is a matter of self-expression by the donor. Therefore, revealing the identity invades the informational privacy of donors protected by the Constitution.[71] The identity of the donor can be revealed in

[70] This is equally important from the perspective of the test of proportionality.
[71] See *K.S. Puttaswamy and Anr.* v. *Union of India and Ors. (9J) (Privacy)*, (2017) 10 SCC 1.

exceptional cases, for instance on directions of a competent court, or registration of a criminal case by any law enforcement agency.[72]

(ii) The Scheme, by incentivising banking channels and providing confidentiality, checks the use of black or unaccounted money in political contributions.[73]

(iii) The Scheme is an improvement to the prior legal framework. It has inbuilt safeguards such as compliance of donors with KYC norms, bearer bonds having a limited validity of fifteen days and recipients belonging to a recognised political party that has secured more than 1% votes in the last general elections.

24. Hon'ble the Chief Justice has rejected the Union of India's submissions by applying the doctrine of proportionality. This is a principle applied by courts when they exercise their power of judicial review in cases involving a restriction on fundamental rights. It is applied to strike an appropriate balance between the fundamental right and the pursued purpose and objective of the restriction.

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[72] Paragraph 7(4) of the Scheme.
[73] See Arun Jaitley, 'Why Electoral Bonds Are Necessary', Press Information Bureau, 2018.

25. The test of proportionality comprises four steps:[74]

(i) The first step is to examine whether the act/measure restricting the fundamental right has a legitimate aim (legitimate aim/purpose).

(ii) The second step is to examine whether the restriction has rational connection with the aim (rational connection).

(iii) The third step is to examine whether there should have been a less restrictive alternate measure that is equally effective (minimal impairment/necessity test).

(iv) The last stage is to strike an appropriate balance between the fundamental right and the pursued public purpose (balancing act).

26. In ***Modern Dental College & Research Centre and Others*** v. ***State of Madhya Pradesh and Others***,[75] this Court had applied proportionality in its four-part doctrinal form[76] as a standard for reviewing right limitations in India. This test was modified in ***K.S. Puttaswamy (Retired) and Anr. (Aadhar)*** v. ***Union of India and Anr. (5J)***,[77] where this Court adopted a more tempered and

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[74] See Aharon Barak, "Proportionality – Constitutional Rights and their Limitations", Cambridge University Press, 2012.
[75] (2016) 7 SCC 353.
[76] In *Gujarat Mazdoor Sabha and Another v. State of Gujarat*, (2020) 10 SCC 459, the Court added fifth prong to proportionality test. It stipulated that the state should provide sufficient safeguards against the abuse of such restriction. This was relied upon in *Ramesh Chandra Sharma and Others v. State of U.P. and Others*, 2023 SCC OnLine SC 162.
[77] (2019) 1 SCC 1.

nuanced approach.[78] The Court, *inter alia*, imposed a stricter test for the third and fourth prongs, namely necessity and balancing stages of the test of proportionality, as reproduced below.

> "155. ...In order to preserve a meaningful but not unduly strict role for the necessity stage, Bilchitz proposes the following inquiry. First, a range of possible alternatives to the measure employed by the Government must be identified. Secondly, the effectiveness of these measures must be determined individually; the test here is not whether each respective measure realises the governmental objective to the same extent, but rather whether it realises it in a "real and substantial manner". Thirdly, the impact of the respective measures on the right at stake must be determined. Finally, an overall judgment must be made as to whether in light of the findings of the previous steps, there exists an alternative which is preferable; and this judgment will go beyond the strict means-ends assessment favoured by Grimm and the German version of the proportionality test; it will also require a form of balancing to be carried out at the necessity stage.
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> 156. Insofar as second problem in German test is concerned, it can be taken care of by avoiding "ad hoc balancing" and instead proceeding on some "bright-line rules" i.e. by doing the act of balancing on the basis of some established rule or by creating a sound rule...
>
> xx xx xx
>
> 158. ...This Court, in its earlier judgments, applied German approach while applying proportionality test to the case at hand. We would like to proceed on that very basis which, however, is tempered with more nuanced approach as suggested by Bilchitz. This, in fact, is the amalgam of German and Canadian approach. We feel that the stages, as mentioned in Modern Dental College & Research Centre and recapitulated above, would be the safe method in undertaking this exercise, with focus

[78] See David Bilchitz, "Necessity and Proportionality: Towards a Balance Approach?", (Hart Publishing, Oxford and Portland, Oregon 2016). Also see Aparna Chandra, "Proportionality: A Bridge to Nowhere?", (Oxford Human Rights Journal 2020).

> on the parameters as suggested by Bilchitz, as this projects an ideal approach that need to be adopted."

27. The said test was also referred to in ***Anuradha Bhasin*** v. ***Union of India and Others***,[79] with the observation that the principle of proportionality is inherently embedded in the Constitution under the doctrine of reasonable restriction. This means that limitations imposed on a right should not be arbitrary or of excessive nature beyond what is required in the interest of public. This judgment thereupon references works of scholars/jurists who have argued that if the necessity prong of the proportionality test is applied strictly, legislations and policies, no matter how well intended, would fail the proportionality test even if any other slightly less drastic measure exists.[80] Thereupon, the Court accepted the suggestion in favour of a moderate interpretation of the necessity test. Necessity involves a process of reasoning designed to ensure that only measures with a strong relationship to the objective they seek to achieve can justify an invasion of fundamental rights. The process thus requires a court to reason through the various stages of moderate interpretation of necessity in the following manner:

> "(MN1) All feasible alternatives need to be identified, with courts being explicit as to criteria of feasibility;

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[79] (2020) 3 SCC 637.
[80] *Anuradha Bhasin* (supra) at paragraph 71.

> (MN2) The relationship between the government measure under consideration, the alternatives identified in MN1 and the objective sought to be achieved must be determined. An attempt must be made to retain only those alternatives to the measure that realise the objective in a real and substantial manner;
>
> (MN3) The differing impact of the measure and the alternatives (identified in MN2) upon fundamental rights must be determined, with it being recognised that this requires a recognition of approximate impact; and
>
> (MN4) Given the findings in MN2 and MN3, an overall comparison (and balancing exercise) must be undertaken between the measure and the alternatives. A judgment must be made whether the government measure is the best of all feasible alternatives, considering both the degree to which it realises the government objective and the degree of impact upon fundamental rights ("the comparative component").

28. Dr. Justice D.Y. Chandrachud, as his Lordship then was, in ***K.S. Puttaswamy (5J)(Aadhar)***(supra), had observed that the objective of the second prong of rational connection test is essential to the test of proportionality.[81] Sanjay Kishan Kaul, J. in his concurring opinion in ***K.S. Puttaswamy (9J) (Privacy)*** (supra) had held that actions not only should be sanctioned by law, but the proposed actions must be necessary in a democratic society for a legitimate aim. The extent of interference must be proportionate to the need for such interference and there must be procedural guarantees against abuse of such interference.

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[81] Dr. Justice D.Y. Chandrachud was in minority in *K.S. Puttaswamy (Aadhaar)* (supra), albeit his observations on the objective of the second prong of rational connection are good and in consonance with the law on the subject.

29. The test of proportionality is now widely recognised and employed by courts in various jurisdictions like Germany, Canada, South Africa, Australia and the United Kingdom.[82] However, there isn't uniformity in how the test is applied or the method of using the last two prongs in these jurisdictions.

30. The first two prongs of proportionality resemble a means-ends review of the traditional reasonableness analysis, and they are applied relatively consistently across jurisdictions. Courts first determine if the ends of the restriction serve a legitimate purpose, and then assess whether the proposed restriction is a suitable means for furthering the same ends, meaning it has a rational connection with the purpose.

31. In the third prong, courts examine whether the restriction is necessary to achieve the desired end. When assessing the necessity of the measure, the courts consider whether a less intrusive alternative is available to achieve the same ends, aiming for minimal impairment. As elaborated above, this Court ***Anuradha Bhasin*** (supra), relying on suggestions given by some jurists,[83]

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[82] We will be referring to certain facets of the proportionality enquiry employed by these countries in our judgment. The test is also employed in various other jurisdictions like Israel, New Zealand, and the European Union.

[83] See David Bilchitz at supra note 76.

emphasised the need to employ a moderate interpretation of the necessity prong. To conclude its findings on the necessity prong, this Court is *inter alia* required to undertake an overall comparison between the measure and its feasible alternatives.[84]

32. We will now delve into the fourth prong, the balancing stage, in some detail. This stage has been a matter of debate amongst jurists and courts. Some jurists believe that balancing is ambiguous and value-based.[85] This stems from the premise of rule-based legal adjudication, where courts determine entitlements rather than balancing interests. However, proportionality is a standard-based review rather than a rule-based one. Given the diversity of factual scenarios, the balancing stage enables judges to consider various factors by analysing them against the standards proposed by the four prongs of proportionality. This ensures that all aspects of a case are carefully weighed in decision-making. This perspective finds support in the work of jurists who believe that constitutional

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[84] In *Anuradha Bhasin* (supra), the Court stipulated the following requirement for a conclusion of findings on the necessity prong: "...A judgment must be made whether the government measure is the best of all feasible alternatives, considering both the degree to which it realises the government objective and the degree of impact upon fundamental rights..."

[85] See Jochen von Bernstroff, Proportionality Without Balancing: Why Judicial Ad Hoc Balancing is Unnecessary and Potentially Detrimental to Realisation of Collective and Individual Self Determination, Reasoning Rights – Comparative Judicial Engagement, (Ed. Liaora Lazarus); Bernhard Schlink, 'Abwägung im Verfassungsrecht', Duncker & Humblot, 1976, and Francisco J. Urbina, 'Is It Really That Easy? A Critique of Proportionality and Balancing as Reasoning' Canadian Journal of Law and Jurisprudence, 2014.

rights and restrictions/measures are both principles, and thus they should be optimised/balanced to their fullest extent.[86]

33. While balancing is integral to the standard of proportionality, such an exercise should be rooted in empirical data and evidence. In most countries that adopt the proportionality test, the State places on record empirical data as evidence supporting the enactment and justification for the encroachment of rights.[87] This is essential because the proportionality enquiry necessitates objective evaluation of conflicting values rather than relying on perceptions and biases. Empirical deference is given to the legislature owing to their institutional competence and expertise to determine complex factual legislation and policies. However, factors like lack of parliamentary deliberation and a failure to make relevant enquiries weigh in on the court's decision. In the absence of data and figures, there is a lack of standards by which proportionality *stricto sensu* can be determined. Nevertheless, many of the constitutional courts

[86] According to Robert Alexy, the 'Law of Balancing' is as follows: "...the greater the degree of non-satisfaction of, or detriment to, one principle, the greater must be the importance of satisfying the other..." See Robert Alexy, A Theory of Constitutional Rights (Julian Rivers, trans. Oxford Univ. Press 2002).

[87] For instance, in Canada, where the doctrine of proportionality is employed by courts, a cabinet directive requires the standard to be incorporated into law-making. These guidelines stipulate that prior to enactment of laws, the matter and its alternate solutions must be analysed, the relevant ministerial department should engage in consultation with those who have an interest in the matter, and they should analyse the impact of the proposed solution. See Cabinet Directive on Law-making in Guide to Making Federal Acts and Regulations (2nd edn, Government of Canada).

have employed the balancing stage 'normatively'[88] by examining the weight of the seriousness of the right infringement against the urgency of the factors that justify it. Examination under the first three stages requires the court to first examine scientific evidence, and where such evidence is inconclusive or does not exist and cannot be developed, reason and logic apply. We shall subsequently be referring to the balancing prong during our application of the test of proportionality.

34. In Germany, the courts enjoy a high judicial discretion. The parliament and the judiciary in Germany have the same goal, that is, to realise the values of the German Constitution.[89] Canadian courts, some believe, in practice give wider discretion to the legislature when a restriction is backed by sufficient data and evidence.[90] The constitutional court in South Africa, as per some jurists, collectively applies the four prongs of proportionality instead of a structured application.[91] While proportionality is the predominant doctrine in Australia, an alternate calibrated scrutiny test is applied by a few judges.[92] It is based on the premise that a

[88] The first and second steps, legitimate aim and rational connection prong, and to some extent necessity prong, are factual.
[89] See Article 1 and 20, Basic Law for the Federal Republic of Germany.
[90] Niels Petersen, 'Proportionality and judicial Activism: Fundamental Rights Adjudication in Canada, Germany and South Africa, (CUP 2017).
[91] *Ibid.*
[92] See Annexure A.

contextual, instead of broad standard of review, is required to be adopted for constitutional adjudication.

35. Findings of empirical legal studies provide a more solid foundation for normative reasoning[93] and enhance understanding of the relationship between means and ends.[94] In our view, proportionality analyses would be more accurate when empirical inquiries on causal relations between a legislative measure under review and the ends of such a measure are considered. It also leads to better and more democratic governance. While one cannot jump from "is" to "ought", to reach an "ought" conclusion, one has to rely on accurate knowledge of "is", for "is" and "ought" to be united.[95] While we emphasise the need of addressing the quantitative/empirical deficit for a contextual and holistic balancing analysis, the pitfalls of selective data sharing must be kept in mind. After all, if a measure becomes a target, it ceases to be a good measure.[96]

36. To avoid this judgment from becoming complex, I have enclosed as an annexure a chart giving different viewpoints on the doctrine of proportionality as a test for judicial review exercised by the courts

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[93] See Yun-chien Chand & Peng-Hsiang Wang, *The Empirical Foundation of Normative Arguments in Legal Reasoning* (Univ. Chicago Coase-Sandor Inst. For L. & Econ., Res. Paper No. 745, 2016).
[94] Lee Epstein & Andrew D. Martin, *An Introduction to Empirical Legal Research* 6 (2014).
[95] *See* Joshua B. Fischman, *Reuniting "Is" and "Ought" in Empirical Legal Scholarship*, 162 U. Pa. L. Rev. 117 (2013).
[96] Marilyn Strathern, Improving Ratings: Audit in the British University System, European review, Vol. 5 Issue 3, pp. 305-321 (1997).

to test the validity of the legislation. The same is enclosed as Annexure-A to this judgment.[97]

37. When we turn to the reply or the defence of the Union of India in the present case, which we have referred to above,[98] the matter of concern is the first submission made regarding the purpose and rationale of the Scheme and amendments to the Finance Act of 2017. Lest remains any doubt, I would like to specifically quote from the transcript of hearing dated 01.11.2023, where on behalf of the Union of India it was submitted:

> "..the bottom line is this. What was really found? That what is the reason, why a person who contributes to a political party chooses the mode of unclean money as a payment mode and Your Lordships would immediately agree with me if we go by the practicalities of life. What happens is, suppose one state is going for an election. There are two parties, there are multiple parties, but by and large there are two parties which go neck to neck. Suppose I am a contractor. I'm not a company or anything. I am a contractor and I'm supposed to give my political contribution to Party A and Party B or Party A or Party B, as the case may be. But the fear was if I give by way of accounted money or by clean money, by way of cheque, it would be easily identifiable. If I give to party A and Party B forms the Government, I would be facing victimization and retribution and vice versa. If I give money to Party B and Party A continues to be in Government, then I would be facing retribution or victimization. Therefore, the safest course was to pay by cash, so that none of the parties know what I paid to which party, and both parties are happy that I have paid something. So, that, the payment by cash ensured confidentiality. Both

[97] Annexure A should not be read as an opinion of this Court or even as *obiter dicta* expressed by this Court. The Annexure is only for the purpose of pointing out different viewpoints on the test of proportionality.

[98] See paragraph 23 of this judgment.

> parties would say that one party would be given 100 crores, one party would be given 40 crores, depending upon my assessment of their winnability. But both would not know who is paid what. My Lord, sometimes what used to happen is in my business, I get only clean money or substantial part of the clean money, but practicalities require that I contribute to the political parties, and practicality again requires that I contribute with a degree of confidentiality so that I am not victimized in the future. And therefore clean money used to be converted into unclean money. White money is being converted into black money so that it can be paid, according to them anonymously, and according to me with confidentiality. And this is disastrous for the economy when white money is converted into black money."

While introducing the Finance Act of 2017, the then Finance Minister had elucidated that the main purpose of the Scheme was to curb the flow of black money in electoral finance.[99] This, it is stated, could be achieved only if information about political donations and the donor were kept confidential.[100] It was believed that this would incentivise donations to political parties through banking channels.

38. I am of the opinion that retribution, victimisation or retaliation cannot by any stretch be treated as a legitimate aim. This will not satisfy the legitimate purpose prong of the proportionality test. Neither is the Scheme nor the amendments to the Finance Act, 2017, rationally connected to the fulfilment of that purpose, namely, to

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[99] See Speech of Arun Jaitley, Minister of Finance, at paragraph 165, Budget 2017-18.
[100] *Ibid.*

counter retribution, victimisation or retaliation in political donations. In our opinion, it will also not satisfy the necessity stage of the proportionality even if we have to ignore the balancing stage.

39. Retribution, victimisation or retaliation against any donor exercising their choice to donate to a political party is an abuse of law and power. This has to be checked and corrected. As it is a wrong, the wrong itself cannot be a justification or a purpose. The argument, therefore, suffers on the grounds of inconsistency and coherence as it seeks to perpetuate and accept the wrong rather than deal with the malady and correct it. The inconsistency is also apparent as the change in law, by giving a cloak of secrecy, leads to severe restriction and curtailment of the collective's right to information and the right to know, which is a check and counters cases of retribution, victimisation and retaliation. Transparency and not secrecy is the cure and antidote.

40. Similarly, the second argument that the donor may like to keep his identity anonymous is a mere *ipse dixit* assumption. The plea of infringement of the right to privacy has no application at all if the donor makes the contribution, that too through a banking channel, to a political party. It is the transaction between the donor and the third person. The fact that donation has been made to a political

party has to be specified and is not left hidden and concealed.[101] What is not revealed is the quantum of the contribution and the political party to whom the contribution is made. Further, when a donor goes to purchase a Bond, he has to provide full particulars and fulfil the KYC norms of the bank.[102] His identity is then asymmetrically known to the person and the officers of the bank from where the Bond is purchased.[103] Similarly, the officers in the branch of the authorised bank[104] where the political party has an account and encashes the Bond are known to the officers in the said bank.[105]

41. The argument raised by the Union of India that details can be revealed when an order is passed by a court or when it is required for investigation pursuant to registration of a criminal case[106] overlooks the fact that it is their stand that the identities of the contributors/donors should be concealed because of fear of retaliation, victimisation and reprisal. That fear would still exist as the identity of the purchaser of the Bond can always be revealed upon registration of a criminal case or by an order/direction of the

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[101] Section 182(3) of the Companies Act, 2013 requires companies to mention the total political contributions made.
[102] Paragraph 4 of the Scheme.
[103] In terms of paragraph 2(b) of the Scheme, only State Bank of India and its specified branches are allowed to issue Bonds.
[104] *Ibid.*
[105] Paragraph 3(4) of the Scheme.
[106] See paragraph 7(4) of the Scheme.

court. Thus, the fear of reprisal and vindictiveness does not evaporate. The so-called protection exists only on paper but in practical terms is not a good safeguard even if we accept that the purpose is legitimate. It fails the rational nexus prong.

42. The fear of the identities of donors being revealed exists in another manner. Under the Scheme, political parties in power may have asymmetric access to information with the authorised bank. They also retain the ability to use their power and authority of investigation to compel the revelation of Bond related information.[107] Thus, the entire objective of the Scheme is contradictory and inconsistent.

43. Further, it is the case of the Union of India that parties in power at the Centre and State are the recipients of the highest amounts of donations through Bonds. If that is the case, the argument of retribution, victimisation and retaliation is tempered and loses much of its force.[108]

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[107] *Ibid.*

[108] In *Brown* v. *Socialist Workers Comm.*, 459 U.S. 87 (1982), the Supreme Court of the United States of America held that disclosure laws requiring the reporting of names and addresses of every campaign contributor could be waived when "specific evidence of hostility, threats, harassment and reprisals" existed, thus adopting a case-by-case approach. Marshall J., delivering the opinion of the court observed that the Socialist Workers Party, a minor political party had historically been the object of harassment by government officials and private parties. Therefore, the court held that the government was prohibited from compelling disclosures from the said party, a minor political party, since there existed a reasonable probability that the compelled disclosures would subject their donors, if identified, to threats, harassment or reprisals.

44. The rational connection test fails since the purpose of curtailing black or unaccounted-for money in the electoral process has no connection or relationship with the concealment of the identity of the donor. Payment through banking channels is easy and an existing antidote. On the other hand, obfuscation of the details may lead to unaccounted and laundered money getting legitimised.

45. The RBI had objected to the Scheme since the Bonds could change hands after they have been issued. There is no check for the same as the purchaser who has completed the KYC, whose identity is thereupon completely concealed, may not be the actual contributor/ donor. In fact, the Scheme may enable the actual contributor/donor to not leave any traceability or money trail.

46. Money laundering can be undertaken in diverse ways. Political contributions for a *quid pro quo* may amount to money laundering, as defined under the Prevention of Money Laundering Act, 2002[109]. The Financial Action Task Force[110] has observed that the signatory States are required to check money laundering on account of contributions made to political parties.[111] Article 7(3) of the United Nations Convention against Corruption, 2003 mandates the state

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[109] For short, "PMLA".
[110] For short, "FATF".
[111] Paragraph 3, Section B, International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation – The FATF Recommendations, 2012.

parties to enhance transparency in political funding of the candidates and parties.[112] The said convention is signed and ratified by India. By ensuring anonymity, the policy ensures that the money laundered on account of *quid pro quo* or illegal connection escapes eyeballs of the public.

47. The economic policies of the government have an impact on business and commerce. Political pressure groups promote different agendas, including perspectives on economic policies. As long as these pressure groups put forward their perspective with evidence and data, there should not be any objection even if they interact with elected representatives. The position would be different if monetary contributions to political parties were made as a *quid pro quo* to secure a favourable economic policy. This would be an offence under the Prevention of Corruption Act, 1988 and also under the PMLA. Such offences when committed by political parties in power can never see the light of the day if secrecy and anonymity of the donor is maintained.

48. In view of the aforesaid observations, the argument raised by the petitioners that there is no rational connection between the

[112] See also United Nations General Assembly Resolution A/RES/S-32/1, 02.06.2021, para 12.

measure and the purpose, which is also illegitimate, has merit and should be accepted.

49. On the question of alternative measures, that is the necessity prong of the proportionality test, it is accepted that post the amendments brought about by the Finance Act, 2017, political parties cannot receive donations in cash for amounts above Rs.2,000/-. However, political parties do not have to record the details and particulars of donations received for amounts less than Rs.20,000/-.[113] Therefore, the reduction of the upper limit of cash donations from Rs.20,000/- to Rs.2,000/- serves no purpose. It is open to the political parties to bifurcate the law and camouflage larger donations in smaller stacks. There is no way or method to verify the donor if the amount shown in the books of the political party is less than Rs.2,000/-.

50. It is an accepted position that the Electoral Trust Scheme[114] was introduced in 2013 to ensure the secrecy of contributors. As per the Trust Scheme, contributions could be made by a person or body corporate to the trust. The trust would thereafter transfer the amount to the political party. The trust is, therefore, treated as the contributor to the political party. Interestingly, it is the ECI that had

[113] This is inapplicable to Bonds under *proviso* (b) to Section 13A of the Income Tax Act, 1961.
[114] For short, "Trust Scheme".

issued guidelines dated 06.06.2014 whereby the trusts were required to specify and give full particulars to the ECI of the depositors with the trust and amounts which were subsequently transferred as a contribution to the political party. The guidelines were issued by the ECI to ensure transparency and openness in the electoral process.[115]

51. The trust can have multiple donors. Similarly, contributions are made by the trust to multiple political parties. The disclosure requirements provided in ECI's guidelines dated 06.06.2014 only impose disclosure requirements at the inflow and outflow points of the trust's donations, that is, the trust is required to provide particulars of its depositors and the amounts donated to political parties, including the names of the political parties. Thus, the Trust Scheme protects the anonymity of the donors *vis-à-vis* their contributions to the political party. When we apply the necessity test propounded in ***Anuradha Bhasin*** (supra)[116], the Trust Scheme

[115] Similarly, early campaign finance laws in the United Kingdom permitted trusts to donate to political parties. It came to be disallowed since it was contrary to openness and accountability. See Suchindran Bhaskar Narayan and Lalit Panda, Money and Elections – Necessary Reforms in Electoral Finance, Vidhi 2018 at p. 19. See also Lord Neill of Bladen, QC, 'Fifth Report of the Committee on Standards in Public Life: The Funding of Political Parties in the United Kingdom', 1998 pp 61-62.

[116] As elaborated in paragraph 27] of this judgement, *Anuradha Bhasin* (supra) proposes a four sub-pronged inquiry at the necessity stage of proportionality, that is (MN1) to (MN4). To arrive at the conclusion of the necessity inquiry, this Court has proposed at (MN4) that: "...an overall comparison (and balancing exercise) must be undertaken between the measure and the alternatives. A judgment must be made whether the government measure is the best of all feasible alternatives, considering both the degree to which it realises the government objective and the degree of impact upon fundamental rights (the comparative component)."

achieves the objective of the Union of India in a real and substantial manner and is also a less restrictive alternate measure in view of the disclosure requirements, *viz.* the right to know of voters. The Trust Scheme is in force and is a result of the legislative process. In a comparison of limited alternatives, it is a measure that best realises the objective of the Union of India in a real and substantial manner without significantly impacting the fundamental right of the voter to know. The ECI, if required, can suitably modify the guidelines dated 06.06.2014.

52. I would now come to the fourth prong. I would begin by first referring to the judgment cited by Hon'ble the Chief Justice in the case of ***Campbell*** v. ***MGM Limited***[117]. This judgment adopts double proportionality standard to adequately balance two conflicting fundamental rights. Double proportionality has been distinguished from the single proportionality standard in paragraph 152 of the judgment authored by Hon'ble the Chief Justice. ***Campbell*** (supra) states that the single proportionality test and the principle of reasonableness are applied to determine whether a private right claim offers sufficient justification for the interference with the fundamental rights. However, this test may not apply when two

[117] [2004] 2 AC 457.

fundamental rights are at conflict and one has to balance the application of one right and restriction of the other.

53. In ***Campbell*** (supra), Baroness Hale has suggested a three-step approach to balance conflicting fundamental rights, when two rights are in play. The first step is to analyse the comparative importance of the fundamental rights being claimed in the particular case. In the second step, the court should consider the justification for interfering with or restricting each of these rights. The third step requires the application of a proportionality standard to both these rights.

54. In a subsequent decision, the House of Lords (Lord Steyn) in ***In re.S***[118], distilled four principles to resolve the question of conflict of rights as under:

> "17. (...) First, neither article has as such precedence over the other. Secondly, where the values under the two articles are in conflict, an intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary. Thirdly, the justifications for interfering with or restricting each right must be taken into account. Finally, the proportionality test must be applied to each. For convenience I will call this the ultimate balancing test. This is how I will approach the present case."

[118] [2005] 1 AC 593.

55. The fourth principle, that is, the ultimate balancing test, was elaborated upon by Sir Mark Potter in ***In Re. W***[119] in the following terms:

> "53. (...) each Article propounds a fundamental right which there is a pressing social need to protect. Equally, each Article qualifies the right it propounds so far as it may be lawful, necessary and proportionate to do so in order to accommodate the other. The exercise to be performed is one of parallel analysis in which the starting point is presumptive parity, in that neither Article has precedence over or "trumps" the other. The exercise of parallel analysis requires the court to examine the justification for interfering with each right and the issue of proportionality is to be considered in respect of each. It is not a mechanical exercise to be decided upon the basis of rival generalities. An intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary before the ultimate balancing test in terms of proportionality is carried out."

56. Fundamental rights are not absolute, legislations/policies restricting the rights may be enacted in accordance with the scheme of the Constitution. However, it is now well settled that the provisions of fundamental rights in Part III of the Constitution are not independent silos and have to be read together as complementary rights.[120] Therefore, the thread of reasonableness applies to all such restrictions.[121] Secondly, Article 14, as observed by the Hon'ble Chief Justice in his judgment[122] includes the facet of formal equality

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[119] [2005] EWHC 1564 (Fam).
[120] *Rustom Cavasjee Cooper* v. *Union of India*, (1970) 1 SCC 248; *K.S. Puttaswamy (9J) (Privacy)* (supra), and *Maneka Gandhi* v. *Union of India and Another*, (1978) 1 SCC 248.
[121] The test of single proportionality will apply.
[122] See paragraphs 191 to 195 of the Hon'ble Chief Justice's judgment.

and substantive equality. Thus, the principle 'equal protection of law' requires the legislature and the executive to achieve factual equality. This principle can be extended to any restriction on fundamental rights which must be reasonable to the identified degree of harm. If the restriction is unreasonable, unjust or arbitrary, then the law should be struck down. Further, it is for the legislature to identify the degree of harm. I have referred to the said observation in the context that there appears to be a divergent opinion in ***K.S. Puttaswamy (9-J) (Privacy)*** (supra) as to whether right of privacy is an essential component for effective fulfilment of all fundamental rights or can be held to be a part or a component of Article 21 and Article 19(1)(a) of the Constitution.

57. When we apply the fourth prong, that is the balancing prong of proportionality, I have no hesitation or doubt, given the findings recorded above, that the Scheme falls foul and negates and overwhelmingly disavows and annuls the voters right in an electoral process as neither the right of privacy nor the purpose of incentivising donations to political parties through banking channels, justify the infringement of the right to voters. The voters right to know and access to information is far too important in a democratic set-up so as to curtail and deny 'essential' information on the pretext of privacy and the desire to check the flow of

unaccounted for money to the political parties. While secret ballots are integral to fostering free and fair elections, transparency—not secrecy—in funding of political parties is a prerequisite for free and fair elections. The confidentiality of the voting booth does not extend to the anonymity in contributions to political parties.

58. In ***K.S. Puttasamy (9-J) (Privacy)*** (supra), all opinions accept that the right to privacy has to be tested and is not absolute. The right to privacy must yield in given circumstances when dissemination of information is legitimate and required in state or public interest. Therefore, the right to privacy is to be applied on balancing the said right with social or public interest. The reasonableness of the restriction should not outweigh the particular aspect of privacy claimed.[123] Sanjay Kishan Kaul, J., in his opinion in ***K.S. Puttasamy (9-J) (Privacy)*** (supra), has said that restriction on right to privacy may be justifiable and is subject to the principle of proportionality when considering the right to privacy in relation to its function in society.

59. As observed above, the right to privacy operates in the personal realm, but as the person moves into communal relations and activities such as business and social interaction, the scope of

[123] While giving the aforesaid finding, we are applying the single proportionality test.

personal space shrinks contextually.[124] In this context, the High Court of South Africa in ***My Vote Counts NPC*** v. ***President of the Republic of South Africa and Ors.***[125] observes that:

> "(...) given the public nature of political parties and the fact that the private funds they receive have a distinctly public purpose, their rights to privacy can justifiably be attenuated. **The same principles must, as a necessary corollary, apply to their donors.** (...)"
>
> (emphasis supplied)

60. The great underlying principle of the Constitution is that rights of individuals in a democratic set-up is sufficiently secured by ensuring each a share in political power.[126] This right gets affected when a few make large political donations to secure selective access to those in power. We have already commented on pressure groups that exert such persuasion, within the boundaries of law. However, when money is exchanged as *quid pro quo* then the line between persuasion and corruption gets blurred.

61. It is in this context that the High Court of Australia in ***Jeffery Raymond McCloy and Others*** v. ***State of New South Wales and Another***[127], observes that corruption can be of different kinds. When a wealthy donor makes contribution to a political party in

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[124] See *Bernstein and Ors.* v. *Bester NO and Others*, (1996) ZACC 2, para 67.
[125] *My Vote Counts NPC* v. *President of the Republic of South Africa and Ors.* (2017) ZAWCHC 105, para 67.
[126] Harrison Moore, The Constitution of the Commonwealth of Australia, p.329 (1902).
[127] (2015) HCA 34.

return of a benefit, it is described as *quid pro quo* corruption. More subtle corruption arises when those in power decide issues not on merits or the desires of their constituencies, but according to the wishes and desires of those who make large contributions. This kind of corruption is described as 'clientelism'. This can arise from the dependence[128] on the financial support of a wealthy patron to a degree that it compromises the expectation, fundamental to representative democracy, that public power will be exercised in public interest. This affects the vitality as well as integrity of the political branches of government. While *quid pro quo* and clientelistic corruption erodes quality and integrity of government decision making, the power of money may also pose threat to the electoral process itself. This phenomenon is referred to as 'war-chest' corruption.[129]

62. In ***Jefferey Raymond*** (supra), the High Court of Australia had referred to the decision of the Supreme Court of Canada in ***Harper*** v. ***Canada (Attorney General)***[130], which upheld the legislative restriction on electoral advertising. In ***Harper*** (supra), the Supreme

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[128] James Madison in the Federalist Paper No. 52 notes that a government must "depend on the people alone". This condition, according to Professor Lawrence Lessig, has two elements – first, it identifies a proper dependency ("on the people") and second, it describes that dependence as exclusive ("alone").
[129] *See Federal Election Commission* v. *National Right to Work Committee*, 459 U.S. 197 (1982), where the petitioners submitted: "...substantial aggregations of wealth amassed by the special advantages which go with the corporate form of organization should not be converted into political "war chests" which could be used to incur political debts from legislators who are aided by the contributions..."
[130] [2004] 1 SCR 827.

Court of Canada has held that the State can provide a voice to those who otherwise might not be heard and the State can also restrict voices that dominate political discourse so that others can be heard as well.

63. The Supreme Court of the United States in ***Buckley*** v. **R Valeo**[131] has commented on the concern of *quid pro quo* arrangements and its dangers to a fair and effective government. Improper influence erodes and harms the confidence in the system of representative government. Contrastingly, disclosure provides the electorate with information as to where the political campaign money comes from and how it is spent. This helps and aides the voter in evaluating those contesting elections. It allows the voter to identify interests which candidates are most likely to be responsive to, thereby facilitating prediction of future performance in office. Secondly, it checks actual corruption and helps avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity. Relying upon ***Grosjean*** v. ***American Press Co.***[132], it holds that informed public opinion is the most potent of all restraints upon misgovernment. Thirdly, record keeping, reporting

[131] 424 U.S. 1 (1976).
[132] 297 U.S. 233 (1936).

and disclosure are essential means of gathering data necessary to detect violations of contribution limitations.

64. In ***Nixon, Attorney General of Missouri, et al*** v. ***Shrink Missouri Government PAC et al***,[133] the Supreme Court of the United States observes that large contributions given to secure a political *quid pro quo* undermines the system of representative democracy. It stems public awareness of the opportunities for abuse inherent in a regime of large contributions. This effects the integrity of the electoral process not only in the form of corruption or *quid pro quo* arrangements, but also extending to the broader threat of the beneficiary being too compliant with the wishes of large contributors.

65. Recently, a five judge Constitution Bench of this Court in ***Anoop Baranwal*** v. ***Union of India***[134] has highlighted the importance of purity of electoral process in the following words:

> "215. ...Without attaining power, men organised as political parties cannot achieve their goals. Power becomes, therefore, a means to an end. The goal can only be to govern so that the lofty aims enshrined in the directive principles are achieved while observing the fundamental rights as also the mandate of all the laws. What is contemplated is a lawful Government. So far so good. What, however, is disturbing and forms as we understand the substratum of the complaints of the petitioner is the pollution of the stream or the sullying

[133] 528 U.S. 377 (2000).
[134] (2023) 6 SCC 161.

> of the electoral process which precedes the gaining of power. Can ends justify the means?
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> 216. There can be no doubt that the strength of a democracy and its credibility, and therefore, its enduring nature must depend upon the means employed to gain power being as fair as the conduct of the Government after the assumption of power by it. The assumption of power itself through the electoral process in the democracy cannot and should not be perceived as an end. The end at any rate cannot justify the means. The means to gain power in a democracy must remain wholly pure and abide by the Constitution and the laws. An unrelenting abuse of the electoral process over a period of time is the surest way to the grave of the democracy. Democracy can succeed only insofar as all stakeholders uncompromisingly work at it and the most important aspect of democracy is the very process, the electoral process, the purity of which alone will truly reflect the will of the people so that the fruits of democracy are truly reaped.
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> 217. The essential hallmark of a genuine democracy is the transformation of the "Ruled" into a citizenry clothed with rights which in the case of the Indian Constitution also consist of fundamental rights, which are also being freely exercised and the concomitant and radical change of the ruler from an "Emperor" to a public servant. With the accumulation of wealth and emergence of near monopolies or duopolies and the rise of certain sections in the Media, the propensity for the electoral process to be afflicted with the vice of wholly unfair means being overlooked by those who are the guardians of the rights of the citizenry as declared by this Court would spell disastrous consequences."

66. The Law Commission of India in its 255th Report noted the concern of financial superiority translating into electoral advantage.[135] It was observed that lobbying and capture give undue importance to big

[135] Law Commission of India, Electoral Reforms, Report No. 255, March 2015.

donors and certain interest groups, at the expense of the ordinary citizen, violating "the right of equal participation of each citizen in the polity."[136] While noting the candidate-party dichotomy in the regulations under Section 77 of the Representation of the People Act, 1951, the Law Commission of India recommends to require candidates to maintain an account of contributions received from their political party (not in cash) or any other permissible donor.

67. At this stage, we would like to refer to the data as available on the website of the ECI and the data submitted by the petitioners for a limited purpose and objective to support our reasoning while applying balancing. We have not *stricto sensu* applied proportionality as the data is not sufficient for us. I also clarify that we have not opened the sealed envelope given by the ECI pursuant to the directions of this Court dated 02.11.2023.

68. An analysis of the annual audit reports of political parties from 2017-18 to 2022-23 showcases party-wise donations received through the Bonds as reproduced below:

PARTY-WISE DONATION THROUGH BONDS (IN RS. CR)

Party	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
BJP	210.00	1,450.890	2,555.000	22.385	1,033.7000	1294.1499
INC	5.00	383.260	317.861	10.075	236.0995	171.0200
AITC	0.00	97.280	100.4646	42.000	528.1430	325.1000
NCP	0.00	29.250	20.500	0.000	14.0000	--
TRS	0.00	141.500	89.153	0.000	153.0000	--

[136] ***R.C.Poudyal*** v. ***Union of India and Others***, (1994) Supp 1 SCC 324.

TDP	0.00	27.500	81.600	0.000	3.5000	34.0000
YSR-C	0.00	99.840	74.350	96.250	60.0000	52.0000
BJD	0.00	213.500	50.500	67.000	291.0000	152.0000
DMK	0.00	0.000	45.500	80.000	306.0000	185.0000
SHS	0.00	60.400	40.980	0.000	--	--
AAP*	0.00	--	17.765	5.950	25.1200	45.4500
JDU	0.00	0.000	13.000	1.400	10.0000	--
SP	0.00	0.000	10.840	0.000	3.2100	0.0000
JDS	6.03	35.250	7.500	0.000	0.0000	--
SAD	0.00	0.000	6.760	0.000	0.5000	0.0000
AIADMK	0.00	0.000	6.050	0.000	0.0000	0.0000
RJD	0.00	0.000	2.500	0.000	0.0000	--
JMM	0.00	0.000	1.000	0.000	0.0000	--
SDF	0.00	0.500	0.000	0.000	0.0000	0.0000
MGP	0.00	0.000	0.000	0.000	0.5500	--
TOTAL	221.03	2,539.170	3,441.324	325.060	2,664.8225	--

Asterisk (*) means that the AAP had declared their donations through Bonds/Electoral Trust, but the party had not declared a separate amount for Bonds.

69. It is clear from the available data that majority of contribution through Bonds has gone to political parties which are ruling parties in the Centre and the States. There has also been a substantial increase in contribution/donation through Bonds.

70. Petitioner no. 1 – Association for Democratic Reforms has submitted the following table which showcases party-wise donation by corporate houses to national parties:

PARTY-WISE CORPORATE DONATION (NATIONAL PARTIES) (IN RS. Cr)

Party	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	Total
BJP	515.500	400.200	698.140	720.407	416.794	548.808	3,299.8500
INC	36.060	19.298	127.602	133.040	35.890	54.567	406.4570
NCP	6.100	1.637	11.345	57.086	18.150	15.280	109.5980
CPI(M)	3.560	0.872	1.187	6.917	9.815	6.811	29.1615
AITC	2.030	0.000	42.986	4.500	0.000	0.250	49.7660
CPI	0.003	0.003	0.000	0.000	0.000	0.000	0.0055
BSP	0.000	0.000	0.000	0.000	0.000	0.000	0.0000
TOTAL	563.253	422.010	881.260	921.950	480.649	625.716	3,894.8380

As per the said table, the data shows that the party-wise donation by the corporate houses has been more or less stagnant from the years 2016-17 to 2021-22. We do not have the comments or official details in this regard from the Union of India or the ECI. The figures support our conclusion, but I would not, without certainty, base my analysis on these figures. However, we do have data of denomination/sale of Bonds, as submitted by the petitioners, during the 27 phases from March 2018 to July 2023, which is as under:

DENOMINATION WISE SALE OF EB DURING 27 PHASES (MARCH, 2018-JULY, 2023)

Denomination	No. of Electoral Bonds Sold	Amount (In Rupees)
1 Crore	12,999 (54.13%)	12,999 Crore (94.25%)
10 Lakhs	7,618 (31.72%)	761.80 Crore (5.52%)
1 Lakh	3,088 (12.86%)	30.88 Crore (0.22%)
10 Thousand	208 (0.86%)	20.80 Lakh (0.001%)
1 Thousand	99 (0.41%)	99,000
Total	**24,012**	**13791.8979 Cr.**

Analysis of this data shows that more than 50% of the Bonds in number, and 94% of the Bonds in value terms were for Rs.1 crore. This supports our reasoning and conclusion on the application of the doctrine of proportionality. This is indicative of the quantum of corporate funding through the anonymous Bonds.

71. The share of income from unknown sources for national parties rose from 66% during the years 2014-15 to 2016-17 to 72% during the years 2018-19 to 2021-22. Between the years 2019-20 to 2021-22 the Bond income has been 81% of the total unknown income of national parties. The total unknown income, that is donations made under Rs.20,000/-, sale of coupons etc. has not shown ebbing and has substantially increased from Rs.2,550 crores during the years 2014-15 to 2016-17 to Rs.8,489 crores during the years 2018-19 to 2021-22. To this we can add total income of the national political parties without other known sources, which has increased from Rs.3,864 crores during the years 2014-15 to 2016-17 to Rs.11,829 crores during the years 2018-19 to 2021-22. The Bonds income between the years 2018-19 to 2021-22 constitutes 58% of the total income of the national political parties.[137]

72. Based on the analysis of the data currently available to us, along with our previous observation asserting that voters' right to know supersedes anonymity in political party funding, I arrive at the conclusion that the Scheme fails to meet the balancing prong of the proportionality test. However, I would like to reiterate that I have not

[137] "Parties' unknown income rise despite electoral bonds", The Hindu, 02.11.2023, pg.7.

applied proportionality *stricto sensu* due to the limited availability of data and evidence.

73. I respectfully agree with the reasoning and the finding recorded by Hon'ble the Chief Justice, holding that the amendment to Section 182 of the Companies Act, deleting the first *proviso* thereunder should be struck down. While doing so, I would rather apply the principle of proportionality which, in my opinion, would subsume the test of manifest arbitrariness.[138] In addition, the claim of privacy by a corporate or a company, especially a public limited company would be on very limited grounds, restricted possibly to protect the privacy of the individuals and persons responsible for conducting the business and commerce of the company. It will be rather difficult for a public (or even a private) limited company to claim a violation of privacy as its affairs have to be open to the shareholders and the public who are interacting with the body corporate/company. This principle would be equally, with some deference, apply to private limited companies, partnerships and sole proprietorships.

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[138] The proportionality test, as adopted and applied by us, essentially checks, invalidates and does not condone manifest arbitrariness. Proportionality analysis recognizes the thread of reasonableness which is the underlying principle behind the first three prongs, legitimate aim, rational connection and necessity test. The balancing analysis of the permissible degree of harm for a constitutionally permissible purpose effectuates the guarantee of reasonableness. Therefore, any legislative action which is manifestly arbitrary, would be disproportionate and will fall foul when we apply the principle of proportionality. See also *Shayara Bano* v. *Union of India*, (2017) 9 SCC 1, where the Court held at paragraph 95, that rationality, logic and reasoning are the triple underpinnings of the test of manifest arbitrariness.

74. In consonance with the above reasoning and on application of the doctrine of proportionality, *proviso* to Section 29C(1) of the Representation of the People Act 1951, Section 182(3) of the Companies Act 2013 (as amended by the Finance Act 2017), Section 13A(b) of the Income Tax Act 1961 (as amended by the Finance Act 2017), are held to be unconstitutional. Similarly, Section 31(3) of the RBI Act 1934, along with the Explanation enacted by the Finance Act 2017, has to be struck down as unconstitutional, as it permits issuance of Bonds payable to a bearer on demand by such person.

75. The petitioners have not argued that corporate donations should be prohibited. However, it was argued by some of the petitioners that coercive threats are used to extract money from businesses as contributions virtually as protection money. Major opposition parties, which may come to power, are given smaller amounts to keep them happy. It was also submitted that there should be a cap on the quantum of donations and the law should stipulate funds to be utilised for political purposes given that the income of the political parties is exempt from income tax. Lastly, suggestions were made that corporate funds should be accumulated and the corpus equitably distributed amongst national and regional parties. I have

not in-depth examined these aspects to make a pronouncement. However, the issues raised do require examination and study.

76. By an interim order dated 26.03.2021, this Court in the context of contributions made by companies through Bonds had *prima facie* observed that the voter would be able to secure information about the funding by matching the information of aggregate sum contributed by the company as required to be disclosed under Section 182(3) of the Companies Act, as amended by the Finance Act 2017, with the information disclosed by the political party. Dr. D.Y. Chandrachud, Hon'ble the Chief Justice, rightly observes in his judgment that this exercise would not reveal the particulars of donations, including the name of the donor.

77. By the order dated 02.11.2023, this Court had asked for ECI's compliance with the interim order of this Court dated 12.04.2019. Relevant portion whereof is reproduced below:

> "In the above perspective, according to us, the just and proper interim direction would be to require all the political parties who have received donations through Electoral Bonds to submit to the Election Commission of India in sealed cover, detailed particulars of the donors as against the each Bond; the amount of each such bond and the full particulars of the credit received against each bond, namely, the particulars of the bank account to which the amount has been credited and the date of each such credit."

The intent of the order dated 12.04.2019 is that the ECI will continue to maintain full particulars of the donors against each Bond; the amount of each such Bond and the full particulars of the credit received against each Bond, that is, the particulars of the bank account to which the amount has been credited and the date of each such credit. This is clear from paragraph 14 of the order dated 12.04.2019 which had directed that the details mentioned in paragraph 13 of the order dated 12.04.2019 will be furnished forthwith in respect of the Bonds received by a political party till the date of passing of the order.

78. In view of the findings recorded above, I would direct the ECI to disclose the full particular details of the donor and the amount donated to the particular political party through Bonds. I would restrict this direction to any donations made on or after the interim order dated 12.04.2019. The donors/purchasers being unknown and not parties, albeit the principle of *lis pendens* applies, and it is too obvious that the donors/purchasers would be aware of the present litigation. Hence, they cannot claim surprise.

79. I, therefore, respectfully agree and also conclude that:

(i) the Scheme is unconstitutional and is accordingly struck down;

(ii) *proviso* to Section 29C(1) of the Representation of the People Act, Section 182(3) of the Companies Act, 2013, and Section 13A(b) of the Income Tax Act, 1961, as amended by the Finance Act, 2017, are unconstitutional, and are struck down;

(iii) deletion of *proviso* to Section 182(1) to the Companies Act of 2013, thereby permitting unlimited contributions to political parties is unconstitutional, and is struck down;

(iv) sub-section (3) to Section 31 of the RBI Act, 1934 and the Explanation thereto introduced by the Finance Act, 2017 are unconstitutional, and are struck down;

(v) the ECI will ascertain the details from the political parties and the State Bank of India, which has issued the Bonds, and the bankers of the political parties and thereupon disclose the details and names of the donor/purchaser of the Bonds and the amounts donated to the political party. The said exercise would be completed as per the timelines fixed by the Hon'ble the Chief Justice;

(vi) Henceforth, as the Scheme has been declared unconstitutional, the issuance of fresh Bonds is prohibited;

(vii) In case the Bonds issued (within the validity period) are with the donor/purchaser, the donor/purchaser may return them to the authorised bank for refund of the amount. In case the

Bonds (within the validity period) are with the donee/political party, the donee/political party will return the Bonds to the issuing bank, which will then refund the amount to the donor/purchaser. On failure, the amount will be credited to the Prime Ministers Relief Fund.

80. The writ petitions are allowed and disposed of in the above terms.

.....J.
(SANJIV KHANNA)

NEW DELHI;
FEBRUARY 15, 2024.

Annexure - A

Standards of Review - Proportionality & Alternatives

Proportionality is a standard-based model. It allows factual and contextual flexibility to judges who encounter diverse factual scenarios to analyse and decide the outcome of factual clashes against the standards. Proportionality, particularly its balancing prong, has been criticized by jurists who contend that legal adjudication should be rule-based rather than principle-based.[139] They argue that this provides legal certainty by virtue of rules being definitive in nature. In response, jurists in favour of balancing contend that neither rules nor principles are definitive but rather *prima facie*.[140] Therefore, both rights and legislations/policies are required to be balanced and realized to the optimum possible extent.

This jurisprudential clash is visible in the various forms and structures of adoptions of proportionality. Generally, two models can be differentiated from works of jurists.

1) **Model I** – Firstly, the traditional two stages of the means–end comparison is applied. After having ascertained the ***legitimate purpose*** of the law, the judge asks whether the imposed restriction is a suitable means of furthering this purpose (***rational connection***). Additionally in this model, the judge ascertains whether the restriction was ***necessary*** to achieve the desired end. The reasoning focuses on whether a less intrusive means existed to achieve the same ends (***minimal impairment/necessity***).

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[139] Francisco J. Urbina, A Critique of Proportionality, American Journal of Jurisprudence, Vol 57, 2012. Also see Ronald Dworkin, Taking Rights Seriously (Bloomsbury 2013), pp 41-42.

[140] Robert Alexy, A Theory of Constitutional Rights, (translated by Julian Rivers, first published 2002, OUP 2010), pp. 47-48.

2) **Model II** – This model adds a fourth step to the first model, namely the ***balancing stage***, which weighs the seriousness of the infringement against the importance and urgency of the factors that justify it.

In the table provided below, we have summarised the different models of proportionality and its alternatives, as propounded by jurists and adopted by courts internationally. We have also summarized other traditional standards of review like the means-ends test and Wednesbury unreasonableness for contextual clarity. In the last column we have captured the relevant criticisms, as propounded by jurists, to each such model.

Test/Model	*Scope of Test/Model*	*Jurisdictions Applied*	*Criticism*
Four-stage Proportionality	In this model, all the four prongs of proportionality test are employed, including the final balancing stage. According to Robert Alexy, values and interests (rights of citizens and objects of legislations/policies) are both principles and principles are optimization requirements.[141]	**Germany** Balancing was adopted by the German Constitutional Court in the 1950s as a new methodology for intensive judicial review of rights-restricting legislation. It stems from the belief that the German	The main premise of the criticisms of balancing is the wide discretion available to judges. To capture three contemporary criticisms in brief: (i) it leads to a comparison of incommensurable values;[143] (ii) it fails to create predictability in the legal system and is

[141] See Robert Alexy, A Theory of Constitutional Rights (Julian Rivers, trans. Oxford Univ. Press 2002).
[143] See Francisco J. Urbina, 'Is It Really That Easy? A Critique of Proportionality and Balancing as Reasoning' Canadian Journal of Law and Jurisprudence, 2014; and Bernhard Schlink, 'Abwägung im Verfassungsrecht', Duncker & Humblot, 1976.

	They are norms and hence their threshold of satisfaction is not strict, and can happen in varying degrees. They must be satisfied to the greatest extent possible in the legal and factual scenarios, as they exist. All stages of the proportionality test therefore seek to optimize relative to what is legally and factually possible. ⇒ The rational connection and necessity prongs of the proportionality test are applicable to factual possibilities. ⇒ The balancing stage optimizes each principle within what is legally possible, by weighing the relevant competing principles.	Constitution posits an original idea of values, and the government and courts, both have a duty to realise these values.[142]	potentially dangerous for human rights;[144] and (iii) conversely, it is equally intrusive from the perspective of separation of powers.[145]

[142] See Article 1 and 20, Basic Law for the Federal Republic of Germany.
[144] Jochen von Bernstroff, Proportionality Without Balancing: Why Judicial Ad Hoc Balancing is Unnecessary and Potentially Detrimental to Realisation of Collective and Individual Self Determination, Reasoning Rights – Comparative Judicial Engagement, (Ed. Liaora Lazarus);
[145] *Ibid.*

	Alexy proposes the 'weight formula', which quantifies competing values (rights of individuals) and interests (objective of legislation/policy) by reducing them to numbers. It is a method of thinking about conflicting values/interests. $W_{1.2} = (I_1 . W_1 . R_1) / (I_2 . W_2 . R_2)$ ⇒ $W_{1.2}$ represents the concrete weight of principle P_1 relative to the colliding principle P_2. ⇒ I_1 stand for intensity of interference with P_1. I_2 stands for importance of satisfying the colliding principle P_2. ⇒ W_1 and W_2 stand for abstract weights of colliding principles (P_1 and P_2). ⇒ When abstract weights are equal, as in case of collision of constitutional		

rights (W_1 and W_2) – they cancel each other out.

⇒ R_1 and R_2 stands for reliability of empirical and normative assumptions with regard to the question of how intensive the interpretation is.

The weight formula is thereupon reduced to numbers on an exponential scale of 2.

(i) The scale assigns following values to intensity of interference (**I**) and abstract weights (**W**)- light (**l**), moderate (**m**), and serious (**s**) – in numbers these are – 2^0, 2^1, 2^2 – **i.e., 1, 2 and 4** respectively.

(ii) To reliability (**R**), i.e., the epistemic side, the values assigned are –

	reliable (**r**), plausible (**p**) and not evidently false (e) – in numbers these are - **2^0, 2^{-1}, 2^{-2} – i.e., 1, 0.5 and 0.25**		
Three-stage Proportionality	This model proposes limiting the proportionality enquiry to its first three prongs, i.e., minus the balancing stage. Von Bernstorff argues against *ad hoc* balancing based on two principal reasons: (i) ad hoc balancing fails to erect stable and predictable standards of human rights protection, allowing even the most intensive infringements of civil liberties to be conveniently balanced out of existence when the stakes are high enough; and (ii) the lack of predictability leads to a situation where every act of parliament is threatened,	**Canada** Canada prefers to resolve cases in the first three prongs. Only in limited instances, does the Canadian Supreme Court decide that a measure survives the first three prongs but nevertheless fails at the final balancing stage.[150] Despite this, past jurisprudence in Canada does affirm the	(i) In absence of the balancing stage, the courts must be mindful of certain analytical weaknesses of the necessity stage that can be dealt with at the balancing stage.[152] (ii) The core of the necessity test is whether an alternate measure is as effective in achieving the purpose as the measure under challenge, while being less restrictive. But often, considerations of balancing may become disguised in the necessity prong, as the court must

[150] See Charterpedia, Department of Justice, Government of Canada, available at: https://www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccdl/check/art1.html. Also see Niels Petersen (supra).

[152] Niels Petersen, 'Proportionality and judicial Activism: Fundamental Rights Adjudication in Canada, Germany and South Africa, (CUP 2017).

	however well intentioned, in the judicial balancing exercise and thus *ad hoc* balancing is potentially overly intrusive from a separation of powers perspective.[146] He, however, defends the use of judicially established bright-line rules for specific cases where intensive interferences are at stake. The bright line rule brings clarity to a law or regulation that could be interpreted in multiple ways. Bright line rules constitute the 'core', 'substance' or 'essence' of a particular right, making human rights categorical instead of open-ended in nature.	significance of final balancing stage.[151]	confront uncertainty in weighing the efficacy of the alternatives.[153] (iii) Some jurists/courts have suggested a strict interpretation of necessity, where an alternate measure is only accepted as less restrictive when they prove to be as effective as the measure under challenge. David Bilchitz has also proposed that other alternatives must have both characteristics – equal realization of the purpose and lesser invasion/restriction on the right in question.[154]

[146] Jochen von Bernstroff, Proportionality Without Balancing: Why Judicial Ad Hoc Balancing is Unnecessary and Potentially Detrimental to Realisation of Collective and Individual Self Determination, Reasoning Rights – Comparative Judicial Engagement, (Ed. Liaora Lazarus); Also see Bernhard Schlink, 'Abwägung im Verfassungsrecht', Duncker & Humblot, 1976, pp. 192–219.

[151] *Ibid.* Also see Canada (Attorney General) *v.* JTI-Macdonald Corp., [2007] 2 S.C.R. 610, at paragraph 46; Alberta v. *Hutterian Brethren of Wilson Colony*, and [2009] 2 S.C.R. 567, at paragraphs 72-78.

[153] *Ibid.*

[154] David Bilchitz, Necessity and Proportionality: Towards a Balance Approach?, (Hart Publishing, Oxford and Portland, Oregon 2016).

	A stricter evaluation of evidence becomes crucial at the necessity stage for an objective standard of review, in contrast to *ad hoc* balancing. In Canada for instance, the onus of proof is on the person seeking to justify the limit, which is generally the government.[147] ⇒ The standard of proof is the civil standard or balance of probabilities.[148] ⇒ Where scientific or social science evidence is available, it will be required; ⇒ However, where such evidence is inconclusive, or does not exist and		David Blichitz's approach was followed in ***Aadhar (5J) (Privacy)*** (supra) case. This test was referenced in ***Anuradha Bhasin (supra)***, which applied a moderate interpretation of the necessity test. To conclude the findings of the necessity stage this Court in ***Anuradha Bhasin (supra)*** suggests that an overall comparison be undertaken between the measure and its feasible alternatives.

[147] ***R. v. Oakes*** [1986] 1 S.C.R. 103.
[148] ***Oakes*** (supra).

	cannot not be developed, reason and logic may suffice.[149]		
Means-ends Test	The doctrine is similar to a reasonableness inquiry, albeit with some variation. In Australia, for instance, courts enquire whether a law is 'reasonably appropriate and adapted' to achieving a legitimate end in a manner compatible with the constitutionally prescribed system of representative and responsible government.	**Australia** The test was followed in Australia before the development of proportionality and is not frequently used in contemporary times.	The test is simplistic and gives limited judicial flexibility. It does not account for diverse factual scenarios.
Calibrated Scrutiny (evolved means-ends test)	The essential elements of the approach are as follows:[155] ⇒ First, a judge determines the nature and intensity of the burden on the right by the challenged law;	**Australia** While proportionality is the predominant doctrine in Australia, this alternate test is applied by a few	Critics of this approach have emphasized that it takes away from the flexibility that is required while considering factually diverse legal challenges. Therefore, the test cannot

[149] ***Libman*** v. ***Quebec (A.G.)***, [1997] 3 S.C.R. 569; ***RJR-MacDonald Inc.*** v. ***Canada (Attorney General)***, [1995] 3 S.C.R. 199; ***Thomson Newspapers Co.*** v. ***Canada (A.G.)***, [1998] 1 S.C.R. 877; ***R.*** v. ***Sharpe***, [2001] 1 S.C.R. 45; ***Harper*** v. ***Canada (A.G.)***, [2004] 1 S.C.R. 827, at paragraph 77; ***R.*** v. ***Bryan***, [2007] 1 S.C.R. 527, at paragraphs 16-19, 29; ***Mounted Police Association of Ontario*** v. ***Canada (Attorney General)***, [2015] 1 S.C.R. 3, at paragraphs 143-144.

[155] Judgment by Gagler J. in ***Clubb*** v. ***Edwards***, (2019) 93 ALJR 448; Also see Adrienne Stone, Proportionality and its Alternatives, Melbourne Legal Studies Research Paper Series No. 848

	⇒ Second, the judge calibrates 'the appropriate level of scrutiny to the risk posed to maintenance of the constitutionally prescribed system of representative and responsible government; ⇒ Third, the judge isolates and assesses the importance of constitutionally permissible purpose of the prohibition; and ⇒ Finally the judge applies the appropriate level of scrutiny so as to determine whether the challenged law is justified as reasonably appropriate and adapted to achieve that purpose in a manner compatible with the maintenance of the constitutionally prescribed system of government,	judges. These judges raise concerns about the application of a test of structured proportionality and suggest that it was best understood as 'a tool' of analysis, or 'a means of setting out steps to a conclusion', 'not a constitutional doctrine'.	substitute a contextually guided judicial approach.[156]

[156] See John Braithwaite, Rules and Principles: a Theory of Legal Certainty, Australian Journal of Legal Philosophy 47 (2002).

	The test is similar to some prongs of the proportionality test. However, it is more rule oriented instead of being standard/principle oriented.		
Strict Scrutiny Test	This is considered one of the heightened forms of judicial review that can be used to evaluate the constitutionality of laws, regulations, or other governmental policies under legal challenge.[157] Strict scrutiny is employed in cases of violation of the most fundamental liberties guaranteed to citizens in the United States of America. For instance, it is employed in cases of infringements on free speech. The test places the burden on the government to show a compelling, or strong	**United States of America** The courts in the United States use a tiered approach of review with strict scrutiny, intermediate scrutiny and rational basis existing in decreasing degree of intensity.	Only a limited number of laws survive under the strict scrutiny test. Its application is reserved for instances where the most intensely protected fundamental rights are affected.

[157] See Jennifer L. Greenblatt, Putting the Government to the (Heightened, Intermediate, or Strict) Scrutiny Test: Disparate Application Shows Not All Rights and Powers Are Created Equal, (2009) 10 Fla Coastal L Rev 421.

	interest in the law, and that the law is either very narrowly tailored or is the least speech-restrictive means available to the government. The usual presumption of constitutionality is removed, and the law must also pass the threshold of both – necessity/end and means.		
Unreasonableness / Wednesbury Principles	A standard of unreasonableness is used for the judicial review of a public authority's decision. A reasoning or decision is unreasonable (or irrational) when no person acting reasonably could have arrived at it. This test has two limbs: (i) The court is entitled to investigate the action to check whether the authority has considered and decided on matters which they ought not to have considered, or	***Associated Provincial Picture Houses Ltd* v. *Wednesbury Corporation***[158]	The test is simplistic and is traditionally only used for policies/administrative decisions/delegated legislation.

[158] (1948) 1 KB 223.

	conversely, have refused to consider or neglected to consider matters which they ought to have considered. (ii) If the above query is answered in favour of the local authority, it may be held that, although the local authority has ruled on matters which they ought to have considered, the conclusion they have arrived at is nonetheless so unreasonable that no reasonable authority could ever have arrived at it.		

Please note that:-

(i) The above table briefly summarises the different standards of constitutional review and it does not elaborate on the said tests in detail;

(ii) the theories propounded by the jurists are not followed *in toto* across the jurisdictions and this has been pointed out appropriately; and

(iii) the table does not provide an exhaustive account of the full range of standards of review employed internationally and is restricted to the tests identified therein.

H Pahal
(T.C.)

ANNEXURE P-3

THE REPRESENTATION OF THE PEOPLE ACT, 1951

ARRANGEMENT OF SECTIONS

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PRELIMINARY

SECTIONS

1. Short title.

2. Interpretation.

PART II

QUALIFICATIONS AND DISQUALIFICATIONS

CHAPTER I.—*Qualifications for Membership of Parliament*

3. Qualification for membership of the Council of States.

4. Qualifications for membership of the House of the People.

CHAPTER II.—*Qualifications for Membership of State Legislatures*

5. Qualifications for membership of a Legislative Assembly.

5A. Qualifications for membership of Legislative Assembly of Sikkim.

6. Qualifications for membership of a Legislative Council.

CHAPTER III.—*Disqualifications for Membership of Parliament and State Legislatures*

7. Definitions.

8. Disqualification on conviction for certain offences.

8A. Disqualification on ground of corrupt practices.

9. Disqualification for dismissal for corruption or disloyalty.

9A. Disqualification for Government contracts, etc.

10. Disqualification for office under Government company.

10A. Disqualification for failure to lodge account of election expenses.

11. Removal or reduction of period of disqualification.

CHAPTER IV.—*Disqualifications for voting*

11A. Disqualification arising out of conviction and corrupt practices.

11B. Removal of disqualifications.

PART III

NOTIFICATION OF GENERAL ELECTIONS

12. Notification for biennial election to the Council of States.

SECTIONS

12A. Notification for election to fill the seat allotted to the State of Sikkim in the Council of States.

13. [*Omitted.*]

14. Notification for general election to the House of the People.

14A. Notification for electing the representative of the State of Sikkim to the existing House of the people.

15. Notification for general election to a State Legislative Assembly.

15A. Notification for certain elections to Legislative Councils.

16. Notification for biennial elections to a State Legislative Council.

PART IV

ADMINISTRATIVE MACHINERY FOR THE CONDUCT OF ELECTIONS

19. Definition.

19A. Delegation of functions of Election Commission.

20. General duties of chief electoral officers.

20A. General duties of district election officer.

20B. Observers.

21. Returning officers.

22. Assistant returning officers.

23. Returning officer to include assistant returning officers performing the functions of the returning officer.

24. General duty of the returning officer.

25. Provision of polling stations for constituencies.

26. Appointment of presiding officers for polling stations.

27. General duty of the presiding officer.

28. Duties of a polling officer.

28A. Returning officer, presiding officer, etc., deemed to be on deputation to Election Commission.

29. Special provisions in the case of certain elections.

PART IVA

REGISTRATION OF POLITICAL PARTIES

29A. Registration with the Election Commission of associations and bodies as political parties.

29B. Political parties entitled to accept contribution.

29C. Declaration of donation received by the political parties.

PART V

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CHAPTER I.—*Nomination of Candidates*

30. Appointment of dates for nominations, etc.

31. Public notice of election.

SECTIONS

32. Nomination of candidates for election.

33. Presentation of nomination paper and requirement for a valid nomination.

33A. Right to information.

33B. Candidate to furnish information only under the Act and the rules.

34. Deposits.

35. Notice of nominations and the time and place for their scrutiny.

36. Scrutiny of nominations.

37. Withdrawal of candidature.

38. Publication of list of contesting candidates.

39. Nomination of candidates at other elections.

39A. Allocation of equitable sharing of time.

CHAPTER II.—*Candidates and their Agent*

40. Election agents.

41. Disqualification for being an election agent.

42. Revocation of the appointment, or death, of an election agent.

43. [*Omitted.*]

44. [*Omitted.*]

45. Functions of election agents.

46. Appointment of polling agents.

47. Appointment of counting agents.

48. Revocation of the appointment or death of a polling agent or counting agent.

49. Functions of polling agents and counting agents.

50. Attendance of a contesting candidate or his election agent at polling stations, and performance by him of the functions of a polling agent or counting agent.

51. Non-attendance of polling or counting agents.

CHAPTER III.—*General Procedure at Elections*

52. Death of candidate of recognised Political Party before Poll.

53. Procedure in contested and uncontested elections.

54. [*Omitted.*]

55. Eligibility of members of Scheduled Castes or Scheduled Tribes to hold seats not reserved for those castes or tribes.

55A. [*Omitted.*]

CHAPTER IV.—*The Poll*

56. Fixing time for poll.

57. Adjournment of poll in emergencies.

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58. Fresh poll in the case of destruction, etc., of ballot boxes.

58A. Adjournment of poll or countermanding of election on the ground of booth capturing.

59. Manner of voting at elections.

60. Special procedure for voting by certain classes of persons.

61. Special procedure for preventing personation of electors.

61A. Voting machines at elections.

62. Right to vote.

63. [*Omitted.*]

CHAPTER V.—*Counting of Votes*

64. Counting of votes.

64A. Destruction, loss, etc., of ballot papers at the time of counting.

65. Equality of votes.

66. Declaration of results.

67. Report of the result.

67A. Date of election of candidate.

CHAPTER VI.—*Multiple Elections*

68. Vacation of seats when elected to both Houses of Parliament.

69. Vacation of seats by persons already members of one House on election to other House of Parliament.

70. Election to more than one seat in either House of Parliament or in the House or either House of the Legislature of a State.

CHAPTER VII.—*Publication of Election Results and Nominations*

71. Publication of results of elections to the Council of States and of names of persons nominated by the President.

72. [*Omitted.*]

73. Publication of results of general elections to the House of the People and the State Legislative Assemblies.

73A. Special provisions as to certain elections.

74. Publication of results of elections to the State Legislative Councils and of names of persons nominated to such Councils.

CHAPTER VIIA.—*Declaration of Assets and Liabilities*

75A. Declaration of assets and liabilities.

CHAPTER VIII.—*Election Expenses*

76. Application of Chapter.

77. Account of election expenses and maximum thereof.

78. Lodging of account with the district election officer.

PART VA

FREE SUPPLY OF CERTAIN MATERIAL TO CANDIDATES OF RECOGNISED POLITICAL PARTIES

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78A. Free supply of copies of electoral rolls.

78B. Supply of certain items to candidates, etc.

PART VI

DISPUTES REGARDING ELECTIONS

CHAPTER I.—*Interpretation*

79. Definitions.

CHAPTER II.—*Presentation of Election Petitions to Election Commission*

80. Election petitions.

80A. High Court to try election petitions.

81. Presentation of petitions.

82. Parties to the petition.

83. Contents of petition.

84. Relief that may be claimed by the petitioner.

85. [*Omitted.*]

CHAPTER III.—*Trial of Election Petitions*

86. Trial of election petitions.

87. Procedure before the High Court.

93. Documentary evidence.

94. Secrecy of voting not to be infringed.

95. Answering of criminating questions and certificate of indemnity.

96. Expenses of witnesses.

97. Recrimination when seat claimed.

98. Decision of the High Court.

99. Other orders to be made by the High Court.

100. Grounds for declaring election to be void.

101. Grounds for which a candidate other than the returned candidate may be declared to have been elected.

102. Procedure in case of an equality of votes.

103. Communication of orders of the High Court.

104. [*Omitted.*]

105. [*Omitted.*]

106. Transmission of order to the appropriate authority, etc., and its publication.

SECTIONS

107. Effect of orders of the High Court.

CHAPTER IV.—*Withdrawal and Abatement of Election Petitions*

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109. Withdrawal of election petitions.

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THE REPRESENTATION OF THE PEOPLE ACT, 1951

ACT NO. 43 OF 1951

[17*th July*, 1951.]

An Act to provide for the conduct of elections to the Houses of Parliament and to the House or Houses of the Legislature of each State, the qualifications and disqualifications for membership of those Houses, the corrupt [1]*** practices and other offences at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections.

BE it enacted by Parliament as follows:—

PART I

PRELIMINARY

1. Short title.—This Act may be called the Representation of the People Act, 1951.

2. Interpretation.—(*1*) In this Act, unless the context otherwise requires,—

(*a*) each of the expressions defined in section 2 or sub-section (*1*) of section 27 of the Representation of the People Act, 1950 (43 of 1950), but not defined in this Act, shall have the same meaning as in that Act;

(*b*) "appropriate authority" means, in relation to an election to the House of the People or the Council of States [2]***, the Central Government, and in relation to an election to the Legislative Assembly or the Legislative Council of a State, the State Government;

[3][(*bb*) "chief electoral officer" means the officer appointed under section 13A of the Representation of the People Act, 1950 (43 of 1950);]

(*c*) "corrupt practice" means any of the practices specified in section 123 [4]***;

[5][(*cc*) "district election officer" means the officer designated or nominated under section 13AA of the Representation of the People Act, 1950 (43 of 1950);]

(*d*) "election" means an election to fill a seat or seats in either House of Parliament or in the House or either House of the Legislature of a State other than the State of Jammu and Kashmir [6]***;

[7][(*e*) "elector" in relation to a constituency means a person whose name is entered in the electoral roll of that constituency for the time being in force and who is not subject to any of the disqualifications mentioned in section 16 of the Representation of the People Act, 1950 (43 of 1950);]

[8][(*f*) "political party" means an association or a body of individual citizens of India registered with the Election Commission as a political party under section 29A;]

(*g*) "prescribed" means prescribed by rules made under this Act;

[5][(*h*) "public holiday" means any day which is a public holiday for the purposes of section 25 of the Negotiable Instruments Act, 1881 (26 of 1881);]

[9][(*i*)] "sign", in relation to a person who is unable to write his name, means authenticate in such manner as may be prescribed.

[10]* * * * *

[11]* * * * *

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1. The words "and illegal" omitted by Act 27 of 1956, s. 2 (w.e.f. 28-8-1956).
2. Certain words omitted by Act 103 of 1956, s. 66 (w.e.f. 1-1-1957).
3. Ins. by Act 27 of 1956, s. 3 (w.e.f. 28-8-1956).
4. The words and figures "or section 124" omitted by s. 3, *ibid.* (w.e.f. 28-8-1956).
5. Ins. by Act 47 of 1966, s. 15 (w.e.f. 14-12-1966).
6. Certain words omitted by Act 58 of 1958, s. 14 (w.e.f. 30-12-1958).
7. Subs. by Act 27 of 1956, s. 3, for clause (*e*) (w.e.f. 28-8-1956).
8. Ins. by Act 1 of 1989, s. 3 (w.e.f. 15-6-1989).
9. Clause (*h*) re-lettered as clause (*i*) of that section by Act 27 of 1956, s. 3 (w.e.f. 28-8-1956).
10. Clause (*j*) omitted by the Adaptation of Laws (No. 2) order, 1956.
11. Clause (*k*) omitted by Act 47 of 1966, s. 15 (w.e.f. 14-12-1966).

(*2*) For the purposes of this Act, [1]*** a Parliamentary constituency, an Assembly constituency, a Council constituency, a local authorities' constituency, a graduates' constituency and a teachers' constituency shall each be treated as a constituency of a different class.

(*3*) Any requirement under this Act that a notification, order, rule, declaration, notice or list issued or made by any authority shall be published in the Official Gazette, shall, unless otherwise expressly provided in this Act, be construed as a requirement that the notification, order, rule, declaration, notice or list shall—

(*a*) where it is issued or made by the Central Government, be published in the Gazette of India;

(*b*) where it is issued or made by a State Government, be published in the Official Gazette of the State; and

(*c*) where it is issued or made by any other authority, be published in the Gazette of India if it relates to an election to, or membership of, either House of Parliament [2]*** and in the Official Gazette of the State if it relates to an election to, or membership of, the House or either House of the Legislature of a State.

(*4*) Where, under any of the provisions of this Act, anything is to be prescribed, different provisions may be made for different cases or classes of cases.

[3]* * * * *

[4][(*5*) Any reference in this Act to a law which is not in force in the State of Jammu and Kashmir shall, in relation to that State, be construed as a reference to the corresponding law, if any, in force in that State.]

[5]* * * * *

PART II

[6][QUALIFICATIONS AND DISQUALIFICATIONS]

CHAPTER I.—*Qualifications for Membership of Parliament.*

[7][**3. Qualification for membership of the Council of States.**—A person shall not be qualified to be chosen as a representative of any State [8]*** or Union territory in the Council of States unless he is an elector for a Parliamentary constituency [9][in India]].

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 [10]*** [11]***, unless—

(*a*) in the case of a seal 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 the State or of any other State (excluding the tribal areas of Assam), and is an elector for any Parliamentary constituency;

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1. The words "an electoral college constituency" omitted by Act 103 of 1956, s. 66 (w.e.f. 1-1-1957).
2. The words "or the electoral college of union territory" omitted by s. 66, *ibid.* (w.e.f. 1-1-1957).
3. Sub-section (*5*) omitted by Act 27 of 1956, s. 3 (w.e.f. 28-8-1956).
4. Subs. by Act 47 of 1966, s. 15, for sub-section (*5*) (w.e.f. 14-12-1966).Which was renumbered as sub-section (*5*) by Act 27 of 1956, s. 3 (w.e.f. 28-8-1956).
5. Sub-section (*7*) omitted by Act 27 of 1956, s. 3 (w.e.f. 28-8-1956).
6. Subs. by Act 47 of 1966, s. 16, for the heading "QUALIFICATIONS AND DISQUALIFICATIONS FOR MEMBERSHIP" (w.e.f. 14-12-1966).
7. Subs. by the Adaptation of Laws (No. 2) Order, 1956.
8. The brackets and words omitted by Act 47 of 1966, s. 17 (w.e.f. 14-12-1966).
9. Subs. by Act 40 of 2003, s. 2, for "in that State or territory" (w.e.f. 28-8-2003).
10. Certain words omitted by Act 49 of 1965, s. 5 (w.e.f. 22-12-1965).
11. Certain words omitted by Act 29 of 1975, s. 12 (w.e.f. 15-8-1975).

(*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; [1]***

[2][(*cc*) in the case of the seat reserved for the Scheduled Tribes in the Union territory of the [3][Lakshadweep], he is a member of any of those Scheduled Tribes and is an elector for the Parliamentary constituency of that Union territory; [4]***]

[5][(*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.

CHAPTER II.—*Qualifications for Membership of State Legislatures*

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, [6]*** he is a member of a [7][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:

[8][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.]

[9][**5A. Qualifications for membership of Legislative Assembly of Sikkim.**—[10][(*1*)] Notwithstanding anything contained in section 5, a person shall not be qualified to be chosen to fill a seat in the Legislative Assembly of Sikkim (deemed to be the Legislative Assembly of that State duly constituted under the Constitution) unless—

(*a*) in the case of a seat reserved for Sikkimese of Bhutia-Lepcha origin, he is a person either of Bhutia or Lepcha origin and is an elector for any Assembly constituency in the State other than the constituency reserved for the Sanghas;

(*b*) in the case of a seat reserved for Sikkimese of Nepal origin, he is a person of Nepali origin and is an elector for any Assembly constituency in the State;

(*c*) in the case of a seat reserved for Scheduled Castes, he is a member of any of the castes specified in the Representation of Sikkim Subjects Act, 1974 and is an elector for any Assembly constituency in the State; and

(*d*) in the case of a seat reserved for Sanghas, he is an elector of the Sangha constituency.]

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1. The word "and" omitted by Act 47 of 1966, s. 18 (w.e.f. 14-12-1966).
2. Ins. by s. 18, *ibid.* (w.e.f. 14-12-1966).
3. Subs. by the Adaptation of Laws order, 1974 (w.e.f. 1-11-1973).
4. The word "and" omitted by Act 10 of 1976, s. 2 and the Schedule (w.e.f. 9-9-1975).
5. Ins. by s. 2 and the Schedule, *ibid.* (w.e.f. 9-9-1975).
6. Certain words omitted by the North-Eastern Areas (Reorganisation) (Adaptation of Laws on Union Subjects) Order, 1974 (w.e.f. 21-1-1972).
7. Subs. by Act 47 of 1966, s. 19, for "Scheduled Tribe of that district" (w.e.f. 14-12-1966).
8. Ins. by Act 27 of 1962, s. 11 (w.e.f. 4-9-1962).
9. Ins. by Act 10 of 1976, s. 2 and the Schedule (w.e.f. 9-9-1975).
10. Section 5A re-numbered as sub-section (*1*) of that section by Act 8 of 1980, s. 3 (w.e.f. 1-9-1979).

[1][(2) Notwithstanding anything contained in section 5, a person shall not be qualified to be chosen to fill a seat in the Legislative Assembly of the State of Sikkim, to be constituted at any time after the commencement of the Representation of the People (Amendment) Act, 1980 (8 of 1980), unless—

(a) in the case of a seat reserved for Sikkimese of Bhutia-Lepcha origin, he is a person either of Bhutia or Lepcha origin and is an elector for any Assembly constituency in the State other than the constituency reserved for the Sanghas;

(b) in the case of a seat reserved for Scheduled Castes, he is a member of any of those castes in the State of Sikkim and is an elector for any Assembly constituency in the State;

(c) in the case of a seat reserved for Sanghas, he is an elector of the Sangha constituency; and

(d) in the case of any other seat, he is an elector for any Assembly constituency in the State.

Explanation.—In this sub-section "Bhutia" includes Chumbipa, Dopthapa, Dukpa, Kagatey, Sherpa, Tibetan, Tromopa and Yolmo.]

6. Qualifications for membership of a Legislative Council.—(1) A person shall not be qualifled to be chosen to fill a seat in the Legislative Council of a State to be filled by election unless he is an elector for any Assembly constituency in that State.

(2) A person shall not be qualified to be chosen to fill a seat in the Legislative Council of a State to be filled by nomination by the Governor [2]*** unless he is ordinarily resident in the State.

[3][CHAPTER III.—*DISQUALIFICATIONS FOR MEMBERSHIP OF PARLIAMENT AND STATE LEGISLATURES*

7. Definitions.—In this Chapter,—

(a) "appropriate Government" means in relation to any disqualification for being chosen as or for being a member of either House of Parliament, the Central Government, and in relation to any disqualification for being chosen as or for being a member of the Legislative Assembly or Legislative Council of a State, the State Government;

(b) "disqualified" means disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State [4][under the provisions of this Chapter, and on no other ground].

8. Disqualification on conviction for certain offences.—[5][(1) A person convicted of an offence punishable under—

(a) section 153A (offence of promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony) or section 171E (offence of bribery) or section 171F (offence of undue influence or personation at an election) or sub-section (1) or sub-section (2) of section 376 or section 376A or section 376B or section 376C or section 376D (offences relating to rape) or section 498A (offence of cruelty towards a woman by husband or relative of a husband) or sub-section (2) or sub-section (3) of section 505 (offence of making statement creating or promoting enmity, hatred or ill-will between classes or offence relating to such statement in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies) of the Indian Penal Code (45 of 1860); or

(b) the Protection of Civil Rights Act, 1955 (22 of 1955), which provides for punishment for the preaching and practice of "untouchability", and for the enforcement of any disability arising therefrom; or

(c) section 11 (offence of importing or exporting prohibited goods) of the Customs Act, 1962 (52 of 1962); or

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1. Ins. by Act 8 of 1980, s. 3 (w.e.f. 1-9-1979).
2. The words "or the Rajpramukh, as the case may be" omitted by the Adaptation of Laws (No. 2) Order, 1956.
3. Subs. by Act 47 of 1966, s. 20, for CHAPTER III (w.e.f. 14-12-1966).
4. Ins. by Act 29 of 2013, s. 2 (w.e.f. 10-7-2013).
5. Subs. by Act 1 of 1989, s. 4, for sub-sections (1) and (2) (w.e.f. 15-3-1989).

(*d*) sections 10 to 12 (offence of being a member of an association declared unlawful, offence relating to dealing with funds of an unlawful association or offence relating to contravention of an order made in respect of a notified place) of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967); or

(*e*) the Foreign Exchange (Regulation) Act, 1973 (46 of 1973); or

(*f*) the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985); or

(*g*) section 3 (offence of committing terrorist acts) or section 4 (offence of committing disruptive activities) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or

(*h*) section 7 (offence of contravention of the provisions of section 3 to 6) of the Religious Institutions (Prevention of Misuse) Act, 1988 (41 of 1988); or

(*i*) section 125 (offence of promoting enmity between classes in connection with the election) or section 135 (offence of removal of ballot papers from polling stations) or section 135A (offence of booth capturing) or clause (*a*) of sub-section (*2*) of section 136 (offence of fraudulently defacing or fraudulently destroying any nomination paper) of this Act; [1][or]

[1][(*j*) section 6 (offence of conversion of a place or worship) of the Places of Worship (Special Provisions) Act 1991], [2][or]

[3][(*k*) section 2 (offence of insulting the Indian National Flag or the Constitution of India) or section 3 (offence of preventing singing of National Anthem) of the Prevention of Insults to National Honour Act, 1971 (69 of 1971) [4][or];]

[4][(*l*) the Commission of Sati (Prevention) Act, 1987 (3 of 1988); or

(*m*) the Prevention of Corruption Act, 1988 (49 of 1988); or

(*n*) the Prevention of Terrorism Act, 2002 (15 of 2002),]

[5][shall be disqualified, where the convicted person is sentenced to—

(*i*) only fine, for a period of six years from the date of such conviction;

(*ii*) imprisonment, from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.]

(*2*) A person convicted for the contravention of—

(*a*) any law providing for the prevention of hoarding or profiteering; or

(*b*) any law relating to the adulteration of food or drugs; or

(*c*) any provisions of the Dowry Prohibition Act, [6][1961 (28 of 1961);],

[7]* * * * *

and sentenced to imprisonment for not less than six months, shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

(*3*) A person convicted of any offence and sentenced to imprisonment for not less than two years [other than any offence referred to in sub-section (*1*) or sub-section (*2*)] shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.]

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1. Ins. by Act 42 of 1991, s. 8 (w.e.f. 18-9-1991).
2. Added by Act 21 of 1996, s. 3 (w.e.f. 1-8-1996).
3. Ins. by s. 3, *ibid.* (w.e.f. 1-8-1996).
4. Ins. by Act 9 of 2003, s. 2 (w.e.f. 7-1-2003).
5. Subs. by s. 2, *ibid.*, for certain words (w.e.f. 7-1-2003).
6. Subs. by s. 2, *ibid.*, for "1961 (28 of 1961); or" (w.e.f. 7-1-2003).
7. Clause (*d*) omitted by s. 2, *ibid.* (w.e.f. 7-1-2003).

[1][(4)] Notwithstanding anything [2][in sub-section (1), sub-section (2) and sub-section (3)] a disqualification under either sub-section shall not, in the case of a person who on the date of the conviction is a member of Parliament or the Legislature of a State, take effect until three months have elapsed from that date or, if within that period an appeal or application for revision is brought in respect of the conviction or the sentence, until that appeal or application is disposed of by the court.

Explanation.—In this section—

(*a*) "law providing for the prevention of hoarding or profiteering" means any law, or any order, rule or notification having the force of law, providing for—

(*i*) the regulation of production or manufacture of any essential commodity;

(*ii*) the control of price at which any essential commodity may be brought or sold;

(*iii*) the regulation of acquisition, possession, storage, transport, distribution, disposal, use or consumption of any essential commodity;

(*iv*) the prohibition of the withholding from sale of any essential commodity ordinarily kept for sale;

(*b*) "drug" has the meaning assigned to it in the Drugs and Cosmetics Act, 1940 (23 of 1940);

(*c*) "essential commodity" has the meaning assigned to it in the Essential Commodities Act, 1955 (10 of 1955);

(*d*) "food" has the meaning assigned to it in the Prevention of Food Adulteration Act, 1954 (37 of 1954).

[3][**8A. Disqualification on ground of corrupt practices.**—(*1*) The case of every person found guilty of a corrupt practice by an order under section 99 shall be submitted, [4][as soon as may be within a period of three months from the date such order takes effect], by such authority as the Central Government may specify in this behalf, to the President for determination of the question as to whether such person shall be disqualified and if so, for what period:

Provided that the period for which any person may be disqualified under this sub-section shall in no case exceed six years from the date on which the order made in relation to him under section 99 takes effect.

(*2*) Any person who stands disqualified under section 8A of this Act as it stood immediately before the commencement of the Election Laws (Amendment) Act, 1975 (40 of 1975), may, if the period of such disqualification has not expired, submit a petition to the President for the removal of such disqualification for the unexpired portion of the said period.

(*3*) Before giving his decision on any question mentioned in sub-section (*1*) or on any petition submitted under sub-section (*2*), the President shall obtain the opinion of the Election Commission on such question or petition and shall act according to such opinion.]

9. Disqualification for dismissal for corruption or disloyalty.—(*1*) A person who having held an office under the Government of India or under the Government of any State has been dismissed for corruption or for disloyalty to the State shall be disqualified for a period of five years from the date of such dismissal.

(*2*) For the purposes of sub-section (*1*), a certificate issued by the Election Commission to the effect that a person having held office under the Government of India or under the Government of a State, has or has not been dismissed for corruption or for disloyalty to the State shall be conclusive proof of that fact:

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1. Sub-section (*3*) re-numbered as sub-section (*4*) of that section by Act 1 of 1989, s. 4 (w.e.f. 15-9-1979).
2. Subs. by s. 4, *ibid.*, for "sub-section (*1*) and sub-section (*2*)" (w.e.f. 15-9-1979).
3. Subs. by Act 40 of 1975, s. 2, for section 8A (w.e.f. 6-8-1975).
4. Subs. by Act 41 of 2009, s. 4, for certain words (w.e.f. 1-2-2010).

Provided that no certificate to the effect that a person has been dismissed for corruption or for disloyalty to the State shall be issued unless an opportunity of being heard has been given to the said person.

9A. Disqualification for Government contracts, etc.—A person shall be disqualified if, and for so long as, there subsists a contract entered into by him in the course of his trade or business with the appropriate Government for the supply of goods to, or for the execution of any works undertaken by, that Government.

Explanation.—For the purposes of this section, where a contract has been fully performed by the person by whom it has been entered into with the appropriate Government, the contract shall be deemed not to subsist by reason only of the fact that the Government has not performed its part of the contract either wholly or in part.

10. Disqualification for office under Government company.—A person shall be disqualified if, and for so long as, he is a managing agent, manager or secretary of any company or corporation (other than a co-operative society) in the capital of which the appropriate Government has not less than twenty-five per cent. share.

10A. 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 to be disqualified and any such person shall be disqualified for a period of three years from the date of the order.

11. Removal or reduction of period of disqualification.—The Election Commission may, for reasons to be recorded, remove any disqualification under this Chapter [1][(except under section 8A)] or reduce the period of any such disqualification.

CHAPTER IV.—*Disqualifications for voting*

11A. Disqualification arising out of conviction and corrupt practices.—[2][(*1*)] If any person, after the commencement of this Act,—

[3]*** is convicted of an offence punishable under section 171E or section 171F of the Indian Penal Code (45 of 1860), or under section 125 or section 135 or clause (*a*) of sub-section (*2*) of section 136 of this Act, [4]***

[5]* * * * *

he shall, for a period of six years from the date of the conviction or from the date on which the order takes effect, be disqualified for voting at any election.

[6][(*2*) Any person disqualified by a decision of the President under sub-section (*1*) of section 8A for any period shall be disqualified for the same period for voting at any election.

(*3*) The decision of the President on a petition submitted by any person under sub-section (*2*) of section 8A in respect of any disqualification for being chosen as, and for being, a member of either House

1. Ins. by Act 40 of 1975, s. 3 (w.e.f. 6-8-1975).
2. Section 11A re-numbered as sub-section (*1*) of that section by s. 4, *ibid.* (w.e.f. 6-8-1975).
3. The brackets and letter "(*a*)" omitted by Act 38 of 1978, s. 3 and the Second Schedule (w.e.f. 26-11-1978).
4. The word "or" omitted by s. 3 and the Second Schedule, *ibid.* (w.e.f. 26-11-1978).
5. Omitted by Act 40 of 1975, s. 4 (w.e.f. 6-8-1975).
6. Ins. by s. 4, *ibid.* (w.e.f. 6-8-1975).

of Parliament or of the Legislative Assembly or Legislative Council of a State shall, so far as may be, apply in respect of the disqualification for voting at any election incurred by him under clause (*b*) of sub-section (*1*) of section 11A of this Act as it stood immediately before the commencement of the Election Laws (Amendment) Act, 1975 (40 of 1975), as if such decision were a decision in respect of the said disqualification for voting also.]

11B. Removal of disqualifications.—The Election Commission may, for reasons to be recorded, remove [1][any disqualification under sub-section (*1*) of section 11A].]

[2][PART III

NOTIFICATION OF GENERAL ELECTIONS

12. Notification for biennial election to the Council of States.—For the purpose of filling the seats of members of the Council of States retiring on the expiration of their term of office the President shall, by one or more notifications published in the Gazette of India on such date or dates as may be recommended by the Election Commission, call upon the elected members of the Legislative Assembly or as the case may be, the members of the electoral college, of each State concerned to elect members in accordance with the provisions of this Act and of the rules and orders made thereunder:

Provided that no notification under this section shall be issued more than three months prior to the date on which the term of office of the retiring members is due to expire.

[3][**12A. Notification for election to fill the seat allotted to the State of Sikkim in the Council of States.**—For the purpose of filling for the first time the seat allotted to the State of Sikkim by the Constitution (Thirty-sixth Amendment) Act, 1975 in the Council of States, the President shall, by a notification published in the Gazette of India, on such date as may be recommended by Election Commission, call upon the elected members of the Legislative Assembly of the State of Sikkim to elect a member in accordance with the provisions of this Act and of the rules and orders made thereunder and the election so held shall for all purposes and intent be deemed to have been held under section 12.]

13. [*Notification for reconstitution of electoral colleges of certain Union territories.*] *Omitted by the Territorial Councils Act,* 1956 (103 *of* 1956), *s.* 66 (*w.e.f.* 1-1-1957).

14. Notification for general election to the House of the People.—(*1*) A general election shall be held for the purpose of constituting a new House of the People on the expiration of the duration of the existing House or on its dissolution.

(*2*) For the said purpose the President shall, by one or more notifications published in the Gazette of India on such date or dates as may be recommended by the Election Commission, call upon all Parliamentary constituencies to elect members in accordance with the provisions of this Act and of the rules and orders made thereunder:

Provided that where a general election is held otherwise than on the dissolution of the existing House of the People, no such notification shall be issued at any time earlier than six months prior to the date on which the duration of that House would expire under the provisions of clause (2) of article 83.

[3][**14A. Notification for electing the representative of the State of Sikkim to the existing House of the People.**—For the purpose of electing a representative of the State of Sikkim to the House of the People, specified in clause (e) of article 371F of the Constitution, the Election Commission shall call upon the members of the Legislative Assembly of the State of Sikkim to elect the representative in accordance with such of the provisions of this Act, and the rules and orders made thereunder, as are applicable to the election of the members of the Council of States.

15. Notification for general election to a State Legislative Assembly.—(*1*) A general election shall be held for the purpose of constituting a new Legislative Assembly on the expiration of the duration of the existing Assembly or on its dissolution.

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1. Subs. by Act 40 of 1975, s. 5, for "any disqualification under this Chapter" (w.e.f. 6-8-1975).
2. Subs. by Act 27 of 1956, s. 7, for "PART III" (w.e.f. 28-8-1956).
3. Ins. by Act 10 of 1976, s. 2 and the Schedule (w.e.f. 9-9-1975).

(2) For the said purpose, [1][the Governor or Administrator, as the case may be], [2]*** shall by one or more notifications published in the Official Gazette of the State on such date or dates as may be recommended by the Election Commission, call upon all Assembly constituencies in the State to elect members in accordance with the provisions of this Act and of the rules and orders made thereunder:

Provided that where a general election is held otherwise than on the dissolution of the existing Legislative Assembly, no such notification shall be issued at any time earlier than six months prior to the date on which the duration of that Assembly would expire under the provisions of clause (1) of article 172 [2]*** [3][or under the provisions of section 5 of the Government of Union Territories Act, 1963 (20 of 1963), as the case may be].

[4][**15A. Notification for certain elections to Legislative Councils.**—For the purpose of constituting the Legislative Council of the State of Madhya Pradesh under the States Reorganisation Act, 1956 (37 of 1956) and constituting the Legislative Council of the State of Andhra Pradesh [5][under the Andhra Pradesh Legislative Council Act, 2005 (1 of 2006)], [6][and constituting the Legislative Council of the State of Tamil Nadu under the Tamil Nadu Legislative Council Act, 2010 (16 of 2010)] the Governor of each of the aforesaid States shall, by one or more notifications published in the Official Gazette of the State on such date or dates as may be recommended by the Election Commission, call upon the members of the Legislative Assembly of the State and all the Council constituencies to elect members in accordance with the provisions of this Act and of the rules and orders made thereunder.]

16. Notification for biennial election to a State Legislative Council.—For the purpose of filling the seats of members of the Legislative Council of a State retiring on the expiration of their term of office, the Governor [7]*** shall, by one or more notifications published in the Official Gazette of the State on such date or dates as may be recommended by the Election Commission call upon the members of the Legislative Assembly of the State and all the Council constituencies concerned to elect members in accordance with the provisions of this Act and of the rules and orders made thereunder:

Provided that no notification under this section shall be issued more than three months prior to the date on which the term of office of the retiring members is due to expire.]

PART IV

ADMINISTRATIVE MACHINERY FOR THE CONDUCT OF ELECTIONS

19. Definition.—In this Part and in Part V, unless the context otherwise requires, "constituency" means [8]*** Parliamentary constituency or an Assembly constituency or a Council constituency.

[9][**19A. Delegation of functions of Election Commission.**—The functions of the Election Commission under the Constitution, the Representation of the People Act, 1950 (43 of 1950) and this Act or under the rules made thereunder may, subject to such general or special directions, if any, as may be given by the Election Commission in this behalf, be performed also by a Deputy Election Commissioner or by the Secretary to the Election Commission.]

[10][**20. General duties of chief electoral officers.**—Subject to the superintendence, direction and control of the Election Commission, the chief electoral officer of each State shall supervise the conduct of all elections in the State under this Act.

[11][**20A. General duties of district election officer.**—(*1*) Subject to the superintendence, direction and control of the chief electoral officer, the district election officer shall co-ordinate and supervise all work in the district or in the area within his jurisdiction in connection with the conduct of all elections to Parliament and the Legislature of the State.

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1. Subs. by Act 20 of 1963, s. 57 and the Second Schedule for "the Governor" (w.e.f. 13-5-1963).
2. The words "Rajpramukh, Lieutenant-Governor or Chief Commissioner, as the case may be," omitted by the Adaptation of Laws (No. 2) Order, 1956.
3. Added by Act 20 of 1963, s. 57 and the Second Schedule (w.e.f. 13-5-1963).
4. Ins. by Act 37 of 1957, s. 13 (w.e.f. 8-9-1957).
5. Subs. by Act 1 of 2006, s. 5, for "under the Legislative Councils Act, 1957" (w.e.f. 11-1-2006).
6. Ins. by Act 16 of 2010, s. 5 (w.e.f. 25-3-2016).
7. The words "or Rajpramukh, as the case may be," omitted by the Adaptation of Laws (No. 2) Order, 1956.
8. The words "an electoral college constituency or" omitted by Act 103 of 1956, s. 66 (w.e.f. 1-1-1957).
9. Ins. by Act 47 of 1966, s. 21 (w.e.f. 14-12-1966).
10. Subs. by Act 27 of 1956, s. 9, for sections 20 and 21 (w.e.f. 28-8-1956).
11. Ins. by Act 47 of 1966, s. 22 (w.e.f. 14-12-1966).

(*2*) The district election officer shall also perform such other functions as may be entrusted to him by the Election Commission and the chief electoral officer.]

[1][**20B. Observers.**—(*1*) The Election Commission may nominate an Observer who shall be an officer of Government to watch the conduct of election or elections in a constituency or a group of constituencies and to perform such other functions as may be entrusted to him by the Election Commission.

(*2*) The Observer nominated under sub-section (*1*) shall have the power to direct the returning officer for the constituency or for any of the constituencies for which he has been nominated, to stop the counting of votes at any time before the declaration of the result or not to declare the result if in the opinion of the Observer booth capturing has taken place at a large number of polling stations or at places fixed for the poll or counting of votes or any ballot papers used at a polling station or at a place fixed for the poll are unlawfully taken out of the custody of the returning officer or are accidentally or intentionally destroyed or lost or are damaged or tampered with to such an extent that the result of the poll at that polling station or place cannot be ascertained.

(*3*) Where an Observer has directed the returning officer under this section to stop counting of votes or not to declare the result, the Observer shall forthwith report the matter to the Election Commission and thereupon the Election Commission shall, after taking all material circumstances into account, issue appropriate directions under section 58A or section 64A or section 66.

Explanation.—For the purposes of sub-section (*2*) and sub-section (*3*), "Observer" shall include a Regional Commissioner or any such officer of the Election Commission as has been assigned under this section the duty of watching the conduct of election or elections in a constituency or group of constituencies by the Commission.]

21. Returning officers.—For every constituency, for every election to fill a seat or seats in the Council of States and for every election by the members of the Legislative Assembly of a State to fill a seat or seats in the Legislative Council of the State, the Election Commission shall, in consultation with the Government of the State, designate or nominate a returning officer who shall be [2][an officer of Government or of a local authority:]

Provided that nothing in this section shall prevent the Election Commission from designating or nominating the same person to be the returning officer for more than one constituency.

22. Assistant returning officers.—(*1*) The Election Commission may appoint one or more persons to assist any returning officer in the performance of his functions:

Provided that every such person shall be [2][an officer of Government or of a local authority].

(*2*) Every assistant returning officer shall, subject to the control of the returning officer, be competent to perform all or any of the functions of the returning officer:

Provided that no assistant returning officer shall perform any of the functions of the returning officer which relate [3]*** to the scrutiny of nominations [4]*** unless the returning officer is unavoidably prevented from performing the said function.

23. Returning officer to include assistant returning officers performing the functions of the returning officer.—References in this Act to the returning officer shall, unless the context otherwise requires, be deemed to include an assistant returning officer performing any function which he is authorised to perform under sub-section (*2*) of section 22.

24. General duty of the returning officer.—It shall be general duty of the returning officer at any election to do all such acts and things as may be necessary for effectually conducting the election in the manner provided by this Act and rules or orders made thereunder.

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1. Ins. by Act 21 of 1996, s. 4 (w.e.f. 1-8-1996).
2. Subs. by Act 47 of 1966, s. 23, for "an officer of Government" (w.e.f. 14-12-1966).
3. Certain words omitted by Act 27 of 1956, s. 10 (w.e.f. 28-8-1956).
4. The words "or to the counting of votes" omitted by s. 10, *ibid.* (w.e.f. 28-8-1956).

[1][**25. Provision of polling stations for constituencies.**—The district election officer shall, with the previous approval of the Election Commission, provide a sufficient number of polling stations for every constituency the whole or greater part of which lies within his jurisdiction, and shall publish, in such manner as the Election Commission may direct, a list showing the polling stations so provided and the polling areas or groups of voters for which they have respectively been provided.]

26. Appointment of presiding officers for polling stations.—(*1*) The [2][district election officer] shall appoint a presiding officer for each polling station and such polling officer or officers as he thinks necessary, but he shall not appoint any person who has been employed by or on behalf of, or has been otherwise working for, a candidate in or about the election:

Provided that if a polling officer is absent from the polling station, the presiding officer may appoint any person who is present at the polling station other than a person who has been employed by or on behalf of, or has been otherwise working for, a candidate in or about the election, to be the polling officer during the absence of the former officer, and inform the [2][district election officer] accordingly:

[3][Provided further that nothing in this sub-section shall prevent that [2][district election officer] from appointing the same person to be the presiding officer for more than one polling station in the same premises.]

(*2*) A polling officer shall, if so directed by the presiding officer, perform all or any of the functions of a presiding officer under this Act or any rules or orders made thereunder.

(*3*) If the presiding officer, owing to illness or other unavoidable cause, is obliged to absent himself from the polling station, his functions shall be performed by such polling officer as has been previously authorised by the [2][district election officer] to perform such functions during any such absence.

(*4*) References in this Act to the presiding officer shall, unless the context otherwise requires, be deemed to include any person performing any function which he is authorised to perform under sub-section (*2*) or sub-section (*3*), as the case may be.

[4]* * * * *

27. General duty of the presiding officer.—It shall be the general duty of the presiding officer at a polling station to keep order thereat and to see that the poll is fairly taken.

28. Duties of a polling officer.—It shall be the duty of the polling officers at a polling station to assist the presiding officer for such station in the performance of his functions.

[5][**28A. Returning officer, presiding officer, etc., deemed to be on deputation to Election Commission.**—The returning officer, assistant returning officer, presiding officer, polling officer and any other officer appointed under this Part, and any police officer designated for the time being by the State Government, for the conduct of any election shall be deemed to be on deputation to the Election Commission for the period commencing on and from the date of the notification calling for such election and ending with the date of declaration of the results of such election and accordingly, such officers shall, during that period, be subject to the control, superintendence and discipline of the Election Commission.]

29. Special provisions in the case of certain elections.—(*1*) The returning officer for an election [6]*** to fill a seat or seats in the Council of States or for an election by the members of the Legislative Assembly of a State to fill a seat or seats in the Legislative Council of the State shall, with the previous approval of the Election Commission, fix the place at which the poll will be taken for such election and shall notify the place so fixed in such manner as the Election Commission may direct.

(*2*) The returning officer shall preside over such election at the place so fixed and shall appoint such polling officer or officers to assist him as he thinks necessary but he shall not appoint any person who has been employed by or on behalf of, or has been otherwise working for, a candidate in or about the election.

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1. Subs. by Act 47 of 1966, s. 25, for section 25 (w.e.f. 14-12-1966).
2. Subs. by s. 26, *ibid.*, for "returning officer" (w.e.f. 14-12-1966).
3. Ins. by Act 27 of 1956, s. 12 (w.e.f. 28-8-1956).
4. Sub-section (*5*) omitted by Act 2 of 2004, s. 3 (w.e.f. 29-10-2003).
5. Ins. by Act 1 of 1989, s. 5 (w.e.f. 15-3-1989).
6. The brackets and words "(other than a primary election)" omitted by Act 27 of 1956, s. 13 (w.e.f. 28-8-1956).

[1][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.

(*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.]

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1. Ins. by Act 1 of 1989, s. 6 (w.e.f. 15-6-1989).

[1][**29B. Political parties entitled to accept contribution.**—Subject to the provisions of the Companies Act, 1956 (1 of 1956), every political party may accept any amount of contribution voluntarily offered to it by any person or company other than a Government company:

Provided that no political party shall be eligible to accept any contribution from any foreign source defined under clause (*e*) of section 2 of the Foreign Contribution (Regulation) Act, 1976 (49 of 1976).

Explanation.—For the purposes of this section and section 29C,—

(*a*) "company" means a company as defined in section 3;

(*b*) "Government company" means a company within the meaning of section 617; and

(*c*) "contribution" has the meaning assigned to it under section 293A, of the Companies Act, 1956 (1 of 1956) and includes any donation or subscription offered by any person to a political party; and

(*d*) "person" has the meaning assigned to it under clause (*31*) of section 2 of the Income-tax Act, 1961 (43 of 1961), but does not include Government company, local authority and every artificial juridical person wholly or partially funded by the Government.

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 followings 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][Provided that nothing contained in this sub-section shall apply to the contributions received by way of an electoral bond.

Explanation.—For the purposes of this sub-section, "electoral bond" means a bond referred to in the *Explanation* to sub-section (*3*) of section 31 of the Reserve Bank of India Act, 1934 (2 of 1934).]

(*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.]

PART V

CONDUCT OF ELECTIONS

CHAPTER I.—*Nomination of Candidates*

[3][**30. Appointment of dates for nominations, etc.**—As soon as the notification calling upon a constituency to elect a member or members is issued, the Election Commission shall, by notification in the Official Gazette, appoint—

(*a*) the last date for making nominations, which shall be the [4][seventh day] after the date of publication of the first mentioned notification or, if that day is a public holiday, the next succeeding day which is not a public holiday;

(*b*) the date for the scrutiny of nominations, which shall be [5][the day immediately following] the last date for making nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday;

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1. Ins. by Act 46 of 2003, s. 2 (w.e.f. 11-9-2003).
2. Ins. by Act 7 of 2017, s. 137 (w.e.f. 1-4-2017).
3. Subs. by Act 27 of 1956, s. 14, for section 30 (w.e.f. 28-8-1956).
4. Subs. by Act 40 of 1961, s. 7, for "tenth day" (w.e.f. 20-9-1961).
5. Subs. by Act 47 of 1966, s. 27, for "the second day after" (w.e.f. 14-12-1966).

(*c*) the last date for the withdrawal of candidatures, which shall be [1][the second day] after the date for the scrutiny of nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday;

(*d*) the date or dates on which a poll shall, if necessary, be taken which or the first of which shall be a date not earlier than the [2][fourteenth day] after the last date for the withdrawal of candidatures; and

(*e*) the date before which the election shall be completed.

[3]* * * * *

31. Public notice of election.—On the issue of a notification under section 30, the returning officer [4]*** shall give public notice of the intended election in such form and manner as may be prescribed, inviting nominations of candidates for such election and specifying the place at which the nomination papers are to be delivered.

32. Nomination of candidates for election.—Any person may be nominated as a candidate for election to fill a seat [5]*** if he is qualified to be chosen to fill that seat under the provisions of the Constitution and this Act [6]*** [7][or under the provisions of the Government of Union Territories Act, 1963 (20 of 1963), as the case may be].

[8][**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:

[9][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.]

[10][(*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;

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1. Subs. by Act 47 of 1966, s. 27, for "the third day" (w.e.f. 14-12-1966).
2. Subs. by Act 21 of 1996, s. 5, for "twentieth day" (w.e.f. 1-8-1996).
3. The *Explanation* omitted by Act 47 of 1966, s. 27 (w.e.f. 14-12-1966).
4. The words "for the constituency" omitted by s. 28, *ibid.* (w.e.f. 14-12-1966).
5. The words "in any constituency" omitted by Act 27 of 1956, s. 15 (w.e.f. 28-8-1956).
6. Certain words and figures omitted by the Adaptation of Laws (No. 2) Order, 1956.
7. Ins. by Act 20 of 1963, s. 57 and the Second Schedule (w.e.f. 13-5-1963).
8. Subs. by Act 27 of 1956, s. 16, for section 33 (w.e.f. 28-8-1956).
9. Subs. by Act 21 of 1996, s. 6, for "the provisos" (w.e.f. 1-8-1975).
10. Ins. by Act 10 of 1976, s. 2 and the Schedule (w.e.f. 9-9-1975).

(*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 [1][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:

[2][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.

[3][(*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.]

[4][(*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 Parliamentary constituencies;

(*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 Assembly 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 Council constituencies in the State;

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1. Subs. by Act 38 of 1978, s. 3 and the Second Schedule, for "clause (*f*) of section 7" (w.e.f. 26-11-1978).
2. Subs. by Act 47 of 1966, s. 29, for "the proviso" (w.e.f. 14-12-1966).
3. Subs. by Act 40 of 1961, s. 8, for sub-section (*6*) (w.e.f. 20-9-1961).
4. Ins. by Act 21 of 1996, s. 6 (w.e.f. 1-8-1996).

(*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;

(*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 such Parliamentary constituencies;

(*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 such Assembly 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 such seats;

(*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 such Council 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 sections 147, 149, 150 or, as the case may be, 151 on the same date.]

[1][**33A. Right to information.**—(*1*) A candidate shall, apart from any information which he is required to furnish, under this Act or the rules made thereunder, in his nomination paper delivered under sub-section (*1*) of section 33, also furnish the information as to whether—

(*i*) he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the court of competent jurisdiction;

(*ii*) he has been convicted of an offence [other than any offence referred to in sub-section (*1*) or sub-section (*2*), or covered in sub-section (*3*), of section 8] and sentenced to imprisonment for one year or more.

(*2*) The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (*1*) of section 33, also deliver to him an affidavit sworn by the candidate in a prescribed form verifying the information specified in sub-section (*1*).

(*3*) The returning officer shall, as soon as may be after the furnishing of information to him under sub-section (*1*), display the aforesaid information by affixing a copy of the affidavit, delivered under sub-section (*2*), at a conspicuous place at his office for the information of the electors relating to a constituency for which the nomination paper is delivered.]

[2][**33B. Candidate to furnish information only under the Act and the rules.**—Notwithstanding anything contained in any judgment, decree or order of any court or any direction, order or any other instruction issued by the Election Commission, no candidate shall be liable to disclose or furnish any such information, in respect of his election, which is not required to be disclosed or furnished under this Act or the rules made thereunder.]

34. Deposits.—[3][(*1*) A candidate shall not be deemed to be duly nominated for election from a constituency unless he deposits or causes to be deposited,—

(*a*) in the case of an election from a Parliamentary constituency, [4][a sum of twenty-five thousand rupees or where the candidate is a member of a Scheduled Caste or Scheduled Tribe, a sum of twelve thousand five hundred rupees]; and

(*b*) in the case of an election from an Assembly or Council constituency, [5][a sum of ten thousand rupees or where the candidate is a member of a Scheduled Caste or Scheduled Tribe, a sum of five thousand rupees]:

Provided that where a candidate has been nominated by more than one nomination paper for election in the same constituency, not more than one deposit shall be required of him under this sub-section.]

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1. Ins. by Act 72 of 2002, s. 2 (w.e.f. 24-8-2002).
2. Ins. by s. 3, *ibid.* (w.e.f. 24-8-2002).
3. Subs. by Act 21 of 1996, s. 7, for sub-section (*1*) (w.e.f. 1-8-1996).
4. Subs. by Act 41 of 2009, s. 5, for certain words (w.e.f. 1-2-2010).
5. Subs. by s. 5, *ibid.*, for certain words (w.e.f. 1-2-2010).

(*2*) Any sum required to be deposited under sub-section (*1*) shall not be deemed to have been deposited under that sub-section unless at the time of delivery of the nomination paper [1][under sub-section (*1*) or, as the case may be, sub-section (*1A*) of section 33] the candidate has either deposited or caused to be deposited that sum with the returning officer in cash or enclosed with the nomination paper a receipt showing that the said sum has been deposited by him or on his behalf in the Reserve Bank of India or in a Government Treasury.

35. Notice of nominations and the time and place for their scrutiny.—The returning officer shall, on receiving the nomination paper [2][under sub-section (*1*) or, as the case may be, sub-section (*1A*) of section 33], inform the person or persons delivering the same of the date, time and place fixed for the scrutiny of nominations and shall enter on the nomination paper its serial number, and shall sign thereon a certificate stating the date on which and the hour at which the nomination paper has been delivered to him; and shall, as soon as may be thereafter, cause to be affixed in some conspicuous place in his office a notice of the nomination containing descriptions similar to those contained in the nomination paper, both of the candidate and of [3][the proposer].

36. Scrutiny of nominations.—(*1*) On the date fixed for the scrutiny of nominations under section 30, the candidates, their election agents, one proposer [4]*** of each candidate, and one other person duly authorised in writing by each candidate, but no other person, may attend at such time and place as the returning officer may appoint; and the returning officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time and in the manner laid down in section 33.

(*2*) The returning officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, [5][reject] any nomination on any of the following grounds:—

[6][(*a*) [7][that on the date fixed for the scrutiny of nominations the candidate] either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely:—

Articles 84, 102, 173 and 191, [8]***.

[9][Part II of this Act and sections 4 and 14 of the Government of Union Territories Act, 1963 (20 of 1963)] [10]***; or

(*b*) that there has been a failure to comply with any of the provisions of section 33 or section 34; or

(*c*) that the signature of the candidate or the proposer on the nomination paper is not genuine.]

(*3*) Nothing contained in [11][clause (*b*) or clause (*c*)] of sub-section (*2*) shall be deemed to authorise the [12][rejection] of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.

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1. Subs. by Act 10 of 1976, s. 2 and the Schedule for "under sub-section (*1*) of section 33" (w.e.f. 9-9-1975).
2. Subs. by s. 2 and the Schedule, *ibid.*, for "under sub-section (*1*)" (w.e.f. 9-9-1975).
3. Subs. by Act 27 of 1956, s. 18, for certain words (w.e.f. 28-8-1956).
4. The words "and one seconder" omitted by s. 19, *ibid.* (w.e.f. 28-8-1956).
5. Subs. by s. 19, *ibid.*, for "refuse" (w.e.f. 28-8-1956).
6. Subs. by s. 19, *ibid.*, for clauses (*a*) to (*e*) (w.e.f. 28-8-1956).
7. Subs. by Act 40 of 1961, s. 9, for "that the candidate" (w.e.f. 20-9-1961).
8. The word "and" omitted by Act 20 of 1963, s. 57 and the Second Schedule (w.e.f. 13-5-1963).
9. Subs. by s. 57 and the Second Schedule, *ibid.*, for "Part II of this Act" (w.e.f. 13-5-1963).
10. Certain words and figures omitted by the Adaptation of Laws (No. 2) Order, 1956.
11. Subs. by Act 27 of 1956, s. 19, for "clause (*c*), clause (*d*) or clause (*e*)" (w.e.f. 28-8-1956).
12. Subs. by s. 19, *ibid.*, for "refusal" (w.e.f. 28-8-1956).

(*4*) The returning officer shall not reject any nomination paper on the ground of any [1]*** defect which is not of a substantial character.

(*5*) The returning officer shall hold the scrutiny on the date appointed in this behalf under clause (*b*) of section 30 and shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control:

Provided that in case [2][an objection is raised by the returning officer or is made by any other person] the candidate concerned may be allowed time to rebut it not later than the next day but one following the date fixed for scrutiny, and the returning officer shall record his decision on the date to which the proceedings have been adjourned.

(*6*) The returning officer shall endorse on each nomination paper his decision accepting or rejecting the same and, if the nomination paper is rejected, shall record in writing a brief statement of his reasons for such rejection.

[3][(*7*) For the purposes of this section, a certified copy of an entry in the electoral roll for the time being in force of a constituency shall be conclusive evidence of the fact that the person referred to in that entry is an elector for that constituency, unless it is proved that he is subject to a disqualification mentioned in section 16 of the Representation of the People Act, 1950 (43 of 1950).

(*8*) Immediately after all the nomination papers have been scrutinised and decisions accepting or rejecting the same have been recorded, the returning officer shall prepare a list of validly nominated candidates, that is to say, candidates whose nominations have been found valid, and affix it to his notice board.]

37. Withdrawal of candidature.—(*1*) Any candidate may withdraw his candidature by a notice in writing which shall contain such particulars as may be prescribed and shall be subscribed by him and delivered before three O'clock in the afternoon on the day fixed under clause (*c*) of section 30 to the returning officer either by such candidate in person or by his proposer, [4]*** or election agent who has been authorised in this behalf in writing by such candidate.

[5]* * * * *

(*2*) No person who has given a notice or withdrawal of his candidature under sub-section (*1*) shall be allowed to cancel the notice.

[6][(*3*) The returning officer shall, on being satisfied as to the genuineness of a notice or withdrawal and the identity of the person delivering it under sub-section (*1*), cause the notice to be affixed in some conspicuous place in his office.]

[7][**38. Publication of list of contesting candidates.**—(*1*) Immediately after the expiry of the period within which candidatures may be withdrawn under sub-section (*1*) of section 37, the returning officer shall prepare and publish in such form and manner as may be prescribed a list of contesting candidates, that is to say, candidates who were included in the list of validity nominated candidates and who have not withdrawn their candidature within the said period.

[8][(*2*) For the purpose of listing the names under sub-section (*1*), the candidates shall be classified as follows, namely:—

(*i*) candidates of recognised political parties;

(*ii*) candidates of registered political parties other than those mentioned in clause (*i*);

(*iii*) other candidates.

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1. The word "technical" omitted by Act 27 of 1956, s. 19 (w.e.f. 28-8-1956).
2. Subs. by Act 40 of 1961, s. 9, for "and objection is made" (w.e.f. 20-9-1961).
3. Subs. by Act 27 of 1956, s. 19, for sub-section (*7*) (w.e.f. 28-8-1956).
4. The word "seconder" omitted by s. 20, *ibid.* (w.e.f. 28-8-1956).
5. The proviso omitted by s. 20, *ibid.* (w.e.f. 28-8-1956).
6. Subs. by Act 40 of 1961, s. 10, for sub-section (*3*) (w.e.f. 20-9-1961).
7. Subs. by Act 27 of 1956, s. 21, for section 38 (w.e.f. 28-8-1956).
8. Subs. by Act 21 of 1966, s. 8, for sub-section (*2*) (w.e.f. 1-8-1996).

(*3*) The categories mentioned in sub-section (*2*) shall be arranged in the order specified therein and the names of candidates in each category shall be arranged in alphabetical order and the addresses of the contesting candidates as given in the nomination papers together with such other particulars as may be prescribed].]

[1][**39. Nomination of candidates at other elections.**—(*1*) As soon as the notification calling upon the elected members or the members of the Legislative Assembly of a State or the members of the electoral college of a [2][Union territory] to elect a member or members is issued, the Election Commission shall, by notification in the Official Gazette, appoint—

(*a*) the last date for making nominations, which shall be the [3][seventh day] after the date of publication of the first-mentioned notification or, if that day is a public holiday, the next succeeding day which is not a public holiday;

(*b*) the date for the scrutiny of nominations, which shall be [4][the day immediately following] the last date for making nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday;

(*c*) the last date for the withdrawal of candidatures, which shall be [5][the second day] after the date for the scrutiny of nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday;

(*d*) the date or dates on which a poll shall, if necessary, be taken, which or the first of which shall be a date not earlier than the seventh day after the last date for the withdrawal of candidatures; and

(*e*) the date before which the election shall be completed.

[6]* * * * *

(*2*) The provisions of sections 31 to 38, excluding sub-sections (*2*) and (*5*) of section 33 and [7][clause (*a*) of sub-section (*1*) of section 34], shall apply in relation to any such election as they apply in relation to an election in any constituency:

Provided that—

(*a*) any references in the said provisions to the electoral roll of the constituency shall, unless the context otherwise requires, be construed, in the case of an election by the members or the elected members of the Legislative Assembly of the State, as references to the list of members or elected members, as the case may be, of that Assembly maintained under sub-section (*1*) of section 152, and in the case of an election by the members of the electoral college of a [2][Union territory], as references to the list of members of such electoral college maintained under sub-section (*2*) of that section;

[8][(*aa*) the reference in the opening paragraph of sub-section (*1*) of section 33 to "an elector of the constituency as proposer" shall be construed as a reference to "ten per cent. of the elected members or of the members of the Legislative Assembly of a State or of the members of the electoral college of a Union territory, as the case may be, or ten members concerned, whichever is less, as proposers":

Provided that where as a result of the calculation of the percentage referred to in this clause, the number of members arrived at is a fraction and if the fraction so arrived at is more than one-half it shall be counted as one, and if the fraction so arrived at is less than one-half it shall be ignored;]

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1. Subs. by Act 27 of 1956, s. 22, for section 39 (w.e.f. 28-8-1956).
2. Subs. by the Adaptation of Laws (No. 2) Order, 1956, for "Part C State".
3. Subs. by Act 40 of 1961, s. 11, for "tenth day" (w.e.f. 20-9-1961).
4. Subs. by Act 47 of 1966, s. 30, for "the second day after" (w.e.f. 14-12-1966).
5. Subs. by s. 30, *ibid.*, for "the third day" (w.e.f. 14-12-1966).
6. The *Explanation* omitted by s. 30, *ibid.* (w.e.f. 14-12-1966).
7. Subs. by Act 58 of 1958, s. 19, for "section 34" (w.e.f. 30-12-1958).
8. Ins. by Act 1 of 1989, s. 8 (w.e.f. 1-4-1989).

[1][[2][(*ab*)] in the case of an election to the Legislative Council of a State by the members of the Legislative Assembly of that State, clause (*a*) of sub-section (*2*) of section 36 shall be construed as including a reference to sub-clause (*d*) of clause (3) of article 171;]

(*b*) any references in the said provisions to section 30 shall be construed as references to sub-section (*1*) of this section; and

(*c*) at the time of presenting the nomination paper, the returning officer may require the person presenting the same to produce either a copy of the electoral roll, or part of the electoral roll, in which the name of the candidate is included or a certified copy of the relevant entries in such roll.]

[3][**39A. Allocation of equitable sharing of time.**—(*1*) Notwithstanding anything contained in any other law for the time being in force, the Election Commission shall, on the basis of the past performance of a recognised political party, during elections, allocate equitable sharing of time on the cable television network and other electronic media in such manner as may be prescribed to display or propagate any election matter or to address public in connection with an election.

(*2*) The allocation of equitable sharing of time under sub-section (*1*), in respect of an election, shall be made after the publication of list of contesting candidates under section 38 for the election and shall be valid till forty-eight hours before the hour fixed for poll for such election.

(*3*) The allocation of equitable sharing of time under sub-section (*1*) shall be binding on all political parties concerned.

(*4*) The Election Commission may, for the purposes of this section, make code of conduct for cable operators and electronic media and the cable operators and every person managing or responsible for the management of the electronic media shall abide by such code of conduct.

Explanation.—For the purposes of this section,—

(*a*) "electronic media" includes radio and any other broadcasting media notified by the Central Government in the Official Gazette;

(*b*) "cable television network" and "cable operator" have the meanings respectively assigned to them under the Cable Television Networks (Regulation) Act, 1995 (7 of 1995).]

CHAPTER II.—*Candidates and their Agents*

[4][**40. Election agents.**—A candidate at an election may appoint in the prescribed manner any one person other than himself to be his election agent and when any such appointment is made, notice of the appointment shall be given in the prescribed manner to the returning officer.]

[5][**41. Disqualification for being an election agent.**—Any person who is for the time being disqualified under the Constitution or under this Act for being a member of either House of Parliament or the House or either House of the Legislature of a State or for voting at elections, shall, so long as the disqualification subsists, also be disqualified for being an election agent at any election.]

42. Revocation of the appointment, or death, of an election agent.—(*1*) Any revocation of the appointment of an election agent, [6]*** shall be signed by the candidate, and shall operate from the date on which it is lodged with the returning officer.

[7][(*2*) In the event of such a revocation or of the death of an election agent whether that event occurs before or during the election, or after the election but before the account of the candidate's election expenses has been lodged in accordance with the provisions of section 78, the candidate may appoint in the prescribed manner another person to be his election agent and when such appointment is made notice of the appointment shall be given in the prescribed manner to the returning officer.]

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1. Ins. by Act 47 of 1966, s. 30 (w.e.f. 14-12-1966).
2. Clause (*aa*) relettered as clause (*ab*) by Act 1 of 1989, s. 8 (w.e.f. 1-4-1989).
3. Ins. by Act 46 of 2003, s. 3 (w.e.f. 24-9-2003).
4. Subs. by Act 27 of 1956, s. 23, for section 40 (w.e.f. 28-8-1956).
5. Subs. by Act 47 of 1966, s. 31, for section 41 (w.e.f. 14-12-1966).
6. The words "whether he be the candidate himself or not" omitted by Act 27 of 1956, s. 24 (w.e.f. 28-8-1956).
7. Subs. by s. 24, *ibid.*, for sub-section (*2*) (w.e.f. 28-8-1956).

43. [*Effect of default in appointment of election agent under section* 42.] *Omitted by the Representation of the People (Second Amendment) Act,* 1956 (27 *of* 1956), *s.* 25 (*w.e.f.* 28-8-1956).

44. [*Duty of the election agent to keep accounts.*] *Omitted by s.* 25, *ibid.* (*w.e.f.* 28-8-1956).

[1][**45. Functions of election agents.**—An election agent may perform such functions in connection with the election as are authorised by or under this Act to be performed by an election agent.]

[2][**46. Appointment of polling agents.**—A contesting candidate or his election agent may appoint in the prescribed manner such number of agents and relief agents as may be prescribed to act as polling agents of such candidate at each polling station provided under section 25 or at the place fixed under sub-section (*1*) of section 29 for the poll.]

[3][**47. Appointment of counting agents.**—A contesting candidate or his election agent may appoint in the prescribed manner one or more persons, but not exceeding such number as may be prescribed, to the present as his counting agent or agents at the counting of votes, and when any such appointment is made notice of the appointment shall be given in the prescribed manner to the returning officer.]

48. Revocation of the appointment, or death of, a polling agent or counting agent.—(*1*) Any revocation of the appointment of a polling agent shall be signed by the candidate or his election agent and shall operate from the date on which it is lodged with such officer as may be prescribed, and in the event of such a revocation or of the death of a polling agent before the close of the poll, the candidate or his election agent may appoint in the prescribed manner another polling agent at any time before the poll is closed and shall forthwith give notice of such appointment in the prescribed manner to such officer as may be prescribed.

(*2*) Any revocation of the appointment of a counting agent shall be signed by the candidate or his election agent and shall operate from the date on which it is lodged with the returning officer, and in the event of such revocation or of the death of a counting agent before the commencement of the counting of votes, the candidate or his election agent may appoint in the prescribed manner another counting agent at any time before the counting of votes is commenced and shall forthwith give notice of such appointment in the prescribed manner to the returning officer.

49. Functions of polling agents and counting agents.—(*1*) A polling agent may perform such functions in connection with the poll as are authorised by or under this Act to be performed by a polling agent.

(*2*) A counting agent may perform such functions in connection with the counting of votes as are authorised by or under this Act to be performed by a counting agent.

50. Attendance of a contesting candidate or his election agent at polling stations, and performance by him of the functions of a polling agent or counting agent.—(*1*) At every election where a poll is taken, each [4][contesting candidate] at such election and his election agent shall have a right to be present at any polling station provided under section 25 for the taking of the poll or at the place fixed under sub-section (*1*) of section 29 for the poll.

(*2*) A [4][contesting candidate] or his election agent may himself do any act or thing which any polling agent or the counting agent of such [4][contesting candidate] if appointed, would have been authorised by or under this Act to do, or may assist any polling agent or the counting agent of such [4][contesting candidate] in doing any such act or thing.

51. Non-attendance of polling or counting agents.—Where any act or thing is required or authorised by or under this Act to be done in the presence of the polling or counting agents, the non-attendance of any such agent or agents at the time and place appointed for the purpose shall not, if the act or thing is otherwise duly done, invalidate the act or thing done.

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1. Subs. by Act 27 of 1956, s. 26, for s. 45 (w.e.f. 28-8-1956).
2. Subs. by s. 27, *ibid.*, for s. 46 (w.e.f. 28-8-1956).
3. Subs. by s. 28, *ibid.*, for s. 47 (w.e.f. 28-8-1956).
4. Subs. by Act 58 of 1958, s. 20, for "candidate" (w.e.f. 30-12-1958).

[1][**52. Death of a candidate of a recognised political party before poll.**—(*1*) If a candidate, set up by a recognised political party,—

(*a*) dies at any time after 11.00 A.M. on the last date for making nominations and his nomination is found valid on scrutiny under section 36; or

(*b*) whose nomination has been found valid on scrutiny under section 36 and who has not withdrawn his candidature under section 37, dies,

and in either case, a report of his death is received at any time before the publication of the list of contesting candidates under section 38; or

(*c*) dies as a contesting candidate and a report of his death is received before the commencement of the poll,

the returning officer shall, upon being satisfied about the fact of the death of the candidate, by order, announce an adjournment of the poll to a date to be notified later and report the fact to the Election Commission and also to the appropriate authority:

Provided that no order for adjourning a poll should be made in a case referred to in clause (*a*) except after the scrutiny of all the nominations including the nomination of the deceased candidate.

(*2*) The Election Commission shall, on the receipt of a report from the returning officer under sub-section (*1*), call upon the recognised political party, whose candidate has died, to nominate another candidate for the said poll within seven days of issue of such notice to such recognised political party and the provisions of sections 30 to 37 shall, so far as may be, apply in relation to such nomination as they would apply to other nominations:

Provided that no person who has given a notice of withdrawal of his candidature under sub-section (*1*) of section 37 before the adjournment of the poll shall be ineligible for being nominated as a candidate for the election after such adjournment.

(*3*) Where a list of contesting candidates had been published under section 38 before the adjournment of the poll under sub-section (*1*), the returning officer shall again prepare and publish a fresh list of contesting candidates under that section so as to include the name of the candidate who has been validly nominated under sub-section (*2*).

Explanation.—For the purposes of this section, sections 33 and 38, "recognised political party", means a political party reorganised by the Election Commission under the Election Symbols (Reservation and Allotment) Order, 1968.]

53. Procedure in contested and uncontested elections.—[2][(*1*) If the number of contesting candidates is more than the number of seats to be filled, a poll shall be taken.]

(*2*) If the number of such candidates is equal to the number of seats to be filled, the returning officer shall forthwith declare all such candidates to be duly elected to fill those seats.

(*3*) If the number of such candidates is less than the number of seats to be filled, the returning officer shall forthwith declare all such candidates to be elected and the [3][Election Commission] shall, by notification in the Official Gazette, call upon the constituency or the elected members or the members of the State Legislative Assembly or the members of the electoral college concerned [4]*** as the case may be, to elect a person or persons to fill the remaining seat or seats [5]***:

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1. Subs. by Act 21 of 1996, s. 9, for section 52 (w.e.f. 1-8-1996).
2. Subs. by Act 27 of 1956, s. 30, for sub-section (*1*) (w.e.f. 28-8-1956).
3. Subs. by s. 30, *ibid.*, for "appropriate authority" (w.e.f. 28-8-1956).
4. The words "or the elected members of the Coorg Legislative Council" omitted by Act 49 of 1951, s. 44 and the Fifth Schedule (w.e.f. 6-9-1951).
5. Certain words omitted by Act 27 of 1956, s. 30 (w.e.f. 28-8-1956).

Provided that where the constituency or the elected members or the members of the State Legislative Assembly or the members of the electoral college [1]*** having already been called upon under this sub-section, has or have failed to elect a person or the requisite number of persons, as the case may be, to fill the vacancy or vacancies, the [2][Election Commission] shall not be bound to call again upon the consituency, or such members to elect a person or persons [3][until it is satisfied that if called upon again, there will be no such failure on the part of the constituency of such members].

54. [*Special procedure at elections in constituencies where seats are reserved for Scheduled Castes or Scheduled Tribes.*] *Omitted by the Representation of the People (Amendment) Act*, 1961 (40 *of* 1961), *s.* 12 (*w.e.f.* 20-9-1961).

55. Eligibility of members of Scheduled Castes or Scheduled Tribes to hold seats not reserved for those castes or tribes.—For the avoidance of doubt it is hereby declared that a member of the Scheduled Castes or of the Scheduled Tribes shall not be disqualified to hold a seat not reserved for members of those castes or tribes, if he is otherwise qualified to hold such seats under the Constitution and this Act [4][or under the Government of Union Territories Act, 1963 (20 of 1963), as the case may be.]

55A. [*Retirement from contest at elections in Parliamentary and Assembly constituencies.*] *Omitted by the Representation of the People (Amendment) Act*, 1958 (58 *of* 1958), *s.* 22 (*w.e.f.* 20-9-1961).

CHAPTER IV.—*The Poll*

56. Fixing time for poll.—The [5][Election Commission] shall fix the hours during which the poll will be taken; and the hours so fixed shall be published in such manner as may be prescribed:

Provided that the total period allotted on any one day for polling at an election in [6][a Parliamentary or Assembly constituency] shall not be less than eight hours.

57. Adjournment of poll in emergencies.—(*1*) If at an election the proceedings at any polling station provided under section 25 or at the place fixed under sub-section (*1*) of section 29 for the poll are interrupted or obstructed by any riot or open violence, or if at an election it is not possible to take the poll at any polling station or such place on account of any natural calamity, or any other sufficient cause, the presiding officer for such polling station or the returning officer presiding over such place, as the case may be, shall announce an adjournment of the poll to a date to be notified later, and where the poll is so adjourned by a presiding officer, he shall forthwith inform the returning officer concerned.

(*2*) Whenever a poll is adjourned under sub-section (*1*), the returning officer shall immediately report the circumstances to the appropriate authority and the Election Commission, and shall, as soon as may be, with the previous approval of the Election Commission, appoint the day on which the poll shall recommence, and fix the polling station or place at which and the hours during which, the poll will be taken, and shall not count the votes cast at such election until such adjourned poll shall have been completed.

(*3*) In every such case as aforesaid the returning officer shall notify in such manner as the Election Commission may direct the date, place and hours of polling fixed under sub-section (*2*).

[7][**58. Fresh poll in the case of destruction, etc., of ballot boxes.**—(*1*) If at any election,—

(*a*) any ballot box used at a polling station or at a place fixed for the poll is unlawfully taken out of the custody of the presiding officer or the returning officer, or is accidentally or intentionally destroyed or lost, or is damaged or tampered with, to such an extent, that the result of the poll at that polling station or place cannot be ascertained; or

1. The words "or the elected members of the Coorg Legislative Council" omitted by Act 49 of 1951, s. 44 and the Fifth Schedule (w.e.f. 6-9-1951).
2. Subs. by Act 27 of 1956, s. 30, for "appropriate authority" (w.e.f. 28-8-1956).
3. Subs. by s. 30, *ibid.*, for "until such date as the Election Commission may specify in this behalf" (w.e.f. 28-8-1956).
4. Subs. by s. 32, *ibid.*, for certain words (w.e.f. 28-8-1856).
5. Subs. by Act 27 of 1956, s. 34, for "appropriate authority" (w.e.f. 28-8-1956).
6. Subs. by Act 58 of 1958, s. 23, for "a Constituency" (w.e.f. 30-12-1958).
7. Subs. by Act 40 of 1961, s. 13, for section 58 (w.e.f. 20-9-1961).

[1][(*aa*) any voting machine develops a mechanical failure during the course of the recording of votes; or]

(*b*) any such error or irregularity in procedure as is likely to vitiate the poll is committed at a polling station or at a place fixed for the poll,

the returning officer shall forthwith report the matter to the Election Commission.

(*2*) Thereupon the Election Commission shall, after taking all material circumstances into account; either—

(*a*) declare the poll at that polling station or place to be void, appoint a day, and fix the hours, for taking a fresh poll at that polling station or place and notify the day so appointed and the hours so fixed in such manner as it may deem fit, or

(*b*) if satisfied that the result of a fresh poll at that polling station or place will not, in any way, affect the result of the election or that [1][the mechanical failure of the voting machine or] the error or irregularity in procedure is not material, issue such directions to the returning officer as it may deem proper for the further conduct and completion of the election.

(*3*) The provisions of this Act and of any rules or orders made thereunder shall apply to every such fresh poll as they apply to the original poll.]

[2]**[58A. Adjournment of poll or countermanding of election on the ground of booth caputring.**—(*1*) If at any election,—

(*a*) booth capturing has taken place at a polling station or at a place fixed for the poll (hereafter in this section referred to as a place) in such a manner that the result of the poll at that polling station or place cannot be ascertained; or

(*b*) booth capturing takes place in any place for counting of votes in such a manner that the result of the counting at that place cannot be ascertained,

the returning officer shall forthwith report the matter to the Election Commission.

(*2*) The Election Commission shall, on the receipt of a report from the returning officer under sub-section (*1*) and after taking all material circumstances into account, either—

(*a*) declare that the poll at that polling station or place be void, appoint a day, and fix the hours, for taking fresh poll at that polling station or place and notify the date so appointed and hours so fixed in such manner as it may deem fit; or

(*b*) if satisfied that in view of the large number of polling stations or places involved in booth capturing the result of the election is likely to be affected, or that booth capturing had affected counting of votes in such a manner as to affect the result of the election, countermand the election in that constituency.

Explanation.—In this section, "booth capturing" shall have the same meaning as in section 135A.]

59. Manner of voting at elections.—At every election where a poll is taken votes shall be given by ballot in such manner as may be prescribed, [3][and, save as expressly provided by this Act, no votes shall be received by proxy]:

[4][Provided that the votes at every election to fill a seat or seats in the Council of States shall be given by open ballot.]

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1. Ins. by Act 1 of 1989, s. 9 (w.e.f. 15-3-1989).
2. Ins. by s. 10, *ibid.* (w.e.f. 15-3-1989).
3. Subs. by Act 24 of 2003, s. 2, for "and no votes shall be received by proxy" (w.e.f. 22-9-2003).
4. Ins. by Act 40 of 2003, s. 3 (w.e.f. 28-8-2003).

[1][**60. Special prodecure for voting by certain classes of persons.**—Without prejudice to the generality of the provisions contained in section 59, provision may be made, by rules made under this Act, for enabling,—

(*a*) any of the persons as is referred to in clause (*a*) or clause (*b*) of sub-section (*8*) of section 20 of the Representation of the People Act, 1950 (43 of 1950) (hereinafter in this section referred to as the 1950-Act) to give his vote either in person or by postal ballot or by proxy, and not in any other manner, at an election in a constituency where poll is taken;

(*b*) any of the following persons to give his vote either in person or by postal ballot, and not in any other manner, at an election in a constituency where a poll is taken, namely:—

(*i*) any person as is referred to in clause (*c*) or clause (*d*) of sub-section (*8*) of section 20 of the 1950-Act;

(*ii*) the wife of any such person to whom the provisions of sub-section (*3*) of section 20 of the 1950-Act apply and such wife being ordinarily residing with that person in terms of sub-section (*6*) of that section;

(*c*) any person belonging to a class of persons notified by the Election Commission in consultation with the Government to give his vote by postal ballot, and not in any other manner, at an election in a constituency where a poll is taken subject to the fulfilment of such requirements as may be specified in those rules;

(*d*) any person subjected to preventive detention under any law for the time being in force to give his vote by postal ballot, and not in any other manner, at an election in a constituency where a poll is taken, subject to the fulfilment of such requirements as may be specified in those rules.]

[2][**61. Special procedure for preventing personation of electors.**—With a view to preventing personation of electors provision may be made by rules made under this Act:—

(*a*) for the marking with indelible ink of the thumb or any other finger of every elector who applies for a ballot paper or ballot papers for the purpose of voting at a polling station before delivery of such paper or papers to him;

(*b*) for the production before the presiding officer or a polling officer of a polling station by every such elector as aforesaid of identity card before the delivery of a ballot paper or ballot papers to him if under rules made in that behalf under the Representation of the People Act, 1950 (43 of 1950), electors of the constituency in which the polling station is situated have been supplied with identity cards with or without their respecting photographs attached thereto; and

(*c*) for prohibiting the delivery of any ballot paper to any person for voting at a polling station if at the time such person applies for such paper he has already such a mark on his thumb or any other finger or does not produce on demand his identity card before the presiding officer or a polling officer of the polling station].

[3][**61A. Voting machines at elections.**—Notwithstanding anything contained in this Act or the rules made thereunder, the giving and recording of votes by voting machines in such manner as may be prescribed, may be adopted in such constituency or constituencies as the Election Commission may, having regard to the circumstances of each case, specify.

Explanation.—For the purpose of this section, "voting machine" means any machine or apparatus whether operated electronically or otherwise used for giving or recording of votes and any reference to a ballot box or ballot paper in this Act or the rules made thereunder shall, save as otherwise provided, be construed as including a reference to such voting machine wherever such voting machine is used at any election.]

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1. Subs. by Act 24 of 2003, s. 3, for section 60 (w.e.f. 22-9-2003).
2. Subs. by Act 58 of 1958, s. 25, for section 61 (w.e.f. 30-12-1958).
3. Ins. by Act 1 of 1989, s. 11 (w.e.f. 15-3-1989).

62. Right to vote.—(*1*) No person who is not, and except as expressly provided by this Act, every person who is, for the time being entered in the electoral roll of any constituency shall be entitled to vote in that constituency.

(*2*) No person shall vote at an election in any constituency if he is subject to any of the disqualifications referred to in section 16 of the Representation of the People Act, 1950 (43 of 1950).

(*3*) No person shall vote at a general election in more than one constituency of the same class, and if a person votes in more than one such constituency, his votes in all such constituencies shall be void.

(*4*) No person shall at any election vote in the same constituency more than once, notwithstanding that his name may have been registered in the electoral roll for that constituency more than once, and if he does so vote, all his votes in that constituency shall be void.

(*5*) No person shall vote at any election if he is confined in a prison, whether under a sentence of imprisonment or transportation or otherwise, or is in the lawful custody of the police:

Provided that nothing in this sub-section shall apply to a person subjected to preventive detention under any law for the time being in force.

[1][Provided further that by reason of the prohibition to vote under this sub-section, a person whose name has been entered in the electoral roll shall not cease to be an elector.]

[2][(*6*) Nothing contained in sub-sections (*3*) and (*4*) shall apply to a person who has been authorised to vote as proxy for an elector under this Act in so far as he votes as a proxy for such elector.]

63. [*Method of voting.*] *Omitted by the Representation of the People (Amendment) Act*, 1961 (40 *of* 1961), *s.* 14 (*w.e.f.* 20-9-1961).

CHAPTER V.—*Counting of Votes*

64. Counting of votes.—At every election where a poll is taken, votes shall be counted by, or under the [3][supervision and direction] of, the returning officer, and each [4][contesting candidate], his election agent and his [5][counting agents], shall have a right to be present at the time of counting.

[6][**64A. Destruction, loss, etc., of ballot papers at the time of counting.**—(*1*) If at any time before the counting of votes is completed any ballot papers used at a polling station or at a place fixed for the poll are unlawfully taken out of the custody of the returning officer or are accidentally or intentionally destroyed or lost or are damaged or tampered with, to such an extent that the result of the poll at that polling station or place cannot be ascertained, the returning officer shall forthwith report the matter to the Election Commission.

(*2*) Thereupon, the Election Commission shall, after taking all material circumstances into account, either—

(*a*) direct that the counting of votes shall be stopped, declare the poll at that polling station or place to be void, appoint a day, and fix the hours, for taking a fresh poll at that polling station or place and notify the date so appointed and hours so fixed in such manner as it may deem fit, or

(*b*) if satisfied that the result of a fresh poll at that polling station or place will not, in any way, affect the result of the election, issue such directions to the returning officer as it may deem proper for the resumption and completion of the counting and for the further conduct and completion of the election in relation to which the votes have been counted.

(*3*) The provisions of this Act and of any rules or orders made thereunder shall apply to every such fresh poll as they apply to the original poll.]

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1. Ins. by Act 29 of 2013, s. 3 (w.e.f. 10-7-2013).
2. Ins. by Act 24 of 2003, s. 4 (w.e.f. 22-9-2003).
3. Subs. by Act 27 of 1956, s. 36, for "supervision" (w.e.f. 28-8-1956).
4. Subs. by Act 58 of 1958, s. 26, for "candidate" (w.e.f. 30-12-1958).
5. Subs. by Act 27 of 1956, s. 36, for "counting agent" (w.e.f. 28-8-1956).
6. Ins. by Act 47 of 1966, s. 34 (w.e.f. 14-12-1966).

65. Equality of votes.—If, after the counting of the votes is completed, an equality of votes is found to exist between any candidates, and the addition of one vote will entitle any of those candidates to be declared elected, the returning officer shall forthwith decide between those candidates by lot, and proceed as if the candidate on whom the lot falls had received an additional vote.

66. Declaration of results.—When the counting of the votes has been completed, the returning officer [1][shall, in the absence of any direction by the Election Commission to the contrary, forthwith declare] the result of the election in the manner provided by this Act or the rules made thereunder.

67. Report of the result.—As soon as may be after the result of an election has been declared, the returning officer shall report the result to the appropriate authority and the Election Commission, and in the case of an election to a House of Parliament or of the Legislature of a State also to the Secretary of that House, and the appropriate authority shall cause to be published in the Official Gazette the declarations containing the names of the elected candidates.

[2][**67A. Date of election of candidate.**—For the purposes of this Act, the date on which a candidate is declared by the returning officer under the provisions of section 53, [3]***, [4]***, or section 66, to be elected to a House of Parliament or of the Legislature of a State [5]*** shall be the date of election of that candidate.]

CHAPTER VI.—*Multiple Elections*

68. Vacation of seats when elected to both Houses of Parliament.—(*1*) Any person who is chosen a member of both the Houses of the People and the Council of States and who has not taken his seat in either House may, by notice in writing signed by him and delivered to the Secretary to the Election Commission [6][within ten days from the date, or the later of the dates, on which he is so chosen, intimate] in which of the Houses he wishes to serve, and thereupon, his seat in the House in which he does not wish to serve shall become vacant.

(*2*) In default of such intimation within the aforesaid period, his seat in the Council of States shall, at the expiration of that period, become vacant.

(*3*) Any intimation given under sub-section (*1*) shall be final and irrevocable.

[7][(*4*) For the purposes of this section and of section 69, the date on which a person is chosen to be a member of either House of Parliament shall be in the case of an elected member, the date of his election and in the case of a nominated member, the date of first publication in the Gazette of India of his nomination.]

69. Vacation of seats by persons already members of one House on election to other House of Parliament.—(*1*) If a person who is already a member of the House of the People and has taken his seat in such House is chosen a member of the Council of States, his seat in the House of the People shall, [8][on the date on which he is so chosen], become vacant.

(*2*) If a person who is already a member of the Council of States and has taken his seat in such Council is chosen a member of the House of the People, his seat in the Council of States shall, [8][on the date on which he is so chosen], become vacant.

70. Election to more than one seat in either House of Parliament or in the House or either House of the Legislature of a State.—If a person is elected to more than one seat in either House of Parliament or in the House or either House of the Legislature of a State, then, unless within the prescribed

1. Subs. by Act 47 of 1966, s. 35, for "shall forthwith declare" (w.e.f. 14-12-1966).
2. Ins. by Act 27 of 1956, s. 37 (w.e.f. 28-8-1956).
3. The word and figures "section 54" omitted by Act 40 of 1961, s. 15 (*w.e.f.* 20-9-1961).
4. The word, figures and letter "section 55A" omitted by Act 58 of 1958, s. 27 (w.e.f. 30-12-1958).
5. Certain words omitted by Act 103 of 1956, s. 66 (w.e.f. 1-1-1957).
6. Subs. by Act 27 of 1956, s. 38, for certain words (w.e.f. 28-8-1956).
7. Ins. by s. 38, *ibid.* (w.e.f. 28-8-1956).
8. Subs. by s. 39, *ibid.*, for certain words (w.e.f. 28-8-1956).

time he resigns all but one of the seats [1][by writing under his hand addressed to the Speaker or Chairman, as the case may be, or to such other authority or officer as may be prescribed], all the seats shall become vacant.

CHAPTER VII.—*Publication of election Results and Nominations*

[2][**71. Publication of results of elections to the Council of States and of names of persons nominated by the President.**—After the elections held in any year in pursuance of the notifications issued under section 12, there shall be notified by the appropriate authority in the Official Gazette the names of members elected by the elected members of the Legislative Assemblies of the States and by the members of the electoral colleges for the various [3][Union territories] at the said elections together with the name of any persons nominated by the President to the Council of States under sub-clause (a) of clause (1) of article 80 or under any other provisions.

72. [*Publication of results of elections for the reconstitution of electoral colleges for certain Union territories.*] *Omitted by the Territorial Councils Act*, 1956 (103 *of* 1956), *s.* 66 (*w.e.f.* 1-1-1957).

73. Publication of results of general elections to the House of the People and the State Legislative Assemblies.—Where a general election is held for the purpose of constituting a new House of the People or a new State Legislative Assembly, there shall be notified by [4][the Election Commission] in the Official Gazette, as soon as may be after [5][the results of the elections in all the constituencies] [other than those in which the poll could not be taken for any reason on the date originally fixed under clause (*d*) of section 30 or for which the time for completion of the election has been extended under the provisions of section 153] have been declared by the returning officer under the provisions of section 53 or, as the case may be, section 66, the names of the members elected for those constituencies] [6]*** and upon the issue of such notification that House or Assembly shall be deemed to be duly constituted:—

Provided that the issue of such notification shall not be deemed—

[7][(*a*) to preclude—

(*i*) the taking of the poll and the completion of the election in any Parliamentary or Assembly constituency or constituencies in which the poll could not be taken for any reason on the date originally fixed under clause (*d*) of section 30; or

(*ii*) the completion of the election in any Parliamentary or Assembly constituency or constituencies for which time has been extended under the provisions of section 153; or]

(*b*) to affect the duration of the House of the People or the State Legislative Assembly, if any, functioning immediately before the issue of the said notification.

[8][**73A. Special provision as to certain elections.**—Notwithstanding anything contained in section 73 or in any other provision of this Act, with respect to the general election for the purpose of constituting a New House of the People upon dissolution of the Ninth House of the People,—

(*a*) the notification under section 73 may be issued without taking into account the Parliamentary constituencies in the State of Jammu and Kashmir; and

(*b*) the Election Commission may take the steps in relation to elections from the Parliamentary constituencies in the State of Jammu and Kashmir separately and in such manner and on such date or dates as it may deem appropriate.]

1. Ins. by Act 27 of 1956, s. 40 (w.e.f. 28-8-1956).
2. Subs. by s. 41, *ibid.*, for sections 71 to 75 (w.e.f. 28-8-1956).
3. Subs. by the Adaptation of Laws (No. 2) Order, 1956, for "Part C States".
4. Subs. by Act 40 of 1961, s. 16, for "the appropriate authority" (w.e.f. 20-9-1961).
5. Subs. by Act 10 of 1967, s. 2, for certain words (w.e.f. 11-4-1967).
6. Certain words omitted by Act 40 of 1961, s. 16 (w.e.f. 20-9-1961).
7. Subs. by Act 10 of 1967, s. 2, for clause (*a*) (w.e.f. 11-4-1967).
8. Subs. by Act 31 of 1991, s. 2, for sections 73A and 73AA (w.e.f. 18-4-1991).

74. Publication of results of elections to the State Legislative Councils and of names of persons nominated to such Councils.—After the elections held [1][in pursuance of the notifications issued under section 15A or] in any year in pursuance of the notifications issued under section 16, there shall be notified by the appropriate authority in the Official Gazette the names of the members elected for the various Council constituencies and by the members or the Legislative Assembly of the State at the said elections together with the names of any persons nominated by the Governor [2]*** under sub-clause (e) of clause (3) of article 171.]

[3][CHAPTER VIIA.—DECLARATION OF ASSETS AND LIABILITIES

75A. Declaration of assets and liabilities.—(*1*) Every elected candidate for a House of Parliament shall, within ninety days from the date on which he makes and subscribes an oath or affirmation, according to the form set out for the purpose in the Third Schedule to the Constitution, for taking his seat in either House of Parliament, furnish the information, relating to—

(*i*) the movable and immovable property of which he, his spouse and his dependant children are jointly or severally owners or beneficiaries;

(*ii*) his liabilities to any public financial institution; and

(*iii*) his liabilities to the Central Government or the State Government, to the Chairman of the Council of States or the Speaker of the House of the People, as the case may be.

(*2*) The information under sub-section (*1*) shall be furnished in such form and in such manner as may be prescribed in the rules made under sub-section (*3*).

(*3*) The Chairman of the Council of States or the Speaker of the House of the People, as the case may be, may make rules for the purposes of sub-section (*2*).

(*4*) The rules made by the Chairman of the Council of States or the Speaker of the House of the People, under sub-section (*3*) shall be laid, as soon as may be after they are made, before the Council of States or the House of the People, as the case may be, for a total period of thirty days which may be comprised in one session or in two or more successive sessions and shall take effect upon the expiry of the said period of thirty days unless they are sooner approved with or without modifications or disapproved by the Council of States or the House of the People and where they are so approved, they shall take effect on such approval in the form in which they were laid or in such modified form, as the case may be, and where they are so disapproved, they shall be of no effect.

(*5*) The Chairman of the Council of States or the Speaker of the House of the People, as the case may be, may direct that any wilful contravention of the rules made under sub-section (*3*) by an elected candidate for a House of Parliament referred to in sub-section (*1*) may be dealt with in the same manner as a breach of privilege of the Council of States or the House of the People, as the case may be.

Explanation.—For the purposes of this section,—

(*i*) "immovable property" means the land and includes any building or other structure attached to the land or permanently fastened to anything which is attached to the land;

(*ii*) "movable property" means any other property which is not the immovable property and includes corporeal and incorporeal property of every description;

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1. Ins. by Act 37 of 1957, s. 13 (w.e.f. 18-9-1957).
2. The words "or Rajpramukha, as the case may be" omitted by the Adaptation of Laws (No.2) Order, 1956.
3. Ins. by Act 72 of 2002, s. 4 (w.e.f. 24-8-2002).

(*iii*) "public financial institution" means a public financial institution within the meaning of section 4A of the Companies Act, 1956 (1 of 1956) and includes bank;

(*iv*) "bank" referred to in clause (*iii*) means—

(*a*) State Bank of India constituted under section 3 of the State Bank of India Act, 1955 (23 of 1955);

(*b*) subsidiary bank having the meaning assigned to it in clause (*K*) of section 2 of the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959);

(*c*) Regional Rural Bank established under section 3 of the Regional Rural Banks Act, 1976 (21 of 1976);

(*d*) corresponding new bank having the meaning assigned to it in clause (*da*) of section 5 of the Banking Regulation Act, 1949 (10 of 1949); and

(*e*) co-operative bank having the meaning assigned to it in clause (*cci*) of section 5 of the Banking Regulation Act, 1949 (10 of 1949) as modified by sub-clause (*i*) of clause (*c*) of section 56 of that Act; and

(*v*) "dependant children" means sons and daughters who have no separate means of earning and are wholly dependant on the elected candidate referred to in sub-section (*1*) for their livelihood.]

CHAPTER VIII.—*Election Expenses*

[1][**76. Application of Chapter.**—This Chapter shall apply only to the elections to the House of the People and to the Legislative Assembly of a State.]

77. Account of election expenses and maximum thereof.—(*1*) Every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his election agent between [2][the date on which he has been nominated] and the date of declaration of the result thereof, both dates inclusive.

[3][*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

1. Subs. by Act 27 of 1956, s. 42, for sections 76 to 78 (w.e.f. 28-8-1956).
2. Subs. by Act 40 of 1975, s. 6, for certain words (w.e.f. 6-8-1975).
3. Subs. by Act 46 of 2003, s. 4, for the *Explanation* (w.e.f. 11-9-2003).

(*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.

78. Lodging of account with the district election officer.—[1][(*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 [2][district election officer] an account of his election expenses which shall be a true copy of the account kept by him or by his election agent under section 77.]

[3]* * * * *

[4][PART VA

FREE SUPPLY OF CERTAIN MATERIAL TO CANDIDATES OF RECOGNISED POLITICAL PARTIES

78A. Free supply of copies of electoral rolls.—(*1*) The Government shall, at any election to be held for the purposes of constituting the House of the People or the Legislative Assembly of a State, supply, free of cost, to the candidates of recognsied political parties such number of copies of the electoral roll, as finally published under the Representation of the People Act, 1950 (43 of 1950) and such other material as may be prescribed.

(*2*) The material referred to in sub-section (*1*) shall be supplied,—

(*i*) subject to such conditions as may be imposed by the Central Government in consultation with the Election Commission with respect to the reduction of the maximum expenditure which may be incurred by the candidate under section 77; and

(*ii*) through such officers as may be specified by the Election Commission who shall act in accordance with such general or special directions as may be given by the Election Commission.

78B. Supply of certain items to candidates, etc.—(*1*) The Election Commission shall, at any time between the date of publication of the notification calling the election for the purposes of constituting the House of the People or the Legislative Assembly of a State and the date on which the poll is to be taken, supply or cause to be supplied, such items as the Central Government may, by order, determine in consultation with the Election Commission, to the electors in the constituencies concerned or to the candidates set up by the recognised political parties.

(*2*) Where the Election Commission supplies the items to the candidates under sub-section (*1*), the Central Government may, in consultation with the Election Commission, impose conditions with respect to the reduction of the maximum expenditure which may be incurred by the candidate under section 77.

1. Section 78 re-numbered as sub-section (*1*) of that section by Act 47 of 1966, s. 36 (w.e.f. 14-12-1966).
2. Subs. by s. 36, *ibid.*, for "returning officer" (w.e.f. 14-12-1966).
3. Omitted by Act 2 of 2004, s. 36 (w.e.f. 29-10-2003).
4. Ins. by Act 46 of 2003, s. 5 (w.e.f. 11-9-2003).

Explanation.—For the purposes of section 39A, this Chapter and clause (*hh*) of sub-section (*2*) of section 169, the expression "recognised political party", has the meaning assigned to it in the Election Symbols (Reservation and Allotment) Order, 1968.]

PART VI
DISPUTES REGARDING ELECTIONS
CHAPTER I.—*Interpretation*

79. Definitions.—In this Part and in [1][Part VII] unless the context otherwise requires,—

[2][(*a*) any reference to a High Court or to the Chief Justice or Judge of a High Court shall, in relation to a Union territory having a Court of the Judicial Commissioner, be construed as a reference to the said Court of the Judicial Commissioner or to the Judicial Commissioner or any Additional Judicial Commissioner, as the case may be;]

[3][(*b*) "candidate" means a person who has been or claims to have been duly nominated as a candidate at any election;]

(*c*) "costs" means all costs, charges and expenses of, or incidental to, a trial of an election petition;

(*d*) "electoral right" means the right of a person to stand or not to stand as, or [4][to withdraw or not to withdraw] from being, a candidate, or to vote or refrain from voting at an election;

[5][(*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;]

(*f*) "returned candidate" means a candidate whose name has been published under section 67 as duly elected.

CHAPTER II.—*PRESENTATION OF ELECTION PETITIONS TO ELECTION COMMISSION*

80. Election petitions.—No election shall be called in question except by an election petition presented in accordance with the provisions of this Part.

[6][**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 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*) 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.]

81. Presentation of petitions.—(*1*) An election petition calling in question any election may be presented on one or more of the grounds specified in [7][sub-section (*1*)] of section 100 and section 101 to the [8][High Court] by any candidate at such election or any elector [9][within forty-five days from, but not earlier than, 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].

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1. Subs. by Act 47 of 1966, s. 37, for "Parts VII and VIII" (w.e.f. 14-12-1966).
2. Ins. by s. 37, *ibid.* (w.e.f. 14-12-1966).
3. Subs. by Act 40 of 1975, s. 7, for clause (*b*) (w.e.f. 6-8-1975).
4. Subs. by Act 47 of 1966, s. 37, for "to withdraw" (w.e.f. 14-12-1966).
5. Subs. by s. 37, *ibid.*, for clause (*e*) (w.e.f. 14-12-1966).
6. Ins. by s. 38, *ibid.* (w.e.f. 14-12-1966).
7. Subs. by Act 27 of 1956, s. 44, for "sub-sections (*1*) and (*2*)" (w.e.f. 28-8-1956).
8. Subs. by Act 47 of 1966, s. 39, for "Election Commission" (w.e.f. 14-12-1966).
9. Subs. by Act 27 of 1956, s. 44, for certain words (w.e.f. 28-8-1956).

Explanation.—In this sub-section, "elector" means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

[1]* * * * *

[2][(*3*) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition [3]*** and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.]

[4][**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; and

(*b*) any other candidate against whom allegations of any corrupt practice are made in the petition.]

[5][**83. Contents of petition.**—

(*1*) An election petition—

(*a*) shall contain a concise statement of the material facts on which the petitioner relies;

(*b*) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(*c*) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

[6][Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.]

(*2*) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition].

[7][**84. Relief that may be claimed by the petitioner.**—A petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected.]

85. [*Procedure on receiving petition.*] *Omitted by Representation of the People (Amendment) Act,* 1966 (47 *of* 1966), *s.* 40 (*w.e.f.* 14-12-1966).

CHAPTER III.—*Trial of Election Petitions*

[8][**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 by the Chief Justice for the trial of election petitions under sub-section (*2*) of section 80A.

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1. Sub-section (*2*) omitted by Act 47 of 1966, s. 39 (w.e.f. 14-12-1966).
2. Ins. by Act 40 of 1961, s. 17 (w.e.f. 20-9-1961).
3. Certain words omitted by Act 47 of 1966, s. 39 (w.e.f. 14-12-1966).
4. Subs. by Act 27 of 1956, s. 45, for section 82 (w.e.f. 28-8-1956).
5. Subs. by s. 46, *ibid.*, for section 83 (w.e.f. 28-8-1956).
6. Ins. by Act 40 of 1961, s. 18 (w.e.f. 20-9-1961).
7. Subs. by Act 27 of 1956, s. 47, for section 84 (w.e.f. 28-8-1956).
8. Subs. by Act 47 of 1966, s. 41, for sections 86 to 92 (w.e.f. 14-12-1966).

(*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 Judge who may, in his discretion, try them separately or in one or more groups.

(*4*) Any candidate not already a respondent shall, upon application made by him to the High Court within fourteen days from the date of commencement of the trial and subject to any order as to security for costs which may be made by the High Court, be entitled to be joined as a respondent.

Explanation.—For the purposes of this sub-section and of section 97, the trial of a petition shall be deemed to commence on the date fixed for the respondents to appear before the High Court and answer the claim or claims made in the petition.

(*5*) The High Court may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition.

(*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.

87. Procedure before the High Court.—(*1*) Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (5 of 1908) to the trial of suits:

Provided that the High Court shall have the discretion to refuse, for reasons to be recorded in writing, to examine any witness or witnesses if it is of the opinion that the evidence of such witness or witnesses is not material for the decision of the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings.

(*2*) The provisions of the Indian Evidence Act, 1872 (1 of 1872), shall, subject to the provisions of this Act, be deemed to apply in all respects to the trial of an election petition.]

93. Documentary evidence.—Notwithstanding anything in any enactment to the contrary, no document shall be inadmissible in evidence at the trial of an election petition on the ground that it is not duly stamped or registered.

94. Secrecy of voting not to be infringed.—No witness or other person shall be required to state for whom he has voted at an election:

[1][Provided that this section shall not apply to such witness or other person where he has voted by open ballot.]

95. Answering of criminating questions and certificate of indemnity.—(*1*) No witness shall be excused from answering any question as to any matter relevant to a matter in issue in the trial of an election petition upon the ground that the answer to such question may criminate or may tend to criminate him, or that it may expose or may tend to expose him to any penalty or forfeiture:

Provided that—

(*a*) a witness, who answers truly all questions which he is required to answer shall be entitled to receive a certificate of indemnity from [2][the High Court]; and

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1. Ins. by Act 40 of 2003, s. 4 (w.e.f. 11-9-2003).
2. Subs. by Act 47 of 1966, s. 42, for "the Tribunal" (w.e.f. 14-12-1966).

(*b*) an answer given by a witness to a question put by or before [1][the High Court] shall not, except in the case of any criminal proceeding for perjury in respect of the evidence, be admissible in evidence against in any civil or criminal proceeding.

(*2*) When a certificate of indemnity has been granted to any witness, it may be pleaded by him in any Court and shall be a full and complete defence to or upon any charge under Chapter IXA of the Indian Penal Code (45 of 1860), or Part VII of this Act arising out of the matter to which such certificate relates, but it shall not be deemed to relieve him from any disqualification in connection with an election imposed by this Act or any other law.

96. Expenses of witnesses.—The reasonable expenses incurred by any person in attending to give evidence may be allowed by [1][the High Court] to such person and shall, unless [1][the High Court] otherwise directs, be deemed to be part of the costs.

97. Recrimination when seat claimed.—(*1*) When in an election petition a declaration that any candidate other than the returned candidate has been duly elected is claimed, the returned candidate or any other party may give evidence to prove that the election of such candidate would have been void if he had been the returned candidate and a petition had been presented calling in question his election:

Provided that the returned candidate or such other party, as aforesaid shall not be entitled to give such evidence unless he has, within fourteen days from the date of [2][commencement of the trial], given notice to [1][the High Court] of his intention to do so and has also given the security and the further security referred to in sections 117 and 118 respectively.

(*2*) Every notice referred to in sub-section (*1*) shall be accompanied by the statement and [3]*** particulars required by section 83 in the case of an election petition and shall be signed and verified in like manner.

98. Decision of the High Court.—At the conclusion of the trial of an election petition [1][the High Court] shall make an order—

(*a*) dismissing the election petition; or

(*b*) declaring the election of [4][all or any of the returned candidates] to be void; or

(*c*) declaring the election of [4][all or any of the returned candidates] to be void and the petitioner or any other candidate to have been duly elected. [5]***

[6]* * * * *

99. Other orders to be made by the High Court.—(*1*) At the time of making an order under section 98 [1][the High Court] shall also make an order—

[7][(*a*) where any charge is made in the petition of any corrupt practice having been committed at the election, recording—

(*i*) finding whether any corrupt practice has or has not been proved to have been committed [8]*** 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 cost payable, and specifying the persons by and to whom costs shall be paid:

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1. Subs. by Act 47 of 1966, s. 42, for "the Tribunal" (w.e.f. 14-12-1966).
2. Subs. by Act 27 of 1956, s. 52, for "the publication of the election petition under section 90" (w.e.f. 28-8-1956).
3. The words "list of" omitted by s. 52, *ibid.* (w.e.f. 28-8-1956).
4. Subs. by s. 53, *ibid.*, for "the returned candidate" (w.e.f. 28-8-1956).
5. The word "or" omitted by s. 53, *ibid.* (w.e.f. 28-8-1956).
6. Clause (*d*) omitted by s. 53, *ibid.* (w.e.f. 28-8-1956).
7. Subs. by s. 54, *ibid.*, for clause (*a*) (w.e.f. 28-8-1956).
8. Certain words omitted by Act 58 of 1958, s. 29 (w.e.f. 30-12-1958).

Provided that [1][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 [2][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 [2][the High Court] and has given evidence against him, of calling evidence in his defence and of being heard.

[3][(*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.—[4][(*1*) Subject to the provisions of sub-section (*2*) of [2][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 [5][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 [6][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,

[2][the High Court] shall declare the election of the returned candidate to be void.]

[7][(*2*)] If in the opinion of [2][the High Court], a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice [8]*** but [2][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 [9][without the consent], of the candidate or his election agent;

[10]* * * * *

(*c*) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt [11]*** practices at the election; and

(*d*) that in all other respects the election was free from any corrupt [11]*** practice on the part of the candidate or any of his agents,

then [2][the High Court] may decide that the election of the returned candidate is not void.

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1. Subs. by Act 27 of 1956, s. 54, for "no person shall be named" (w.e.f. 28-8-1956).
2. Subs. by Act 47 of 1966, s. 42, for "the Tribunal" (w.e.f. 14-12-1966).
3. Subs. by Act 27 of 1956, s. 54, for sub-section (*2*) (w.e.f. 28-8-1956).
4. Subs. by s. 55, *ibid.*, for sub-sections (*1*) and (*2*) (w.e.f. 28-8-1956).
5. Ins. by Act 20 of 1963, s. 57 and the Second Schedule (w.e.f. 13-5-1963).
6. Subs. by Act 58 of 1958, s. 30, for certain words (w.e.f. 30-12-1958).
7. Sub-section (*3*) re-numbered as sub-section (*2*) by Act 27 of 1956, s. 55 (w.e.f. 28-8-1956).
8. The words and figures "specified in section 123" omitted by s. 55, *ibid.* (w.e.f. 28-8-1956).
9. Subs. by s. 55, *ibid.*, for "without the sanction or connivance" (w.e.f. 28-8-1956).
10. Clause (*b*) omitted by Act 58 of 1958, s. 30 (w.e.f. 30-12-1958).
11. The words "or illegal" omitted by Act 27 of 1956, s. 55 (w.e.f. 28-8-1956).

101. Grounds for which a candidate other than the returned candidate may be declared to have been elected.—If any person who has lodged a petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and [1][the High Court] is of opinion—

(*a*) that in fact the petitioner or such other candidate received a majority of the valid votes; or

(*b*) that but for the votes obtained by the returned candidate by corrupt [2]*** practices the petitioner or such other candidate would have obtained a majority of the valid votes,

[1][the High Court] shall after declaring the election of the returned candidate to be void declare the petitioner or such other candidate, as the case may be, to have been duly elected.

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 to be declared elected, then—

(*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 [1][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.

[3][**103. Communication of orders of the High Court.**—The High Court shall, as soon as may be after the conclusion of the trial of an election petition, intimate the substance of the decision 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 and, as soon as may be thereafter, shall send to the Election Commission an authenticated copy of the decision.]

104. [*Difference of opinion among the members of the Tribunal.*] *Omitted by the Representation of the People* (*Second Amendment*) *Act*, 1956 (27 *of* 1956), *s.* 57 (*w.e.f.* 28-8-1956).

105. [*Orders of the Tribunal to be final and conclusive.*] *Omitted by s.* 58, *ibid.* (*w.e.f.* 28-8-1956).

106. Transmission of order to the appropriate authority, etc., and its publication.—As soon as may be after the receipt of any order made by [1][the High Court] under section 98 or section 99, the Election Commission shall forward copies of the order to the appropriate authority and, in the case where such order relates to an election [4]*** to a House of Parliament or to an election to the House or a House of the Legislature of a State, also to the Speaker or Chairman, as the case may be, of the House concerned and [5][shall cause the order to be published—

(*a*) where the order relates to an election to a House of Parliament, in the Gazette of India as well as in the Official Gazette of the State concerned; and

(*b*) where the order relates to an election to the House or a House of the Legislature of the State, in the Official Gazette of the State.]

[6][**107. Effect of orders of the High Court.**—[7][(*1*) Subject to the provisions contained in Chapter IVA relating to the stay of operation of an order of the High Court under section 98 or section 99, every such order shall take effect as soon as it is pronounced by the High Court.]

1. Subs. by Act 47 of 1966, s. 42, for "the Tribunal" (w.e.f. 14-12-1966).
2. The words "or illegal" omitted by Act 27 of 1956, s. 56 (w.e.f. 28-8-1956).
3. Subs. by Act 47 of 1966, s. 43, for s. 103 (w.e.f. 14-12-1966).
4. The brackets and words "(other than a primary election)" omitted by Act 27 of 1956, s. 59 (w.e.f. 28-8-1956).
5. Subs. by s. 59, *ibid.*, for certain words (w.e.f. 28-8-1956).
6. Subs. by Act 47 of 1966, s. 60, for section 107 (w.e.f. 14-12-1966).
7. Subs. by s. 44, *ibid.*, for sub-section (*1*) (w.e.f. 14-12-1966).

(*2*) Where by an order under section 98 the election of a returned candidate is declared to be void, acts and proceedings in which that returned candidate has, before the date thereof, participated as a member of Parliament or as a member of the Legislature of a State shall not be invalidated by reason of that order, nor shall such candidate be subjected to any liability or penalty on the ground of such participation.]

CHAPTER IV.—*Withdrawal and Abatement of Election Petitions*

108. [*Withdrawal of petitions before appointment of Tribunal.*] *Omitted by the Representation of the People (Amendment) Act,* 1966 (47 *of* 1966), *s.* 45 (*w.e.f.* 14-12-1966).

[1][**109. Withdrawal of election petitions.**—(*1*) An election petition may be withdrawn only by leave 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.

110. Procedure for withdrawal of election petitions.—(*1*) If there are more petitioners than one, no application to withdraw an election petition shall be made except with the consent of all the petitioners.

(*2*) No application for withdrawal shall be granted if, in the opinion of the High Court, such application has been induced by any bargain or consideration which ought not to be allowed.

(*3*) If the application is granted—

(*a*) the petitioner shall be ordered to pay the costs of the respondents there to incurred or such portion thereof as the High Court may think fit;

(*b*) the High Court shall direct that the notice of withdrawal shall be published in the Official Gazette and in such other manner as it may specify and thereupon the notice shall be published accordingly;

(*c*) a person who might himself have been a petitioner may, within fourteen days of such publication, apply to be substituted as petitioner in place of the party withdrawing, 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 High Court may deem fit.]

111. Report of withdrawal by the High Court to the Election Commission.—When an application for withdrawal is granted by [2][the High Court] and no person has been substituted as petitioner under clause (*c*) of sub-section (*3*) of section 110, in place of the party withdrawing, [2][the High Court] shall report the fact to the Election Commission [3][and thereupon the Election Commission shall publish the report in the Official Gazette].

[4][**112. Abatement of election petitions.**—(*1*) An election petition shall abate only on the death or a sole petitioner or of the survivor of several petition.

(*2*) Where an election petition abates under sub-section (*1*), 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 security, shall be entitled to be so substituted and to continue the proceedings upon such terms as the High Court may deem fit.]

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1. Subs. by Act 47 of 1966, s. 46, for sections 109 and 110 (w.e.f. 14-12-1966).
2. Subs. by s. 47, *ibid.*, for "the Tribunal" (w.e.f. 14-12-1966).
3. Ins. by Act 27 of 1956, s. 61 (w.e.f. 28-8-1956).
4. Subs. by Act 47 of 1966, s. 48, for sections 112 to 115 (w.e.f. 14-12-1966).

116. Abatement or substitution on death of respondent.—If before the conclusion of the trial of an election petition, the sole respondent dies or gives notice that he does not intend to oppose the petition or any of the respondents dies or gives such notice and there is no other respondent who is opposing the petition, [1][the High Court] shall cause notice of such event to be published in the Official Gazette, and thereupon any person who might have been a petitioner may, within fourteen days of such publication, apply to be substituted in place of such respondent to oppose the petition, and shall be entitled to continue the proceedings upon such terms as [1][the High Court] may think fit.

[2][CHAPTER IVA.—*APPEALS*

[3][**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) from every order made by a 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 High Court under section 98 or section 99:

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 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 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 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 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.

116C. Procedure in appeal.—(*1*) Subject to the provisions of this Act and of the rules, if any, made thereunder, every appeal shall be heard and determined by the Supreme Court as nearly as may be in accordance with the procedure applicable to the hearing and determination of an appeal from any final order passed by a High Court in the exercise of its original civil jurisdiction; and all the provisions of the Code of Civil Procedure, 1908 (5 of 1908), and the Rules of the Court, (including provisions as to the furnishing of security and the execution of any order of the Court) shall, so far as may be, apply in relation to such appeal.

(*2*) As soon as an appeal is decided, the Supreme Court shall intimate the substance of the decision 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 and as soon as may be thereafter shall send to the Election Commission an authenticated copy of the decision; and upon its receipt, the Election Commission shall—

(*a*) forward copies thereof to the authorities to which copies of the order of the High Court were forwarded under section 160; and

1. Subs. by Act 47 of 1966, s. 49, for "the Tribunal" (w.e.f. 14-12-1966).
2. Ins. by Act 27 of 1956, s. 62 (w.e.f. 28-8-1956).
3. Subs. by Act 47 of 1966, s. 50, for sections 116A and 116B (w.e.f. 14-12-1966).

(*b*) cause the decision to be published in the Gazette or Gazettes in which that order was published under the said section.]]

CHAPTER V.—*Costs and Security for Costs*

[1][**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 two thousand rupees as security for the costs of the petition.

(*2*) During the course of the trial of an election petition, the High Court may, at any time, call upon the petitioner to give such further security for costs as it may direct.

118. Security for costs from a respondent.—No person shall be entitled to be joined as a respondent under sub-section (*4*) of section 86 unless he has given such security for costs as the High Court may direct.

119. Costs.—Costs shall be in the discretion 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.]

121. Payment of costs out of security deposits and return of such deposits.—(*1*) If in any order as to costs under the provisions of this Part there is a direction for payment of costs by any party to any person, such costs shall, if they have not been already paid, be paid in full, or so far as possible, out of the security deposit and the further security deposit, if any, made by such party under this Part, on an application made in writing in that behalf [2][within a period of one year, from the date of such order] to [3][the High Court] by the person in whose favour the costs have been awarded.

(*2*) If there is any balance left of any of the said security deposits after payment under sub-section (*1*) of the costs referred to in that sub-section, such balance, or where no costs have been awarded or no application as aforesaid has been made within the said period of [4][one year] the whole of the said security deposits may, on an application made in that behalf in writing to [3][the High Court] by the person by whom the deposits have been made, or if such person dies after making such deposits by the legal representative of such person, be returned to the said person or to his legal representative, as the case may be.

122. Execution of orders as to costs.—Any order as to costs under the provisions of this part may be produced before the principal civil court of original jurisdiction within the local limits of whose jurisdiction any person directed by such order to pay any sum of money has a place of residence or business, or where such place is within a presidency-town, before the court of small causes having jurisdiction there, and such court shall execute the order or cause the same to be executed in the same manner and by the same procedure as if it were a decree for the payment of money made by itself in a suit:

Provided that where any such costs or any portion thereof may be recovered by an application made under sub-section (*1*) of section 121, no application shall lie under this section [5][within a period of one year from the date of such order] unless it is for the recovery of the balance of any costs which has been left unrealised after an application has been made under that sub-section owing to the insufficiency of the amount of the security deposits referred to in that sub-section.

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1. Subs. by Act 47 of 1966, s. 51, for sections 117, 118, 119, 119A and 120 (w.e.f. 14-12-1966).
2. Subs. by Act 58 of 1958, s. 34, for certain words (w.e.f. 30-12-1958).
3. Subs. by Act 47 of 1966, s. 52, for "the Election Commission" (w.e.f. 14-12-1966).
4. Subs. by Act 58 of 1958, s. 34, for "six months" (w.e.f. 30-12-1958).
5. Subs. by s. 35, *ibid.*, for certain words (w.e.f. 30-12-1958).

PART VII

[1][CORRUPT PRACTICES AND ELECTORAL OFFENCES]

[2][CHAPTER I.—*CORRUPT PRACTICES*

123. Corrupt practices.—The following shall be deemed to be corrupt practices for the purposes of this Act:—

[3][(*1*) "Bribery" that is to say,—

(*A*) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly of inducing—

(*a*) a person to stand or not to stand as, or [4][to withdraw or not to withdraw] from being a candidate at an election, or

(*b*) an elector to vote or refrain from voting at an election, or as a reward to—

(*i*) a person for having so stood or not stood, or for [5][having withdrawn or not having withdrawn] his candidature; or

(*ii*) an elector for having voted or refrained from voting;

(*B*) the receipt of, or agreement to receive, any gratification, whether as a motive or a reward—

(*a*) by a person for standing or not standing as, or for [6][withdrawing or not withdrawing] from being, a candidate; or

(*b*) by any person whomsoever for himself or any other person for voting or refraining from voting, or inducing or attempting to induce any elector to vote or refrain from voting, or any candidate [4][to withdraw or not to withdraw] his candidature.

Explanation.—For the purposes of this clause the term "gratification" is not restricted to pecuniary gratifications or gratifications estimable in money and it includes all forms of entertainment and all forms of employment for reward but it does not include the payment of any expenses *bona fide* incurred at, or for the purpose of, any election and duly entered in the account of election expenses referred to in section 78.]

(*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*) the reatens 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,

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1. Subs. by Act 27 of 1956, s. 65, for the heading "CORRUPT AND ILLEGAL PRACTICES AND ELECTROAL OFFENCES" (w.e.f. 28-8-1956).
2. Subs. by s. 66, *ibid.*, for the heading Chapters I and II (w.e.f. 28-8-1956).
3. Subs. by Act 58 of 1958, s. 36, for clause (*1*) (w.e.f. 30-12-1958).
4. Subs. by Act 47 of 1966, s. 53, for "to withdraw" (w.e.f. 14-12-1966).
5. Subs. by s. 53, *ibid.*, for "having withdrawn" (w.e.f. 14-12-1966).
6. Subs. by s. 53, *ibid.*, for "withdrawing" (w.e.f. 14-12-1966).
7. Ins. by Act 58 of 1958, s. 36 (w.e.f. 30-12-1958).

shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;

(*b*) a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause.

[1][(*3*) The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate:

[2][Provided that no symbol allotted under this Act to a candidate shall be deemed to be a religious symbol or a national symbol for the purposes of this clause.]

(*3A*) The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community, or language, by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.]

[3][(*3B*) The propagation of the practice or the commission of *sati* or its glorification by a candidate or his agent or any other person with the consent of the candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

Explanation.—For the purposes of this clause, "*sati*" and "glorification" in relation to *sati* shall have the meanings respectively assigned to them in the Commission of Sati (Prevention) Act, 1987 (3 of 1988)].

(*4*) The publication by a candidate or his agent or by any other person [4][with the consent of a candidate or his election agent], of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate or in relation to the candidature, or withdrawal, [5]*** of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election.

(*5*) The hiring or procuring, whether on payment or otherwise, of any vehicle or vessle by a candidate or his agent or by any other person [4][with the consent of a candidate or his election agent] [6][or the use of such vehicles or vessel for the free conveyance] of any elector (other than the candidate himself, the members of his family or his agent) to or from any polling station provided under section 25 or a place fixed under sub-section (*1*) of section 29 for the poll:

Provided that the hiring of a vehicle or vessel by an elector or by several electors at their joint costs for the purpose of conveying him or them to and from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause if the vehicle or vessel so hired is a vehicle or vessel not propelled by mechanical power:

Provided further that the use of any public transport vehicle or vessel or any tramcar or railway carriage by any elector at his own cost for the purpose of going to or coming from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause.

Explanation.—In this clause, the expression "vehicle" means any vehicle used or capable of being used for the purpose of road transport, whether propelled by mechanical power or otherwise and whether used for drawing other vehicles or otherwise.

(*6*) The incurring or authorising of expenditure in contravention of section 77.

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1. Subs. by Act 40 of 1961, s. 23, for clause (*3*) (w.e.f. 20-9-1961).
2. Ins. by Act 40 of 1975, s. 8 (w.e.f. 6-8-1975).
3. Ins. by Act 3 of 1988, s. 19 (w.e.f. 21-3-1988).
4. Ins. by Act 58 of 1958, s. 36 (w.e.f. 30-12-1958).
5. The words "or retirement from contest" omitted by s. 36, *ibid.* (w.e.f. 30-12-1958).
6. Subs. by Act 47 of 1966, s. 53, "for the conveyance" (w.e.f. 14-12-1966).

(*7*) The obtaining or procuring or a betting or attempting to obtain or procure by a candidate or his agent or, by any other person [1][with the consent of a candidate or his election agent], any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, [2][from any person whether or not in the service of the Government] and belonging to any of the following classes, namely:—

(*a*) gazetted officers;

(*b*) stipendiary judges and magistrates;

(*c*) members of the armed forces of the Union;

(*d*) members of the police forces;

(*e*) excise officers;

[3][(*f*) revenue officers other than village revenue officers known as lambardars malguzars, patels, deshmukhs or by any other name, whose duty is to collect land revenue and who are remunerated by a share of, or commission on, the amount of land revenue collected by them but who do not discharge any police functions; and

(*g*) such other class of persons in the service of the Government as may be prescribed:

[4][Provided that where any person, in the service of the Government and belonging to any of the classes aforesaid, in the discharge or puported discharge of his official duty, makes any arrangements or provides any facilities or does any other act or thing, for, to, or in relation to, any candidate or his agent or any other person acting with the consent of the candidate or his election agent, (whether by reason of the office held by the candidate or for any other reason), such arrangements facilities or act or thing shall not be deemed to be assistance for the furtherance of the prospects of that candidate's election;]

[5][(*h*) class of persons in the service of a local authority, university, government company or institution or concern or undertaking appointed or deputed by the Election Commission in connection with the conduct of elections.]

[6][(*8*) Booth capturing by a candidate or his agent or other person.]

Explanation.—(*1*) In this section the expression "agent" includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate.

(*2*) For the purposes of clause (*7*), a person shall be deemed to assist in the furtherance of the prospects of a candidate's election if he acts as an election agent [7]*** of that candidate.

[8][(*3*) For the purposes of clause (*7*), notwithstanding anything contained in any other law, the publication in the Official Gazette of the appointment, resignation, termination of service, dismissal or removal from service of a person in the service of the Central Government (including a person serving in connection with the administration of a Union territory) or of a State Government shall be conclusive proof—

(*i*) of such appointment, resignation, termination of service, dismissal or removal from service, as the case may be, and

(*ii*) where the date of taking effect of such appointment, resignation, termination of service, dismissal or removal from service, as the case may be, is stated in such publication, also of the fact that such person was appointed with effect from the said date, or in the case of resignation, termination of service, dismissal or removal from service, such person ceased to be in such service with effect from the said date.]

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1. Ins. by Act 58 of 1958, s. 36 (w.e.f. 30-12-1958).
2. Subs. by Act 41 of 2009, s. 6, for certain words (w.e.f. 1-2-2010).
3. Subs. by Act 58 of 1958, s. 36, for sub-clause (*f*) (w.e.f. 30-12-1958).
4. Ins. by Act 40 of 1975, s. 8 (w.e.f. 6-8-1975).
5. Ins. by Act 41 of 2009, s. 6 (w.e.f. 1-2-2010).
6. Ins. by Act 1 of 1989, s. 13 (w.e.f. 15-3-1989).
7. The words "or a polling agent or a counting agent" omitted by Act 47 of 1966, s. 53 (w.e.f. 14-12-1966).
8. Added by Act 40 of 1975, s. 8 (w.e.f. 6-8-1975).

[1][(4) For the purposes of clause (8), "booth capturing" shall have the same meaning as in section 135A.]

CHAPTER III.—*Electoral offences*

[2][**125. Promoting enmity between classes in connection with election.**—Any person who in connection with an election under this Act promotes or attempts to promote on grounds of religion, race, caste, community or language, feelings of enmity or hatred, between different classes of the citizens of India shall he punishable with imprisonment for a term which may extend to three years, or with fine, or with both.]

[3][**125A . Penalty for filing false affidavit, etc.**—A candidate who himself or through his proposer, with intent to be elected in an election,—

(*i*) fails to furnish information relating to sub-section (*1*) of section 33A; or

(*ii*) give false information which he knows or has reason to believe to be false; or

(*iii*) conceals any information,

in his nomination paper delivered under sub-section (*1*) of section 33 or in his affidavit which is required to be delivered under sub-section (*2*) of section 33A, as the case may be, shall, notwithstanding anything contained in any other law for the time being in force, be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.]

[4][**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, attend, join or address any public meeting or procession in connection with an election; or

(*b*) 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 hour fixed for the conclusion of the poll for any election in that 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.

(*3*) In this section, the expression "election matter" means any matter intended or calculated to influence or affect the result of an election.]

[5][**126A. Restriction on publication and dissemination of result of exit polls, etc.**—(*1*) No person shall conduct any exit poll and publish or publicise by means of the print or electronic media or disseminate in any other manner, whatsoever, the result of any exit poll during such period, as may be notified by the Election Commission in this regard.

(*2*) For the purposes of sub-section (*1*), the Election Commission shall, by a general order, notify the date and time having due regard to the following, namely:—

(*a*) in case of a general election, the period may commence from the beginning of the hours fixed for poll on the first day of poll and continue till half an hour after closing of the poll in all the States and Union territories;

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1. Ins. by Act 1 of 1989, s. 13 (w.e.f. 15-3-1989).
2. Ins. by Act 40 of 1961, s. 24 (w.e.f. 20-9-1961).
3. Ins. by 72 of 2002, s. 5 (w.e.f. 24-8-2002).
4. Subs. by Act 21 of 1996, s. 10, for section 126 (w.e.f. 1-8-1996).
5. Ins. by Act 41 of 2009, s. 7 (w.e.f. 1-2-2010).

(*b*) in case of a bye-election or a number of bye-elections held together, the period may commence from the beginning of the hours fixed for poll on and from the first day of poll and continue till half an hour after closing of the poll:

Provided that in case of a number of bye-elections held together on different days, the period may commence from the beginning of the hours fixed for poll on the first day of poll and continue till half an hour after closing of the last poll.

(*3*) Any person who contravenes the provisions of this section shall be punishable with imprisonment for a term which may extend to two years or with fine or with both.

Explanation.—For the purposes of this section,—

(*a*) "exit poll" means an opinion survey respecting how electors have voted at an election or respecting how all the electors have performed with regard to the identification of a political party or candidate in 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*) "dissemination" includes publication in any "print media" or broadcast or display on any electronic media.

126B. Offences by companies.—(*1*) Where an offence under sub-section (*2*) of section 126A 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.]

127. Disturbances at election meetings.—(*1*) Any person who at a public meeting to which this section applies acts, or incites others to act, in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called together, [1][shall be punishable with imprisonment for a term which may extend to [2][six months or with fine which may extend to two thousand rupees], or with both.]

[3][(*1A*) An offence punishable under sub-section (*1*) shall be cognizable.]

1. Subs. by Act 1 of 1989, s. 14, for certain words (w.e.f. 15-3-1989).
2. Subs. by Act 21 of 1996, s. 11, for certain words (w.e.f. 1-8-1996).
3. Ins. by s. 11, *ibid.* (w.e.f. 1-8-1996).

(2) This section applies to any public meeting of a political character held in any constituency between the date of the issue of a notification under this Act calling upon the constituency to elect a member or members and the date on which such election is held.

(3) If any police officer reasonably suspects any person of committing an offence under sub-section (1), he may, if requested so to do by the chairman of the meeting, require that person to declare to him immediately his name and address and, if that person refuses or fails so to declare his name and address, or if the police officer reasonably suspects him of giving a false name or address, the police officer may arrest him without warrant.

[1][**127A. Restrictions on the printing of pamphlets, posters, etc.**—(1) No person shall print or publish, or cause to be printed or published, any election pamphlet or poster which does not bear on its face the names and addresses of the printer and the publisher thereof.

(2) No person shall print or cause to be printed any election pamphlet or poster—

(a) unless a declaration as to the identity of the publisher thereof, signed by him and attested by two persons to whom he is personally known, is delivered by him to the printer in duplicate; and

(b) unless, within a reasonable time after the printing of the document, one copy of the declaration is sent by the printer, together with one copy of the document,—

(i) where it is printed in the capital of the State, to the Chief Electoral Officer; and

(ii) in any other case, to the district magistrate of the district in which it is printed.

(3) For the purposes of this section,—

(a) any process for multiplying copies of a document, other than copying it by hand, shall be deemed to be printing and the expression "printer" shall be construed accordingly; and

(b) "election pamphlet or poster" means 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.

(4) Any person who contravenes any of the provisions of sub-section (1) or sub-section (2) shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both.]

128. Maintenance of Secrecy of voting.—(1) Every officer, clerk, agent or other person who performs any duty in connection with the recording or counting of votes at an election shall maintain, and aid in maintaining, the secrecy of the voting and shall not (except for some purpose authorised by or under any law) communicate to any person any information calculated to violate such secrecy:

[2][Provided that the provisions of this sub-section shall not apply to such officer, clerk, agent or other person who performs any such duty at an election to fill a seat or seats in the Council of States.]

(2) Any person who contravenes the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to three months or with fine or with both.

129. Officers, etc., at elections not to act for candidates or to influence voting.—(1) No person who is [3][a district election officer or a returning officer], or an assistant returning officer, or a presiding or polling officer at an election, or an officer or clerk appointed by the returning officer for the presiding officer to perform any duty in connection with an election shall in the conduct or the management of the election do any act (other than the giving of vote) for the furtherance of the prospects of the election of a candidate.

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1. Ins. by Act 40 of 1961, s. 26 (w.e.f. 20-9-1961).
2. Ins. by Act 40 of 2003, s. 5 (w.e.f. 11-9-2003).
3. Subs. by Act 47 of 1966, s. 55, for "a returning officer" (w.e.f. 14-12-1966).

(*2*) No such person as aforesaid, and no member of a police force, shall endeavour—

(*a*) to persuade any person to give his vote at an election, or

(*b*) to dissuade any person from giving his vote at an election, or

(*c*) to influence the voting of any person at an election in any manner.

(*3*) Any person who contravenes the provisions of sub-section (*1*) or sub-section (*2*) shall be punishable with imprisonment which may extend to six months or with fine or with both.

[1][(*4*) An offence punishable under sub-section (*3*) shall be cognizable.]

130. Prohibition of canvassing in or near polling stations.—(*1*) No person shall, on the date or dates on which a poll is taken at any polling station, commit any of the following acts within the polling station or in any public or private place within a distance of [2][one hundred metres] of the polling station, namely:—

(*a*) canvassing for votes; or

(*b*) soliciting the vote of any elector; or

(*c*) persuading any elector not to vote for any particular candidate; or

(*d*) persuading any elector not to vote at the election; or

(*e*) exhibiting any notice or sign (other than an official notice) relating to the election.

(*2*) Any person who contravenes the provisions of sub-section (*1*) shall be punishable with fine which may extend to two hundred and fifty rupees.

(*3*) An offence punishable under this section shall be cognizable.

131. Penalty for disorderly conduct in or near polling stations.—(*1*) No person shall, on the date or dates on which a poll is taken at any polling station,—

(*a*) use or operate within or at the entrance of the polling station, or in any public or private place in the neighbourhood thereof, any apparatus for amplifying or reproducing the human voice, such as a megaphone or a loudspeaker, or

(*b*) shout, or otherwise act in a disorderly manner, within or at the entrance of the polling station or in any public or private place in the neighbourhood thereof,

so as to cause annoyance to any person visiting the polling station for the poll, or so as to interfere with the work of the officers and other persons on duty at the polling station.

(*2*) Any person who contravenes, or wilfully aids or abets the contravention of, the provisions of sub-section (*1*) shall be punishable with imprisonment which may extend to three months or with fine or with both.

(*3*) If the presiding officer of a polling station has reason to believe that any person is committing or has committed an offence punishable under this section, he may direct any police officer to arrest such person, and thereupon the police officer shall arrest him.

(*4*) Any police officer may take such steps, and use such force, as may be reasonably necessary for preventing any contravention of the provisions of sub-section (*1*), and may seize any apparatus used for such contravention.

132. Penalty for misconduct at the polling station.—(*1*) Any person who during the hours fixed for the poll at any polling station misconducts himself or fails to obey the lawful directions of the presiding officer may be removed from the polling station by the presiding officer or by any police officer on duty or by any person authorised in this behalf by such presiding officer.

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1. Ins. by Act 47 of 1966, s. 55 (w.e.f. 14-12-1966).
2. Subs. by s. 56, *ibid.*, for "one hundred yards" (w.e.f. 14-12-1966).

(*2*) The powers conferred by sub-section (*1*) shall not be exercised so as to prevent any elector who is otherwise entitled to vote at a polling station from having an opportunity of voting at that station.

(*3*) If any person who has been so removed from a polling station re-enters the polling station without the permission of the presiding officer, he shall be punishable with imprisonment for a term which may extend to three months, or with fine, or with both.

(*4*) An offence punishable under sub-section (*3*) shall be cognizable.

[1][**132A. Penalty for failure to observe procedure for voting.**—If any elector to whom a ballot paper has been issued, refused to observe the procedure prescribed for voting the ballot paper issued to him shall be liable for cancellation.]

[2][**133. Penalty for illegal hiring or procuring of conveyance at elections.**—If any person is guilty of any such corrupt practice as is specified in clause (*5*) of section 123 at or in connection with an election, he shall be punishable with imprisonment which may extend to three months and with fine.]

134. Breaches of official duty in connection with elections.—(*1*) If any person to whom this section applies is without reasonable cause guilty of any act or omission in breach of his official duty, he shall be punishable with fine which may extend to five hundred rupees.

[3][(*1A*) An offence punishable under sub-section (*1*) shall be cognizable.]

(*2*) No suit or other legal proceedings shall lie against any such person for damages in respect of any such act or omission as aforesaid.

(*3*) The persons to whom this section applies are the [4]*** [5][district election officers, returning officers], assistant returning officers, presiding officers, polling officers and any other person appointed to perform any duty in connection with [6]*** the receipt of nominations or withdrawal of candidatures, or the recording or counting of votes at an election; and the expression "official duty" shall for the purposes of this section be construed accordingly, but shall not include duties imposed otherwise than by or under this Act [4]***.

[7][**134A. Penalty for Government servants for acting as election agent, polling agent or counting agent.**—If any person in the service of the Government acts as an election agent or a polling agent or a counting agent of a candidate at an election, he shall be punishable with imprisonment for a term which may extend to three months, or with fine, or with both.]

[8][**134B. Prohibition of going armed to or near a polling station.**—(*1*) No person, other than the returning officer, the presiding officer, any police officer and any other person appointed to maintain peace and order at a polling station who is on duty at the polling station, shall, on a polling day, go armed with arms, as defined in the Arms Act, 1959 (54 of 1959), of any kind within the neighbourhood of a polling station.

(*2*) If any person contravenes the provisions of sub-section (*1*), he shall be punishable with imprisonment for a term which may extend to two years or with fine, or with both.

(*3*) Notwithstanding anything contained in the Arms Act, 1959 (54 of 1959), where a person is convicted of an offience under this section, the arms as defined in the said Act found in his possession shall be liable to confiscation and the licence granted in relation to such arms shall be deemed to have been revoked under section 17 of that Act.

(*4*) An offence punishable under sub-section (*2*) shall be cognizable.]

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1. Ins. by Act 4 of 1986, s. 2 and Schedule (w.e.f. 15-5-1986).
2. Subs. by Act 21 of 1996, s. 12, for section 133 (w.e.f. 1-8-1996).
3. Ins. by Act 47 of 1966, s. 58 (w.e.f. 14-12-1966).
4. Certain words omitted by Act 58 of 1958, s. 37 (w.e.f. 30-12-1958).
5. Subs. by Act 47 of 1966, s. 58, for "returning officers" (w.e.f. 14-12-1966).
6. The words "the preparation of an electoral roll" omitted by Act 58 of 1958, s. 37 (w.e.f. 30-12-1958).
7. Ins. by Act 47 of 1966, s. 59 (w.e.f. 14-12-1966).
8. Ins. by Act 21 of 1996, s. 13 (w.e.f. 1-8-1996).

135. Removal of ballot papers from polling station to be an offence.—(*1*) Any person who at any election [1][unauthorisedly] takes, or attempts to take, a ballot paper out of a polling station, or wilfully aids or abets the doing of any such act, shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to five hundred rupees or with both.

(*2*) If the presiding officer of a polling station has reason to believe that any person is committing or has committed an offence punishable under sub-section (*1*), such officer may, before such person leaves the polling station, arrest or direct a police officer to arrest such person and may search such person or cause him to be searched by a police officer:

Provided that when it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency.

(*3*) Any ballot paper found upon the person arrested on search shall be made over for safe custody to a police officer by the presiding officer, or when the search is made by a police officer, shall be kept by such officer in safe custody.

(*4*) An offence punishable under sub-section (*1*) shall be cognizable.

[2][**135A. Offence of booth capturing.**—[3][(*1*)] Whoever commits an offence of booth capturing shall be punishable with imprisonment for a term which [4][shall not be less than one year but which may extend to three years and with fine, and where such offence is committed by a person in the service of the Government, he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and with fine.]

Explanation.—For the purposes of [5][this sub-section and section 20B], "booth capturing" includes, among other things, all or any of the following activities, namely:—

(*a*) seizure of a polling station or a place fixed for the poll by any person or persons, making polling authorities surrender the ballot papers or voting machines and doing of any other Act which affects the orderly conduct of elections;

(*b*) taking possession of a polling station or a place fixed for the poll by any person or persons, and allowing only his or their own supporters to exercise their right to vote and [4][prevent others from free exercise of their right to vote];

(*c*) [6][coercing or intimidating or threatening directly or indirectly,] any elector and preventing him from going to the polling station or a place fixed for the poll to cast his vote;

(*d*) seizure of a place for counting of votes by any person or persons, making the counting authorities surrender the ballot papers or voting machines and the doing of anything which affects the orderly counting of votes;

(*e*) doing by any person in the service of Government, of all or any of the aforesaid activities or aiding or conniving at, any such activity in the furtherance of the prospects of the election of a candidate.]

[7][(*2*) An offence punishable under sub-section (*1*) shall be cognizable.]

[8][**135B. Grant of paid holiday to employees on the day of poll.**—(*1*) Every person employed in any business, trade, industrial undertaking or any other establishment and entitled to vote at an election to the House of the People or the Legislative Assembly of a State shall, on the day of poll, be granted a holiday.

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1. Subs. by Act 21 of 1996, s. 14, for "fraudulently" (w.e.f. 1-8-1996).
2. Ins. by Act 1 of 1989, s. 15 (w.e.f. 15-3-1989).
3. Section 135A renumbered as sub-section (*1*) thereof by Act 21 of 1996, s. 15 (w.e.f. 1-8-1996).
4. Subs. by s. 15, *ibid.*, for certain words (w.e.f. 1-8-1996).
5. Subs. by s. 15, *ibid.*, for "this section" (w.e.f. 1-8-1996).
6. Subs. by s. 15, *ibid.*, for "threatening" (w.e.f. 1-8-1996).
7. Ins. by s. 15, *ibid.* (w.e.f. 1-8-1996).
8. Ins. by s. 16, *ibid.* (w.e.f. 1-8-1996).

(*2*) No deduction or abatement of the wages of any such person shall be made on account of a holiday having been granted in accordance with sub-section (*1*) and if such person is employed on the basis that he would not ordinarily receive wages for such a day, he shall nonetheless be paid for such day the wages he would have drawn had not a holiday been granted to him on that day.

(*3*) If an employer contravenes the provisions of sub-section (*1*) or sub-section (*2*), then such employer shall be punishable with fine which may extend to five hundred rupees.

(*4*) This section shall not apply to any elector whose absence may cause danger or substantial loss in respect of the employment in which he is engaged.

135C. Liquor not to be sold, given or distributed on polling day.—(*1*) No spirituous, fermented or intoxicating liquors or other substances of a like nature shall be sold, given or distributed at a hotel, eating house, tavern, shop or any other place, public or private, within a 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.

(*2*) Any person who contravenes the provisions of sub-section (*1*), shall be punishable with imprisonment for a term which may extend to six months or with fine, which may extend to two thousand rupees, or with both.

(*3*) Where a person is convicted of an offence under this section, the spirituous, fermented, or intoxicating liquors or other substances of a like nature found in his possession shall be liable to confiscation and the same shall be disposed of in such manner as may be prescribed.]

136. Other offences and penalties therefor.—(*1*) A person shall be guilty of an electoral offence if at any election he—

(*a*) fraudulently defaces or fraudulently destroys any nomination paper; or

(*b*) fraudulently defaces, destroys or removes any list, notice or other document affixed by or under the authority of returning officer; or

(*c*) fraudulently defaces or fraudulently destroys any ballot paper or the official mark on any ballot paper or any declaration of identity or official envelop used in connection with voting by postal ballot; or

(*d*) without due authority supplies any ballot paper to any person [1][or receives any ballot paper from any person or is in possession of any ballot paper]; or

(*e*) fraudulently puts into any ballot box anything other than the ballot paper which he is authorised by law to put in; or

(*f*) without due authority destroys, takes, opens or otherwise interferes with any ballot box or ballot papers than in use for the purposes of the election; or

(*g*) fraudulently or without due authority, as the case may be, attempts to do any of the foregoing acts or wilfully aids or abets the doing of any such acts.

(*2*) Any person guilty of an electoral offence under this section shall,—

(*a*) if he is a returning officer or an assistant returning officer or a presiding officer at a polling station or any other officer or clerk employed on official duty in connection with the election, be punishable with imprisonment for a term which may extend to two years or with fine or with both;

(*b*) if he is any other person, be punishable with imprisonment for a term which may extend to six months or with fine or with both.

(*3*) For the purposes of this section, a person shall be deemed to be on official duty if his duty is to take part in the conduct of an election or part of an election including the counting of votes or to be responsible after an election for the used ballot papers and other documents in connection with such election, but the expression "official duty" shall not include any duty imposed otherwise than by or under this Act [2]***.

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1. Ins. by Act 27 of 1956, s. 70 (w.e.f. 28-8-1956).
2. Certain words omitted by Act 58 of 1958, s. 38 (w.e.f. 30-12-1958).

[1][(*4*) An offence punishable under sub-section (*2*) shall be cognizable.]

137. [*Prosecution regarding certain offences.*] *Omitted by the Representation of the People (Amendment) Act,* 1966 (47 *of* 1966), *s.* 61 (*w.e.f.* 14-12-1966).

138. [*Amendment of Act* 5 *of* 1898.] *Rep. by the Repealing and Amending Act,* 1957 (36 *of* 1957), *s.* 2 *and the First Schedule* (*w.e.f.* 17-9-1957).

PART VIII

DISQUALIFICATIONS

139—145. [*Chapters I to III.*] *Omitted by the Representation of the People (Amendment) Act,* 1966 (47 *of* 1966), *s.* 62 (*w.e.f.* 14-12-1966).

[2][CHAPTER IV.—*POWERS OF ELECTION COMMISSION IN CONNECTION WITH INQUIRIES AS TO DISQUALIFICATIONS OF MEMBERS*

146. Powers of Election Commission.—(*1*) Where in connection with the tendering of any opinion to the President under article 103 or, as the case may be, under sub-section (*4*) of section 14 of the Government of Union Territories Act, 1963 (20 of 1963), or to the Governor under article 192, the Election Commission considers it necessary or proper to make an inquiry, and the Commission is satisfied that on the basis of the affidavits filed and the documents produced in such inquiry by the parties concerned of their own accord, it cannot come to a decisive opinion on the matter which is being inquired into, the Commission shall have, for the purposes of such inquiry, the powers of a civil court, while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:—

(*a*) summoning and enforcing the attendance of any person and examining him on oath;

(*b*) requiring the discovery and production of any document or other material object producible as evidence;

(*c*) receiving evidence on affidavits;

(*d*) requisitioning any public record or a copy thereof from any court or office;

(*e*) issuing commissions for the examination of witnesses or documents.

(*2*) The Commission shall also have the power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as in the opinion of the Commission may be useful for, or relevant to, the subject matter of the inquiry.

(*3*) The Commission shall be deemed to be a civil court and when any such offence, as is described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code (45 of 1860), is committed in the view or presence of the Commission, the Commission may after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1898 (5 of 1898)[3], forward the case to a magistrate having jurisdiction to try the same and the magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case had been forwarded to him under section 482 of the Code of Criminal Procedure, 1898 (5 of 1898)[3].

(*4*) Any proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860).

146A. Statements made by person to the Election Commission.—No statement made by a person in the course of giving evidence before the Election Commission shall subject him to, or be used against him in, any civil or criminal proceeding except a prosecution for giving false evidence by such statement:

Provided that the statement—

1. Subs. by Act 47 of 1966, s. 60, for sub-section (*4*) (w.e.f. 14-12-1966).
2. Ins. by Act 17 of 1965, s. 2 (w.e.f. 22-9-1965).
3. *See* now the corresponding provision of the Code of Criminal Procedure, 1973 (2 of 1974).

(*a*) is made in reply to a question which he is required by the Commission to answer, or

(*b*) is relevant to the subject-matter of the inquiry.

146B. Procedure to be followed by the Election Commission.—The Election Commission shall have the power to regulate its own procedure (including the fixing of places and times of its sittings and deciding whether to sit in public or in private).

146C. Protection of action taken in good faith.—No suit, prosecution or other legal proceeding shall lie against the Commission or any person acting under the direction of the Commission in respect of anything which is in good faith done or intended to be done in pursuance of the foregoing provisions of this Chapter or of any order made thereunder or in respect of the tendering of any opinion by the Commission to the President or, as the case may be, to the Governor or in respect of the publication, by or under the authority of the Commission of any such opinion, paper or proceedings.]

PART IX

BYE-ELECTIONS

147. Casual vacancies in the Council of States.—[1][(*1*)] When before the expiration of the term of office of a member elected to the Council of States, his seat becomes vacant or is declared vacant or his election to the Council of States is declared void, the Election Commission shall by a notification in the Gazette of India call upon the elected members of the Legislative Assembly or the members of the electoral college concerned [2]***, as the case may be, to elect a person for the purpose of filling the vacancy so caused before such date as may be specified in the notification and the provisions of this Act and of the rules and orders made thereunder shall apply, as far as may be, in relation to the election of a member to fill such vacancy.

[3][(*2*) As soon as may be after the date of commencement of the Constitution (Seventh Amendment) Act, 1956, bye-elections shall be held to fill the vacancies existing on that date in the seats allotted to the States of Assam, Orissa and Uttar Pradesh and the Union territories of Delhi, Himachal Pradesh and Manipur.]

148. [*Casual vacancies in the electoral colleges for certain Union territories.*] *Omitted by the Territorial Councils Act,* 1956 (103 *of* 1956), *s.* 66 (*w.e.f.* 1-1-1957).

149. Casual vacancies in the House of the People.—(*1*) When the seat of a member elected to the House of the People becomes vacant or is declared vacant or his election to the House of the People is declared void, the Election Commission shall, subject to the provisions of sub-section (*2*), by a notification in the Gazette of India, call upon the parliamentary constituency concerned to elect a person for the purpose of filling the vacancy so caused before such date as may be specified in the notification, and the provisions of this Act and of the rules and orders made thereunder shall apply, as far as may be, in relation to the election of a member to fill such vacancy.

(*2*) If the vacancy so caused be a vacancy in a seat reserved in any such constituency for the Scheduled Castes or for any Scheduled Tribes, the notification issued under sub-section (*1*) shall specify that the person to fill that seat shall belong to the Scheduled Castes or to such Scheduled Tribes, as the case may be.

150. Casual vacancies in the State Legislative Assemblies.—When the seat of a member elected to the Legislative Assembly of a State becomes vacant or is declared vacant or his election to the Legislative Assembly is declared void, the Election Commission shall, subject to the provisions of sub-section (*2*), by a notification in the Official Gazette, call upon the Assembly constituency concerned to elect a person for the purpose of filling the vacancy so caused before such date as may be specified in the notification, and the provisions of this Act and of the rules and orders made thereunder shall apply, as far as may be, in relation to the election of a member to fill such vacancy.

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1. Section 147 renumbered as sub-section (*1*) of that section by the Adaptation of Laws (No. 2) Order, 1956.
2. The words "or the elected members of the Coorg Legislative Council" omitted by Act 49 of 1951, s. 44 and the Fifth Schedule (w.e.f. 6-9-1951).
3. Ins. by the Adaptation of Laws (No. 2) Order, 1956.

(*2*) If the vacancy so caused be a vacancy in a seat reserved in any such constituency for the Scheduled Castes or for any Scheduled Tribes, the notification issued under sub-section (*1*) shall specify that the person to fill that seat shall belong to the Scheduled Castes or to such Scheduled Tribes, as the case may be.

151. Casual vacancies in the State Legislative Councils.—When before the expiration of the term of office of a member elected to the Legislative Council of a State, his seat becomes vacant or is declared vacant or his election to the Legislative Council is declared void, the Election Commission shall, by a notification in the Official Gazette, call upon the Council constituency concerned or the members of the Legislative Assembly of the State, as the case may be, to elect a person for the purpose of filling the vacancy so caused, before such date as may be specified in the notification; and the provisions of this Act and of the rules and orders made thereunder shall apply, as far as may be, in relation to the election of a member to fill such vacancy.

[1][**151A. Time limit for filling vacancies referred to in sections 147, 149, 150 and 151.**—Notwithstanding anything contained in section 147, section 149, section 150 and section 151, a bye-election for filling any vacancy referred to in any of the said sections shall be held within a period of six months from the date of the occurrence of the vacancy:

Provided that nothing contained in this section shall apply if—

(*a*) the remainder of the term of a member in relation to a vacancy is less than one year; or

(*b*) the Election Commission in consultation with the Central Government certifies that it is difficult to hold the bye-election within the said period.]

PART X

MISCELLANEOUS

152. List of members of the State Legislative Assemblies and electoral colleges to be maintained by returning officers concerned.—(*1*) The returning officer for an election by the elected members of the Legislative Assembly of a State to fill a seat or seats in the Council of States or for an election, by the members of the Legislative Assembly of a State to fill a seat or seats in the Legislative Council of the State shall, for the purposes of such election maintain in his office in the prescribed manner and form a list of elected members or a list of members, as the case may be, of that Legislative Assembly.

(*2*) The returning officer for an election by the members of the electoral college for a [2][Union territory] [3]*** [4]*** to fill a seat or seats in the Council of States shall, for the purposes of such election, maintain in his office in the prescribed manner and form a list of members of that electoral college [4]***.

(*3*) Copies of the lists referred to in sub-sections (*1*) and (*2*) shall be made available for sale.

[5][**153. Extension of time for completion of election.**—It shall be competent for the Election Commission for reasons which it considers sufficient, to extend the time for the completion of any election by making necessary amendments in the notification issued by it under section 30 or sub-section (*1*) of section 39.]

154. Term of office of members of the Council of States.—[6][(*1*) Subject to the provisions of sub-sections (*2*) and (*2A*), the term of office of a member of the Council of States, other than a member chosen to fill a casual vacancy, shall be six years.]

(*2*) [7]*** Upon the first constitution of the Council of States the President shall, after constitution with the Election Commission, make by order such provision as he thinks fit for curtailing the term of office of some of the members then chosen in order that, as nearly as may be, one-third of the members holding seats of each class shall retire in every second year thereafter.

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1. Ins. by Act 21 of 1996, s. 17 (w.e.f. 1-8-1996).
2. Subs. by the Adaptation of Laws (No. 2) Order, 1956, for "Part C State".
3. The words "or group of such States" omitted by Act 27 of 1956, s. 77 (w.e.f. 28-8-1956).
4. Certain words omitted by Act 49 of 1951, s. 44 and the Fifth Schedule (w.e.f. 6-9-1951).
5. Subs. by Act 27 of 1956, s. 78 for section 153 (w.e.f. 28-8-1956).
6. Subs. by the Adaptation of Laws (No. 2) Order, 1956, for sub-section (*1*).
7. Certain words omitted, *ibid.*

[1][(*2A*) In order that, as nearly as may be, one-third of the members may retire on the second day of April, 1958, and on the expiration of every second year thereafter, the President shall, as soon as may be after the commencement of the Constitution (Seventh Amendment) Act, 1956, after consultation with the Election Commission, make by order such provisions as he thinks fit in regard to the terms of office of the members elected under sub-section (*2*) of section 147.]

(*3*) A member chosen to fill a casual vacancy shall be chosen to serve for the remainder of his predecessor's term of office.

155. Commencement of the term of office of members of the Council of States.—(*1*) The term of office of a member of the Council of States whose name is required to be notified in the Official Gazette under section 71 shall begin on the date of such notification.

(*2*) The term of office of a member of the Council of States whose name is not required to be notified under section 71 shall begin on the date of publication in the Official Gazette of the declaration containing the name of such person as elected under section 67 or of the notification issued under sub-clause (*a*) of clause (*1*) of article 80 or under any other provision announcing the nomination of such person to the Council of States, as the case may be.

156. Term of office of members of State Legislative Councils.—(*1*) The term of office of a member of the Legislative Council of a State, other than a member chosen to fill a casual vacancy, shall be six years, but upon the first constitution of the Council the Governor [2]*** shall, after consultation with the Election Commission, make by order such provision as he thinks fit for curtailing the term of office of some of the members then chosen in order that, as nearly as may be, one-third of the members holding seats of each class shall retire in every second year thereafter.

(*2*) A member chosen to fill a casual vacancy shall be chosen to serve for the remainder of his predecessor's term of office.

157. Commencement of the term of office of members of the Legislative Councils.—(*1*) The term of office of a member of the Legislative Council of a State whose name is required to be notified in the Official Gazette under [3][section 74] shall begin on the date of such notification.

(*2*) The term of office of a member of the Legislative Council of a State whose name is not required to be notified under [3][section 74] shall begin on the date of publication in the Official Gazette of the declaration containing the name of such person as elected under section 67 or of the notification issued under sub-clause (*e*) of clause (*3*) of article 171, announcing the nomination of such person to the Council, as the case may be.

[4][**158. Return or forfeiture of candidate's deposit.**—(*1*) The deposit made under section 34 or under that section read with sub-section (*2*) of section 39 shall either be returned to the person making it or his legal representative or be forfeited to the appropriate authority in accordance with the provisions of this section.

(*2*) Except in cases hereafter mentioned in this section, the deposit shall be returned as soon as practicable after the result of the election is declared.

(*3*) If the candidate is not shown in the list of contesting candidates, or if he dies before the commencement of the poll, the deposit shall be returned as soon as practicable after the publication of the list or after his death, as the case may be.

(*4*) Subject to the provisions of sub-section (*3*), the deposit shall be forfeited if at an election where a poll has been taken, the candidate is not elected and the number of valid votes polled by him does not exceed one-sixth of the total number of valid votes polled by all the candidates or in the case of election of more than one member at the election, one-sixth of the total number of valid votes so polled divided by the number of members to be elected:

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1. Ins. by the Adaptation of Laws (No. 2) Order, 1956.
2. The words "or the Rajpramukh, as the case may be" omitted by the Adaptation of Laws (No.2) Order, 1956, *ibid.*
3. Subs. by Act 27 of 1956, s. 79, for "section 75" (w.e.f. 28-8-1956).
4. Subs. by Act 58 of 1958, s. 39, for section 158 (w.e.f. 30-12-1958).

Provided that where at an election held in, accordance with the system of proportional representation by means of the single transferable vote, a candidate is not elected, the deposit made by him shall be forfeited if he does not get more than one-sixth of the number of votes prescribed in this behalf as sufficient to secure the return of a candidate.

(*5*) Notwithstanding anything in sub-sections (*2*), (*3*) and (*4*),—

(*a*) if at a general election, the candidate is a contesting candidate in more than one Parliamentary constituency or in more than one assembly constituency, not more than one of the deposits shall be returned, and the other shall be forfeited.]

(*b*) if the candidate is a contesting candidate at an election in more than one council constituency or at an election in a Council constituency and at an election by the members of the State Legislative Assembly to fill seats in the Legislative Council, not more than one of the deposits shall be returned, and the others shall be forfeited.]

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

(*2*) The following shall be the authorities for the purposes of sub-section (*1*), namely:—

(*i*) every local authority;

(*ii*) every university established or incorporated by or under a Central, Provincial or State Act;

(*iii*) a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

(*iv*) any other institution, concern or undertaking which is established by or under a Central, Provincial or State Act or which is controlled, or financed wholly or substantially by funds provided, directly or indirectly, by the Central Government or a State Government.]

160. Requisitioning of Premises, vehicles, etc., for election purposes.—(*1*) If it appears to the State Government that in connection with an election held within the State—

(*a*) any premises are needed or are likely to be needed for the purpose of being used as a polling station or for the storage of ballot boxes after a poll has been taken, or

(*b*) any vehicle, vessel or animal is needed or is likely to be needed for the purpose of transport of ballot boxes to or from any polling station, or transport of members of the police force for maintaining order during the conduct of such election, or transport of any officer or other person for performance of any duties in connection with such election,

that Government may by order in writing requisition such premises, or such vehicle, vessel or animal, as the case may be, and may make such further orders as may appear to it to be necessary or expedient in connection with the requisitioning:

Provided that no vehicle, vessel or animal which is being lawfully used by a candidate or his agent for any purpose connected with the election of such candidate shall be requisitioned under this sub-section until the completion of the poll at such election.

(*2*) The requisition shall be effected by an order in writing addressed to the person deemed by the State Government to be the owner or person in possession of the property, and such order shall be served in the prescribed manner on the person to whom it is addressed.

(*3*) Whenever any property is requisitioned under sub-section (*1*), the period of such requisition shall not extend beyond the period for which such property is required for any of the purposes mentioned in that sub-section.

1. Subs. by Act 12 of 1998, s. 2, for section 159 (w.e.f. 23-12-1997).

(*4*) In this section,—

(*a*) "premises" means any land, building or part of a building and includes a hut, shed or other structure or any part thereof;

(*b*) "vehicle" means any vehicle used or capable of being used for the purpose of road transport, whether propelled by mechanical power or otherwise.

161. Payment of compensation.—(*1*) Whenever in pursuance of section 160 the State Government requisitions any premises, there shall be paid to the persons interested compensation the amount of which shall be determined by taking into consideration the following, namely:—

(*i*) the rent payable in respect of the premises or if no rent is so payable, the rent payable for similar premises in the locality;

(*ii*) if in consequence of the requisition of the premises the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change:

Provided that where any person interested being aggrieved by the amount of compensation so determined makes an application within the prescribed time to the State Government for referring the matter to an arbitrator, the amount of compensation to be paid shall be such as the arbitrator appointed in this behalf by the State Government may determine:

Provided further that where there is any dispute as to the title to receive the compensation or as to the apportionment of the amount of compensation, it shall be referred by the State Government to an arbitrator appointed in this behalf by that Government for determination, and shall be determined in accordance with the decision of such arbitrator.

Explanation.—In this sub-section, the expression "person interested" means the person who was in actual possession of the premises requisitioned under section 160 immediately before the requisition, or where no person was in such actual possession, the owner of such premises.

(*2*) Whenever in pursuance of section 160 the State Government requisitions any vehicle, vessel or animal, there shall be paid to the owner thereof compensation the amount of which shall be determined by the State Government on the basis of fares or rates prevailing in the locality for the hire of such vehicle, vessel or animal:

Provided that where the owner of such vehicle, vessel or animal being aggrieved by the amount of compensation so determined makes an application within the prescribed time to the State Government for referring the matter to an arbitrator, the amount of compensation to be paid shall be such as the arbitrator appointed in this behalf by the State Government may determine:

Provided further that where immediately before the requisitioning the vehicle or vessel was by virtue of a hire-purchase agreement in the possession of a person other than the owner, the amount determined under this sub-section as the total compensation payable in respect of the requisition shall be apportioned between that person and the owner in such manner as they may agree upon, and in default of agreement, in such manner as an arbitrator appointed by the State Government in this behalf may decide.

162. Power to obtain information.—The State Government may with a view to requisitioning any property under section 160 or determining the compensation payable under section 161, by order, require any person to furnish to such authority as may be specified in the order such information in his possession relating to such property as may be so specified.

163. Powers of entry into and inspection of premises, etc.—(*1*) Any person authorised in this behalf by the State Government may enter into any premises and inspect such premises and any vehicle, vessel or animal therein for the purpose of determining whether, and if so in what manner, an order under section 160 should be made in relation to such premises, vehicle, vessel or animal, or with a view to securing compliance with any order made under that section.

(*2*) In this section the expressions "premises" and "vehicle" have the same meanings as in section 160.

164. Eviction from requisitioned premises.—(*1*) Any person remaining in possession of any requisitioned premises in contravention of any order made under section 160 may be summarily evicted from the premises by any officer empowered by the State Government in this behalf.

(*2*) Any officer so empowered may, after giving to any woman not appearing in public reasonable warning and facility to withdraw, remove or open any lock or bolt or break open any door of any building or do any other act necessary for effecting such eviction.

165. Release of premises from requisition.—(*1*) When any premises requisitioned under section 160 are to be released from requisition, the possession thereof shall be delivered to the person from whom possession was taken at the time when the premises were requisitioned, or if there were no such person, to the person deemed by the State Government to be the owner of such premises, and such delivery of possession shall be a full discharge of the State Government from all liabilities in respect of such delivery, but shall not prejudice any rights in respect of the premises which any other person may be entitled by due process of law to enforce against the person to whom possession of the premises is so delivered.

(*2*) Where the person to whom possession of any premises requisitioned under section 160 is to be given under sub-section (*1*) cannot be found or is not readily ascertainable or has no agent or any other person empowered to accept delivery on his behalf, the State Government shall cause a notice declaring that such premises are released from requisition to be affixed on some conspicuous part of such premises and publish the notice in the Official Gazette.

(*3*) When a notice referred to in sub-section (*2*) is published in the Official Gazette, the premises specified in such notice shall cease to be subject to requisition on and from the date of such publication and be deemed to have been delivered to the person entitled to possession thereof; and the State Government shall not be liable for any compensation or other claim in respect of such premises for any period after the said date.

166. Delegation of functions of the State Government with regard to requisitioning.—The State Government may, by notification in the Official Gazette, direct that any powers conferred or any duty imposed on that Government by any of the provisions of sections 160 to 165 shall, under such conditions, if any, as may be specified in the direction, be exercised or discharged by such officer or class of officers as may be so specified.

167. Penalty for contravention of any order regarding requisitioning.—If any person contravenes any order made under section 160 or section 162, he shall be punishable with imprisonment for a term which may extend to one year or with fine or with both.

168. [*Special provisions with respect to Rulers of former Indian States.*] *Omitted by Rulers of Indian States (Abolition of Privileges) Act*, 1972 (54 *of* 1972), *s.* 4 (*w.e.f.* 9-9-1972).

PART XI
GENERAL

169. Power to make rules.—(*1*) The Central Government may, after consulting the Election Commission, by notification in the Official Gazette, make rules[1] for carrying out the purposes of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

[2][(*a*) the form of affidavit under sub-section (*2*) of section 33A;]

[3][(*aa*)] the duties of presiding officers and polling officers at polling stations;

[4][(*aaa*) the form of contribution report;]

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1. *See* the Conduct of Election Rules, 1961.
2. Ins. by Act 72 of 2002, s. 6 (w.e.f. 24-8-2002).
3. Clause (*a*) renumbered as (*aa*) by s. 6, *ibid.* (w.e.f. 24-8-2002).
4. Ins. by Act 46 of 2003, s. 6 (w.e.f. 11-9-2003).

(*b*) the checking of voters by reference to the electoral roll;

[4][(*bb*) the manner of allocation of equitable sharing of time on the cable television network and other electronic media;]

(*c*) the manner in which votes are to be given both generally and in the case of illiterate voters or voters under physical or other disability;

(*d*) the manner in which votes are to be given by a presiding officer, polling officer, polling agent or any other person, who being an elector for a constituency is authorised or appointed for duty at a polling station at which he is not entitled to vole;

(*e*) the procedure to be followed in respect of the lender of vote by a person representing himself to be an elector after another person has voted as such elector;

[1][(*ee*) the manner of giving and recording of voles by means of voting machines and the procedure as to voting to be followed at polling stations where such machines are used;]

(*f*) the procedure as to voting to be followed at elections held in accordance with the system of proportional representation by means of the single transferable vote;

(*g*) the scrutiny and counting of votes including cases in which a recount of the votes may be made before the declaration of the result of the election;

[1][(*gg*) the procedure as to counting of votes recorded by means of voting machines;]

(*h*) the safe custody of [2][ballot boxes, voting machines], ballot papers and other election papers, the period for which such papers shall be preserved and the inspection and production of such papers;

[3][(*hh*) the material to be supplied by the Government to the candidates of recognised political parties at any election to be held for the purposes of constituting the House of the People or the Legislative Assembly of a State;]

(*i*) any other matter required to be prescribed by this Act.

[4][(*3*) Every rule made under this Act shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or [5][in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made,] the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to validity of anything previously done under the rule.]

170. Jurisdiction of civil courts barred.—No civil court shall have jurisdiction to question the legality of any action taken or of any decision given by the returning officer or by any other person appointed under this Act in connection with an election.

171. [*Repeal of Act* 39 *of* 1920.] *Rep. by the Repealing and Amending Act*, 1957 (36 *of* 1957), *s.* 2 *and the First Schedule* (*w.e.f.* 17-9-1957).

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1. Ins. by Act 1 of 1989, s. 16 (w.e.f. 15-3-1989).
2. Subs. by s. 16, *ibid.*, for "ballot boxes" (w.e.f. 15-3-1989).
3. Ins. by Act 46 of 2003, s. 6 (w.e.f. 11-9-2003).
4. Subs. by Act 40 of 1961, s. 29, for sub-section (*3*) (w.e.f. 20-9-1961).
5. Subs. by Act 4 of 1986, s. 2 and the Schedule (w.e.f. 15-5-1986).

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HP Pahal

(T.C.)

ANNEXURE/P-4

*THE CONDUCT OF ELECTIONS RULES, 1961[1]

PART I
Preliminary

1. Short title and commencement.—(*1*) These rules may be called the Conduct of Elections Rules, 1961.

(*2*) They shall come into force on the 25th day of April, 1961:

Provided that these rules shall not apply to or in relation to any election called but not completed before that date and the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1956, shall continue to apply to or in relation to any such election as if these rules had not been made.

2. Interpretation.—(*1*) In these rules, unless the context otherwise requires,—

(*a*) "Act" means the Representation of the People Act, 1951 (43 of 1951);

(*b*) "ballot box" includes any box, bag or other receptacle used for the insertion of ballot paper by voters;

[2][(*ba*) "counterfoil" means the counterfoil attached ~~to~~ a ballot paper printed under the provisions of these rules;]

[3]* * * * *

(*c*) "election by assembly members" means an election to the Council of States by the elected members of the Legislative Assembly of a State by the members of the electoral college of a Union territory, or an election to the Legislative Council of a State by the members of the Legislative Assembly of that State;

(*d*) "elector", in relation to an election by assembly members, means any person entitled to vote at that election;

(*e*) "electoral roll", in relation to an election by assembly members, means the list maintained under section 152 by the returning officer for that election;

(*f*) "electoral roll number" of a person means—

(*i*) the serial number of the entry in the electoral roll in respect of that person;

(*ii*) the serial number of the part of the electoral roll in which such entry occurs; and

(*iii*) the name of the constituency to which the electoral roll relates;

[4][(*g*) "Form" means a Form appended to these rules and in respect of any election in a State, includes a translation thereof in any of the languages used for official purposes of the State;

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* Rules recently amended *vide* Notifn. No. S.O. 272(E), dated the 27th February, 2004.

1. Published with the Ministry of Law Notifn. No. S.O. 859, dated the 15th April, 1961, *see* Gazette of India, Extraordinary, Part II, Section 3(*ii*), Page 419.
2. Ins. by Notifn. No. S.O. 5573, dated the 23rd December, 1971.
3. Ins. by Notifn. No. S.O. 3875, dated the 15th December, 1966 and omitted by Notifn. No. S.O. 1294(E), dated the 11th November, 2003.
4. Subs. by Notifn. No. S.O. 3450, dated the 9th November, 1966, for cl. (*g*).

[1][(*gg*) "marked copy of the electoral roll" means the copy of the electoral roll set apart for the purpose of marking the names of electors to whom ballot papers are issued at an election;]

(*h*) "polling station", in relation to an election by assembly members, means the place fixed under section 29 for taking the poll at that election;

(*i*) "presiding officer" includes—

(*i*) any polling officer performing any of the functions of a presiding officer under sub-section (*2*) or sub-section (*3*) of section 26; and

(*ii*) any returning officer while presiding over an election under sub-section (*2*) of section 29;

(*j*) "returning officer" includes any assistant returning officer performing any function he is authorised to perform under sub-section (*2*) of section 22;

(*k*) "section" means a section of the Act.

(*2*) For the purposes of the Act or these rules, a person who is unable to write his name shall, unless otherwise expressly provided in these rules, be deemed to have signed an instrument or other paper if—

(*a*) he has placed a mark on such instrument or other paper in the presence of the returning officer or the presiding officer or such other officer as may be specified in this behalf by the Election Commission, and

(*b*) such officer on being satisfied as to his identity has attested the mark as being the mark of that person.

(*3*) Any requirement under these rules that a notification, order, declaration, notice or list issued or made by any authority shall be published in the Official Gazette shall, unless otherwise expressly provided in these rules, be construed as a requirement that it shall be published in the Gazette of India, if it relates to an election to, or membership of, either House of Parliament or an electoral college, and in the Official Gazette of the State, if it relates to an election to, or membership of, the House or either House of the State Legislature.

(*4*) The General Clauses Act, 1897 (10 of 1897) shall apply for the interpretation of these rules as it applies for the interpretation of an Act of Parliament.

PART II

General provisions

3. Public notice of intended election.—The public notice of an intended election referred to in section 31 shall be in Form 1 and shall, subject to any directions of the Election Commission, be published in such manner as the returning officer thinks fit.

4. Nomination paper.—Every nomination paper presented under sub-section (*1*) of section 33 shall be completed in such one of the Forms 2A to 2E as may be appropriate:

Provided that a failure to complete or defect in completing, the declaration as to symbols in a nomination paper in Form 2A or Form 2B shall not be deemed to be a defect of a substantial character within the meaning of sub-section (*4*) of section 36.

[2][**4A. Form of affidavit to be filed at the time of delivering nomination paper.**—The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (*1*) of section 33 of the Act, also deliver to him an affidavit sworn by the candidate before a Magistrate of the first class or a Notary in Form 26.]

1. Subs. by Notifn. No. S.O. 5573, dated the 23rd December, 1971, for cl.(*gg*).
2. Ins. by Notifn. No. S.O. 935 (E), dated the 8th September, 2002.

5. Symbols for elections in parliamentary and assembly constituencies.—(*1*) The Election Commission shall, by notification in the Gazette of India, and in the Official Gazette of each State, specify the symbols that may be chosen by candidates at elections in parliamentary or assembly constituencies and the restrictions to which their choice shall be subject.

(*2*) [1][Subject to any general or special direction issued by the Election Commission either under sub-rule (*4*) or sub-rule (*5*) of rule 10, where at any such election], more nomination papers than one are delivered by or on behalf of a candidate, the declaration as to symbols made in the nomination paper first delivered, and no other declaration as to symbols, shall be taken into consideration under rule 10 even if that nomination paper has been rejected.

6. Authentication of certificates issued by the Election Commission.—A certificate issued by the Election Commission under [2][sub-section (*2*) of section 9] or under sub-section (*3*) of section 33 shall be signed by the Secretary to the Election Commission and shall bear its official seal.

7. Notice of nominations.—The notice of nominations under section 35 shall be in such one of the Forms 3A to 3C as may be appropriate.

[3][**8. List of validly nominated candidates.**—(*1*) The list of validly nominated candidates referred to in sub-section (*8*) of section 36 shall be in Form 4.

(*2*) The name of every such candidate shall be shown in said list as it appears in his nomination paper:

Provided that if a candidate considers that his name is incorrectly spelt or is otherwise incorrectly shown in his nomination paper or is different from the name by which he is popularly known, he may, at any time before the list of contesting candidates is prepared furnish in writing to the returning officer the proper form and spelling of his name and the returning officer shall, on being satisfied as to the genuineness of the request, make the necessary correction or alteration in the list in Form 4 and adopt that form and spelling in the list of contesting candidates.]

9. Notice of withdrawal of candidature.—(*1*) A notice of withdrawal of candidature under sub-section (*1*) of section 37 shall be in Form 5 and shall contain the particulars set out therein; and on receipt of such notice, the returning officer shall note thereon the date and time at which it was delivered.

(*2*) The notice under sub-section (*3*) of section 37 shall be in Form 6.

10. Preparation of list of contesting candidates.—(*1*) The list of contesting candidates referred to in sub-section (*1*) of section 38 shall be in Form 7A or Form 7B as may be appropriate and shall contain the particulars set out therein and shall be prepared in such language or languages as the Election Commission may direct.

[4]* * * * *

(*3*) If the list is prepared in more languages than one, the names of candidates therein shall be arranged alphabetically according to the script of such one of those languages as the Election Commission may direct.

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1. Subs. by Notifn. No. S.O. 5573, dated the 23rd December, 1971, for certain words.
2. Subs. by Notifn. No. S.O. 1542, dated the 25th April, 1967, for certain words.
3. Subs. by Notifn. No. S.O. 3450, dated the 9th November, 1966, for rule 8.
4. Sub-rule (2) omitted by Notifn. No. S.O. 3662, dated the 12th October, 1964.

(*4*) At an election in a parliamentary or assembly constituency, where a poll becomes necessary, the returning officer shall consider the choice of symbols expressed by the contesting candidates in their nomination papers and shall, subject to any general or special direction issued in this behalf by the Election Commission,—

(*a*) allot a different symbol to each contesting candidate in conformity, as far as practicable, with his choice; and

(*b*) if more contesting candidates than one have indicated their preference for the same symbol decide by lot to which of such candidates the symbol will be allotted.

(*5*) The allotment by the returning officer of any symbol to a candidate shall be final except where it is inconsistent with any directions issued by the Election Commission in this behalf in which case the Election Commission may revise the allotment in such manner as it thinks fit.

(*6*) Every candidate or his election agent shall forthwith be informed of the symbol allotted to the candidate and be supplied with a specimen thereof by the returning officer.

[1][**11. Publication of list of contesting candidates and declaration of result in uncontested election.**—(*1*) The returning officer shall, immediately after its preparation, cause a copy of the list of contesting candidates to be affixed in some conspicuous place in his office and where the number of contesting candidates is equal to, or less than, the number of seats to be filled, he shall, immediately after such affixation, declare under sub-section (*2*) or as the case may be, sub-section (*3*) of section 53 the result of the election in such one of the Forms 21 to 21B as may be appropriate and send signed copies of the declaration to the appropriate authority, the Election Commission and the chief electoral officer.

(*2*) If a poll becomes necessary under sub-section (*1*) of section 53, the returning officer shall supply a copy of the list of contesting candidates to each such candidate or his election agent, and then shall also publish the list in the Official Gazette.]

12. Appointment of election agent.—[2][(*1*) Any appointment of an election agent under section 40 shall be made in Form 8 and the notice of such appointment shall be given by forwarding the same in duplicate to the returning officer who shall return one copy thereof to the election agent after affixing thereon his seal and signature in token of his approval of the appointment.]

(*2*) The revocation of the appointment of an election agent under sub-section (*1*) of section 42 shall be made in Form 9.

13. Appointment of polling agents.—(*1*) The number of polling agents that may be appointed under section 46 shall be one agent and two relief agents.

(*2*) Every such appointment shall be made in Form 10 and shall be made over to the polling agent for production at the polling station or the place fixed for the poll, as the case may be.

(*3*) No polling agent shall be admitted into the polling station or the place fixed for the poll unless he has delivered to the presiding officer the instrument of his appointment under sub-rule (*2*) after duly completing and signing before the presiding officer the declaration contained therein.

14. Revocation of the appointment of a polling agent.—(*1*) The revocation of the appointment of a polling agent under sub-section (*1*) of section 48 shall be made in Form 11 and lodged with the presiding officer.

(*2*) In the event of any such revocation the candidate or his election agent may, at any time before the poll is closed, make a fresh appointment in the manner specified in rule 13 and the provisions of that rule shall apply to every such agent.

1. Subs. by Notifn. No. S.O. 4542, dated the 20th December, 1968 (w.e.f. 1-1-1969) for rule 11.
2. Subs. by Notifn. No. S.O. 3450, dated the 9th November, 1966, for sub-rule (*1*).

15. Publication of the hours fixed for polling.—The hours fixed for polling under section 56 shall be published by notification in the Official Gazette.

16. Voting normally to be in person.—Save as hereinafter provided, all electors voting at an election shall do so in person at the polling station provided for them under section 25 or, as the case may be, at the place of polling fixed under section 29.

PART III

Postal ballot

17. Definitions.—In this Part,—

[1][(*a*) "service voter" means any person specified in clause (*a*) or clause (*b*) of section 60, but does not include "classified service voter" defined in rule 27M;]

(*b*) "special voter" means any person holding an office to which the provisions of sub-section (*4*) of section 20 of the Representation of the People Act, 1950 (43 of 1950) are declared to apply or the wife of such person, if he or she has been registered as an elector by virtue of a statement made under sub-section (*5*) of the said section;

(*c*) "voter on election duty" means any polling agent, any polling officer, presiding officer or other public servant, who is an elector in the constituency and is by reason of his being on election duty unable to vote as the polling station where he is entitled to vote.

18. Persons entitled to vote by post.—The following persons shall, subject to their fulfilling the requirements hereinafter specified, be entitled to vote by post, namely:—

(*a*) at an election in a parliamentary or assembly constituency—

(*i*) special voters;

(*ii*) service voters;

(*iii*) voters on election duty; and

(*iv*) electors subjected to preventive detention;

(*b*) at an election in a council constituency—

(*i*) voters on election duty;

(*ii*) electors subjected to preventive detention; and

(*iii*) electors in the whole or any specified parts, of the constituency if directed by the Election Commission in this behalf under clause (*b*) of rule 68;

(*c*) at an election by a assembly members—

(*i*) electors subjected to preventive detention; and

(*ii*) all electors if directed by the Election Commission in this behalf under clause (*a*) of rule 68.

1. Subs. by Notifn. No. S.O. 903(E), dated the 5th August, 2003.

19. Intimation by special voters.—A special voter who wishes to vote by post at an election shall send an intimation in Form 12 to the returning officer so as to reach him at least ten days before the date of poll; and on receipt of the intimation the returning officer shall issue a postal ballot paper to him.

20. Intimation by voters on election duty.—[1][(*1*)] A voter on election duty who wishes to vote by post at an election shall send an application in Form 12 to the returning officer so as to reach him at least seven days or such shorter period as the returning officer may allow before the date of poll; and if the returning officer is satisfied that the applicant is a voter on election duty, he shall issue a postal ballot paper to him.

[2][(*2*) Where such voter, being a polling officer, presiding officer or other public servant on election duty in the constituency of which he is an elector, wishes to vote in person at an election [3][in a parliamentary or assembly constituency] and not by post, he shall send an application in Form 12A to the returning officer so as to reach him at least four days, or such shorter period as the returning officer may allow, before the date of poll; and if the returning officer is satisfied that the applicant is such public servant and voter on election duty in the constituency, he shall—

(*a*) issue to the applicant an election duty certificate in Form 12B,

(*b*) mark 'EDC' against his name in the marked copy of the electoral roll to indicate that an election duty certificate has been issued to him, and

(*c*) ensure that he is not allowed to vote at the polling station where he would otherwise have been entitled to vote.]

21. Electors under preventive detention.—(*1*) The appropriate Government shall, within fifteen days of the calling of an election, ascertain and intimate to the returning officer the names of the electors, if any, subjected to preventive detention together with their addresses and electoral roll numbers and the particulars about their places of detention.

(*2*) Any elector subjected to preventive detention may, within fifteen days of the calling of an election, send an intimation to the returning officer that he wishes to vote by post, specifying his name, address, electoral roll number and place of detention.

(*3*) The returning officer shall issue a postal ballot paper to every elector subjected to preventive detention whose name has been intimated to him under sub-rule (*1*) or under sub-rule (*2*).

22. Form of ballot paper.—[4][(*1*) Every postal ballot paper shall have a counterfoil attached thereto, and the said ballot paper and the counterfoil shall be in such form, and the particulars therein shall be in such language or languages, as the Election Commission may direct.]

(*2*) The names of the candidates shall be arranged [5][on the postal ballot paper] in the order in which they appear in the list of contesting candidates.

(*3*) If two or more candidates bear the same name, they shall be distinguished by the addition of their occupation or residence or in some other manner.

1. Rule 20 renumbered as sub-rule (*1*) of that rule by Notifn. No. S.O. 3662, dated the 12th October, 1964.
2. Ins., *ibid.*
3. Ins. by Notifn. No. S.O. 3450, dated the 9th November, 1966.
4. Subs. by Notifn. No. S.O. 5573, dated the 23rd December, 1971, for sub-rule (*1*).
5. Ins., *ibid.*

23. Issue of ballot paper.—(*1*) A postal ballot paper shall be sent by post under certificate of posting to the elector together with—

(*a*) a declaration in Form 13A;

(*b*) a cover in Form 13B;

(*c*) a large cover addressed to the returning officer in Form 13C; and

(*d*) instructions for the guidance of the elector in Form 13D:

Provided that the returning officer may, in the case of a special voter or a voter on election duty, deliver the ballot paper and Forms, or cause them to be delivered, to such voter personally.

[1][(*2*) The returning officer shall at the same time—

(*a*) record on the counterfoil of the ballot paper the electoral roll number of the elector as entered in the marked copy of the electoral roll;

(*b*) mark the name of the elector in the marked copy of the electoral roll to indicate that a ballot paper has been issued to him, without however recording therein the serial number of the ballot paper issued to that elector; and

(*c*) ensure that that elector is not allowed to vote at a polling station.]

(*3*) Before any ballot paper is issued to an elector at an election in a local authorities' constituency or by assembly members, the serial number of the ballot paper shall be effectively concealed in such manner as the Election Commission may direct.

(*4*) Every officer under whose care or through whom a postal ballot paper is sent shall ensure its delivery to the addressee without delay.

(*5*) After ballot papers have been issued to all the electors entitled to vote by post, the returning officer shall—

(*a*) at an election in a parliamentary or assembly constituency, [2][subject to the provisions of rule 27P, seal up in a packet] that part of the marked copy of the electoral roll which relates to service voters and record on the packet a brief description of its contents and the date on which it was sealed and send the other relevant parts of the marked copy to the several presiding officers [3][or marking the names of electors to whom ballot papers are issued at the polling stations without however recording therein the serial numbers of the ballot papers issued to the electors]; and

(*b*) at any other election, seal up in a packet the marked copy of the electoral roll and record on the packet a brief description of its contents and the date on which it is sealed.

[4][(*6*) The returning officer shall also seal up in a separate packet the counterfoils of the ballot papers issued to electors entitled to vote by post and record on the packet a brief description of its contents and the date on which it was sealed.]

24. Recording of Vote.—(*1*) An elector who has received a postal ballot paper and desires to vote shall record his vote on the ballot paper in accordance with the directions contained in Part I of Form 13D and then enclose it in the cover in Form 13B.

1. Subs. by Notifn. No. S.O. 5573, dated the 23rd December, 1971, for sub-rule (*2*).
2. Subs. by Notifn. No. 903(E), dated the 5th August, 2003, for "seal up in a packet".
3. Subs., by Notifn. No. S.O. 5573, dated the 23rd December, 1971, for certain words.
4. Ins., *ibid.*

(*2*) The elector shall sign the declaration in Form 13A in the presence of, and have the signature attested by, a stipendiary magistrate or such other officer specified below, as may be appropriate, to whom he is personally known or to whose satisfaction he has been identified—

(*a*) in the case of a service voter, such officer as may be appointed in this behalf by the Commanding Officer of the unit, ship or establishment in which the voter or her husband, as the case may be, is employed or such officer as may be appointed in this behalf by the diplomatic or consular representative of India in the country in which such voter is resident;

(*b*) in the case of a special voter, an officer not below the rank of a Deputy Secretary to Government;

(*c*) in the case of a voter on election duty, any gazetted officer [1][or the presiding officer of the polling station at which he is on election duty];

(*d*) in the case of an elector under preventive detention, the Superintendent of the Jail or the Commandant of the detention camp in which the elector is under detention; and

(*e*) in any other case, such officer as may be notified in this behalf by the Election Commission.

25. Assistance to illiterate or infirm voters.—(*1*) If an elector is unable through illiteracy, blindness or other physical infirmity to record his vote on a postal ballot paper and sign the declaration, he shall take the ballot paper, together with declaration and the covers received by him to an officer competent to attest his signature under sub-rule (*2*) of rule 24 and request the officer to record his vote and sign his declaration on his behalf.

(*2*) Such officer shall thereupon mark the ballot paper in accordance with the wishes of the elector in his presence, sign the declaration on his behalf and complete the appropriate certificate contained in Form 13A.

26. Re-issue of ballot paper.—(*1*) When a postal ballot paper and other papers sent under rule 23 are for any reason returned undelivered, the returning officer may re-issue them by post under certificate of posting or deliver them or cause them to be delivered to the elector personally on a request being made by him.

(*2*) If any elector has inadvertently dealt with the ballot paper or any of the other papers sent to him under rule 23 in such a manner that they cannot conveniently be used, a second set of the papers shall be issued to him after he has returned the spoiled papers and satisfied the returning officer of the inadvertence.

(*3*) The returning officer shall cancel the spoiled papers so returned and keep them in a separate packet after noting thereon the particulars of the election and the serial numbers of the cancelled ballot papers.

27. Return of ballot paper.—(*1*) After an elector has recorded his vote and made his declaration under rule 24 or rule 25, he shall return the ballot paper and declaration to the returning officer in accordance with the instructions communicated to him in Part II of Form 13D so as to reach the returning officer before [2][the hour fixed for the commencement of counting of votes].

(*2*) If any cover containing a postal ballot paper is received by the returning officer after the expiry of the time fixed in sub-rule (*1*), he shall note thereon the date and time of its receipt and shall keep all such covers together in a separate packet.

(*3*) The returning officer shall keep in safe custody until the commencement of the counting of votes all covers containing postal ballot papers received by him.

1. Ins. by Notifn. No. S.O. 3450, dated the 9th November, 1966.
2. Subs. by Notifn. No. S.O. 479A, dated the 27th January, 1971, for certain words.

[1][PART IIIA

Procedure for voting by the notified class of electors

27A. Definitions.—In this Part, unless the context otherwise requires,—

(*a*) "Assistant Returning Officer", for the notified class of electors, means the Assistant Returning Officer notified by the Election Commission for the purposes of this Part;

(*b*) "notified elector" means an elector who belongs to a class of persons notified by the Election Commission under clause (*c*) of section 60 of the Act.

27B. Special provisions for voting by the notified class of electors.—Notwithstanding anything contained in Part III, the provisions of this Part shall apply to a notified elector who wishes to vote by post at an election.

27C. Intimation by a notified elector.—A notified elector, who wishes to vote by post at an election shall send an application in Form 12C to the Assistant Returning Officer for the notified class of electors so as to reach him at least ten days before the date of the poll and on receipt of the intimation such Assistant Returning Officer shall issue a postal ballot paper to him:

Provided that an application which does not furnish complete particulars as required in Form 12C may be rejected if such Assistant Returning Officer, despite making reasonable efforts, is not in a position to ascertain the requisite information:

Provided further that an application in Form 12C without a certificate from the authorised officer as required under Part II of Form 12C shall be rejected.

27D. Form of ballot paper.—(*1*) Every postal ballot paper shall have a counterfoil attached thereto and the said ballot paper and the counterfoil shall be in such form and the particulars therein shall be in such language or languages as the Election Commission may direct.

(*2*) The names of the candidates shall be arranged on the postal ballot paper in the order in which they appear in the list of contesting candidates.

(*3*) If two or more candidates bear the same name, they shall be distinguished by the addition of their occupation or residence or in some other manner.

27E. Issue of ballot paper.—A postal ballot paper shall be sent by post under certificate of posting to the notified elector together with—

(*a*) a declaration in Form 13A;

(*b*) a cover in Form 13B;

(*c*) a large cover addressed to the Returning Officer in Form 13C; and

(*d*) instructions for the guidance of the elector in Form 13E:

Provided that the Assistant Returning Officer of the notified class of electors may deliver, or cause to be delivered, the ballot paper and the Forms to the notified elector personnel".

(*2*) The Assistant Returning Officer for the notified class of electors shall at the same time—

(*a*) record on the counterfoil of the ballot paper the electoral roll number of the elector as entered in the marked copy of the electoral roll;

1. Part IIIA ins. by Notifn. No. S.O. 32(E), dated the 1st May, 1996 and Subs. by Notifn. No. S.O. 92(E), dated the 27th January, 1998.

(*b*) mark the name of the elector in the marked copy of the electoral roll to indicate that a ballot paper has been issued to him without, however, recording therein the serial number of the ballot paper issued to that elector;

(*c*) ensure that the elector is not allowed to vote at a polling station.

(*3*) Every officer under whose care or through whom a postal ballot paper is sent shall ensure its delivery to the addressee without delay.

(*4*) The Assistant Returning Officer for the notified class of electors shall ensure that ballot papers are issued to all such electors whose intimation has been received in accordance with rule 27C and who are entitled to vote by post before eight days from the date of poll in the constituency and shall on expiry of the said period of eight days keep the marked copies of the electoral rolls in sealed envelopes and record on the envelopes a brief description of its contents and the date on which it was sealed and send the sealed envelopes to the Returning Officer concerned.

(*5*) The Assistant Returning Officer for the notified class of electors shall also seal in a separate packet the counterfoils of the ballot papers issued to electors entitled to vote by post and record on the packet a brief description of its contents and the date on which it was sealed and send the sealed packet to the Returning Officer concerned.

27F. Recording of vote.—(*1*) A notified elector who has received a postal ballot paper and desires to vote shall record his vote on the ballot paper in accordance with the instructions contained in Form 13E and then enclose it in the cover in Form 13B.

(*2*) The notified elector shall sign the declaration in Form 13A in the presence of, and have the signature attested by, an officer authorised under sub-rule (*2*) of rule 27J.

27G. Assistance to illiterate or infirm electors.—(*1*) If a notified elector is unable through illiteracy, blindness or other physical infirmity to record his vote on a postal ballot paper and sign the declaration, he shall take the ballot paper together with the declaration and the covers received by him to an officer authorised under sub-rule (*2*) of rule 27J and request the officer to record his vote and sign his declaration on his behalf.

(*2*) Such officer shall thereupon mark the ballot paper in accordance with the wishes of the elector in his presence, sign the declaration on his behalf and complete all the requirements to be made in this behalf.

27H. Re-issue of ballot paper.—(*1*) When a postal ballot paper and other papers sent under rule 27E are for any reason returned undelivered, the Assistant Returning Officer for the notified class of electors may re-issue them by post under certificate of posting or deliver them or cause them to be delivered to the elector personally either on a request being made by him or of his own.

(*2*) If any notified elector has inadvertently dealt with the ballot paper or any of the other papers sent to him under rule 27E in such a manner that they cannot conveniently be used, a second set of the papers shall be issued to him after he has returned the spoiled papers and satisfied the Assistant Returning Officer for the notified class of electors of the inadvertence.

(*3*) The Assistant Returning Officer for the notified class of electors shall cancel the spoiled papers so returned and keep them in a separate packet after noting thereon the particulars of the election and the serial numbers of the cancelled ballot papers.

27-I. Return of ballot paper.—(*1*) After a notified elector has recorded his vote and made his declaration under rule 27F or rule 27G, he shall return the ballot paper and the declaration to the Returning Officer concerned before the hour fixed for the commencement of counting of votes.

(*2*) If any cover containing a postal ballot paper is received by the Returning Officer after the expiry of the time fixed in sub-rule (*1*), he shall note thereon the date and time of its receipt and shall keep all such covers together in a separate packet.

(*3*) The Returning Officer shall keep in safe custody until the commencement of the counting of votes all covers containing postal ballot papers received by him.

27J. Officers authorised to perform certain functions under this Part.—(*1*) The officers mentioned in sub-rule (*2*) shall be the authorised officers for the purpose of—

(*a*) sub-rule (*2*) of rule 27G;

(*b*) issuing certificate in Part II of Form 12C.

(*2*) Any of the following officers shall be the authorised officers for the purpose of sub-rule (*1*) —

(*a*) an oficer incharge of a migrant camp/area;

(*b*) an officer incharge of an office from where the migrant elector draws his salary as a migrant employee;

(*c*) an officer incharge of a treasury/bank from where the migrant elector draws his pension as a pensioner;

(*d*) any gazetted officer.

27K. Marked copy of the electoral roll.—The Returning Officer shall ensure that the marked copy of the electoral roll received by him from the Assistant Returning Officer for the notified class of electors is used during the poll in the constituency so that such electors who have been supplied with a postal ballot paper do not cast the vote again.

27L. Notwithstanding anything contained in rule 54A, the Election Commission may direct, by notification in the Official Gazette, that the postal ballot papers may be mixed with the ordinary ballot papers at the time of mixing of ordinary ballot papers under rule 59A and, in that case, the Election Commission may also prescribe, by directions to the Returning Officers, the manner in which the mixing of postal ballot papers shall be done with the ordinary ballot papers in the constituency.]

[1][PART IIIB

Voting by classified service voters through proxy

27M. Definitions.—In this Part, unless the context otherwise requires,—

(*a*) "classified service voter" means any person specified in clause (*a*) of section 60, who opts to give his vote by proxy;

(*b*) "proxy" means the person appointed by a classified service voter as his proxy under rule 27N to give vote on his behalf and in his name;

(*c*) "service voter" means any person specified in clause (*a*) of section 60 and registered as an elector in the last part of the electoral roll for the constituency.

27N. Appointment of proxy by a classified service voter.—(*1*) A service voter may opt to give his vote by proxy appointed in the manner provided in sub-rules (*2*) to (*4*).

(*2*) Any service voter opting to vote by proxy may appoint any person as his proxy to give vote on his behalf and in his name at an election in a parliamentary or assembly constituency:

Provided that such proxy shall be an ordinary resident in the constituency concerned and of not less than 18 years of age and shall not be disqualified for registration as an elector in an electoral roll under section 16 of the Representation of the People Act, 1950 (43 of 1950).

1. Ins. by Notifn. No. S.O. 903(E), dated the 5th August, 2003.

(*3*) The appointment of proxy under sub-rule (*2*) shall be made by the classified service voter in Form 13F.

(*4*) Any appointment of proxy made under sub-rule (*3*) shall be deemed to be valid so long as the person making it continues to be a service voter or till the date he revokes such appointment, or dies, whichever is earlier:

Provided that any revocation of appointment shall be made in Form 13G and shall be effective from the date on which it is received by the returning officer:

Provided further that where he revokes such appointment, or the proxy appointed by him dies, while he remains a service voter, he may appoint another person as proxy under these rules, as a substitute proxy in Form 13G and the substitute proxy so appointed shall be the proxy appointed by such classified service voter under sub-rule (*3*) from the date of receipt of the Form 13G by the returning officer.

27-O. Intimation of name of proxy by the classified service voter.—(*1*) The name of the proxy appointed by a classified service voter under sub-rule (*3*), or, as the case may be, under the second proviso to sub-rule (*4*), of rule 27N shall be intimated by him to the returning office as soon as may be after such appointment is made, and such intimation must reach the returning officer not later than the last date for making nominations for the earliest election in the constituency after such appointment.

(*2*) Notwithstanding anything contained in sub-rule (*1*), if any intimation under that sub-rule reaches the returning officer after the last date for making nominations in the constituency, such intimation shall not be valid for the election then in progress, but shall, subject to the provisions of sub-rule (*4*) of rule 27N, be valid for any future election in the constituency.

27P. Action by returning officer on intimation of name of proxy.—(*1*) On receipt of intimation under rule 27-O from a classified service voter in regard to his proxy, the returning officer shall mark "CSV" against the name of such voter in the last part of the electoral roll containing the names of all service voters so as to indicate that the said voter has appointed his proxy, and the returning officer shall—

(*a*) If it is an intimation received the last date for making nominations in the constituency, ensure that no postal ballot paper is issued to such classified service voter; and

(*b*) if it is an intimation received after the said last date, ensure that a postal ballot paper is issued to such classified service voter for the election then in progress, in accordance with the provisions contained in Part III of these rules.

(*2*) The returning officer shall also prepare, and maintain up-to date, a separate list of all classified service voters who have given intimation of their proxies under rule 27-O, and also of all such proxies with their complete addresses, in such form and such manner as the Election Commission may specify from time to time.

(*3*) As soon as may be after the last date for making nominations in the constituency, the returning officer shall, on the basis of the list maintained under sub-rule (*2*) and subject to such further direction as the Election Commission may give in this behalf, prepare or cause to be prepared polling station-wise sub-lists of all classified service voters and their proxies having regard to the residential address of each such classified service voter as given in the electoral roll.

(*4*) Each sub-list prepared under sub-rule (*3*) shall thereafter be caused to be added by the returning officer at the end to the relevant part of the electoral roll pertaining to each polling station concerned, and such relevant part of the electoral roll together with the said sub-list shall be deemed to be the copy of the electoral roll to be used as the marked copy of the electoral roll under rule 33A or, as the case may be, under rule 49F during the poll at the polling station concerned.

27Q. Recording of votes of proxy.—(*1*) A person voting as proxy for a classified service voter shall do so in person at the polling station concerned in the electoral roll of which the name of such classified service voter is added under sub-rule (*4*) of rule 27P.

(*2*) The person voting as proxy shall record the vote on behalf of the classified service voter at the said polling station, in the same manner as any other elector assigned to that polling station and the provisions of rules 34, 35 and 36 to 43 or, as the case may be, rules 49G, 49H, 49J to 49R shall apply in relation to the recording of vote by such proxy as they apply to any other elector at the polling station:

Provided that any reference to left forefinger of elector in rule 37 or, as the case may be, rule 49K shall be construed as reference to left middle finger of the person voting as a proxy under this rule.]

PART IV
Voting in Parliamentary and Assembly Constituencies

[1][CHAPTER I
VOTING BY BALLOT]

28. Definitions.—[2][In this Chapter and Chapter II], unless the context otherwise requires,—

(*a*) "candidate" means a contesting candidate;

(*b*) "constituency" means a parliamentary or assembly constituency; and

(*c*) "polling agent", in relation to a polling station, means a polling agent of a candidate duly appointed under section 46 for the polling station and includes a candidate and the election agent of a candidate when present at the polling station.

29. Design of ballot boxes.—Every ballot box shall be of such design as may be approved by the Election Commission.

30. Form of ballot papers.—[3][(*1*) Every ballot paper shall have a counterfoil attached thereto, and the said ballot paper and the counterfoil shall be in such form, and the particulars therein shall be in such language or languages, as the Election Commission may direct.]

(*2*) The names of the candidates shall be arranged on the ballot paper in the same order in which they appear in the list of contesting candidates.

(*3*) If two or more candidates bear the same name, they shall be distinguished by the addition of their occupation or residence or in some other manner.

31. Arrangements at polling stations.—(*1*) Outside each polling station there shall be displayed prominently—

(*a*) a notice specifying the polling area the electors of which are entitled to vote at the polling station and, when the polling area has more than one polling station, the particulars of the electors so entitled; and

(*b*) a copy of the list of contesting candidates.

(*2*) At each polling station, there shall be set up [4][one or more voting compartments] in which electors can record their votes screened from observation.

(*3*) The returning officer shall provide at each polling station a sufficient number of ballot boxes, copies of the relevant part of the electoral roll, ballot papers, instruments for stamping the distinguishing mark on ballot papers and articles, necessary for electors to mark the ballot papers.

32. Admission to polling stations.—The presiding officer shall regulate the number of electors, to be admitted at any one time inside the polling station and shall exclude therefrom all persons other than—

(*a*) polling officers;

(*b*) public servants on duty in connection with the election;

(*c*) persons authorised by the Election Commission;

1. Ins. by Notifn. No. S.O. 230(E), dated the 24th March, 1992.
2. Subs., *ibid.*, for certain words.
3. Subs. by Notifn. No. S.O. 5573, dated the 23rd December, 1971, for sub-rule (*1*).
4. Subs., *ibid.*, for certain words.

(*d*) candidates, their election agents and subject to the provisions of rule 13, one polling agent of each candidate;

(*e*) a child in arms accompanying an elector;

(*f*) a person accompanying a blind or infirm elector who cannot move without help; and

(*g*) such other persons as the returning officer or the presiding officer may employ under sub-rule (*2*) of rule 34 or sub-rule (*1*) of rule 35.

33. Preparation of ballot boxes for poll.—(*1*) Where a paper seal is used for securing a ballot box, the presiding officer shall affix his own signature on the paper seal and obtain thereon the signatures of such of the polling agents present as are desirous of affixing the same.

(*2*) The presiding officer shall thereafter fix the paper seal so signed in the space meant therefor in the ballot box and shall then secure and seal the box in such manner that the slit for the insertion of ballot paper thereinto remains open.

(*3*) The seals used for securing a ballot box shall be affixed in such manner that after the box has been closed it is not possible to open it without breaking the seals.

(*4*) Where it is not necessary to use paper seals for securing the ballot boxes, the presiding officer shall secure and seal the ballot box in such manner that the slit for the insertion of ballot papers remains open and shall allow the polling agents present to affix, if they so desire, their seals.

(*5*) Every ballot box used at a polling station shall bear labels, both inside and outside, marked with—

(*a*) the serial number, if any, and name of the constituency;

(*b*) the serial number and name of the polling station;

(*c*) the serial number of the ballot box (to be filled in at the end of the poll on the label outside the ballot box only); and

(*d*) the date of poll.

(*6*) Immediately before the commencement of the poll, the presiding officer shall demonstrate to the polling agents and other persons present that the ballot box is empty and bears the labels referred to in sub-rule (*5*).

(*7*) The ballot box shall then be closed, sealed and secured and placed in full view of the presiding officer and the polling agents.

[1][**33A. Marked copy of electoral roll.**—Immediately before the commencement of the poll the presiding officer shall also demonstrate to the polling agents and others present that the marked copy of the electoral roll to be used during the poll does not contain—

[2][(*a*) any entry other than those made in pursuance of clause (*b*) of sub-rule (*2*) of rule 20 or clause (*b*) of sub-rule (*2*) of rule 27E; and]

[3][(*b*) any mark other than the mark made in pursuance of clause (*b*) of sub-rule (*2*) of rule 23 or clause (*b*) of sub-rule (*2*) of rule 27E.]]

1. Subs. by Notifn. No. S.O. 5573, dated the 23 rd December, 1971, for rule 33A.
2. Subs. by Notifn. No. S.O. 321(E), dated the 1st May, 1996, for cl. (*a*).
3. Subs. by Notifn. No. S.O. 628(E), dated the 4th August, 1999, for cl. (*b*).

34. Facilities for women electors.—(*1*) Where a polling station is for both men and women electors, the presiding officer may direct that they shall be admitted into the polling station alternately in separate batches.

(*2*) The returning officer or the presiding officer may appoint a woman to serve as an attendant at any polling station to assist women electors and also to assist the presiding officer generally in taking the poll in respect of women electors, and, in particular, to help in searching any women elector in case it becomes necessary.

35. Identification of electors.—(*1*) The presiding officer may employ at the polling station such persons as he thinks fit to help in the identification of the electors or to assist him otherwise in taking the poll.

(*2*) As each elector enters the polling station, the presiding officer or the polling officer authorised by him in this behalf shall check the elector's name and other particulars with the relevant entry in the electoral roll and then call out the serial number, name and other particulars of the elector.

(*3*) Where the polling station is situated in a constituency, electors of which have been supplied with identity cards under the provisions of the Registration of Electors Rules, 1960, the elector shall produce his identity card before the presiding officer or the polling officer authorised by him in this behalf.

(*4*) In deciding the right of a person to obtain a ballot paper, the presiding officer or the polling officer, as the case may be, shall overlook merely clerical or printing errors in an entry in the electoral roll, if he is satisfied that such person is identical with the elector to whom such entry relates.

[1][**35A. Facilities for public servants on election duty.**—(*1*) The provisions of rule 35 shall not apply to any person who produces at the polling station an election duty certificate in Form 12B and asks for the issue of a ballot paper to him although the polling station is different from the one where he is entitled to vote.

(*2*) On production of such certificate the presiding officer shall—

(*a*) obtain thereon the signature of the person producing it;

(*b*) have the person's name and electoral roll number as mentioned in the certificate entered at the end of the marked copy of the electoral roll; and

(*c*) issue to him a ballot paper, and permit him to vote, in the same manner as for an elector entitled to vote at that polling station.]

36. Challenging of identity.—(*1*) Any polling agent may challenge the identity of a person claiming to be a particular elector by first depositing a sum of two rupees in cash with the presiding officer for each such challenge.

(*2*) On such deposit being made, the presiding officer shall—

(*a*) warn the person challenged of the penalty for personation;

(*b*) read the relevant entry in the electoral roll in full and ask him whether he is the person referred to in that entry;

(*c*) enter his name and address in the list of challenged votes in Form 14; and

(*d*) require him to affix his signature in the said list.

(*3*) The presiding officer shall thereafter hold a summary inquiry into the challenge and may for that purpose—

(*a*) require the challenger to adduce evidence in proof of the challenge and the person challenged to adduce evidence in proof of his identity;

1. Ins. by Notfin. No. S.O. 3662, dated the 12th October, 1964.

(*b*) put to the person challenged any questions necessary for the purpose of establishing his identity and require him to answer them on oath; and

(*c*) administer an oath to the person challenged and any other person offering to give evidence.

(*4*) If, after the inquiry, the presiding officer considers that the challenge has not been established he shall allow the person challenged to vote; and if he considers that the challenge has been established, he shall debar the person challenged from voting.

(*5*) If the presiding officer is of the opinion that the challenge is frivolous or has not been made in good faith, he shall direct that the deposit made under sub-rule (*1*) be forfeited to Government, and in any other case, he shall return to the challenger at the conclusion of the inquiry.

37. Safeguards against personation.—(*1*) Every elector about whose identity the presiding officer or the polling officer, as the case may be, is satisfied, shall allow his left forefinger to be inspected by the presiding officer or polling officer and an indelible ink mark to be put on it.

(*2*) If any elector—

(*a*) refuses to allow his left forefinger to be inspected or marked in accordance with sub-rule (*1*) or has already such a mark on his left forefinger or does any act with a view to removing the ink mark, or

(*b*) fails or refuses to produce his identity card as required by sub-rule (*3*) of rule 35,

he shall not be supplied with any ballot paper or allowed to vote.

(*3*) Where a poll is taken simultaneously in a parliamentary constituency and an assembly constituency, an elector whose left forefinger has been marked with indelible ink or who has produced his identity card at one such election shall, notwithstanding anything contained in sub-rules (*1*) and (*2*), be supplied with a ballot paper for the other election.

(*4*) Any reference in this rule to the left forefinger of an elector shall, in the case where the elector has his left forefinger missing, be construed as a reference to any other finger of his left hand, and shall, in the case where all the fingers of his left hand are missing, be construed as a reference to the forefinger or any other finger of his right hand, and shall in the case where all his fingers of both the hands are missing be construed as a reference to such extremity of his left or right arm as he possesses.

[1][**38. Issue of ballot papers to electors.**—(*1*) Every ballot paper before it is issued to an elector, and the counterfoil attached thereto shall be stamped on the back with such distinguishing mark as the Election Commission may direct, and every ballot paper, before it is issued, shall be signed in full on its back by the presiding officer.

(*2*) At the time of issuing a ballot paper to an elector, the polling officer shall—

(*a*) record on its counterfoil the electoral roll number of the elector as entered in the marked copy of the electoral roll;

[2][(*b*) obtain the signature or thumb impression of that elector on the said counterfoil; and]

(*c*) mark the name of the elector in the marked copy of the electoral roll to indicate that a ballot paper has been issued to him, without however recording therein the serial number of the ballot paper issued to that elector:

[2][Provided that no ballot paper shall be delivered to an elector unless he has put his signature or thumb impression on the counterfoil of that ballot paper.

1. Subs. by Notifn. No. S.O. 5573, dated the 23rd December, 1971, for rule 38.
2. Ins. by Notifn. No. S.O. 518(E), dated the 7th September, 1979.

(*3*) Notwithstanding anything contained in sub-rule (*2*) of rule 2, it shall not be necessary for any presiding officer or polling officer or any other officer to attest the thumb impression of the elector on the counterfoil.]

(*4*) No person in the polling station shall note down the serial numbers of the ballot papers issued to particular electors.]

[1][**39. Maintenance of secrecy of voting by electors within polling station and voting procedure.**—(*1*) Every elector to whom a ballot paper has been issued under rule 38 or under any other provision of these rules, shall maintain secrecy of voting within the polling station and for that purpose observe the voting procedure hereinafter laid down.

(*2*) The elector on receiving the ballot paper shall forthwith—

(*a*) proceed to one of the voting compartments;

(*b*) there make a mark on the ballot paper with the instrument supplied for the purpose on or near the symbol of the candidate for whom he intends to vote;

(*c*) fold the ballot paper so as to conceal his vote;

(*d*) if required, show to the presiding officer the distinguishing mark on the ballot paper;

(*e*) insert the folded ballot paper into the ballot box; and

(*f*) quit the polling station.

(*3*) Every elector shall vote without undue delay.

(*4*) No elector shall be allowed to enter a voting compartment when another elector is inside it.

(*5*) If an elector to whom a ballot paper has been issued, refuses, after warning given by the presiding officer, to observe the procedure as laid down in sub-rule (*2*), the ballot paper issued to him shall, whether he has recorded his vote thereon or not, be taken back from him by the presiding officer or a polling officer under the direction of the presiding officer.

(*6*) After the ballot paper has been taken back, the presiding officer shall record on its back the words "Cancelled: voting procedure violated" and put his signature below those words.

(*7*) All the ballot papers on which the words "Cancelled: voting procedure violated" are recorded, shall be kept in a separate cover which shall bear on its face the words "Ballot papers: voting procedure violated".

(*8*) Without prejudice to any other penalty to which an elector, from whom a ballot paper has been taken back under sub-rule (*5*), may be liable, the vote, if any, recorded on such ballot paper shall not be counted.]

1. Subs. by Notifn. No. S.O. 1433, dated the 19th April, 1968, for rule 39.

[1][**40. Recording of votes of blind or infirm electors.**—(*1*) If the presiding officer is satisfied that owing to blindness or other physical infirmity an elector is unable to recognise the symbols on the ballot paper or to make a mark thereon without assistance, the presiding officer shall permit the elector to take with him a companion of not less than [2][eighteen] years of age to the voting compartment for recording the vote on the ballet paper on his behalf and in accordance with his wishes, and, if necessary, for folding the ballet paper so as to conceal the vote and inserting it into the ballot box:

Provided that no person shall be permitted to act as the companion of more than one elector at any polling station on the same day:

Provided further that before any person is permitted to act as the companion of an elector on any day under this rule, the person shall be required to declare that he will keep secret the vote recorded by him on behalf of the elector and that he has not already acted as the companion of any other elector at any polling station on that day.

(*2*) The presiding officer shall keep a record in Form 14A of all cases under this rule.]

41. Spoilt and returned ballot papers.—(*1*) An elector who has inadvertently dealt with his ballot paper in such manner that it cannot be conveniently used as a ballot paper may, on returning it to the presiding officer and on satisfying him of the inadvertence, be given another ballot paper, and [3][the ballot paper so returned and the counterfoil of such ballot paper] shall be marked "Spoilt: cancelled" by the presiding officer.

(*2*) If an elector after obtaining a ballot paper decides not to use it, he shall return it to the presiding officer, and [3][the ballot paper so returned and the counterfoil of such ballot paper] shall be marked as "Returned: cancelled" by the presiding officer.

(*3*) All ballot papers cancelled under sub-rule (*1*) or sub-rule (*2*) shall be kept in a separate packet.

42. Tendered votes.—(*1*) If a person representing himself to be a particular elector applies for a ballot paper after another person has already voted as such elector, he shall, on satisfactorily answering such questions relating to his identity as the presiding officer may ask, be entitled, subject to the following provisions of this rule, to mark a ballot paper (hereinafter in these rules referred to as a "tendered ballot paper") in the same manner as any other elector.

(*2*) Every such person shall, before being supplied with a tendered ballot paper, sign his name against the entry relating to him in a list in Form 15.

[4][(*3*) A tendered ballot paper shall be the same as the other ballot papers used at the polling except that—

(*a*) such tendered ballot paper shall be serially the last in the bundle of ballot papers issued for use at the polling station; and

(*b*) such tendered ballot paper and its counterfoil shall be endorsed on the back with the words "tendered ballot paper" by the presiding officer in his own hand and signed by him.]

1. Subs. by Notifn. No. S.O. 3662, dated the 12th October, 1964, for rule 40.
2. Subs. by Notifn. No. S.O. 542(E), dated the 13th September, 1989, for "twenty-one".
3. Subs. by Notifn. No. S.O. 5573, dated the 23rd December, 1971, for certain words.
4. Subs., *ibid.*, for sub-rule (*3*).

(*4*) The elector, after marking a tendered ballot paper in the voting compartment and folding it, shall, instead of putting it into the ballot box, give it to the presiding officer, who shall place it in a cover specially kept for the purpose :

[1][Provided that where such elector is a member of a political party in an election to fill a seat or seats in the Council of States, the presiding officer shall, before placing the tendered ballot paper in the said cover, allow the authorised agent of that political party to verify as to which candidate the elector has cast his vote.

Explanation. —For the purposes of this rule, "authorised agent", in respect of a political party, means an authorised agent appointed, under sub-rule (2) of rule 39AA as made applicable, by clause (*ii*) of rule 70, to election, in a council constituency and, by assembly members other than by postal ballot under clause (*a*) of rule 68, by that political party.]

43. Closing of poll.—(*1*) The presiding officer shall close a polling station at the hour fixed in that behalf under section 56 and shall not thereafter admit any elector into the polling station:

Provided that all electors present at the polling station before it is closed shall be allowed to cast their votes.

(*2*) If any question arises whether an elector was present at the polling station before it was closed, it shall be decided by the presiding officer and his decision shall be final.

44. Sealing of ballot boxes after poll.—(*1*) As soon as practicable after the closing of the poll, the presiding officer shall close the slit of the ballot box, and where the box does not contain any mechanical device for closing the slit, he shall seal up the slit and also allow any polling agent present to affix his seal.

(*2*) The ballot box shall thereafter be sealed and secured.

(*3*) Where it becomes necessary to use a second ballot box by reason of the first ballot box getting full, the first box shall be closed, sealed and secured as provided in sub-rules (*1*) and (*2*) before another ballot box is put into use.

(*4*) The foregoing provisions of this rule shall not apply at a polling station to the presiding officer of which the Election Commission has issued a direction asking him to proceed in accordance with sub-rule (*5*).

(*5*) At any such polling station, as soon as practicable after the close of poll, the presiding officer shall—

(*a*) transfer all the ballot papers contained in the ballot box or boxes used at that polling station, without examining or counting them and with due regard to the secrecy of the ballot, into a cloth bag or cloth-lined cover after demonstrating to the polling agents present that the bag or cover is empty;

(*b*) allow the polling agents present to inspect each ballot box and demonstrate to them that it has been emptied;

(*c*) record on the bag or cover the name of the constituency, the name of the polling station and the date of the poll; and

(*d*) seal the bag or cover and allow any polling agent present to affix his seal thereon.

45. Account of ballot papers.—[2][(*1*)] The presiding officer shall at the close of the poll prepare a ballot paper account in Form 16 and enclose it in a separate cover with the words "Ballot Paper Account" superscribed thereon.

1. Ins. by Notifn. No. S.O. 272(E), dated the 27th February, 2004.
2. Rule 45 renumbered as sub-rule (*1*) of that rule by Notifn. No. S.O. 3875, dated the 15th December, 1966.

[1][(2) The presiding officer shall furnish to every polling agent present at the close of the poll a true copy of the entries made in the ballot paper account after obtaining a receipt from the said polling agent therefor and shall also attest it as a true copy.]

46. Sealing of other packets.—(1) The presiding officer shall then make into separate packets—

(a) the marked copy of the electoral roll;

[2][(aa) the counterfoils of the used ballot paper;]

[3][(b) the ballot papers signed in full by the presiding officer under sub-rule (1) of rule 38 but not issued to the voters;

(bb) any other ballot papers not issued to the voters;

(c) the ballot papers cancelled for violation of voting procedure under rule 39;

(cc) any other cancelled ballot papers;]

(d) the cover containing the tendered ballot papers and the list in Form 15;

(e) the list of challenged votes; and

(f) any other papers directed by the Election Commission to be kept in a sealed packet.

[3][(2) Each such packet shall be sealed with the seals of the presiding officer and with the seals either of the candidate or of his election agent or of his polling agent who may be present at the polling station and may desire to affix his seals thereon.]

47. Transmission of ballot boxes, etc., to the returning officer.—(1) The presiding officer shall then deliver or cause to be delivered to the returning officer at such place as the returning officer may direct—

(a) the ballot boxes or, as the case may be, the bags or covers referred to in rule 44;

(b) the ballot paper account;

(c) the sealed packets referred to in rule 46; and

(d) all other papers used at the poll.

(2) The returning officer shall make adequate arrangements for the safe transport of all ballot boxes, packets and other papers and for their safe custody until the commencement of the counting of votes.

48. Procedure on adjournment of poll.—(1) If the poll at any polling station is adjourned under sub-section (1) of section 57, the provisions of rules 44 to 47 shall, as far as practicable, apply as if the poll was closed at the hour fixed in that behalf under section 56.

(2) When an adjourned poll is recommenced under sub-section (2) of section 57, the electors who have already voted at the poll so adjourned shall not be allowed to vote again.

(3) The returning officer shall provide the presiding officer of the polling station at which such adjourned poll is held, with the sealed packet containing the marked copy of the electoral roll and a new ballot box.

(4) The presiding officer shall open the sealed packet in the presence of the polling agents present and use the marked copy of the electoral roll [4][for marking the names of the electors to whom the ballot papers are issued at the adjourned poll, without however recording therein the serial number thereof].

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1. Subs. by Notifn. No. S.O. 229(E), dated the 26th May, 1975, for sub-rule (2).
2. Ins. by Notifn. No. S.O. 5573, dated the 23rd December, 1971.
3. Subs. by Notifn. No. S.O. 4542, dated the 20th December, 1968, for sub-rule (2) (w.e.f. 1-1-1969).
4. Subs. by Notifn. No. S.O. 5573, dated the 23rd December, 1971, for certain words.

(*5*) The provisions of rules 28 to 47 shall apply in relation to the conduct of an adjourned poll as they apply in relation to the poll before it was so adjourned.

49. Voting by ballot at notified polling stations.—(*1*) Notwithstanding anything contained in the preceding provisions of this Part, the Election Commission may, by notification published in the Official Gazette at least 15 days before the date, or the first of the dates, of poll appointed for an election, direct that the method of voting by ballot shall be followed in that election at such polling stations as may be specified in the notification.

(*2*) Every such polling station is hereafter in these rules referred to as a "notified polling station".

(*3*) The provisions of rules 28 to 48 shall apply in relation to every notified polling station subject to the following modifications, namely:—

(*a*) in lieu of rule 30, the following rule shall apply:—

"30A. *Form of ballot paper.*—Every ballot paper shall be of such design as the Election Commission may decide.";

(*b*) in lieu of sub-rules (*2*) and (*3*) of rule 31, the following sub-rules shall apply:—

"(*2*) At each notified polling station there shall be set up one voting compartment in which the ballot boxes, one for each candidate, shall be placed for the reception of ballot papers during the poll and which shall be so designed that an elector can insert a ballot paper in any of the ballot boxes without being observed by any person outside the compartment.

(*3*) The returning officer shall provide at each notified polling station a sufficient number of ballot boxes, copies of the relevant part of the electoral roll, ballot papers and such other election materials as may be required for taking the poll.";

(*c*) in lieu of sub-rules (*5*), (*6*) and (*7*) of rule 33, the following sub-rules shall apply:—

"(*5*) The symbol allotted to each candidate under rule 10 shall be printed on lables which shall be affixed both inside and outside the ballot box and such ballot box shall thereafter be deemed to have been allotted to that candidate.

(*6*) Each ballot box shall also be marked with such other distinguishing marks as the Election Commission may direct.

(*7*) Immediately before the commencement of the poll, the presiding officer shall allow inspection of each ballot box by the polling agents present and demonstrate to them that (*a*) it is empty, (*b*) proper lables have been affixed both inside and outside the box, and (*c*) the ballot box is marked in accordance with sub-rule (*6*).

(*8*) After all the ballot boxes have been labelled, secured and sealed, they shall be placed in the voting compartment side by side the same order in which the names of the candidates to whom they have respectively been allotted appear in the list of contesting candidates.";

[1][(*cc*) in lieu of rule 38, the following rule shall apply:—

"38B. *Issue of ballot papers to electors.*—(*1*) Every ballot paper shall before issue to an elector be—

1. Ins. by Notifn. No. S.O. 5573, dated the 23rd December, 1971.

(*a*) stamped with such distinguishing mark as the Election Commission may direct; and

(*b*) signed in full on its back by the presiding officer.

(*2*) At the time of issuing a ballot paper to an elector, the polling officer shall record the serial number thereof against the entry relating to the elector in the marked copy of the electoral roll.

(*3*) Save as provided in sub-rule (*2*), no person in the polling station shall note down the serial numbers of the ballot papers issued to particular electors.";]

(*d*) in lieu of [1][sub-rule (*2*) of rule 39], the following sub-rule shall apply:—

"(*1*) On receiving the ballot paper, the elector shall forthwith go into the voting compartment and insert the ballot paper through the slit into the ballot box allotted to the candidate for whom he wishes to vote.";

[2][(*e*) in lieu of sub-rule (*1*) of rule 40, the following sub-rule shall apply:—

"(*1*) If the presiding officer is satisfied that owing to blindness or other physical infirmity an elector is unable to recognise the symbols on the ballot boxes or to insert the ballot paper into a ballot box, the presiding officer shall permit the elector to take with him a companion of not less than [3][eighteen] years of age to the voting compartment for ascertaining from him the name of the candidate for whom he wishes to vote and for inserting the ballot paper into the ballot box of such candidate in accordance with the wishes of such elector:

Provided that no person shall be permitted to act as the companion of more than one elector at any polling station on the same day:

Provided further that before any person is permitted to act as the companion of an elector on any day under this rule, the person shall be required to declare that he will keep secret the name of the candidate for whom the elector has voted and that he has not already acted as the companion of any other elector at any polling station on that day."];

(*f*) in lieu of rule 42, the following rules shall apply:—

'42A. *Tendered votes.*—(*1*) If a person representing himself to be a particular elector applies for a ballot paper after another person has already voted as such elector, he shall, on satisfactorily answering such questions relating to his identity as the presiding officer may ask, be supplied with a ballot paper in Form 17 (hereafter in these rules referred to as a "tendered ballot paper").

(*2*) Every such person shall, before being supplied with a tendered ballot paper, sign his name against the entry relating to him in a list in Form 15.

(*3*) Such person shall thereafter record on the tendered ballot paper the name of the candidate for whom he wishes to vote; but if owing to illiteracy, blindness, physical infirmity or any other reason he is unable to make such record, the presiding officer shall do so in accordance with his wishes.

(*4*) The procedure laid down in sub-rule (*3*) shall be followed with due regard to secrecy.

(*5*) Every such tendered ballot paper shall forthwith be placed in a cover specially kept for the purpose.

[4][Provided that where the person referred to in sub-rule (3) is a member of a political party in an election to fill a seat or seats in the Council of States, the presiding officer, notwithstanding anything

1. Subs. by Notifn. No. S.O. 1433, dated the 19th April, 1968.
2. Subs. by Notifn. No. S.O. 3662, dated the 12th October, 1964, for cl. (*e*).
3. Subs by Notifn. No. S.O. 542(E), dated the 13th July, 1989.
4. Ins. by Notifn. No. S.O. 272(E), dated the 27th February, 2004.

contained in. sub-rule (3), shall, before the tendered ballot paper is placed in the said cover, allow the authorised agent of that political party to verify as to whom such person has cast his vote

Explanation. —For the purposes of this rule, "authorised agent", in respect of a political party, means an authorised agent appointed, under sub-rule (2) of rule 39AA as made applicable, by clause (ii) of rule 70, to election, in a council constituency and, by assembly members other than by postal ballot under clause (a) of rule 68, by that political party.

42B. *Presiding officer's entry into voting compartment during poll.*—(*1*) The presiding officer may, whenever he considers it necessary to do so, enter the voting compartment during poll and take such steps as may be necessary to ensure that the ballot boxes therein are not tampered or interfered within any way.

(*2*) If the presiding officer has reason to suspect that an elector who has entered the voting compartment is tampering or otherwise interfering with any ballot box or has remained inside the voting compartment unduly long, he shall enter the voting compartment and take such steps as may be necessary to ensure the smooth and prompt progress of the poll.

(*3*) Whenever the presiding officer enters the voting compartment under this rule he shall permit the polling agents present to accompany him.

42C. *Disposal of ballot papers found wholly or partly outside ballot boxes.*— (*1*) If any ballot paper which has been issued to an elector has not been inserted by him into any ballot box but is found anywhere in or near the polling station, whether within or outside the voting compartment it shall be deemed to have been returned to the presiding officer under sub-rule (*2*) of rule 41 and dealt with accordingly.

(*2*) If a ballot paper is found partly inserted into the ballot box of a candidate, it shall be presumed that the intention of the elector was to cast that vote for that candidate and the presiding officer shall accordingly push the ballot paper into the ballot box.';

(*g*) in lieu of rule 44, the following rule shall apply:—

"44A. *Sealing of ballot boxes after poll.*—(*1*) As soon as practicable after the closing of the poll, the presiding officer shall close the slit of each ballot box and where the boxes do not contain any mechanical device for closing the slit, he shall seal up the slit and also allow any polling agent present to affix his seals.

(*2*) All the ballot boxes shall thereafter be sealed and secured.";

[1]* * * * *

[2][(*i*) clause (*aa*) of sub-rule (*1*) of rule 46 shall not apply; and

(*j*) in lieu of sub-rules (*3*) and (*4*) of rule 48, the following sub-rule shall apply: —

"(*3*) The returning officer shall provide the presiding officer of the polling station at which such adjourned poll is held with the sealed packet containing the marked copy of the electoral roll and a set of new ballot boxes.

(*4*) The presiding officer shall open the sealed packet in the presence of the polling agents present and use the marked copy of the electoral roll for recording the serial numbers of the ballot papers issued to elector at the adjourned poll."].

1. Cl.(*h*) omitted by Notifn. No. S.O. 518(E), dated the 7th September, 1979.
2. Subs. by Notifn. No. S.O. 5573, dated the 23rd December, 1971, for cls. (*i*) and (*j*).

[1][CHAPTER II

VOTING BY ELECTRONIC VOTING MACHINES

49A. Design of Electronic Voting Machines.—Every electronic voting machine (hereinafter referred to as the voting machine) shall have a control unit and a balloting unit and shall be of such designs as may be approved by the Election Commission.

49B. Preparation of voting machine by the returning Officer.—(*1*) The balloting unit of the voting machine shall contain such particulars and in such language or languages as the Election Commission may specify.

(*2*) The names of the candidates shall be arranged on the balloting unit in the same order in which they appear in the list of the contesting candidates.

(*3*) If two or more candidates bear the same name, they shall be distinguished by the addition of their occupation or residence or in some other manner.

(*4*) Subject to the foregoing provisions of this rule, the returning officer shall—

(*a*) fix the label containing the names and symbol of the contesting candidates in the balloting unit and secure that unit with his seal and the seals of such of the contesting candidates or their election agents present as are desirous of affixing the same;

(*b*) set the number of contesting candidates and close the candidate set section in the control unit and secure it with his seal and the seals of such of the contesting candidates or their election agents present as are desirous of affixing the same.

49C. Arrangements at the polling stations.—(*1*) Outside each polling station there shall be displayed prominently—

(*a*) a notice specifying the polling area, the electors of which are entitled to vote at the polling station and, when the polling area has more than one polling station, the particulars of the electors so entitled; and

(*b*) a copy of the list of contesting candidates.

(*2*) At each polling station there shall be set up one or more voting compartments in which the electors can record their votes free from observation.

(*3*) The returning officer shall provide at each polling station one voting machine and copies of relevant part of the electoral roll and such other election material as may be necessary for taking the poll.

(*4*) Without prejudice to the provisions of sub-rule (*3*), the returning officer may, with the previous approval of the Election Commission, provide one common voting machine for two or more polling stations located in the same premises.

49D. Admission to polling stations.—The presiding officer shall regulate the number of electors, to be admitted at any one time inside the polling station and shall exclude therefrom all persons other than—

(*a*) polling officers;

(*b*) public servants on duty in connection with the election;

(*c*) persons authorised by the Election Commission;

(*d*) candidates, their election agents and subject to the provisions of rule 13, one polling agent of each candidate;

(*e*) a child in arms accompanying an elector;

1. Ins. by Notifn. No. S.O. 230(E), dated the 24th March, 1992.

(*f*) a person accompanying a blind or infirm elector who cannot move without help; and

(*g*) such other person as the returning officer or the presiding officer may employ under sub-rule (*2*) of rule 49G or sub-rule (*1*) of rule 49H.

49E. Preparation of voting machine for poll.—(*1*) The control unit and balloting unit of every voting machine used at polling station shall bear a label marked with—

(*a*) the serial number, if any, and the name of the constituency;

(*b*) the serial number and name of the polling station or stations as the case may be;

(*c*) the serial number of the unit; and

(*d*) the date of poll.

(*2*) Immediately before the commencement of the poll, the presiding officer shall demonstrate to the polling agents and other persons present that no voter has been already recorded in the voting machine and it bears the label referred to in sub-rule (*4*).

(*3*) A paper seal shall be used for securing the control unit of the voting machine, and the presiding officer shall affix his own signature on the paper seal and obtain thereon the signature of such of the polling agents present as the desirous of affixing the same.

(*4*) The presiding officer shall thereafter fix the paper seal so signed in the space meant therefor in the control unit of the voting machine and shall secure and seal the same.

(*5*) The seal used for securing the control unit shall be fixed in such manner that after the unit has been sealed, it is not possible to press the "result button" without breaking the seal.

(*6*) The control unit shall be closed and secured and placed in full view of the presiding officer and the polling agents and the balloting unit placed in the voting compartment.

49F. Marked copy of electoral roll.—Immediately before the commencement of the poll, the presiding officer shall also demonstrate to the polling agents and others present that the marked copy of the electoral roll to be used during the poll does not contain—

(*a*) any entry other than that made in pursuance of clause (*b*) of sub-rule (*2*) of rule 20; and

(*b*) any mark other than the mark made in pursuance of clause (*b*) of sub-rule (*2*) of rule 23.

49G. Facilities for women electors.—(*1*) Where a polling station is for both men and women electors, the presiding officer may direct that they shall be admitted into the polling station alternately in separate batches.

(*2*) The returning officer or the presiding officer may appoint a woman to serve as an attendant at any polling station to assist women electors and also to assist the presiding officer generally in taking the poll in respect of women electors, and in particular, to help frisking any woman elector in case it becomes necessary.

49H. Identification of electors.—(*1*) The presiding officer may employ at the polling station such persons as he thinks fit to help in the identification of the electors or to assist him otherwise in taking the poll.

(*2*) As each elector enters the polling station, the presiding officer or the polling officer authorised by him in this behalf shall check the elector's name and other particulars with the relevant entry in the electoral roll and then call out the serial number, name and other particulars of the elector.

(*3*) Where the polling station is situated in a constituency electors of which have been supplied with identity cards under the provisions of the Registration of Electors Rules, 1960, the elector shall produce his identity card before the presiding officer or the polling officer authorised by him in this behalf.

(*4*) In deciding the right of a person to cast his vote, the presiding officer or the polling officer, as the case may be, shall over-look the clerical or printing errors in an entry in the electoral roll if he is satisfied that such person is identical with the elector to whom such entry relates.

49-I. Facilities for public servants on election duty.—(*1*) The provisions of rule 49H shall not apply to any person who produces at the polling station an election duty certificate in Form 12B and seeks permission to cast his vote at that polling station although it is different from the one where he is entitled to vote.

(*2*) On production of such certificate, the presiding officer shall—

(*a*) obtain thereon, the signature of the person producing it;

(*b*) have the person's name and electoral roll number as mentioned in the certificate entered at the end of the marked copy of the electoral roll; and

(*c*) permit him to cast his vote in the same manner as for an elector entitled to vote at that polling station.

49J. Challenging of identity.—(*1*) Any polling agent may challenge the identity of a person claiming to be a particular elector by first depositing a sum of two rupees in cash with the presiding officer for each such challenge.

(*2*) On such deposit being made, the presiding officer shall—

(*a*) warn the person challenged of the penalty for personation;
(*b*) read the relevant entry in the electoral roll in full and ask him whether he is the person referred to in that entry;
(*c*) enter his name and address in the list of challenged votes in Form 14; and
(*d*) require him to affix his signature in the said list.

(*3*) The presiding officer shall thereafter hold a summary inquiry into the challenge and may for that purpose—

(*a*) require the challenger to adduce evidence in proof of the challenge and the person challenged to adduce evidence of proof of his identity;

(*b*) put to the person challenged any questions necessary for the purpose of establishing his identity and require him to answer them on oath; and

(*c*) administer an oath to the person challenged and any other person offering to give evidence.

(*4*) If, after the inquiry, the presiding officer considers that the challenge has not been established he shall allow the person challenged to vote; and if he considers that the challenge has been established, he shall debar the person challenged from voting.

(*5*) If the presiding officer is of the opinion that the challenge is frivolous or has not been made in good faith, he shall direct that the deposit made under sub-rule (*1*) be forfeited to Government and in any other case, returned to the challenger at the conclusion of the inquiry.

49K. Safeguards against personation.—(*1*) Every elector about whose identity the presiding officer or the polling officer, as the case may be, is satisfied, shall allow his left forefinger to be inspected by the presiding officer or polling officer and an indelible ink mark to be put on it.

(*2*) If any elector—

(*a*) refuse to allow his left forefinger to be inspected or marked in accordance with sub-rule (*1*) or has already such a mark on his left forefinger or does any act with a view to removing the ink mark, or

(*b*) fails or refuses to produce his identity card as required by sub-rule (*3*) of rule 49H he shall not be allowed to vote.

(*3*) Where a poll is taken simultaneously in a Parliamentary constituency and an assembly constituency, an elector whose left forefinger has been marked with indelible ink or who has produced his identity card at one such election, shall notwithstanding anything contained in sub-rules (*1*) and (*2*) be permitted to cast his vote for the other election.

(*4*) Any reference in this rule to the left forefinger of an elector shall, in the case where the elector has his left forefinger missing, be construed as a reference to any other finger to his left hand, and shall, in the case where all the fingers of his left hand are missing, be construed as a reference to the forefinger or any other finger of his right hand, and shall in the case where all his fingers of both the hands are missing be construed as a reference to such extremity of his left or right arm as he possesses.

49L. Procedure for voting by voting machines.—(*1*) Before permitting an elector to vote, the polling officer shall—

(*a*) record the electoral roll number of the elector as entered in the marked copy of the electoral roll in a register of voters in Form 17A.

(*b*) obtain the signature or the thumb impression of the elector on the said register of votes; and

(*c*) mark the name of the elector in the marked copy of the electoral roll to indicate that he has been allowed to vote:

[1][(*d*) give details of the document produced by the elector in proof of his/her identification.]

Provided that no elector shall be allowed to vote unless he has his signature or thumb impression on the register of voters.

(*2*) Notwithstanding anything contained in sub-rule (2) of rule 2, it shall be necessary for any presiding officer or polling officer or any other officer to attest the thumb impression of the elector on the register of voters.

49M. Maintenance of secrecy of voting by electors within the polling station and voting procedures.—(*1*) Every elector who has been permitted to vote under rule 49L shall maintain secrecy of voting within the polling station and for that purpose observe the voting procedure hereinafter laid down.

(*2*) Immediately on being permitted to vote the elector shall proceed to the presiding officer or the polling officer incharge of the control unit of the voting machine who shall, by pressing the appropriate button on the control unit, activate the balloting unit; for recording of elector's vote.

(*3*) The elector shall thereafter forthwith—

(*a*) proceed to the voting compartment;

(*b*) record his vote by pressing the button on the balloting unit against the name and symbol of the candidate for whom he intends to vote; and

(*c*) come out of the voting compartment and leave the polling station.

(*4*) Every elector shall vote without undue delay.

(*5*) No elector shall be allowed to enter the voting compartment when another elector is inside it.

(*6*) If an elector who has been permitted to vote under rule 49L or rule 49P refuses after warning given by the presiding officer to observe the procedure laid down in sub-rule (*3*) of the said rules, the presiding officer or a polling officer under the direction of the presiding officer shall not allow such elector to vote.

1. Ins. by Notifn. No. S.O. 728 (E), dated the 8th May, 2007.

(*7*) Where an elector is not allowed to vote under sub-rule (*6*), a remark to the effect that voting procedure has been violated shall be made against the elector's name in the register of voters in Form 17A by the presiding officer under his signature.

49N. Recording of votes of blind or infirm electors.—(*1*) If the presiding officer is satisfied that owing to blindness or other physical infirmities an elector is unable to recognise the symbol on the balloting unit of the voting machine or unable to record his vote by pressing the appropriate button thereon without assistance the presiding officer shall permit the elector to take with him a companion of not less than eighteen years of age to the voting compartment for recording the vote on his behalf and in accordance with his wishes:

Provided that no person shall be permitted to act as the companion of more than one elector at any polling station on the same day:

Provided further that before any person is permitted to act as the companion of an elector on any day under this rule that person shall be required to declare that he will keep secret the vote recorded by him on behalf of the elector and that he has not already acted as the companion of any other elector at any other polling station on that day.

(*2*) The presiding officer shall keep a record in Form 14A of all cases under this rule.

49-O. Elector deciding not to vote.—If an elector, after his electoral roll number has been duly entered in the register of voters in Form 17A and has put his signature or thumb impression thereon as required under sub-rule (*1*) of rule 49L, decided not to record his vote, a remark to this effect shall be made against the said entry in Form 17A by the presiding officer and the signature or thumb impression of the elector shall be obtained against such remark.

49P. Tendered votes.—(*1*) If a person representing himself to be a particular elector seeks to vote after another person has already voted as such elector, he shall, on satisfactorily answering such questions relating to his identity as the presiding officer may ask, be, instead of being allowed to vote through the balloting unit, supplied with a tendered ballot paper which shall be of such design, and the particulars of which shall be in such language or languages as the Election Commission may specify.

(*2*) Every such elector shall before being supplied with tendered ballot paper write his name against the entry relating to him in Form 17B.

(*3*) On receiving the ballot paper he shall forthwith—

(*a*) proceed to the voting compartment;

(*b*) record there his vote on the ballot paper by placing a cross mark 'X' with the instrument or article supplied for the purpose on or near the symbol of the candidate for whom he intends to vote;

(*c*) fold the ballot paper so as to conceal his vote;

(*d*) show to the presiding officer, if required, the distinguishing mark on the ballot paper;

(*e*) give it to the presiding officer who shall place it in a cover specially kept for the purpose; and

(*f*) leave the polling station.

(*4*) If owing to blindness or physical infirmities, such elector is unable to record his vote without assistance, the presiding officer shall permit him to take with him a companion, subject to the same conditions and after following the same procedure as laid down in rule 49N for recording the vote in accordance with his wishes.

49Q. Presiding Officer's entry in the voting compartment during poll.—(*1*) The presiding officer may, whenever he considers it necessary so to do, enter the voting compartment during poll and take such steps as may be necessary to ensure that the balloting unit is not tampered or interfered with in any way.

(*2*) If the presiding officer has reason to suspect that an elector who has entered the voting compartment is tampering or otherwise interfering with the balloting unit or has remained inside the voting compartment for unduly long period, he shall enter the voting compartment and take such steps as may be necessary to ensure the smooth and orderly progress of the poll.

(*3*) Whenever the presiding officer enters the voting compartment under this rule, he shall permit the polling agents present to accompany him if they so desire.

49R. Closing of poll.—(*1*) The presiding officer shall close a polling station at the hour fixed in that behalf under section 56 and shall not thereafter admit any elector into the polling station:

Provided that all electors present at the polling station before it is closed shall be allowed to cast their votes.

(*2*) If any question arises whether an elector was present at the polling station before it was closed it shall be decided by the presiding officer and his decision shall be final.

49S. Account of votes recorded.—(*1*) The presiding officer shall at the close of the poll prepare an account of votes recorded in Form 17C and enclose it in a separate cover with the words 'Account of Votes Recorded' superscribed thereon.

(*2*) The presiding officer shall furnish to every polling agent present at the close of the poll a true copy of the entries made in Form 17C after obtaining a receipt from the said polling agent therefor and shall attest it as a true copy.

49T. Sealing of voting machine after poll.—(*1*) As soon as practicable after the closing of the poll, the presiding officer shall close the control unit to ensure that no further votes can be recorded and shall detach the balloting unit from the control unit.

(*2*) The control unit and the balloting unit shall thereafter be sealed, and secured separately in such manner as the Election Commission may direct and the seal used for securing them shall be so affixed that it will not be possible to open the units without breaking the seals.

(*3*) The polling agents present at the polling station, who desire to affix their seals, shall also be permitted to do so.

49U. Sealing of other packets.—(*1*) The presiding officer shall then make into separate packet,—

(*a*) the marked copy of the electoral roll;

(*b*) the register of voters in Form 17A;

(*c*) the cover containing the tendered ballot papers and the list in Form 17B;

(*d*) the list of challenged votes; and

(*e*) any other papers directed by the Election Commission to be kept in a sealed packet.

(*2*) Each packet shall be sealed with the seal of the presiding officer and with the seal either of the candidate or of his election agent or of his polling agent who may be present at the polling station and may desire to affix his seal thereon.

49V. Transmission of voting machines, etc., to the returning officer.—(*1*) The presiding officer shall then deliver or cause to be delivered to the returning officer at such place as the returning officer may direct,—

(*a*) the voting machine;
(*b*) the account of votes recorded in Form 17C;
(*c*) the sealed packets referred to in rule 49U; and
(*d*) all other papers used at the poll.

(*2*) The returning officer shall make adequate arrangements for the safe transport of the voting machine, packets and other papers for their safe custody until the commencement of the counting of votes.

49W. Procedure on adjournment of poll.—(*1*) If the poll at any polling station is adjourned under sub-section (*1*) of section 57, the provision of rules 49S to 49V shall, as far as practicable, apply as if the poll was closed at the hour fixed in that behalf under section 56.

(*2*) When an adjourned poll is recommended under sub-section (*2*) of section 57, the electors who have already voted at the poll so adjourned shall not be allowed to vote again.

(*3*) The returning officer shall provide the presiding officer of the polling station at which such adjourned poll is held, with the sealed packet containing the marked copy of the electoral roll, register of voters in Form 17A and a new voting machine.

(*4*) The presiding officer shall open the sealed packet in the presence of the polling agents present and use the marked copy of the electoral roll for marking the names of the electors who are allowed to vote at the adjourned poll.

(*5*) The provisions of rule 28 and rules 49A to 49V shall apply in relation to the conduct of an adjourned poll before it was so adjourned.

49X. Closing of voting machine in case of booth capturing.—Where the presiding officer is of opinion that booth capturing is taking place at a polling station or at a place fixed for the poll, he shall immediately close the control unit of the voting machine to ensure that no further votes can be recorded and shall detach the balloting that from the control unit.]

PART V
Counting of votes in Parliamentary and Assembly Constituencies

50. Definitions.—In this Part, unless the context otherwise requires,—

(*a*) "candidate" means a contesting candidate;

(*b*) "constituency" means a parliamentary or assembly constituency;

(*c*) "counting agent" means a counting agent duly appointed under section 47 and includes a candidate and the election agent of a candidate when present at the counting;

(*d*) "notified polling station" means a polling station notified under rule 49;

(*e*) "polling station" means a polling station provided under section 25 other than a notified polling station.

51. Time and place for counting of votes.—The returning officer shall, at least one week before the date, or the first of the dates, fixed for the poll, appoint the place or places where the counting of votes will be done and the date and time at which the counting will commence and shall give notice of the same in writing to each candidate or his election agent:

Provided that if for any reason the returning officer finds it necessary so to do, he may alter the date, time and place or places so fixed, or any of them, after giving notice of the same in writing to each candidate or his election agent.

52. Appointment of counting agents and revocation of such appointments.—(*1*) The number of counting agents that a candidate may appoint under section 47 shall, subject to such general or special direction as the Election Commission may issue in this behalf, not exceed sixteen at the place or each of the places, fixed for counting under rule 51.

(*2*) Every such appointment shall be made in Form 18 in duplicate, one copy of which shall be forwarded to the returning officer while the other copy shall be made over to the counting agent for production before the returning officer [1][not later than one hour before the time fixed] for counting under rule 51.

(*3*) No counting agent shall be admitted into the place fixed for counting unless he has delivered to the returning officer the second copy of his appointment under sub-rule (*2*) after duly completing and signing the declaration contained therein and receiving from the returning officer an authority for entry into the place fixed for counting.

(*4*) The revocation of appointment of a counting agent under sub-section (*2*) of section 48 shall be made in Form 19 and lodged with the returning officer.

(*5*) In the event of any such revocation before the commencement of the counting of votes, the candidate or his election agent may make a fresh appointment in accordance with sub-rule (*2*).

53. Admission to the place fixed for counting.—(*1*) The returning officer shall exclude from the place fixed for counting of votes all persons except—

(*a*) [2][such persons (to be known as counting supervisors and counting assistants)] as he may appoint to assist him in the counting;

(*b*) persons authorised by the Election Commission;

(*c*) public servants on duty in connection with the election; and

(*d*) candidates, their election agents and counting agents.

(*2*) No person who has been employed by or on behalf of, or has been otherwise working for, a candidate in or about the election shall be appointed under clause (*a*) of sub-rule (*1*).

(*3*) The returning officer shall decide which counting agent or agents shall watch the counting at any particular counting table or group of counting tables.

(*4*) Any person who during the counting of votes misconducts himself or fails to obey the lawful directions of the returning officer may be removed from the place where the votes are being counted by the returning officer or by any police officer on duty or by any person authorised in this behalf by the returning officer.

54. Maintenance of secrecy of voting.—The returning officer shall, before he commences the counting, read out the provisions of section 128 to such persons as may be present.

[3][**54A. Counting of votes received by post.**—(*1*) The returning officer shall first deal with the postal ballot papers in the manner hereinafter provided.

(*2*) No cover in Form 13C received by the returning officer after the expiry of the time fixed in that behalf shall be opened and no vote contained in any such cover shall be counted.

(*3*) The other covers shall be opened one after another and as each cover is opened, the returning officer shall first scrutinise the declaration in Form 13A contained therein.

(*4*) If the said declaration is not found, or has not been duly signed and attested, or is otherwise substantially defective, or if the serial number of the ballot paper as entered in it differs from the serial number endorsed on the cover in Form 13B, that cover shall not be opened, and after making an appropriate endorsement thereon, the returning officer shall reject the ballot paper therein contained.

(*5*) Each cover so endorsed and the declaration received with it shall be replaced in the cover in Form 13C and all such covers in Form 13C shall be kept in a separate packet which shall be sealed and on which shall be recorded the name of the constituency, the date of counting and a brief description of its content.

1. Subs. by Notifn. No. S.O. 3662, dated the 12th October, 1964, for certain words.
2. Subs. by Notifn. No. S.O. 4542, dated the 20th December, 1968 (w.e.f 1-1-1969), for certain words.
3. Ins. by Notifn. No. S.O. 3662, dated the 12th October, 1964.

(*6*) The returning officer shall then place all the declarations in Form 13A which he has found to be in order in a separate packet which shall be sealed before any cover in Form 13B is opened and on which shall be recorded the particulars referred to in sub-rule (*5*).

(*7*) The covers in Form 13B not already dealt with under the foregoing provisions of this rule shall then be opened one after another and the returning officer shall scrutinise each ballot paper and decide the validity of the vote recorded thereon.

(*8*) A postal ballot paper shall be rejected—

[1][(*a*) if it bears any mark (other than the mark to record the vote) or writing by which the elector can be identified; or]

[2][(*aa*)] if no vote is recorded thereon; or

(*b*) if noted are given on it in favour of more candidates than one; or

(*c*) if it is a spurious ballot paper; or

(*d*) if it is so damaged or mutilated that its identity as a genuine ballot paper cannot be established; or

(*e*) if it is not returned in the cover sent along with it to the elector by the returning officer.

(*9*) A vote recorded on a postal ballot paper shall be rejected if the mark indicating the vote is placed on the ballot paper in such manner as to make it doubtful to which candidate the vote has been given.

(*10*) A vote recorded on a postal ballot paper shall not be rejected merely on the ground that the mark indicating the vote is indistinct or made more than once, if the intention that the vote shall be for a particular candidate clearly appears from the way the paper is marked.

(*11*) The returning officer shall count all the valid votes given by postal ballot in favour of each candidates, record the total thereof in the result sheet in Form 20 and announce the same.

(*12*) Thereafter, all the valid ballot papers and all the rejected ballot papers shall be separately bundled and kept together in a packet which shall be sealed with the seals of the returning officer and of such of the candidates, their election agent or counting agents as may desire to affix their seals thereon and on the packet so sealed shall be recorded the name of the constituency, the date of counting and a brief description of its contents.]

55. Scrutiny and opening of ballot boxes.—[3][(*1*) The returning officer may have the ballot box or boxes used at more than one polling station opened and the ballot papers found in such box or boxes counted simultaneously.]

[4]* * * * *

(*2*) Before any ballot box is opened at a counting table, the counting agents present at that table shall be allowed to inspect the paper seal or such other seal as might have been affixed thereon and to satisfy themselves that it is intact.

(*3*) The returning officer shall satisfy himself that none of the ballot boxes has in fact been tampered with.

(*4*) If the returning officer is satisfied that any ballot box has in fact been tampered with, he shall not count the ballot papers contained in that box and shall follow the procedure laid down in section 58 in respect of that polling station.

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1. Ins. by Notifn. No. S.O. 5573, dated the 23rd December, 1971.
2. cl. (*a*) relettered as cl. (*aa*), *ibid.*
3. Subs. by Notifn. No. S.O. 518(E), dated the 7th September, 1979, for sub-rule (*1*).
4. Sub-rule (*1A*) omitted, *ibid.*

56. [1]**[Counting of Votes]**.—[2][(*1*) The ballot papers taken out of each ballot box shall be arranged in convenient bundles and scrutinized.]

(*2*) The returning officer shall reject a ballot paper—

(*a*) if it bears any mark or writing by which the elector can be identified, or

[3][(*b*) if it bears no mark at all or, to indicate the vote, it bears a mark elsewhere than on or near the symbol of one of the candidates on the face of the ballot paper or, it bears a mark made otherwise than with the instrument supplied for the purpose, or]

(*c*) if votes are given on it in favour of more than one candidates, or

(*d*) if the mark indicating the vote thereon is placed in such manner as to make it doubtful to which candidate the vote has been given, or

(*e*) if it is a spurious ballot paper, or

(*f*) if it is so damaged or mutilated that its identity as a genuine ballot paper cannot be established, or

(*g*) if it bears a serial number, or is of a design, different from the serial numbers, or, as the case may be, design, of the ballot papers authorised for use at the particular polling-station, or

(*h*) if it does not bear [4][both the mark and the signature] which it should have borne under the provisions of sub-rule (*1*) of rule 38:

Provided that where the returning officer is satisfied that any such defect as is mentioned in clause (*g*) or clause (*h*) has been caused by any mistake or failure on the part of a presiding officer or polling officer, the ballot paper shall not be rejected merely on the ground of such defect:

Provided further that a ballot paper shall not be rejected merely on the ground that the mark indicating the vote is indistinct or made more than once, if the intention that the vote shall be for a particular candidate clearly appears from the way the paper is marked.

(*3*) Before rejecting any ballot paper under sub-rule (*2*), the returning officer shall allow each counting agent present a reasonable opportunity to inspect the ballot paper but shall not allow him to handle it or any other ballot paper.

[5][(*4*) The returning officer shall endorse on every ballot paper which he rejects the word "Rejected" and the grounds of rejection in abbreviated form either in his own hand or by means of a rubber stamp and shall initial such endorsement.]

(*5*) All ballot papers rejected under this rule shall be bundled together.

[6][(*6*) Every ballot paper which is not rejected under this rule shall be counted as one valid vote:

Provided that no cover containing tendered ballot papers shall be opened and no such paper shall be counted.

[7][(*7*) After the counting of all ballot papers contained in all the ballot boxes used at a polling station has been completed,—

1. Subs. by Notifn. No. S.O. 3662, dated the 12th October, 1964, for the former marginal heading.
2. Subs. by Notifn. No. S.O. 518(E), dated the 7th September,1979, for sub-rule (*1*).
3. Subs. by Notifn. No. S.O. 505(*E*), dated the 18th September, 1973, for cl. (*b*).
4. Subs. by Notifn. No. S.O. 4542, dated the 20th December, 1968 (w.e.f. 1-1-1969).
5. Subs. by Notifn. No. S.O. 479A, dated the 27th January, 1971, for sub-rule (*4*).
6. Ins. by Notifn. No. S.O. 3662, dated the 12th October, 1964, for rule 57.
7. Subs. by Notifn. No. S.O. 518(E), dated the 7th September, 1979, for sub-rule (*7*).

(*a*) the counting supervisor shall fill in and sign Part II—Result of Counting, in Form 16, which shall also be signed by the returning officer; and

(*b*) the returning officer shall make the entries in a result sheet in Form 20 and announce the particulars.]]

[1]* * * * *

[2][**57. Sealing of used ballot papers.**—The valid ballot papers of each candidate and the rejected ballot papers shall thereafter be bundled separately and the several bundles made up into a separate packet which shall be sealed with the seals of the returning officer and of such of the candidates, their election agents or counting agents as may desire to affix their seals thereon; and on the packets so sealed shall be recorded the following particulars, namely:—

(*a*) the name of the constituency;

[3][(*b*) the particulars of the polling station where the ballot papers have been used; and]

(*c*) the date of counting.]

58. Counting of ballot papers transferred to bags or covers under rule 44.—The provisions of rules 55, 56 and 57 shall apply so far as may be in relation to counting of ballot papers and votes, if any, which have been transferred from ballot boxes to cloth bags or cloth-lined covers under sub-rule (*5*) of rule 44:

Provided that every reference in the said rules to a ballot box shall be construed as a reference to a bag or cover to which the contents of a ballot box have been transferred.

59. Counting of votes at notified polling stations.—In relation to the counting of ballot papers found in ballot boxes used at notified polling stations, [4][rules 50 to 54] and, in lieu of rules 55, 56 and 57, the following rules shall apply, namely:—

"55A. *Scrutiny and opening of ballot boxes.*—(*1*) All ballot boxes used at a notified polling station shall be opened at the same time but every ballot box shall be dealt with in such manner that its contents do not get mixed up with the contents of any other ballot box.

(*2*) Subject to the provisions of sub-rule (*1*), the returning officer may have the ballot boxes used at more notified polling stations than one opened and their contents counted simultaneously.

(*3*) Before any ballot box is opened, the counting agents present shall be allowed to inspect the paper seal or any other seal that might have been affixed thereon and to satisfy themselves that it is intact.

(*4*) The returning officer shall satisfy himself that none of the ballot boxes has in fact been tampered with.

(*5*) If the returning officer is satisfied that any of the ballot boxes has in fact been tampered with, he shall not count the ballot papers contained in any of the ballot boxes used at the polling station at which such box was used and shall proceed as laid down in section 58 in respect of that polling station.

(*6*) After each ballot box is opened, the counting agents present shall be allowed to inspect the ballot box and satisfy themselves that it bears the proper symbol inside and has been duly marked in accordance

1. *Explanation* omitted, by Notifn. No. S.O. 518(*E*), dated the 7th September, 1979.
2. Subs. by Notifn. No. S.O. 3662, dated the 12th October, 1964, for rule 57.
3. Cl. (*b*) Ins. by Notifn. No. S.O. 518(E), dated the 7th September, 1979. Earlier it was omitted by Notifn. No. S.O. 5573, dated the 23rd December, 1971.
4. Subs. by Notifn. No. S.O. 5573, dated the 23rd December, 1971.

with the provisions of sub-rule (*6*) of rule 33 as modified by clause (*c*) of sub-rule (*3*) of rule 49.

(*7*) If any question arises as to the candidate to whom a particular ballot box was allotted at the poll, the returning officer shall decide such question by a reference to the symbol inside the box:

Provided that—

(*a*) if there is no symbol inside the box, or

(*b*) if the symbol inside the box has been damaged or mutilated beyond recognition, or

(*c*) if the same symbol is found on two or more boxes used at the same polling station, the returning officer, shall, wherever possible, decide the question by reference to all relevant circumstances including the distinguishing marks on the ballot box, and where he does not consider it possible to decide the question, he shall immediately refer it to the Election Commission for its decision.

56A. [1][*Counting of votes*].— (*1*) The ballot papers taken out of each ballot box shall be arranged in convenient bundles and scrutinised.

(*2*) The returning officer shall reject a ballot paper—

(*a*) if it bears any mark or writing by which the elector can be identified; or

(*b*) if it is a spurious ballot paper; or

(*c*) if it is so damaged or mutilated that its identity as a genuine ballot paper cannot be established; or

(*d*) if it bears a serial number, or is of design, different from the serial numbers or, as the case may be, design, of the ballot papers authorised for use at the particular polling station; or

(*e*) if it does not bear [2][both the mark and the signature] which it should have borne under the provisions of sub-rule (*1*) of rule 38:

Provided that where the returning officer is satisfied that any such defect as is mentioned in clause (*d*) or clause (*e*) has been caused by any mistake or failure on the part of a presiding officer or polling officer, the ballot paper shall not be rejected merely on the ground of such defect.

(*3*) Before rejecting any ballot paper under sub-rule (*2*), the returning officer shall allow the counting agents present a reasonable opportunity to inspect the ballot paper but shall not allow them to handle it or any other ballot paper.

(*4*) The returning officer shall record on every ballot paper which he rejects the letter 'R' and the grounds of rejection in abbreviated form either in his own hand or by means of a rubber stamp.

(*5*) All ballot papers taken out of any one ballot box and rejected under this rule shall be made into a separate bundle.

[3][(*6*) Every ballot paper which is not rejected under this rule shall be counted as one valid vote:

1. Subs. by Notifn. No. S.O. 3662, dated the 12th October, 1964, for the former marginal heading.
2. Subs. by Notifn. No. S.O. 4542, dated the 20th December, 1968 (w.e.f 1-1-1969).
3. Ins. by Notifn. No. S.O. 3662, dated the 12th October, 1964.

Provided that no cover containing tendered ballot papers shall be opened and no such ballot paper shall be counted.]

[1][(7) After the counting of all ballot papers contained in all the ballot boxes used at a polling station has been completed,—

(*a*) the counting supervisor shall fill in and sign Part II—Result of Counting in [2][Form 16] which shall also be signed by the returning officer; and

(*b*) the returning officer shall make the entries in a result sheet in Form 20 and announce the particulars.]

[3][57A. *Sealing of used ballot papers.*—(*1*) The valid ballot papers found in each ballot box, shall thereafter be bundled together and kept along with the bundle of rejected ballot papers, if any found in that box in a separate packet which shall be sealed with the seals of the returning officer and of such of the candidates, their election agents or counting agents as may desire to affix their seals thereon and on the packet so sealed there shall be recorded the following particulars, namely:—

(*a*) the name of the constituency,

(*b*) the particulars of the polling station where the ballot papers have been used,

(*c*) the name of the candidate to whom the ballot box was allotted, and

(*d*) the date of counting.

(*2*) The returning officer shall then place together all the packets made up under sub-rule (*1*) in respect of each candidate in a separate container which shall be sealed with the seals of the returning officer and of such of the candidates, their election agents or their counting agents as may desire to affix their seals thereon and on the container so sealed shall be recorded the following particulars, namely:—

(*a*) the name of the constituency,

(*b*) the names of the candidates, and

(*c*) the date of counting.]".

[4][**59A.** [5][**Counting of votes in specified constituencies.**—Where the Election Commission apprehends intimidation and victimisation of electors in any constituency and it is of the opinion that it is absolutely necessary that the ballot papers taken out of all boxes used in that constituency should be mixed before counting, it may, by notification in the Official Gazette, specify such constituency and for counting of such ballot papers, in lieu of rules 55, 56, 57 and 59, the following rules shall apply], namely:—

'55B. *Scrutiny and opening of ballot boxes.*—(*1*) The returning officer shall open, or cause to be opened, simultaneously the ballot box or boxes used at more than one polling station and shall have the total number of ballot papers found in such box or boxes counted and recorded in Part II of From 16:

1. Subs. by Notifn. No. S.O. 4542, dated the 20th December, 1968 (w.e.f 1-1-1969).
2. Subs. by Notifn. No. S.O. 518 (E), dated the 7th September, 1979, for certain words.
3. Subs. by Notifn. No. S.O. 3662, dated the 12th October, 1964, for rule 57A.
4. Ins. by Notifn. No. S.O. 958(E), dated the 17th November, 1989, for rule 59A.
5. Subs. by Notifn. No. S.O. 105(E), dated the 15th February, 1993, for certain words.

Provided that discrepancy, if any, between the total number of such ballot papers recorded as aforesaid and the total number of ballot papers shown against item No. 5 of Part I shall also be recorded in Part II of Form 16.

(*2*) Before any ballot box is opened at a counting table, the counting agents present at that table shall be allowed to inspect the paper seal or such other seal as might have been affixed thereon and to satisfy themselves that it is intact.

(*3*) The returning officer shall satisfy himself that none of the ballot boxes has in fact been tampered with.

(*4*) If the returning officer is satisfied that any ballot box has in fact been tampered with, he shall not count the ballot papers contained in that box and shall follow the procedure laid down in section 58 in respect of that polling station.

56B. *Counting of votes.*—(*1*) Subject to such general or special directions, if any, as may be given by the Election Commission in this behalf, the ballot papers taken out of all boxes [1][used at more than one polling station in a constituency,] shall be mixed together and then arranged in convenient bundles and scrutinised.

(*2*) The returning officer shall reject a ballot paper—

(*a*) if it bears any mark or writing by which the elector can be identified, or

(*b*) if it bears no mark at all or, to indicate the vote, it bears a mark elsewhere than on or near the symbol of one of the candidates on the face of the ballot paper or, it bears a mark made otherwise than with the instrument supplied for the purpose, or

(*c*) if votes are given on it in favour of more than one candidate, or

(*d*) if the mark indicating the vote thereon is placed in such manner as to make it doubtful to which candidate the vote has been given, or

(*e*) if it is a spurious ballot paper, or

(*f*) if it is so damaged or mutilated that its identity as a genuine ballot paper cannot be estasblished, or

(*g*) if it bears a serial number, or is of a design, different from the serial numbers, or, as the case may be, design, of the ballot papers authorised for use at the particular polling station, or

(*h*) if it does not bear both the mark and the signature which it should have borne under the provisions of sub-rule (*1*) of rule 38:

Provided that where the returning officer is satisfied that any such defect as is mentioned in clause (*g*) or clause (*h*) has been caused by any mistake or failure on the part of a presiding officer or polling officer, the ballot paper shall not be rejected merely on the ground of such defect:

Provided further that a ballot paper shall not be rejected merely on the ground that the mark indicating the vote is indistinct or made more than once, if the intention that the vote shall be for a particular candidate clearly appears from the way the paper is marked.

1. Subs. by Notifn. No. S.O. 105(E), dated the 15th February, 1993, for certain words.

(*3*) Before rejecting any ballot paper under sub-rule (*2*), the returning officer shall allow each counting agent present a reasonable opportunity to inspect the ballot paper but shall not allow him to handle it or any other ballot paper.

(*4*) The returning officer shall endorse on every ballot paper which he rejects the word "Rejected" and the grounds of rejection in abbreviated form either in his own hand or by means of a rubber stamp and shall initial such endorsement.

(*5*) All ballot papers rejected under this rule shall be bundled together.

(*6*) Every ballot paper which is not rejected under this rule shall be counted as one valid vote:

Provided that no cover containing tendered ballot shall be opened and no such paper shall be counted.

(*7*) After the counting of all ballot papers contained in all the ballot boxes used in a constituency has been completed, the returning officer shall make the entries in a result sheet in Form 20A and announce the particulars.

Explanation.—For the purpose of this rule, the expression "constituency" shall, in relation to an election from a parliamentary constituency, mean the assembly constituency comprised therein.

57B. *Sealing of used ballot papers.*—The valid ballot papers of each candidate and the rejected ballot papers shall thereafter be bundled separately and the several bundles made up into a separate packet which shall be sealed with the seals of the returning officer and of such of the candidates, their election agents or counting agents as may desire to affix their seals thereon and on the packets so sealed shall be recorded the following particulars, namely:—

(*a*) the name of the constituency; and

(*b*) the date of counting.'.

60. Counting to be continuous.—The returning officer shall, as far as practicable, proceed continuously with the counting and shall, during any intervals when the counting has to be suspended, keep the ballot papers, packets and all other papers relating to the election sealed with his own seal and the seals of such candidates or election agents as may desire to affix their seals and take sufficient precaution for their safe custody during such intervals.

61. Recommencement of counting after fresh poll.—(*1*) If a fresh poll is held under section 58, the returning officer shall, after completion of that poll, recommence the counting of votes on the date and at the time and place which have been fixed by him in that behalf and of which notice has been previously given to the candidates and their election agents.

(*2*) The provisions of rules 56 and 57 shall apply so far as may be to such further counting.

[1]* * * * *

63. Re-count of votes.— (*1*) After the completion of the counting, the returning officer shall record in the result sheet in Form 20 the total number of votes polled by each candidate and announce the same.

[2][(*2*) After such announcement has been made, a candidate or, in his absence, his election agent or any of his counting agents may apply in writing to the returning officer to re-count the votes either wholly or in part stating the grounds on which the demands such re-count.]

1. Rule 62 omitted by Notifn. No. S.O. 3662, dated the 12th October, 1964.
2. Subs., *ibid.*, for sub-rule (*2*).

(*3*) On such an application being made the returning officer shall decide the matter and may allow the application in whole or in part or may reject it *in toto* if it appears to him to be frivolous or unreasonable.

(*4*) Every decision of the returning officer under sub-rule (*3*) shall be in writing and contain the reasons therefor.

[1][(*5*) If the returning officer decides under sub-rule (*3*) to allow a re-count of the votes either wholly or in part, he shall—

(*a*) do the re-counting in accordance with [2][rule 54A,] rule 56 or rule 56A, as the case may be;

(*b*) amend the result sheet in Form 20 to the extent necessary after such re-count; and

(*c*) announce the amendments so made by him.]

(*6*) After the total number of votes polled by each candidate has been announced under sub-rule (*1*) or sub-rule (*5*), the returning officer shall complete and sign the result sheet in Form 20 and no application for a re-count shall be entertained thereafter:

Provided that no step under this sub-rule shall be taken on the completion of the counting until the candidates and election agents present at the completion thereof have been given a reasonable opportunity to exercise the right conferred by sub-rule (*2*).

[3][**64. Declaration of result of election and return of election.**—The returning officer shall, subject to the provisions of section 65 if and so far as they apply to any particular case, then—

(*a*) declare in Form 21C or Form 21D, as may be appropriate, the candidate to whom the largest number of valid votes have been given, to be elected under section 66 and send signed copies thereof to the appropriate authority, the Election Commission and the chief electoral officer; and

(*b*) Complete and certify the return of election in Form 21E, and send signed copies thereof to the Election Commission and the chief electoral officer.]

65. Counting at two or more places. —If ballot papers are counted at more places than one, the provisions of [4][rules 53, 54 and 55 to 60] shall apply to the counting at each such place, but the provisions of [5][rules 54A, 63 and 64] shall apply only to the counting at the last of such places.

66. Grant of certificate of election to returned candidate.—As soon as may be after a candidate has been declared by the returning officer under the provisions of section 53, or section 66, to be elected, the returning officer shall grant to such candidate a certificate of election in Form 22 and obtain from the candidate an acknowledgment of its receipt duly signed by him and immediately send the acknowledgment by registered post to the Secretary of the House of the People or, as the case may be, the Secretary of the Legislative Assembly.

[6][**66A. Counting of votes where electronic voting machines have been used.**—In relation to the counting of votes at a polling station, where voting machine has been used,—

(*i*) the provisions of rules 50 to 54 and in lieu of rules 55, 56 and 57, the following rules shall respectively apply, namely:—

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1. Subs. by Notifn. No. S.O. 3662, dated the 12th October, 1964, for sub-rule (*2*).
2. Ins. by Notifn. No. S.O. 3450, dated the 9th November, 1966.
3. Subs. by Notifn. No. S.O. 4542, dated the 20th December, 1968 (w.e.f 1-1-1969), for rule 64.
4. Subs. by Notifn. No. S.O. 3450, dated the 9th November, 1966, for "rules 53 to 60".
5. Subs., *ibid.*, for "rules 62 to 64".
6. Ins. by Notifn. No. S.O. 230(E), dated the 24th March, 1992.

'55C. *Scrutiny and inspection of voting machines.*—(*1*) The returning officer may have the control units of the voting machines used at more than one polling station taken up for scrutiny and inspection and votes recorded in such units counted simultaneously.

(*2*) Before the votes recorded in any control unit of voting machine are counted under sub-rule (*1*), the candidate or his election agent or his counting agent present at the counting table shall be allowed to inspect the paper seal and such other vital seals as might have been affixed on the unit and to satisfy themselves that the seals are intact.

(*3*) The returning officer shall satisfy himself that none of the voting machines has in fact been tampered with.

(*4*) If the returning officer is satisfied that any voting machine has in fact been tampered with, he shall not count the votes recorded in that machine and shall follow the procedure laid down in section 58, or section 58A or section 64A, as may be applicable in respect of the polling station or stations where that machine was used.

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.

57C. *Sealing of voting machines.*—(*1*) After the result of voting recorded in a control unit has been ascertained candidate-wise and entered in Part II of Form 17C and Form 20 under rule 56C, the returning officer shall reseal the unit with his seal and the seals of such of the candidates or their election agents present who may desire to affix the seals thereon so however that the result of voting recorded in the unit is not obliterated and the unit retains the memory of such result.

(*2*) The control unit so sealed shall be kept in specially prepared boxes on which the returning officer shall record the following particulars, namely:—

(*a*) the name of the constituency;

(*b*) the particulars of polling station or stations where the control unit has been used;

(*c*) serial number of the control unit;

(*d*) date of poll; and

(*e*) date of counting.';

(*ii*) the provisions of rules 60 to 66 shall, so far as may be, apply in relation to voting by voting machines and any reference in those rules to,—

(*a*) ballot paper shall be construed as including a reference to such voting machine;

(*b*) any rule shall be construed as a reference to the corresponding rule in Chapter II of Part IV or, as the case may be, to rule 55C or 56C or 57C].

PART VI

Voting at elections by assembly members and in council constituencies

[1][**67. Definition.**-- Unless the context otherwise requires, in this Part—

(*a*) and in rule 84, "authorised agent", in respect of a political party, means an authorised agent appointed, under sub-rule (2) of rule 39AA as made applicable, by clause (ii) of rule 70, to election, in a council constituency and, by assembly members other than by postal ballot under clause (a) of rule 68, by that political party;

(*b*) "election" means an election by assembly members or an election in a council constituency.]

68. Notification as to postal ballot.—The Election Commission may, by notification published in the Official Gazette at any time before the last date for the withdrawal of candidatures at an election, direct that the method of voting by postal ballot shall be followed:—

(*a*) at that election, if it is an election by assembly members; or

(*b*) in the whole or any specified parts of the constituency, if it is an election in a council constituency.

[2][**69. Notice to electors at election by assembly members.**—At an election by assembly members where a poll becomes necessary, the returning officer for such election shall, as soon as may be after the last date for the withdrawal of candidatures, send to each elector a notice informing him of the date, time and place fixed for polling.]

70. Rules for conduct of poll.—The provisions of [3][rules 28 to 35 and 36 to 48] shall apply—

(*a*) to every election by assembly members in respect of which no direction has been issued under clause (*a*) of rule 68, and

(*b*) to every election in a council constituency unless voting by postal ballot has been directed in the whole of that constituency under clause (*b*) of rule 68,

subject to the following modifications, namely:—

(*i*) clause (*a*) of sub-rule (*1*) of rule 31 shall not apply to an election by assembly members;

(*ii*) [4][in lieu of rules 37 to 40], the following rules shall apply:—

"37A. *Method of voting.*—(*1*) Every elector has only one vote at an election irrespective of the number of seats to be filled.

[5][(*1A*) The provisions of sub-rules (*1*), (*2*) and (*4*) of rule 37 shall apply in relation to electors in the graduates' constituencies and teachers' constituencies as they apply in relation to electors in the Parliamentary constituencies and Assembly constituencies.]

(*2*) An elector in giving his vote—

1. Subs. by Notifn. No. S.O. 272(E), dated the 27th February, 2004.
2. Subs. by Notifn. No. S.O. 3662, dated the 12th October, 1964, for rule 69.
3. Subs. by Notifn. No. S.O. 3450, dated the 9th November, 1966, for "rules 28 to 48".
4. Subs. by Notifn. No. S.O. 1520, dated the 25th April, 1968, for certain words.
5. Ins. by Notifn. No. S.O. 335(E), dated the 23rd April, 1990.

(*a*) shall place on his ballot paper the figure 1 in the Space opposite the name of the candidate for whom he wishes to vote in the first instance; and

(*b*) may, in addition, place on his ballot paper the figure 2 or the figures 2 and 3, or the figures 2, 3 and 4 and so on, in the space opposite the names of the other candidates in the order of his preference.

[1][*Explanation.*—The figures referred to in clauses (*a*) and (*b*) of this sub-rule may be marked in the international form of Indian numerals or in the Roman form or in the form used in any Indian language but shall not be indicated in words.]

[2][38A. *Issue of ballot papers to electors.*—(*1*) Every ballot paper, before it is issued to an elector, and the counterfoil attached thereto shall be stamped on the back with such distinguishing mark as the Election Commission may direct, and every ballot paper, before it is issued, shall be signed in full on its back by the presiding officer.

(*2*) At the time of issuing a ballot paper to an elector, the polling officer shall—

(*a*) record on its counterfoil the electoral roll number of the elector as entered in the marked copy of the electoral roll;

(*b*) obtain the signature or thumb impression of that elector on the said counterfoil; and

[3][(*c*) mark the name of the elector in the marked copy of the electoral roll to indicate that a ballot paper has been issued to him, —

(*i*) and record in the marked copy of the electoral roll, the serial number of the ballot paper issued to that elector, in the case of an election to fill a seat or seats in the Council of States;

(*ii*) without recording therein the serial number of the ballot paper issued to that elector, in the case of an election to fill a seat or seats in the Legislative Council of a State:";

[3][Provided that no ballot paper shall be delivered to an elector unless he has put his signature or thumb impression on the counterfoil of that ballot paper.]

(*3*) Notwithstanding anything contained in sub-rule (2) of rule 2, it shall not be necessary for any presiding officer or polling officer or any other officer to attest the thumb impression of the elector on the counterfoil.

(*4*) [3][Subject to rule 39AA., no person] in the polling station shall note down the serial numbers of the ballot papers issued to particular electors.

[3][(*5*) Before any ballot paper is delivered to an elector at an election to fill a seat or seats in the Legislative Council of a State by assembly members or in a local authorities' constituency, the serial number of the ballot papers shall be effectively concealed in such manner as the Election Commission may direct.]

[4][39A. *Maintenance of secrecy of voting by electors within polling station and voting procedure.*—(*1*) Every elector, to whom a ballot paper has been issued under rule 38A or under any

1. Ins. by Notifn. No. S.O. 3875, dated the 15th December, 1966.
2. Subs. by Notifn. No. S.O. 5573, dated the 23rd December, 1971, for rule 38A.
3. Subs. by Notifn. No. S.O.272(E), dated the 27th February, 2004
4. Subs. by Notifn. No. S.O.286(E), dated the 8th May, 1974, for rule 39A.

other provision of these rules, shall maintain secrecy of voting within the polling station and for that purpose observe the voting procedure hereinafter laid down.

(*2*) The elector on receiving the ballot paper shall forthwith—

(*a*) proceed to one of the voting compartments;

(*b*) record his vote in accordance with sub-rule (*2*) of rule 37A with the article supplied for the purpose;

(*c*) fold the ballot paper so as to conceal his vote;

[1][(*d*) if required, show to the presiding officer, the distinguishing mark on the ballot paper;]

[2][(*e*)] insert the folded paper into the ballot box; and

[2][(*f*)] quit the polling station.

(*3*) Every elector shall vote without undue delay.

(*4*) No elector shall be allowed to enter a voting compartment when another elector is inside it.

(*5*) If an elector to whom a ballot paper has been issued, refuses, after warning given by the presiding officer to observe the procedure as laid down in sub-rule (*2*), the ballot paper issued to him shall, whether he has recorded his vote thereon or not, be taken back from him by the presiding officer or a polling officer under the direction of the presiding officer.

(*6*) After the ballot paper has been taken back, the presiding officer shall record on its back the words "Cancelled: voting procedure violated" and put his signature below those words.

(*7*) All the ballot papers on which the words "Cancelled: voting procedure violated" are recorded, shall be kept in a separate cover which shall bear on its face the words "Ballot papers: voting procedure violated".

(*8*) Without prejudice to any other penalty to which an elector, from whom a ballot paper has been taken back under sub-rule (*5*), may be liable, vote, if any, recorded on such ballot paper shall not be counted.]

[3][**39AA. Information regarding casting of votes.** — (*1*) Notwithstanding anything contained in rule 39A, the presiding officer shall, between the period when an elector being a member of a political party records his vote on a ballot paper and before such elector inserts that ballot paper into the ballot box, allow the authorised agent of that political party to verify as to whom such elector has cast his vote:

Provided that if such elector refuses to show his marked ballot paper to the authorised agent of his political party, the ballot paper issued to him shall be taken back by the presiding officer or a polling officer under the direction of the presiding officer and the ballot paper so taken back shall then be further dealt with in the manner specified in sub-rules (6) to (8) of rule 39A as if such ballot paper had been taken back under sub-rule (5) of that rule.

1. Ins. by Notifn. No. S.O. 340(E), dated the 4th June, 1986.
2. Cls. (*d*) and (*e*) relettered as cls. (*e*) and (*f*), respectively, *ibid.*
3. Ins. by Notifn. No. S.O. 272(E), dated the 27th February, 2004.

(*2*) Every political party, whose member as an elector casts a vote at a polling station, shall, for the purposes of sub-rule (1), appoint, in Form 22A, two authorised agents.

(*3*) An authorised agent appointed under sub-rule (2) shall be present throughout the polling hours at the polling station and the other shall relieve him when he goes out of the polling station or *vice versa*.]

[1][40A. *Recording of votes of illiterate, blind or infirm electors.*— (*1*) If an elector is unable to read the ballot paper or to record his vote thereon in accordance with rule 37A by reason of illiteracy, blindness or other infirmity, the presiding officer shall, on being satisfied about such illiteracy, blindness or infirmity, permit the elector to take with him a companion of not less than [2][eighteen] years of age who is able to read the ballot paper and record the vote thereon on behalf of, and in accordance with the wishes of, the elector and, if necessary, to fold the ballot paper so as to conceal the vote and insert it into the ballot box:

Provided that no person shall be permitted to act as the companion of more than one elector at any polling station on the same day:

Provided further that before any person is permitted to act as the companion of an elector on any day under this rule, the person shall be required to declare that he will keep secret the vote recorded by him on behalf of the elector and that he has not already acted as the companion of any other elector at any polling station on that day:

[3][Provided also that at an election by assembly members no such companion shall be an elector at that election.]

(*2*) The presiding officer shall keep a record in Form 14A of all the cases under this rule.

(*3*) The presiding officer shall, when he is so requested by the companion of an elector, explain to him the instructions for the recording of votes.]";

(*iii*) in lieu of rule 44, the following rule shall apply:—

"44B. *Sealing of ballot box after poll.*—As soon as practicable after the close of the poll, the [4][presiding officer] shall, in the presence of any polling agents who may be present, close the slit for insertion of ballot papers of each ballot box or where the box does not contain any mechanical device for closing the slit, seal up the slit and secure the ballot box:

Provided that it shall not be necessary to seal the slit or secure the ballot box if the counting of votes is to begin immediately after the close of the poll.";

[5][(*iv*) in rule 46, in sub-rule (*1*), in lieu of clauses (*b*) and (*c*), the following clauses shall apply:—

"(*b*) the ballot papers signed in full by the presiding officer under sub-rule (*1*) of rule 38A but not issued to the voters;

(*c*) the ballot papers cancelled for violation of voting procedure under rule 39A."].

1. Ins. by Notifn. No. S.O. 1520, dated the 25th April, 1968.
2. Subs. by Notifn. No. S.O. 542 (E), dated the 13th July, 1989.
3. Added by Notifn. No. S.O. 5573, dated the 23rd December, 1971.
4. Subs. by Notifn. No. S.O. 2912, dated the 21st August, 1964.
5. Subs. by Notifn. No. S.O. 286(E), dated the 8th May, 1974, for cl. (*iv*).

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

PART VII

Counting of votes at Elections by Assembly Members or in Council Constituencies

71. Definitions.—In this Part,—

(*1*) "continuing candidate" means any candidate not elected and not excluded from the poll at any given time;

(*2*) "count" means—

(*a*) all the operations involved in the counting of the first preferences recorded for candidates; or

(*b*) all the operations involved in the transfer of the surplus of an elected candidate; or

(*c*) all the operations involved, in the transfer of the total value of votes of an excluded candidate;

(*3*) "exhausted paper" means a ballot paper on which no further preference is recorded for a continuing candidate, provided that a paper shall also be deemed to have become exhausted whenever—

(*a*) the names of two or more candidates, whether continuing or not, are marked with the same figure and are next in order of preference; or

(*b*) the name of the candidate next in order of preference, whether continuing or not, is marked by a figure not following consecutively after some other figure on the ballot paper or by two or more figures;

(*4*) "first preference" means the figure 1 set opposite the name of a candidate; "second preference" means the figure 2 set opposite the name of a candidate; "third preference" means the figure 3 set opposite the name of a candidate, and so on;

(*5*) "original vote", in relation to any candidate, means a vote derived from a ballot paper on which a first preference is recorded, for such candidate;

(*6*) "surplus" means the number by which the value of the votes, original and transferred, of any candidate exceeds the quota;

(*7*) "transferred vote", in relation to any candidate, means a vote the value or the part of the value of which is credited to such candidate and which is derived from a ballot paper on which a second or a subsequent preference is recorded for such candidate; and

(*8*) "unexhausted paper" means a ballot paper on which a further preference is recorded for a continuing candidate.

72. Application of certain rules.—The provisions of rules 51 to 54 shall apply to the counting of votes at any election by assembly members or in a council constituency as they apply to the counting of votes at an election in a parliamentary or assembly constituency.

73. Scrutiny and opening of ballot boxes and the packets of postal ballot papers.—(*1*) The returning officer shall—

[1][(*a*) first deal with the covers containing the postal ballot papers, if any, in the manner provided in sub-rules (*2*) to (*7*) of rule 54A;

(*b*) then open the ballot boxes, take out from each box and count the ballot papers contained therein, and record their number in a statement;]

(*c*) scrutinise the ballot papers taken out of the ballot boxes as well as the postal ballot papers taken out from the covers; and

1. Subs. by Notifn. No. S.O. 3662, dated the 12th October, 1964, for cls. (*a*) and (*b*).

(*d*) separate the ballot papers which he deems valid from those which he rejects endorsing on each of the latter the word "Rejected" and the ground of rejection.

(*2*) [1][Subject to rule 38A as made applicable, by clause (*ii*) of rule 70, to election, in a council constituency and, by assembly members other than by postal ballot under clause (*a*) of rule 68, a ballot paper shall] be invalid on which—

(*a*) the figure 1 is not marked; or

(*b*) the figure 1 is set opposite the name of more than one candidate or is so placed as to render it doubtful to which candidate it is intended to apply; or

(*c*) the figure 1 and some other figures are set opposite the name of the same candidate; or

(*d*) there is any mark or writing by which the elector can be identified; [2][or]

[3][(*e*) there is any figure marked otherwise than with the article supplied for the purpose:

Provided that this clause shall not apply to a postal ballot paper:

Provided further that where the returning officer is satisfied that any such defect as is mentioned in this clause has been caused by any mistake or failure on the part of a presiding officer or polling officer, the ballot paper shall not be rejected, merely on the ground of such defect.]

[4][*Explanation.*—The figures referred to in clauses (*a*), (*b*) and (*c*) of this sub-rule may be marked in the international form of Indian numerals or in the Roman form or in the form used in any Indian language, but shall not be indicated in words.]

74. Arrangement of valid ballot papers in parcels.—After rejecting the ballot papers which are invalid, the returning officer shall—

(*a*) arrange the remaining ballot papers in parcels according to the first preference recorded for each candidate;

(*b*) count and record the number of papers in each parcel and the total number; and

(*c*) credit to each candidate the value of the papers in his parcel.

75. Counting of votes where only one seat is to be filled.—(*1*) At any election where only one seat is to be filled, every valid ballot paper shall be deemed to be of the value of 1 at each count, and the quota sufficient to secure the return of a candidate at the election shall be determined as follows:—

(*a*) add the values credited to all the candidates under clause (*c*) of rule 74;

(*b*) divide the total by 2; and

(*c*) add 1 to the quotient ignoring the remainder, if any, and the resulting number is the quota.

(*2*) If, at the end of the first or any subsequent count, the total value of the ballot papers credited to any candidate is equal to, or greater than, the quota or there is only one continuing candidate, that candidate shall be declared elected.

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1. Subs. by Notifn. No. S.O. 272(E), dated the 27th February, 2004.
2. Ins. by Notifn. No. S.O. 286(E), dated the 8th May, 1974.
3. Subs. by Notifn. No. S.O. 795(E), dated the 14th December, 1976, for cl. (*e*).
4. Ins. by Notifn. No. S.O. 3662, dated the 12th October, 1964.

(*3*) If, at the end of any count, no candidate can be declared elected, the returning officer shall—

(*a*) exclude from the poll the candidate who up to that stage has been credited with the lowest value;

(*b*) examine all the ballot papers in his parcels and sub-parcels, arrange the unexhausted papers in sub-parcels according to the next available preferences recorded thereon for the continuing candidates, count the number of papers in each such sub-parcel and credit it to the candidate for whom such preference is recorded, transfer the sub-parcel to that candidate, and make a separate sub-parcel of all the exhausted papers; and

(*c*) see whether any of the continuing candidates has, after such transfer and credit, secured the quota.

(*4*) If, when a candidate has to be excluded under clause (*a*) of sub-rule (*3*), two or more candidates have been credited with the same value and stand lowest on the poll, the candidate for whom the lowest number of original votes are recorded shall be excluded, and if this number also is the same in the case of two or more candidates, the returning officer shall decide by lot which of them shall be excluded.

Counting of votes when more than one seat is to be filled

76. Ascertainment of quota.—At any election where more than one seat is to be filled, every valid ballot paper shall be deemed to be of the value of 100, and the quota sufficient to secure the return of a candidate at the election shall be determined as follows:—

(*a*) add the values credited to all the candidates under clause (*c*) of rule 74;

(*b*) divide the total by a number which exceeds by 1 the number of vacancies to be filled; and

(*c*) add 1 to the quotient ignoring the remainder, if any, and the resulting number is the quota.

77. General instruction.—In carrying out the provisions of rules 78 to 82, the returning officer shall disregard all fractions and ignore all preferences recorded for candidates already elected or excluded from the poll.

78. Candidates with quota elected.—If at the end of any count or at the end of the transfer of any parcel or sub-parcel of an excluded candidate the value of ballot papers credited to a candidate is equal to, or greater than the quota, that candidate shall be declared elected.

79. Transfer of surplus.—(*1*) If at the end of any count the value of the ballot papers credited to a candidate is greater than the quota, the surplus shall be transferred, in accordance with the provisions of this rule, to the continuing candidates indicated on the ballot papers of that candidate as being next in order of the elector's preference.

(*2*) If more than one candidate have a surplus, the largest surplus shall be dealt with first and the others in order of magnitude:

Provided that every surplus arising on the first count shall be dealt with before those arising on the second count and so on.

(*3*) Where there are more surpluses than one to distribute and two or more surpluses are equal, regard shall be had to the original votes of each candidate and the candidate for whom most original votes are recorded shall have his surplus first distributed; and if the values of their original votes are equal, the returning officer shall decide by lot which candidate shall have his surplus first distributed.

(*4*) (*a*) If the surplus of any candidate to be transferred arises from original votes only, the returning officer shall examine all the papers in the parcel belonging to that candidate, divide the unexhausted papers into sub-parcels

according to the next preferences recorded thereon and make a separate sub-parcel of the exhausted papers.

(*b*) He shall ascertain the value of the papers in each sub-parcel and of all the unexhausted papers.

(*c*) If the value of the unexhausted papers is equal to or less than the surplus, he shall transfer all the unexhausted papers at the value at which they were received by the candidate whose surplus is being transferred.

(*d*) If the value of the unexhausted papers is greater than the surplus, he shall transfer the sub-parcels of unexhausted papers and the value at which each paper shall be transferred shall be ascertained by dividing the surplus by the total number of unexhausted papers.

(*5*) If the surplus of any candidate to be transferred arises from transferred as well as original votes, the returning officer shall re-examine all the papers in the sub-parcel last transferred to the candidate, divide the unexhausted papers into sub-parcels according to the next preferences recorded thereon, and then deal with the sub-parcels in the same manner as is provided in the case of sub-parcels referred to in sub-rule (*4*).

(*6*) The papers transferred to each candidate shall be added in the form of a sub-parcel to the papers already belonging to such candidate.

(*7*) All papers in the parcel or sub-parcel of an elected candidate not transferred under this rule shall be set apart as finally dealt with.

80. Exclusion of candidates lowest on the poll.—(*1*) If after all surpluses have been transferred as hereinbefore provided, the number of candidates elected is less than the required number, the returning officer shall exclude from the poll the candidate lowest on the poll and shall distribute his unexhausted papers among the continuing candidates according to the next preferences recorded thereon; and any exhausted papers shall be set apart as finally dealt with.

(*2*) The papers containing original votes of an excluded candidate shall first be transferred, the transfer value of each paper being one hundred.

(*3*) The papers containing transferred votes of an excluded candidate shall then be transferred in the order of the transfers in which, and at the value at which, he obtained them.

(*4*) Each of such transfers shall be deemed to be a separate transfer but not a separate count.

(*5*) If, as a result of the transfer of papers, the value of votes obtained by candidate is equal to or greater than the quota, the count then proceeding shall be completed but no further papers shall be transferred to him.

(*6*) The process directed by this rule shall be repeated on the successive exclusions one after another of the candidates lowest on the poll until such vacancy is filled either by the election of a candidate with the quota or as hereinafter provided.

(*7*) If at any time it becomes necessary to exclude a candidate and two or more candidates have the same value of votes and are the lowest on the poll, regard shall be had to the original votes of each candidate and the candidate for whom fewest original votes are recorded shall be excluded; and if the values of their original votes are equal the candidates with the smallest value at the earliest count at which these candidates had unequal values shall be excluded.

(*8*) If two or more candidates are lowest on the poll and each has the same value of votes at all counts the returning officer shall decide by lot which candidate shall be excluded.

81. Filling the last vacancies.—(*1*) When at the end of any count the number of continuing candidates is reduced to the number of vacancies remaining unfilled, the continuing candidates shall be declared elected.

(*2*) When at the end of any count only one vacancy remains unfilled and the value of the papers of some one candidate exceeds the total value of the papers of all the other continuing candidates together with any surplus not transferred, that candidate shall be declared elected.

(*3*) When at the end of any count only one vacancy remains unfilled and there are only two continuing candidates and each of them has the same value of votes and no surplus remains capable of transfer, the returning officer shall decide by lot which of them shall be excluded; and after excluding him in the manner aforesaid, declare the other candidate to be elected.

82. Provision for re-counts.—(*1*) Any candidate or, in his absence, his election agent or counting agent may, at any time during the counting of the votes either before the commencement or after the completion of any transfer of votes (whether surplus or otherwise) request the returning officer to re-examine and re-count the papers of all or any candidates (not being papers set aside at any previous transfer as finally dealt with), and the returning officer shall forthwith re-examine and re-count the same accordingly.

(*2*) The returning officer may in his discretion re-count the votes either once or more than once in any case in which he is not satisfied as to the accuracy of any previous count:

Provided that nothing in this sub-rule shall make it obligatory on the returning officer to re-count the same votes more than once.

83. Illustration of the procedure as to the counting of votes under rules 76 to 81.—An illustration of the procedure as to the counting of votes in accordance with the provisions of [1][rules 76 to 81] is given in the Schedule to these rules.

[2][**84. Declaration of result and return by returning officers.**—~~(*1*)~~ Upon the completion of counting, the returning officer shall, subject to the provisions of sub-rule (*3*) of rule 81,—

(*a*) declare the result under section 66 in Form 23 or Form 23A as may be appropriate, and send signed copies thereof to the appropriate authority, the Election Commission and the chief electoral officer;

(*b*) prepare and certify a return of the election in Form 23B and after reporting the result of the election under section 67, send signed copies of the said Form to the Election Commission and the chief electoral officer; and

(*c*) permit any candidate or his election agent or counting agent to take a copy of, or extract from, such return in Form 23B.]

[1][(*2*) The returning officer shall thereafter—

(*a*) place the valid ballot papers in one packet and the rejected ballot papers in another;

(*b*) seal with the seals of the returning officer and of such of the candidates, their election agents or counting agents as may desire to affix their seals, each of the packets referred to in clause (*a*) and the packet containing the declarations by electors and attestations of their signatures; and

(*c*) record on each of the sealed packets the descriptions of its contents and the date of election.]

[3][Provided that where such counting relates to an election to fill a seat or seats in the Council of States, the returning officer shall, before sealing the packets under clause (*b*), allow the authorised agent of a political party to verify as to whom the electors being members of that political party have cast their votes.]

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1. Subs. by Notifn. No. S.O. 3662, dated the 12th October, 1964, for sub-rule (*2*).
2. Subs. by Notifn. No. S.O. 4542, dated the 20th December, 1968, for rule 84, (w.e.f. 1-1-1969).
3. Ins. by Notifn. No. S.O.272(E), dated the 27th February, 2004.

[1]* * * * *

85. Grant of certificate of election to returned candidate.—As soon as may be after a candidate has been declared to be elected the returning officer shall grant to such candidate a certificate of election in Form 24 and obtain from the candidate an acknowledgment of its receipt duly signed by him and immediately send the acknowledgment by registered post to the Secretary of the Council of States or, as the case may be, the Secretary of the Legislative Council.

[2][PART VIIA

Contributions report, equitable sharing of time on electronic media and material to be supplied to recognised political parties

85A. Definitions.—In this Part, unless the context otherwise requires,—

(*a*) "cable television network" and "cable operator" have the meanings respectively assigned to them in clause (*b*) of *Explanation* to section 39A;

(*b*) "electronic media" has the meaning assigned to it in clause (*a*) of *Explanation* to section 39A;

(*c*) "political party" has the meaning assigned to it in clause (*f*) of sub-section (*1*) of section 2;

(*d*) "recognised political party" has the meaning assigned to it in the Election Symbols (Reservation and Allotment) Order, 1968.

85B. Form of contributions report.—The report for a financial year under sub-section (*1*) of section 29C shall be submitted in form 24A by the treasurer of a political party or any other person authorised by the political party in this behalf, before the due date for furnishing a return of its income of that financial year under section 139 of the Income-tax Act, 1961 (43 of 1961), to the Election Commission.

85C. Allocation of equitable sharing of time on electronic media.—(*1*) The Election Commission shall, for the purposes of allocating equitable sharing of time on the cable television network and other electronic media under sub-section (*1*) of section 39A, categories the cable television networks and electronic media into the two separate categories that is to say one category which is owned or controlled or financed wholly or substantially by funds provided to them by the Central Government and the other which is not owned of controlled or financed wholly or substantially by funds provided to them by the Central Government.

(*2*) For allocating equitable sharing of time on the cable television network and other electronic media owned or controlled or financed wholly or substantially by funds provided to them by the Central Government referred to in sub-rule (*1*), the Election Commission shall determine, in consultation with the Ministry of the Government of India dealing with the concerned subject, the maximum time period available on such cable television network and other electronic media and allocate such time period proportionately among the recognised political parties contesting the election on the basis of their past performances for the purposes of displaying or propagating any election matter or to address public in connection with the election under sub-section (*1*) of section 39A.

(*3*) For the purposes of this rule, "past performance of a recognised political party" shall be calculated,—

(*i*) in relation to the election to fill a seat or seats in the House of the People, on the basis of the percentage of votes cast in the last preceding general election in favour of that recognised political party with reference to the total votes cast in that general election, to fill the seats in that House;

(*ii*) in relation to the election to fill a seat or seats in the Legislative Assembly of a State (except the State of Jammu and Kashmir), on the basis of the percentage of the votes cast in the last preceding general election in favour of that recognised political party with reference to the total votes cast in that general election, to fill the seats in that Assembly.

1. Sub-rule (*3*) omitted by Notifn. No. S.O. 4542, dated the 10th December, 1968 (w.e.f. 1-1-1969).
2. Ins. by Notifn. No. S.O. 1283(E), dated the 10th November, 2003.

85D. Supply of material by the Government.—The Central Government shall, at the time of any general election to be held for the purposes of constituting the house of the People or the Legislative Assembly of a State provide to the Election Commission such number of copies of electoral roll, as finally published under the representation of the People Act, 1950 (43 of 1950), as the Election Commission may require for supplying the same free of cost to the candidate of recognised political parties through such officers as may be specified by the Election Commission and such officer shall act in accordance with such general or special directions as may be issued by the Election Commission in this behalf.'.

PART VIII
Election Expenses

86. Particulars of account of election expenses.—(*1*) The account of election expenses to be kept by a candidate or his election agent under section 77 shall contain the following particulars in respect of each item of expenditure from day to day, namely: —

(*a*) the date on which the expenditure was incurred or authorised;

(*b*) the nature of the expenditure (as for example, travelling, postage or printing and the like);

(*c*) the amount of the expenditure—

(*i*) the amount paid;

(*ii*) the amount outstanding;

(*d*) the date of payment;

(*e*) the name and address of the payee;

(*f*) the serial number of vouchers, in case of amount paid;

(*g*) the serial number of bills, if any, in case of amount outstanding;

(*h*) the name and address of the person to whom the amount outstanding is payable.

(*2*) A voucher shall be obtained for every item of expenditure unless from the nature of the case, such as postage, travel by rail and the like, it is not practicable to obtain a voucher.

(*3*) All vouchers shall be lodged along with the account of election expenses, arranged according to the date of payment and serially numbered by the candidate or his election agent and such serial numbers shall be entered in the account under item (*f*) of sub-rule (*1*).

(*4*) It shall not be necessary to give the particulars mentioned in item (*e*) of sub-rule (*1*) in regard to items of expenditure for which vouchers have not been obtained under sub-rule (*2*).

87. Notice by [1][district election officer] for inspection of accounts.—The [1][district election officer] shall, within two days from the date on which the account of election expenses has been lodged by a candidate under section 78, cause a notice to be affixed to his notice board, specifying—

(*a*) the date on which the account has been lodged;

(*b*) the name of the candidate; and

1. Subs. by Notifn. No. S.O. 3875, dated the 15th December, 1966, for "returning officer".

(*c*) the time and place at which such account can be inspected.

88. Inspection of account and the obtaining of copies thereof.—Any person shall on payment of a fee of one rupee be entitled to inspect any such account and on payment of such fee as may be fixed by the Election Commission in this behalf be entitled to obtain attested copies of such account or of any part thereof.

89. Report by the [1][district election officer] as to the lodging of the account of election expenses and the decision of the Election Commission thereon.— (*1*) As soon as may be after the expiration of the time specified in section 78 for the lodging of the accounts of election expenses at any election, the [1][district election officer] shall report to the Election Commission—

(*a*) the name of each contesting candidate;

(*b*) whether such candidate has lodged his account of election expenses and if so, the date on which such account has been lodged; and

(*c*) whether in his opinion such account has been lodged within the time and in the manner required by the Act and these rules.

(*2*) Where the [1][district election officer] is of the opinion that the account of election expenses of any candidate has not been lodged in the manner required by the Act and these rules, he shall with every such report forward to the Election Commission the account of election expenses of that candidate and the vouchers lodged along with it.

(*3*) Immediately after the submission of the report referred to in sub-rule (*1*) the [1][district election officer] shall publish a copy thereof affixing the same to his notice board.

(*4*) As soon as may be after the receipt of the report referred to in sub-rule (*1*) the Election Commission shall consider the same and decide whether any contesting candidate has failed to lodge the account of election expenses within the time and in the manner required by the Act and these rules.

[2][(*5*) Where the Election Commission decides that a contesting candidate has failed to lodge his account of election expenses within the time and in the manner required by the Act and these rules it shall by notice in writing call upon the candidate to show cause why he should not be disqualified under section 10A for the failure.

(*6*) Any contesting candidate who has been called upon to show cause under sub-rule (*5*) may within twenty days of the receipt of such notice submit in respect of the matter a representation in writing to the Election Commission, and shall at the same time send to district election officer a copy of his representation together with a complete account of his election expenses if he had not already furnished such an account.

(*7*) The district election officer shall, within five days of the receipt thereof, forward to the Election Commission the copy of the representation and the account (if any) with such comments as he wishes to make thereon.

(*8*) If, after considering the representation submitted by the candidate and the comments made by the district election officer and after such inquiry as it thinks fit, the Election Commission is satisfied that the candidate has no good reason or justification for the failure to lodge his account, it shall declare him to be disqualified under section 10A for a period of three years from the date of the order, and cause the order to be published in the Official Gazette.]

1. Subs. by Notifn. No. S.O.3875, dated 15th December, 1966, for "returning officer".
2. Subs., *ibid.*, for sub-rules (*5*) to (*9*).

[1][**90. Maximum election expenses.**—The total of the expenditure of which account is to be kept under section 77 and which is incurred or authorized in connection with an election in a State or Union territory mentioned in column 1 of the Table below shall not exceed—

(*a*) in any one parliamentary constituency of that State or Union territory, the amount specified in the corresponding column 2 of the said Table; and

(*b*) in any one assembly constituency, if any, of the State or Union territory, the amount specified in the corresponding column 3 of the said Table—

1. Subs. by Notifn. No. S.O. 767(*E*), dated the 29th November, 1979, for rule 90.

[1][TABLE

Sl. No.	Name of State or Union territory	Maximum limit of election expenses in any one	
		Parliamentary constituency	Assembly constituency
1	2	3	4
	I. STATES		
1.	Andhra Pradesh	40,00,000	16,00,000
2.	Arunachal Pradesh	27,00,000	10,00,000
3.	Assam	40,00,000	16,00,000
4.	Bihar	40,00,000	16,00,000
5.	Goa	22,00,000	8,00,000
6.	Gujarat	40,00,000	16,00,000
7.	Haryana	40,00,000	16,00,000
8.	Himachal Pradesh	40,00,000	11,00,000
9.	Jammu amd Kashmir	40,00,000	--------
10.	Karnataka	40,00,000	16,00,000
11.	Kerala	40,00,000	16,00,000
12.	Madhya Pradesh	40,00,000	16,00,000
13.	Maharashtra	40,00,000	16,00,000
14.	Manipur	35,00,000	8,00,000
15.	Meghalaya	35,00,000	8,00,000
16.	Mizoram	32,00,000	8,00,000
17.	Nagaland	40,00,000	8,00,000
18.	Orissa	40,00,000	16,00,000
19.	Punjab	40,00,000	16,00,000
20.	Rajasthan	40,00,000	16,00,000
21.	Sikkim	27,00,000	8,00,000
22.	Tamil Nadu	40,00,000	16,00,000
23.	Tripura	40,00,000	8,00,000
24.	Uttar Pradesh	40,00,000	16,00,000
25.	West Bengal	40,00,000	16,00,000
26.	Chhattisgarh	40,00,000	16,00,000
27.	Uttarakhand	40,00,000	11,00,000
28.	Jharkhand	40,00,000	16,00,000
	II. UNION TERRITORIES		
1.	Andaman and Nicobar Islands	27,00,000	--
2.	Chandigarh	22,00,000	--
3.	Dadra and Nagar Haveli	16,00,000	--
4.	Daman and Diu	16,00,000	--
5.	Delhi	40,00,000	14,00,000
6.	Lakshadweep	16,00,000	--
7.	Puducherry	32,00,000	8,00,000]

1. Subs. by Notifn. No. S.O. 425 (*E*), dated the 23rd February, 2011.

PART IX
Miscellaneous

91. Resignation of seats in case of election to more seats than one in a House.—(*1*) The time within which a person may resign all but one of the seats in either House of Parliament or in the House or either House of the Legislature of a State, to which he has been elected shall be—

(*a*) fourteen days from the date of his election under section 67A; or

(*b*) where the dates of his election are different in respect of different seats, fourteen days from the last of those dates.

(*2*) Such resignation shall be addressed—

(*a*) to the Speaker or the Chairman of the House concerned; or

(*b*) whether the office of the Speaker or Chairman is for the time being vacant or is, or is deemed to be, in abeyance, to the Deputy Speaker or the Deputy Chairman of the House concerned; or

(*c*) where the post of the Deputy Speaker or Deputy Chairman is also for the time being vacant or is, deemed to be, in abeyance, to the Election Commission.

(*3*) Where the resignation has been addressed to the Election Commission under sub-rule (*2*) the Election Commission shall, as soon as may be after the receipt of the resignation, send a copy thereof to the Secretary of the House concerned.

92. Custody of ballot boxes and papers relating to election. —(*1*) All ballot boxes used at an election shall be kept in such custody as the chief electoral officer may direct.

[1][(*1A*) All voting machines used at an election shall be kept in the custody of the concerned district election officer.]

[2][(*2*) The district election officer shall keep in safe custody—

(*a*) the packets of unused ballot papers with counterfoils attached thereto;

(*b*) the packets of used ballot papers whether valid, tendered or rejected;

(*c*) the packets of the counterfoils of used ballot papers;

(*d*) the packets of the marked copy of the electoral roll or, as the case may be, the list maintained under sub-section (*1*) or sub-section (*2*) of section 152;

[1][(*dd*) the packets containing registers of voters in Form-17A;]

(*e*) the packets of the declarations by electors and the attestation of their signatures; and

(*f*) all other papers relating to the election:

Provided that in the case of an election in an assembly constituency or a parliamentary constituency or a council constituency which extends over more districts that one, the said papers shall be kept in the custody of such one of the district election officers having jurisdiction over the constituency as the Election Commission may direct:

Provided further that in the case of an election by assembly members the said papers shall be kept in the custody of the returning officer.]

1. Ins. by Notifn. No. S.O. 230 (E), dated the 24th March, 1992.
2. Subs. by Notifn. No. S.O. 5573, dated the 23rd December, 1971, for sub-rule (*2*).

[1][**93. Production and inspection of election papers.**— (*1*) While in the custody of the district election officer or, as the case may be, the returning officer—

(*a*) the packets of unused ballot papers with counterfoils attached thereto;

(*b*) the packets of used ballot papers whether valid, tendered or rejected;

(*c*) the packets of the counterfoils of used ballot papers;

(*d*) the packets of the marked copy of the electoral roll or, as the case may be, the list maintained under sub-section (*1*) or sub-section (*2*) of section 152; and

[2][(*dd*) the packets containing registers of voters in form 17-A;]

(*e*) the packets of the declarations by electors and the attestation of their signatures;

shall not be opened and their contents shall not be inspected by, or produced before, any person or authority except under the order of a competent court.

[2][*1A*) The control units sealed under the provisions of rule 57C and kept in the custody of the district election officer shall not be opened and shall not be inspected by, or produced before, any person or authority except under the orders of a competent court.]

(*2*) Subject to such conditions and to the payment of such fee as the Election Commission may direct, —

(*a*) all other papers relating to the election shall be open to public inspection; and

(*b*) copies thereof shall on application be furnished.

(*3*) copies of the returns by the returning officer forwarded under rule 64, or as the case may be, under clause (*b*) of sub-rule (*1*) of rule 84 shall be furnished by the returning officer, district election officer, chief electoral officer or the Election Commission on payment of a fee of two rupees for each copy.]

94. Disposal of election papers.—Subject to any direction to the contrary given by the Election Commission or by a competent court or tribunal—

[1][(*a*) the packets of unused ballot papers shall be retained for a period of six months and shall thereafter be destroyed in such manner as the Election Commission may direct;]

[2][(*aa*) the voting machines kept in the custody of the district election officer under sub-rule (*1A*) of rule 92 shall be retained intact for such period as the Election Commission may direct and shall not be used at any subsequent election without the previous approval of the Election Commission;]

(*b*) the other packets referred to in sub-rule (*1*) of rule 93 shall be retained for a period of one year and shall thereafter be destroyed:

[3][Provided that packets containing the counterfoils of used ballot papers shall not be destroyed except with the previous approval of the Election Commission;]

(*c*) all other papers relating to the election shall be retained for such period as the Election Commission may direct.

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1. Subs. by Notifn. No. S.O. 5573, dated the 23rd December, 1971, for rule 93.
2. Ins. by Notifn. No. S.O. 230(E), dated the 24th March, 1992.
3. Added by Notifn. No. S.O. 5573, dated the 23rd December, 1971.

[1][**94A. Form of affidavit to be filed with election petition.**—The affidavit referred to in the proviso to sub-section (*1*) of section 83 shall be sworn before a magistrate of the first class or a notary or a commissioner of oaths and shall be in Form 25.]

[2][**95. Power of the Election Commission to issue directions.**—Subject to the other provisions of these rules, the Election Commission may issue such directions as it may consider necessary to facilitate the proper use and operation of the voting machines.]

96. List of Members of State Assemblies and electoral colleges.—(*1*) The returning officer for an election by the members of the Legislative Assembly of a State, to fill a seat or seats in the Council of States or in the Legislative Council of a State, shall maintain a list of members of that Assembly with their addresses corrected up-to-date in such form as the Election Commission may direct.

Explanation.—In this sub-rule any reference to the members of the Legislative Assembly of a State shall, in relation to an election to the Council of States, be construed as a reference to the elected members of that Legislative Assembly.

(*2*) The returning officer for an election by the members of the electoral college of a Union territory to fill a seat or seats in the Council of States shall maintain a list of members of that electoral college with their addresses corrected up-to-date in such form as the Election Commission may direct.

97. Number of votes sufficient to secure the return of a candidate in relation to return of forfeiture of deposits in certain cases.—For the purpose of the proviso to sub-section (*4*) of section 158—

(*a*) a candidate who is not elected shall be deemed to get, —

(*i*) if he is a continuing candidate, the votes obtained by him at the end of the final count, and

(*ii*) if he is a candidate excluded from the poll, the votes obtained by him at the end of the count immediately preceding his exclusion;

(*b*) the quota referred to in rule 75 or rule 76 shall be deemed to be the number of votes sufficient to secure the return of a candidate.

98. Manner of serving the order of requisition of premises, vehicles, etc.—An order of requisition under section 160 shall be served—

(*a*) where the person to whom such order is addressed is a corporation or firm in the manner provided for the service of summons in rule 2 of Order XXIX or rule 3 of Order XXX, as the case may be, in the First Schedule to the Code of Civil Procedure, 1908 (Act V of 1908); and

(*b*) where the person to whom such order is addressed is an individual—

(*i*) personally by delivering or tendering the order, or

(*ii*) by registered post, or

(*iii*) if the person cannot be found, by leaving an authentic copy of the order with any adult member of his family or by affixing such copy to some conspicuous part of the premises in which he is known to have last resided or carried on business or personally worked for gain.

99. Time for application for reference to arbitration under section 161.—The time within which any person interested who is aggrieved by the amount of compensation determined under sub-section (*1*) of section 168 or within which the owner of a vehicle, vessel or animal who is aggrieved by the amount of compensation determined under sub-section (*2*) of that section may make an application for referring the manner to arbitration shall be fourteen days from the date of determination of the amount of such compensation or where the amount of such compensation has been determined in the absence of the person interested or, as the case may be, the owner, fourteen days from the date on which the intimation of such determination is sent to that person or owner.

1. Ins. by Notifn. No. S.O. 597, dated the 27th February, 1962.
2. Ins. by Notifn. No. S.O. 230(E), dated the 24th March, 1992.

[1][FORM 1

(*See* rule 3)

NOTICE OF ELECTION

Notice is hereby given that:—

(*1*) an election is to be held of a member to the House of the People/.....Legislative Assembly/.....Legislative Council in the.....constituency;

OR

(*1*) an election is to be held of a member(s) to the Council of States/.....legislative Council/.....by the elected members of the..... Legislative Assembly;

(*2*) nomination papers may be delivered by a candidate or by any of his proposers to the Returning Officer or to ..... Assistant Returning Officer, at..... between 11 A.M. and 3 P.M. on any day (other than public holiday) not later than the .....;

(*3*) forms of nomination paper may be obtained at the place and time aforesaid;

(*4*) the nomination papers will be taken up for scrutiny at .....on.....at..... .....;

(*5*) notice of withdrawal of candidature may be delivered either by a candidate or by any of his proposers or by his election agent who has been authorised in writing by the candidate to deliver it to either of the officers specified in paragraph (*2*) above at his office before 3 P.M. on the.....;

(*6*) in the event of the election being contested, the poll will be taken on .....between the hours of..... and..... .

Place.....
Date.....

Returning Officer.]

1. Subs. by Notifn. No. S.O. 321(E), dated the 1st May, 1996.

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

[1][FORM 2A
(*See* rule 4)
NOMINATION PAPER
Election to the House of the People
STRIKE OFF PART I OR PART II BELOW WHICHEVER IS NOT APPLICABLE

PART I
(To be used by candidate set up by recognised political party)

I nominate as a candidate for election to the House of the People from the.....Parliamentary constituency.

Candidate's name.....Father's/mother's/husband's name.....His postal address .....His name is entered at S. No.....in Part No..... of the electoral roll for .....*(Assembly constituency comprised within)..... Parliamentary constituency.

My name is.....and it is entered at S.No.....in Part No.....of the electoral roll for .....*(Assembly constituency comprised within).....Parliamentary constituency.

Date .....

(Signature of Proposer).

PART II
(To be used by candidate NOT set up by recognised political party)

We hereby nominate as candidate for election to the House of the People from the..... Parliamentary Constituency.

Candidate's name.....Father's/mother's/husband's name.....His postal address.....His name is entered at S.No..... in Part No.....of the electoral roll for .....*(Assembly constituency comprised within) .....Parliamentary constituency.

We declare that we are electors of the above Parliamentary Constituency and our names are entered in the electoral roll for that Parliamentary Constituency as indicated below and we append our signatures below in token of subscribing to this nomination:—

Particulars of the proposers and their signatures

Sl. No.	Name of Component Assembly Constituency	Elector roll No. of proposer		Full Name	Signature	Date
		Part No. of Electoral Roll	S. No. in that Part			
1	2	3	4	5	6	7
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						
9.						
10.						

N.B.:—There should be ten electors of the constituency as proposers.

1. Subs. by Notifn. No. S.O. 558(E), dated the 9th August, 1996, for Forms 2A to 2C.

PART III

I, the candidate mentioned in Part I/Part II (Strike out which is not applicable) assent to this nomination and hereby declare—

(*a*) that I have completed.....years of age;

[STRIKE OUT b(i) or b(ii) BELOW WHICHEVER IS NOT APPLICABLE]

(*b*) (*i*) that I am set up this election by the.....party, which is recognised National Party/State Party in this State and that the symbol reserved for the above party be allotted to me.

OR

(*b*) (*ii*) that I am set up at this election by the .....party, which is a registered-unrecognised political party/that I am contesting this election as an independent candidate. (Strike out which is not applicable) and that the symbols I have chosen, in order of preference, are:—

(*i*)..... (*ii*).....(*iii*).....

(*c*) that my name and my father's/mother's/husband's name have been correctly spelt out above in..... (name of the language);

(*d*) that to the best of my knowledge and belief, I am qualified and not also disqualified for being chosen to fill the seat in the House of the People.

*I further declare that I am a member of the.....
**Caste/tribe which is a scheduled
***caste/tribe of the State of.....in relation to.....(area) in that State.

I also declare that I have not been, and shall not be.

****nominated as a candidate at the present general election/the bye-elections being held simultaneously, to the House of the People from more than two Parliamentary Constituencies.

Date..... (Signature of Candidate).

*Score out the words "assembly constituency comprised within" in the case of Jammu and Kashmir, Andaman and Nicobar Islands, Chandigarh, Dadra and Nagar Haveli, Daman and Diu and Lakshadweep.
**Score out this paragraph, if not applicable.
***Score out the words not applicable.
****Not applicable in the case of Jammu and Kashmir, Andaman and Nicobar Islands, Chandigarh, Dadra and Nagar Haveli, Daman and Diu and Lakshadweep.
N.B.—A "recognised political party" means a political party recognised by the Election Commission under the Election Symbols (Reservation and Allotment) Order, 1968 in the State concerned.

[1][**PART IIIA**
(To be filled by the candidate)

Whether the candidate—
(i) has been convicted—

(a) of any offence(s) under sub-section (1); or
(b) for contravention of any law specified in sub-section (2), of section 8 of the Representation of the People Act, 1951 (43 of 1951); or — Yes/No.

1. Ins. by Notifn. No. S.O. 935(E), dated the 3rd September, 2002.

(*ii*) has been convicted for any other offence(s) for which he has been sentenced to imprisonment for two years or more.

If the answer is "Yes", the candidate shall furnish the following information:

(*i*) Case/first information report No./Nos.....

(*ii*) Police station(s).....District(s).....State(s).....

(*iii*) Section(s) of the concerned Act(s) and brief description of the offence(s) for which he has been convicted.....

(*iv*) Date(s) of conviction(s).....

(*v*) Court(s) which convicted the candidate.....

(*vi*)Punishment(s) imposed [indicate period of imprisonment(s) and/or quantum of fine(s)].....

(*vii*) Date(s) of release from prison.....

(*viii*) Was/were any appeal(s)/revision(s) filed against above conviction(s).....Yes/No

(*ix*) Date and particulars of appeal(s)/application(s) for revision filed.....

(*x*) Name of the court(s) before which the appeal(s)/application(s) for revision filed.....

(*xi*) Whether the said appeal(s)/application(s) for revision has/have been disposed of or is/are pending.....

(*xii*) If the said appeal(s)/application(s) for revision has/have been disposed of—

(*a*) Date(s) of disposal.....
(*b*) Nature of order(s) passed.....

Place: (Signature of Candidate)].

Date:

PART IV
(To be filled by the Returning Officer)

Serial No. of nomination paper.....

This nomination was delivered to me at my office at.....(hour) on.....(date) by the *candidate/proposer.

Date..... Returning Officer.

PART V
Decision of Returning Officer Accepting or Rejecting the Nomination Paper

I have examined this nomination paper in accordance with section 36 of the Representation of the People Act, 1951(43 of 1951) and decide as follows:—

Date..... Returning Officer.
(Perforation).....

---

* Score out the word not applicable.

PART VI

Receipt for Nomination Paper and Notice of Scrutiny

(To be handed over to the person presenting the Nomination Paper)

Serial No. of nomination paper.....

The nomination paper of.....a candidate for election from the..... Parliamentary constituency was delivered to me at my office at.....(hour) on.....(date) by the *candidate/proposer. All nomination papers will be taken up for scrutiny at.....(hour) on.....(date) at.....(Place).

Date.....

Returning Officer.

*Score out the word not applicable.

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

FORM 2B
(*See* rule 4)
NOMINATION PAPER

Election to the Legislative Assembly of.....(*State*)

STRIKE OFF PART I OR PART II BELOW WHICHEVER IS NOT APPLICABLE

PART I
(To be used by candidate set up by recognised political party)

I nominate as a candidate for election to the Legislative Assembly from the.....Assembly Constituency. Candidate's name..... Father's/mother's/husband's name.....His postal address..... His name is entered at Sl. No.....in Part No.....of the electoral roll for .....Assembly constituency. My name is .....and it is entered at Sl. No. .....in Part No.....of the electoral roll for the.....Assembly constituency.

Date .....

(Signature of the Proposer).

PART II

We hereby nominate as candidate for election to the Legislative Assembly from the.....Assembly Constituency.

Candidate's name.....Father's/mother's/husband's name.....His postal address.....

His name is entered at Sl. No.....in Part No.....of the electoral roll for.....Assembly constituency.

We declare that we are electors of this Assembly constituency and our names are entered in the electoral roll for this Assembly constituency as indicated below and we append our signatures below in token of subscribing to this nomination:-

Particulars of the proposers and their signatures

Sl. No.	Electoral Roll No. of proposer		Full name	Signature	Date
	Part No. of electoral roll constituency	Sl. No. in that part			
1	2	3	4	5	6
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

N.B.:-There should be ten electors of the constituency as proposers.

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

PART III

I, the candidate mentioned in Part I/Part II (Strike out which is not applicable) assent to this nomination and hereby declare—

(a) that I have completed.....years of age;

[STRIKE OUT b(I) OR b(II) BELOW WHICHEVER IS NOT APPLICABLE]

(b) (i) that I am set up at this election by the .....party, which is recognised National Party/State Party in this State and that the symbol reserved for the above party be allotted to me.

(ii) that I am set up at this election by the.....party, which is a registered unrecognised political party/that I am contesting this election as an independent candidate. (Strike out which is not applicable) and that the symbols I have chosen, in order of preference, are: —

(i)..... (ii)..... (iii).....

(c) that my name and my father's/mother's/husband's name have been correctly spelt out above in..... (name of the language);

(d) That to the best of my knowledge and belief, I am qualified and not also disqualified for being chosen to fill the seat in the Legislative Assembly of this State.

!I further declare that I am a member of the.....**Caste/tribe which is a scheduled ***caste/tribe of the State of.....in relation to.....(area) in that State.

I also declare that I have not been, and shall not be.....

****nominated as a candidate at the present general election/the bye-elections being held simultaneously, to the Legislative Assembly ..... of (State) from more than two Assembly constituencies.

Date..... (Signature of Candidate).

!Score out this paragraph, if not applicable.

N.B.—A "recognised political party" means a political party recognised by the Election Commission under the Election Symbols (Reservation and Allotment) Order, 1968 in the State concerned.

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

[1][PART IIIA
(To be filled by the candidate)

Whether the candidate—

(i) has been convicted—

(a) of any offence(s) under sub-section (*1*); or Yes/No

(b) for contravention of any law specified in sub-section (*2*) of section 8 of the Representation of the People Act, 1951 (43 of 1951); or

(ii) has been convicted for any other offence(s) for which he has been sentenced to imprisonment for two years or more.

If the answer is "Yes", the candidate shall furnish the following information:

(i) Case/First information report No./Nos. .....

(ii) Police station(s).....District(s).....State(s).....

(iii) Section(s) of the concerned Act(s) and brief description of the offence(s) for which he has been convicted .....

(iv) Date(s) of conviction(s).....

(v) Court(s) which convicted the candidate.....

(vi) Punishment(s) imposed [indicate period of imprisonment(s) and/or quantam of fine(s)].....

(vii) Date(s) of release from prison.....

(viii) Was/were any appeal(s)/revision(s) filed against above conviction(s).....Yes/No

(ix) Name of the court(s) before which the appeal(s)/application(s) for revision filed.....

(x) Name of the court(s) before which the appeal(s)/application(s) for revision filed.....

(xi) Whether the said appeal(s)/application(s) for revision has/have been disposed of or is/are pending.....

(xii) If the said appeal(s)/application(s) for revision has/have been disposed of—

(a) Date(s) of disposal.....

(b) Nature of order(s) passed.....

Place:

Date: (Signature of the candidate)]

1. Ins by Notifn. No. S.O. 935(E), dated the 3rd September, 2002.

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

PART IV

(To be filled by the Returning Officer)

Serial No. of nomination paper .....

This nomination was delivered to me at my office at .....(hour) on.....(date) by the *candidate/proposer.

Date.....

Returning Officer.

*Score out the word not applicable.

PART V

Decision of Returning Officer Accepting or Rejecting the Nomination Paper

I have examined this nomination paper in accordance with section 36 of the Representation of the People Act, 1951 and decide as follows: —

Date.....

Returning Officer.

(Perforation).....

PART VI

Receipt for Nomination Paper and Notice of Scrutiny

(To be handed over to the person presenting the Nomination Paper)

Serial No. of nomination paper.....

The nomination paper of.....a candidate for election from the.....Assembly constituency was delivered to me at my office at.....(hour) on.....(date) by the *candidate/proposer. All nomination papers will be taken up for scrutiny at .....(hour) on.....(date) at.....(Place).

Date.....

Returning Officer.

*Score out the word not applicable.

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

FORM 2C
(*See* rule 4)

NOMINATION PAPER
Election to the Council of States
[1][PART I]

We hereby nominate as a candidate for election to the Council of States:

Candidate's Name..... [father's/mother's/husband's name] .....His postal address.....

His name is entered at S.No.....in Part No.....of the electoral roll for the .....assembly/*Parliamentary constituency.

We declare that we are elected members of the Legislative Assembly of..... electoral college for..... and our names are entered as indicated below in the list maintained under section 152 and we append our signatures below in token of subscribing to his nomination:

Particulars of the proposers and their signatures

Sl.	Sl.No. as entered in the list maintained under sec. 152	Full Name	Signature	Date
1	2	3	4	5
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.**				

* For Jammu and Kashmir only.
**There should be ten per cent. of the elected members of the Legislative Assembly or ten per cent. of the members of the electoral college or ten members concerned, whichever is less, as proposers.

I, the above-mentioned candidate, assent to this nomination and hereby declare—

(a) that I have completed .....years of age;

(b) that I am set up at this election by the .....party;

(c) that my name and my [father's/mother's/husband's name] have been correct spelt out above in.....(name of the language); and

(d) that to the best of my knowledge and belief, I am qualified and not also disqualified for being chosen to fill the seat in the Council of States.

I also declare that I have not been, and shall not be, nominated as a candidate at the present biennial election/bye-elections being held simultaneously, to the Council of States for more than two seats.

Date .....

(Signature of the candidate)

1. Ins. by Notifn. No. S.O. 935 (E), dated the 3rd September, 2002.

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

[1][PART II
(To be filled by the candidate)

Whether the candidate—

(i) has been convicted—

(a) of any offence(s) under sub-section (*1*); or Yes/No

(b) for contravention of any law specified in sub-section (*2*), of section 8 of the Representation of the People Act, 1951 (43 of 1951); or

(ii) has been convicted for any other offence(s) for which he has been sentenced to imprisonment for two years or more.

If the answer is "Yes", the candidate shall furnish the following information:

(i) Case/First information report No./Nos. .....

(ii) Police station(s).....District(s).....State(s).....

(iii) Section(s) of the concerned Act(s) and brief description of the offence(s) for which he has been convicted .....

(iv) Date(s) of conviction(s).....

(v) Court(s) which convicted the candidate.....

(vi) Punishment(s) imposed [indicate period of imprisonment(s) and/or quantam of fine(s)].....

(vii) Date(s) of release from prison.....

(viii) Was/were any appeal(s)/revision(s) filed against above conviction(s).....Yes/No

(ix) Date and particulars of appeal(s)/application(s) for revision filed.....

(x) Name of the court(s) before which the appeal(s)/application(s) for revision filed.....

(xi) Whether the said appeal(s)/application(s) for revision has/have been disposed of or is/are pending.....

(xii) If the said appeal(s)/application(s) for revision has/have been disposed of—

(a) Date(s) of disposal.....

(b) Nature of order(s) passed.....

Place:

Date: (Signature of the candidate)]

1. Ins by Notifn. No. S.O. 935 (E), dated 3rd September, 2002.

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

[1][PART III]
(To be filled by the Returning Officer)

Serial No. of Nomination Paper.....

This nomination was delivered to me at my office at.....(hours) on.....(date) by the candidates/proposer.....(Name).

Date.....

Returning Officer.

NOTE.—Wherever alternative is provided score out the word(s) not applicable.

[1][PART IV]

Decision of Returning Officer accepting or rejecting the Nomination Paper.

I have examined this nomination paper in accordance with section 36 of the Representation of the People Act, 1951(43 of 1951) and, decide as follows:—

Date.....

Returning Officer.

Perforation.....

[1][PART V]

Receipt of Nomination Paper and Notice of Scrutiny
(To be handed over to the person presenting the nomination paper)

Serial No. of Nomination Paper.....

The nomination paper of .....a candidate for election to the Council of States by the elected members of the Legislative Assembly of..... .....(State)/Members of the Electoral College of.....(State)/was delivered to me at my office at.....(hour) on.....(date) by the candidate/proposer.....(Name). All nomination papers will be taken up for scrutiny at.....(hour) on .....(date) at.....(place).

Date.....

Returning Officer(s).]

1. Ins by Notifn. No. S.O. 935(E), dated, the 3rd September, 2002.

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

FORM 2D
(*See* rule 4)
NOMINATION PAPERS

Election to the Legislative Council of.....(State) by the Members of the Legislative Assembly.

[1][PART I]

We hereby nominate as a candidate for the above election.

Candidate's name..... [2][father's/ mother's/ husband's name].....
His postal address.....
.....
.....
.....

His name is enterd at S.No.....in Part No.....of the electoral roll for the .....assembly constituency.

We declare that we are members of Legislative Assembly of.....and our names are entered as indicated below in the list maintained under section 152 and we append our signatures below in token of subscribing to his nomination.

Particulars of the proposers and their signatures

Sl.	Sl.No. as indicated in the list maintained under sec. 152	Full Name	Signature	Date
1	2	3	4	5
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.*				

*There should be ten per cent. of the members of the Legislative Assembly or ten members concerned, whichever is less, as proposers.

I, the above-mentioned candidate, assent to this nomination and hereby declare:—

(a) that I have completed.....years of age;

(b) that I am set up at this election by the .....party;

(c) that my name and my [2][father's/mother's /husband's name] have been correctly spelt out above in.....(name of the language); and

(d) that to the best of my knowledge and belief, I am qualified and not also disqualified for being chosen to fill the seat in the Legislative Council of....(State) by the members of the Legislative Assembly.

Date..... (Signature of the candidate)

1. Ins. by Notifn. No. S.O. 935(E), dated the 3rd September, 2002.
2. Subs. by Notifn. No. S.O.124(E), dated the 24th February, 1993, for certain words.

[1][PART II
(To be filled by the Candidate)

Whether the candidate—

(i) has been convicted—

(a) of any offence(s) under sub-section (*1*); or Yes/No

(b) for contravention of any law specified in sub-section (*2*), of section 8 of the Representation of the People Act, 1951 (43 of 1951); or

(ii) has been convicted for any other offence(s) for which he has been sentenced to imprisonment for two years or more.

If the answer is "Yes", the candidate shall furnish the following information:

(i) Case/First information report No./Nos. .....

(ii) Police station(s).....District(s).....State(s).....

(iii) Section(s) of the concerned Act(s) and brief description of the offence(s) for which he has been convicted .....

(iv) Date(s) of conviction(s).....

(v) Court(s) which convicted the candidate.....

(vi) Punishment(s) imposed [indicate period of imprisonment(s) and/or quantam of fine(s)].....

(vii) Date(s) of release from prison.....

(viii) Was/were any appeal(s)/revision(s) filed against above conviction(s).....Yes/No

(ix) Date and particulars of appeal(s)/application(s) for revision filed.....

(x) Name of the court(s) before which the appeal(s)/application(s) for revision filed.....

(xi) Whether the said appeal(s)/application(s) for revision has/have been disposed of or is/are pending.....

(xii) If the said appeal(s)/application(s) for revision has/have been disposed of—

(a) Date(s) of disposal.....

(b) Nature of order(s) passed.....

Place:

Date: (Signature of the candidate)].

1. Ins. by Notifn. No. S.O. 935(E), dated the 3rd September, 2002.

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

[1][PART III]

(To be filled by the Returning Officer)

Serial No. of Nomination Paper.....

This nomination was delivered to me at my office at.....(hour) on.....(date) by the candidate/proposer.....(Name).

Date.....

Returning Officer.

[1][PART IV]

Decision of Returning Officer accepting or rejecting the Nomination Paper

I have examined this nomination paper in accordance with section 36 of the Representation of the People Act, 1951, and decide as follows:—

Date.....

Returning Officer.

(perforation).....

[1][PART V]

Receipt for Nomination Paper and Notice of Scrutiny

(To be handed over to the person presenting the nomination paper)

Serial No. nomination paper.....

The nomination paper of.....a candidate for election to the Legislative Council of.....(State) by the Members of Legislative Assembly was delivered to me at my office at.....(hour) on.....(date) by the candidate/proposer.....(Name). All nomination papers will be taken up for scrutiny at .....(hour) on.....(date) at.....(place).

Date.....

Returning Officer.

Note:—Wherever alternative is provided score out the word(s) not applicable.

1. Ins. by S.O. 935(E), dated 3-9-2002.

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

[1][FORM 2E
(*See* rule 4)
NOMINATION PAPER

Election to the Legislative Council of .....(State) from a Council constituency.....

[2][PART I]

We hereby nominate as a candidate for election to the Legislative Council of.....(State) from the constituency. Candidate's name.....(Father's/Mother's/Husband's name).....His Postal address.....His name is entered at Sl. No.....in Part No. .....of the electoral roll for .....Assembly Constituency.

We declare that we are electorals and our name entered in the electoral roll for.....(Council) constituency as indicated below and we append our signatures below in token of subscribing to this nomination:--

Particulars of the proposers and their signatures.

Sl.No.	Electoral Roll No. of proposer		Full Name	Signature	Date
	Part No. of electoral roll	Sl. No. in that Part			
1	2	3	4	5	6
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
*10.					

*There should be ten per cent. of the electors of the constituency or ten such electors whichever is less, as proposers.

I, the above-mentioned candidate, assent to this a nomination and hereby declare:—

(a) that I have completed .....years of age;
(b) that I am set up at this election by the .....party;
(c) that my name and my (father's/mother's/husband's name) has been correctly spelt out above in .....(name of the language);
(d) that to the best of my knowledge and belief, I am qualified and not also disqualified for being chosen to fill the seat in the Legislative Council of.....(State) from .....Council constituency.

I also declare that I have not been and shall not be, nominated as a candidate at the present biennial election/bye-elections being held simultaneously, to the Legislative Council of .....(State) from more than two Council constituencies in the State.

Date.....

(Signature of the Candidate).

*Score out the words not applicable

1. Subs. by Notifn. No. S.O. 558(E), dated the 9th August, 1996.
2. Ins. by Notifn. No. S.O. 935(E), dated the 3rd September, 2002.

[1][PART II
(To be filled by the candidate)

Whether the candidate—

(i) has been convicted—

(a) of any offence(s) under sub-section (*1*); or Yes/No

(b) for contravention of any law specified in sub-section (*2*), of section 8 of the Representation of the People Act, 1951 (43 of 1951); or

(ii) has been convicted for any other offence(s) for which he has been sentenced to imprisonment for two years or more.

If the answer is "Yes", the candidate shall furnish the following information:

(i) Case/First information report No./Nos. .....

(ii) Police station(s).....District(s).....State(s).....

(iii) section(s) of the concerned Act(s) and brief description of the offence(s) for which he has been convicted .....

(iv) date(s) of conviction(s).....

(v) Court(s) which convicted the candidate.....

(vi) Punishment(s) imposed [indicate period of imprisonment(s) and/or quantam of fine(s)].....

(vii) Date(s) of release from prison.....

(viii) Was/were any appeal(s)/revision(s) filed against above conviction(s).....Yes/No

(ix) Date and particulars of appeal(s)/application(s) for revision filed.....

(x) Name of the court(s) before which the appeal(s)/application(s) for revision filed.....

(xi) Whether the said appeal(s)/application(s) for revision has/have been disposed of or is/are pending.....

(xii) If the said appeal(s)/application(s) for revision has/have been disposed of—

(a) Date(s) of disposal.....

(b) Nature of order(s) passed.....

Place:

Date: (Signature of the candidate)].

1. Ins. by Notifn. No. S.O. 935(E), dated the 3rd September, 2002.

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

[1][PART III]

(To be filled by the Returning Officer)

Serial No. of Nomination Paper .....

This nomination was delivered to me at my office at ..... (hour) on ..... (date) by the candidate/proposer .....(Name).

Date.....

Returning Officer.

---

[1][PART IV]

Decision of Returning Officer accepting or rejecting the Nomination Paper

I have examined this nomination paper in accordance with section 36 of the Representation of the People Act, 1951 and decide as follows:—

Date.....

Returning Officer.

---

[1][PART V]

Receipt for Nomination Paper and Notice of Scrutiny
(To be handed over to the person presenting the nomination paper)

Serial No. of nomination paper .....

The nomination paper of .....a candidate for election to the Legislative Council of .....(State) from the.....Graduates'/(Teachers'/Local Authorities') constituency was delivered to me at my office at .....(hour) on..... (date) by the candidate/proposer..... (Name). All nomination papers will be taken up for scrutiny at .....(hour) on .....(date) at .....(Place).

Date.....

Returning Officer.

Note:—Wherever alternative is provided score out the word(s) not applicable.

1. Ins. by Notifn. No. S.O. 935(E), dated the 3rd September, 2002.

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

[1][FORM 3A

(*See* rule 7)

NOTICE OF NOMINATIONS

Election to the *House of the People/Legislative Assembly from the ..... constituency.

Notice is hereby given that the following nominations in respect of the above election have been received up to 3 P.M. today:—

Sl. No. of Nomination paper	Name of candidate	Name of Father/mother/husband	Age of candidate	Address
1	2	3	4	5

Party affiliation	Particulars of castes, or tribes for candidates belonging to scheduled castes or scheduled tribes	Electoral roll of number of candidate	Names of proposers	Electoral roll No. of proposers
6	7	8	9	10

Place:.....
Date:.....

Returning Officer]

*Strike off the inappropriate alternative.

1. Subs. by Notifn. No. S.O. 558 (E), dated the 9th August, 1996.

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

[1][FORM 3B
(*See* rule 7)

NOTICE OF NOMINATION

Election to the the Council of States/Legislative Council by the elected members of the Legislative Assembly/Electoral College of.

Notice is hereby given that the following nominations in respect of the above election have been received up to 3 P.M. today: —

Serial Number of nomination paper	Name of candidate	Name of [2][father/mother husband]	Age of candidate	Address	Party Affiliation
1	2	3	4	5	6

Electoral roll number of candidate	Names of proposers	Serial numbers of proposers in the list maintained under section 152
7	8	9

Place
Date

Returning Officer.

Note:—Wherever alternative is provided score out the word(s) not applicable.

1. Subs. by Notifn. No. S.O. 364(E), dated the 18th May, 1989, for Forms 3B and 3C.
2. Subs. by Notifn. No. S.O.124(E), dated the 24th February, 1993, for certain words.

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

FORM 3C
(*See* rule 7)

NOTICE OF NOMINATION

Election to the Legislative Council of .....(State) from the.....constituency.

Notice is hereby given that the following nominations in respect of the above election have been received up to 3 P.M. today: —

Serial Number of nomination paper	Name of candidate	Name of [1][father/mother/husband]	Age of candidate	Address	Party Affiliation
1	2	3	4	5	6

Electoral roll numbers of candidate in assembly constituency	Names of proposers	Electrol roll numbers of proposers in the council constituency
7	8	9

Place.....
Date.....

Returning Officer.]

Note:—Wherever alternative is provided score out the word(s) not applicable.

1. Subs. by Notifn. No. S.O.124(E), dated the 24th February, 1993, for certain words.

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

[1][FORM 4
(*See* rule 8)

LIST OF VALIDLY NOMINATED CANDIDATES

*Election to the** .....

Sl. No.	Name of candidate	Name of **Father/mother/husband	Address of candidates	@Party affiliation
1	2	3	4	5

(i) Candidates of recognised National and State Political Parties.

(ii) Candidates of registered political parties (other than recognised National and State Political Parties).

(iii) Other candidates.

Place.....
Date .....

Returning Officer.]

*Appropriate particulars of the election to be inserted here.
**Strike off the inappropriate alternative.
@Applicable in the case of candidates mentioned under categories (i) and (ii) above.

N.B.—Under Col. 1 above, the serial numbers of candidates of all the three categories shall be given consecutively and not separately for each category.

1. Subs. by Notifn. No. S.O. 558(E), dated the 9th August, 1996, for Form 4.

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

FORM 5
[*See* rule 9(*1*)]

NOTICE OF WITHDRAWAL OF CANDIDATURE

*Election to the** .....

The Returning Officer,

I,....., a [1][candidate validly nominated] at the above election do hereby give notice that I withdraw my candidature.

Place .....
Date .....

Signature of [1][validly nominated candidate].

This notice was delivered to me at my office at .....(hour) on.....

(date) by.....(name), the+.....

Date.....

Returning Officer.

Receipt for Notice of Withdrawal

(To be handed over to the person delivering the notice)

The notice of withdrawal of candidature by .....a [1][validly nominated candidate] at the election to the*.....was delivered to me by the+.....at my office at.....(hour) on ..... (date).

Returning Officer.

---

*Here insert one of the following alternatives as may be appropriate:—

(1) House of the People from the ..... constituency.

(2) Legislative Assembly from the.....constituency.

(3) Council of States by the elected members of the Legislative Assembly of.....(State).

(4) Council of States by the members of the electoral college of..... (Union territory).

(5) Legislative Council by the members of the Legislative Assembly.

(6) Legislative Council from the..... constituency.

+Here insert one of the following alternatives as may be appropriate:—

(1) Candidate.

(2) Candidate's proposer who has been authorised in writing by the candidate to deliver it.

(3) Candidate's election agent who has been authorized in writing by the candidate to deliver it.

---

1. Subs. by Notifn. No. S.O. 565(E), dated the 4th August, 1984.

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

FORM 6
[*See* rule 9(*2*)]

NOTICE OF WITHDRAWAL OF CANDIDATURES

*Election to the** .....

Notice is hereby given that the following [1][validly nominated +candidate]/candidates at the above election withdraw +his candidature/their candidatures today.

Name of [1][validly nominated candidate]	Address of [1][validly nominated candidate]	Remarks
1.		
2.		
3.		
etc.		

Date.....

Returning Officer.

*Appropriate particulars of the election to be inserted here.
+Strike off the inappropriate alternative.

1. Subs. by Notifn. No. S.O. 565(E), dated the 4th August, 1984.

FILED ON
20 AUG 2024
SUPREME COURT OF INDIA

[1][FORM 7A
[*See* rule 10(*1*)]
LIST OF CONTESTING CANDIDATES

Election to the House of the People/Legislative Assembly from the ..... constituency.

Sl. No.	Name of candidate	Address of candidate	*Party affiliation	Symbol allotted
1	2	3	4	5

(i) Candidates of recognised National and State Political Parties.
(ii) Candidates of registered political parties (other than recognised National and State Political Parties).
(iii) Other candidates.

Place .....
Date .....

Returning Officer.]

*Applicable in the case of candidates mentioned under categories (i) and (ii) above.

N.B.—Under Col. 1 above, the serial numbers of candidates of all the three categories shall be given consecutively and not separately for each category.]

1. Subs. by Notifn. No. S.O. 558(E), dated the 9th August, 1996, for Form 7A.

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

[1][FORM 7B

[*See* rule 10(1)]

LIST OF CONTESTING CANDIDATES

*Election to the**.....

Sl. No	Name of candidate	Address of candidate	**Party affiliation
1	2	3	4

(i) Candidates of recognised National and State Political Parties.

(ii) Candidates of registered political parties (other than recognised National and State Political Parties).

(iii) Other candidates.

Place.....
Date.....

Returning Officer.]

*Here insert one of the following alternatives as may be appropriate:—

(1) Council of States by the elected members of the Legislative Assembly of.....(State).

(2) Council of States by the members of the electoral college.....(Union Territory).

(3) Legislative Council of.....(State), by the members of the Legislative Assembly.

(4) Legislative Council of.....(State), from the.....Constituency.

**Applicable in the case of candidates mentioned under categories (*i*) and (*ii*) above.

N.B.—Under Col. 1 above, the serial numbers of candidates of all the three categories shall be given consecutively and not separately for each category.]

1. Subs. by Notifn. No. S.O. 558(E), dated the 9th August, 1996, for Form 7B.

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

FORM 8

[*See* rule 12(*1*)]

APPOINTMENT OF ELECTION AGENT

(To be filled by the Returning Officer)

*Election to the** .....

To

The Returning Officer,

I,.....,of..... a candidate at the above election do hereby appoint.....of.....as my election agent from this day at the above election.

Place.....

Signature of candidate.

Date.....

I accept the above appointment.

Place.....
Date.....

Signature of election agent

[1][Approved.

Signature and Seal of the Returning officer.]

---

*Here insert one of the following alternatives as may be appropriate:—

(1) House of the People from the.....constituency.

(2) Legislative Assembly from the.....constituency.

(3) Council of States by the elected members of the Legislative Assembly of.....(State).

(4) Council of States by the members of the electoral college of.....(Union territory).

(5) Legislative Council by the members of the Legislative Assembly.

(6) Legislative Council from the .....constituency.

---

1. Ins.by Notifn. No. S.O. 565(E), dated the 4th August, 1984.

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

FORM 9
[*See* rule 12(*2*)]

REVOCATION OF APPOINTMENT OF ELECTION AGENT

*Election to the** .....

To

The Returning Officer,

I....., a candidate at the above election, hereby revoke the appointment of ..... my election agent.

Place.....
Date .....

Signature of candidate.

*Here insert one of the following alternatives as may be appropriate:—

(1) House of the People from the..... constituency.
(2) Legislative Assembly from the..... constituency.
(3) Council of States by the elected members of the Legislative Assembly of..... (State).
(4) Council of States by the members of the electoral college of..... (Union territory).
(5) Legislative Council by the members of the Legislative Assembly.
(6) Legislative Council from the ..... constituency.

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

FORM 10
[*See* rule 13(*2*)]
*APPOINTMENT OF ELECTION AGENT

*Election to the*** .....

I, ... † a candidate/the election agent of .....who is a candidate at the above election do hereby [1][appoint.....(Name and address)].....as a polling agent to attend† polling station No..... at/place fixed for the poll..... at.....

Place .....
Date.....

Signature of †candidate/election agent.

I agree to act as such polling agent.

Place.....
Date .....

Signature of polling agent.

Declaration of polling agent to be signed before Presiding Officer

I hereby declare that at the above election I will not do anything forbidden by section 128†† of the Representation of the People Act, 1951, which† I have read/has been read over to me.

Date .....

Signature of polling agent.

Signed before me.

Date.....

Presiding Officer.

*To be handed over to the polling agent for production at the polling station or at the place fixed for the poll.
**Here insert one of the following alternatives as may be appropriate:—

(1) House of the People from the .....constituency.
(2) Legislative Assembly from the.....constituency.
(3) Council of States by the elected members of the Legislative Assembly of .....(State).
(4) Council of States by the members of the electoral college of..... (Union territory).
(5) Legislative Council by the members of the Legislative Assembly.
(6) Legislative Council from the .....constituency.

†Strike off the inappropriate alternative.
††Section 128 of the Representation of the People Act, 1951:—

"128. *Maintenance of secrecy of voting.*—(*1*) Every officer, clerk, agent or other person who performs any duty in connection with the recording or counting of votes at an election shall maintain, and aid in maintaining, the secrecy of the voting and shall not (except for some purpose authorised by or under any law) communicate to any person any information calculated to violate such secrecy.

(*2*) Any person who contravenes the provisions of sub-section (*1*) shall be punishable with imprisonment for a term which may extend to three months or with fine or with both.".

1. Subs. by Notifn. No. S.O. 565(E), dated the 4th August, 1984.

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

FORM 11

[*See* rule 14(1)]

REVOCATION OF APPOINTMENT OF POLLING AGENT

*Election to the** .....

To

The Presiding Officer,

I, ...[the election agent of.....] a candidate at the above election, hereby revoke the appointment of..... my/his polling agent.

Place .....
Date .....

Signature of person revoking.

---

*Here insert one of the following alternatives as may be appropriate:—

(1) House of the People from the..... constituency.
(2) Legislative Assembly from the..... constituency.
(3) Council of States by the elected members of the Legislative Assembly of .....(State).
(4) Council of States by the elected members of the electoral college of..... (Union territory).
(5) Legislative Council by the members of the Legislative Assembly.
(6) Legislative Council from the..... constituency.

N.B.-Omit the words marked [ ] as necessary.

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[1][FORM 12
(*See* rules 19 and 20)
LETTER OF INTIMATION TO RETURNING OFFICER

To

The Returning Officer for
Assembly/Parliamentary constituency.

Sir,

I intend to cast my vote by post at the ensuing election to the Legislative Assembly/House of the People from the .....Assembly/Parliamentary constituency.

My name is entered at S.No.....in Part No..... of the electoral role for ..... assembly constituency comprised within.....Parliamentary constituency.

The ballot paper may be sent to me at the following address:—

.....
.....
.....

Place .....
Date .....

Yours faithfully,
.....]

---

1. Subs. by Notifn. No. S.O. 3662, dated the 12th October, 1964, for Form 12.

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

[1][FORM 12A
[*See* rule 20(*2*)]

APPLICATION FOR ELECTION DUTY CERTIFICATE

To

The Returning Officer,

.....Assembly/Parliamentary constituency.

Sir,

I intend to cast my vote in person at the ensuing election to the Legislative Assembly/House of the People from the .....constituency.

I have been posted on election duty within the constituency at ..... (No. and name of the polling station) but my name is entered at Serial No..... Part No. ..... of the electoral rolls for..... assembly constituency comprised within..... Parliamentary constituency.

I request that an Election Duty Certificate in Form 12B may be issued to enable me to vote at the polling station where I may be on duty on the polling day. It may be sent to me at the following address:—

.....
.....
.....
.....
.....
.....

Place .....
Date .....

Yours faithfully,
.....].

FORM 12B

[*See* rules 20(2) and 35A]

ELECTION DUTY CERTIFICATE

Certified that.....is an elector in the.....Assembly/Parliamentary constituency, his electoral roll number being .....that by reason of his being on election duty he is unable to vote at the polling station where he is entitled to vote and that he is therefore hereby authorised to vote at any polling station [2][in the said constituency where] he may be on duty on the date of poll.

Place.....
Date .....

Signature.....

SEAL

Returning Officer.

---

1. Subs. by Notifn. No. S.O. 565(E), dated the 4th August, 1984.
2. Ins., *ibid.*

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

[1][FORM 12C
[*See* rule 27-C]

PART I

Letter of intimation to Assistant Returning Officer for notified class of electors:

To

The Assistant Returning Officer,
(for the notified class of electors)

..... Parliamentary/Assembly constituency ..... (designation & address of ARO)

Sir,

I,.....son/daughter/wife of.....resident of....of.....village/Mohalla....of Town/city/tehsil.....District.....of.....(State) belong to the class of notfied electors and wish to cast my vote by post at the election to the House of the People/Legislative Assembly from the.....Parliamentary/Assembly constituency.

My complete present postal address is as under:—

House/dwelling unit/tent number.....
Camp/mohalla/village.....
ward/town/tehsil.....
district.....
State.....PIN CODE.....

My name is entered at serial number.....in Part No.....of the electrol roll for.....Parliamentary/Assembly constituency.

*I am registered as a migrant with.....(designation of officer) Government of.....under registration no.....as a head/member of the family of self/Shri/Shrimati.....

*I am not registered as a migrant.

*I am the head of my family is serving as a Government employee as (designation).....in the office of..... (full address).

*I am/the head of my family is a pensioner and drawing pension under account No.....from Government Treasury/Branch of Bank, located at.....(full address).

Yours faithfully,

PART II

Certificate by the officer incharge of the migrant camp/office/area or by head of the office where the applicant is serving as a migrant employee or by a treasury officer/bank manager from where the migrant is drawing his pension as a pensioner or by any gazetted officer.

It is hereby certified that the particulars given by the applicant in Part I are correct as per our record/to the best of my knowledge and understanding.

.....(full signature of the attesting Officer)
.....(Name)
.....(address)
.....(rubber stamp).

* Strike off whichever is not applicable and tick the relevant statement.

1. Subs. by Notifn. No. S.O. 628(E), dated 4th August, 1999.

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

FORM 13A
[*See* rule 23(*1*)(*a*)]

DECLARATION BY ELECTOR

*Election to the**.....
(This side is to be used only when the elector signs the declaration himself)

I hereby declare that I am the elector to whom the postal ballot paper bearing serial number.....has been issued at the above election.

Date.....

Signature of elector.
Address.....

Attestation of signature

The above has been signed in my presence by.....(elector) who** is personally known to me/has been identified to my satisfaction by.....(identifier) who is personally known to me.

Signature of Attesting Officer.

Signature of identifier, if any.....

Designation.....

Address.....

Address.....
Date.....

(This side is to be used when the elector cannot sign himself)

I hereby declare that I am the elector to whom the postal ballot paper bearing serial number.....has been issued at the above election.

Signature of Attesting Officer on behalf of elector.
Address of Elector.....

Date.....

CERTIFICATE

I hereby certify that—

(1) the above named elector** is personally known to me/has been identified to my satisfaction by.....(identifier) who is personally known to me;
(2) I am satisfied that the elector** is illiterate/suffers from.....(infirmity) and is unable to record his vote himself or sign his declaration;
(3) I was requested by him to mark the ballot paper and to sign the above declaration on his behalf; and
(4) the ballot paper was marked and the declaration signed by me on his behalf in his presence and in accordance with his wishes.

Signature of Attesting Officer.....

Signature of identifier, if any.....

Designation.....

Address.....

Address.....
Date.....

---

*Here insert one of the following alternatives as may be appropriate:—

(1) House of the People from the..... constituency.
(2) Legislative Assembly from the..... constituency.
(3) Council of States by the elected members of the Legislative Assembly of .....(State).
(4) Council of States by the members of the electoral college of..... (Union territory).
(5) Legislative Council by the members of the Legislative Assembly.
(6) Legislative Council from the..... constituency.

**Strike off the inappropriate alternative.

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

FORM 13B
[*See* rule 23(1)(b)]
[1][Cover A]

COVER 'A'	NOT TO BE OPENED BEFORE COUNTING ELECTION to the* ..... POSTAL BALLOT PAPER Serial number of ballot paper

*Appropriate particulars of the election to be inserted here.

FORM 13C
[See rule 23(1)(c)]

[1][Cover B]

(*To be used at an election to the House of People for the Legislative Assembly of a State*)

COVER `B'	["Every officer under whose care or through whom a postal ballot paper is sent shall ensure its delivery to the addressee without delay—Rule 23(4) of the conduct of Elections Rules, 1961"]	[2][***SERVICE UNPAID]

ELECTION-IMMEDIATE

POSTAL BALLOT PAPER

For* ..... Constituency

(NOT TO BE OPENED BEFORE COUNTING)

To
The Returning Officer
Signature** .....
of sender .....

*Returning Officer to insert here the name of the appropriate Parliamentary/Assembly Constituency.
**Returning Officer to mention here his full postal address.
[2][***Strike off in the case of an elector who is employed under the Government of India in a post outside India.]

1. Subs. by Notifn. No. S.O. 565(E), dated the 4th August, 1984.
2. Subs. by Notifn. No. S.O. 2362 (E), dated the 3rd July, 1970.

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

FORM 13C
[*See* rule 23(*1*)(*c*)]
[1][Cover B]

(TO BE USED AT AN ELECTION TO THE COUNCIL OF STATES OR TO THE LEGISLATIVE COUNCIL OF A STATE)

COVER "B" NOT TO BE OPENED BEFORE COUNTING

ELECTION—IMMEDIATE *.....

POSTAL BALLOT PAPER

The Returning Officer .....
**.....

*Insert here Council of States or name of the Legislative Council or the appropriate Electoral College.
**Full postal address of the Returning Officer to be inserted here.

1. Subs. by Notifn. No. S.O. 565(E), dated the 4th August, 1984.

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

[1][FORM 13D
[*See* rule 23(*1*)(*d*)]
INSTRUCTIONS FOR GUIDANCE OF ELECTORS

(To be used at an election to the House of the People or to the Legislative Assembly of a State).

Election to the*.....from the.....

The persons whose names are printed on the ballot paper sent herewith are candidates at the above election. Record your vote by placing clearly a mark opposite the name of the candidate to whom you wish to give your vote. The mark should be so placed as to indicate clearly and beyond doubt to which candidate you are giving your vote. If the mark is so placed as to make it doubtful to which candidate you have given your vote, your vote will be invalid.

The number of members to be elected is one. Please remember that you have only one vote. Accordingly you should not vote for more than one candidate. If you do so, your ballot paper will be rejected.

Do not put your signature or write any word or mark any mark, sign or writing whatsoever on the ballot paper other than the mark required to record your vote.

After you have recorded your vote on the ballot paper, place the ballot paper in the smaller cover marked 'A' sent herewith. Close the cover and secure it by seal or otherwise.

(1) You may then sign the declaration in Form 13A also sent herewith in the presence of a stipendiary magistrate and obtain the attestation of your signature by such stipendiary magistrate.

(2) If you are a member of the armed forces of the Union or of an armed police force of a State but is serving outside that State, the attestation may be obtained by such officer as may be appointed in this behalf by the Commanding Officer of the Unit, ship or establishment in which you or your husband, as the case may be, are employed.

(3) If you are employed under the Government of India in a post outside India the attestation may be obtained by such officer as may be appointed in this behalf by the diplomatic or consular representative of India in the country in which you are resident.

(4) If you hold an office like the office of the (i) President, (ii) Vice-President, (iii) Governors of States, (iv) Cabinet Ministers of the Union or of any State, (v) The Deputy Chairman and Members of the Planning Commission, (vi) The Ministers of State of the Union or of any State, (vii) Deputy Minister of the Union of any State, (viii) The Speaker of the House of the People or of any State Legislative Assembly, (ix) The Chairman of any State Legislative Council, (x) Lieutenant Governors of Union territories, (xi) The Deputy Speaker of the House of the People or of any State Legislative Assembly, (xii) The Deputy Chairman of the Council of States or of any State Legislative Council, (xiii) Parliamentary Secretaries of the Union or of any State, the attestation may be obtained by an officer not below the rank of a Deputy Secretary to the Government of the Union or the State, as the case may be.

(5) If you are on an election duty, attestation may be obtained by any gazetted officer or by the Presiding Officer of the polling station in which you are on election duty.

(6) If you are under preventive detention, the attestation may be obtained by the Superintendent of the jail or the Commandant of the detention camp in which you are under detention.

In all the above cases you may take the declaration to the authorised officer and sign it in his presence after he has satisfied himself about your identity. The officer will attest your signature and return the declaration to you. You must not show your ballot paper to the attesting officer nor tell him how you have voted.

If you are unable to mark the ballot paper and sign the declaration yourself in the manner indicated above by reason of illiteracy, blindness or other infirmity, you are entitled to have your vote marked and declaration signed on your behalf by any of the authorised officer mentioned above. Such an officer will, at your request mark the ballot paper in your presence and in accordance with your wishes. He will also complete the necessary certificate in this behalf.

After your declaration has been signed and your signature has been attested, place the declaration in Form 13A as also the smaller cover marked 'A' containing the ballot paper in the larger cover marked 'B'. After closing the larger cover, send it to the returning officer by post or by messenger. You have to give full signature in the space provided on the cover marked 'B'.

* Appropriate particulars of the election, to be inserted here.

1. Subs. by Notifn. No. S.O. 961 (E), dated the 29th December, 1986, for Form 13D.

No postage stamp need be affixed by you, if the cover is posted in India. If, however, you are an elector employed under the Government of India in a post outside India, you should return the cover to the returning officer concerned direct by air mail service after the requisite postage stamp is duly affixed thereon by the office in which you are serving except where it is sent by diplomatic bag.

You must ensure that the cover reaches the Returning Officer before** .....**on.....

Please note that :—

(i) if you fail to get your declaration attested or certified in the manner indicated above, your ballot paper will be rejected; and

(ii) if the cover reaches the returning officer after**.....on the**..... .....your vote will not be counted.

**(Here specify the hour and date fixed for the commencement of counting of votes).

FORM 13D
[*See* rule 23(*1*) (*d*)]
INSTRUCTIONS FOR GUIDANCE OF ELECTORS

(To be used at an election to the Council of States or to the Legislative Council of a State)

Election to the Council of States .....Legislative Council.

The persons whose names are printed on the ballot paper sent herewith are candidates at the above election. Record your vote by placing the figure 1 in the space opposite the name of the candidate to whom you want to vote. Place the figure 1 opposite the name of one candidate only *(although there are more members than one to be elected). You may indicate your relative preference for the other candidates by placing in the spaces opposite their names the figures 2, 3, 4, etc., in order of such preference. Do not place more than one figure opposite the name of any candidate and do not place the same figure opposite the names of more candidates than one.

The number of members to be elected is .....

After you have recorded your vote on the ballot paper, place the ballot paper in the smaller cover marked `A' sent herewith. Close the cover and secure it by seal or otherwise.

You have then to sign the declaration in Form 13A also sent herewith in the presence of an officer competent to attest your signature. If you are under preventive detention the attestation of your signature on the declaration in Form 13A shall be obtained by the Superintendent of the jail or the Commandant of the detention camp in which you are under such detention. If you are not under preventive detention, the attestation may be obtained by a stipendiary magistrate to whom you are personally known or to whose satisfaction you have been identified, or in the case of an election to a Council Constituency by any of the following categories of officers who have been notified in this behalf by the Election Commission, namely:—

.....
.....

Take the declaration to any such officer and sign it in his presence after he has been satisfied about your identity. The officer will attest your signature and return the declaration to you. You must not show your ballot paper to the attesting officer nor tell him how you have voted.

If you are unable to mark the ballot paper and sign the declaration yourself in the manner indicated above by reason of illiteracy, blindness or other infirmity, you are entitled to have your vote marked and the declaration signed on your behalf by an officer competent to attest your signature. Such an officer will, at your request, mark the ballot paper in your presence and in accordance with your wishes. He will also complete the necessary certificate in this behalf.

After the declaration has been signed and your signature has been attested, place the declaration in Form 13A as also the smaller cover marked `A' containing the ballot paper in the larger cover marked `B'. After closing the larger cover, send it to the Returning Officer by registered post or by messenger.

* To be deleted when only one member is to be elected.

You must ensure that the cover reaches the returning officer before**.....on the.....**.

Please note that—

(i) If you fail to get your declaration attested or certified in the manner indicated above your ballot paper will be rejected; and

(ii) if the cover reaches the returning officer after** .....on the.....**your vote will not be counted.

Any ballot paper on which the figure 1 is not marked or on which the figure 1 is set opposite the name of more than one candidate, or is so placed as to render it doubtful to which candidate it is intended to apply, or on which the figure 1 and some other figures are set opposite the name of the same candidate or on which the same figure is set opposite the name of more candidates than one or on which the signature of the elector is not duly attested or the number of which does not agree with the number of the ballot paper entered on the cover in which it is placed, will be rejected.]

**Here specify the hour and date fixed for the commencement of counting of votes.

[1][FORM 13E

(*See* rule 27F)

INSTRUCTIONS FOR GUIDANCE OF NOTIFIED CLASS OF ELECTORS

(To be used at an election to the House of the People/State Legislative Assembly)

Election to the House of the People/Legislative Assembly of..... from the.....

The persons whose names are printed on the ballot paper sent herewith are candidates at the above election. Record your vote by placing clearly a mark opposite the name of the candidate to whom you wish to give your vote. The mark should be so placed as to indicate clearly and beyond doubt to which candidate you are giving your vote. If the mark is so placed as to make it doubtful to which candidate you have given your vote, your vote will be invalid.

The number of members to be elected is one. Accordingly, you should not vote for more than one candidate, if you do so, your ballot paper will be rejected.

Do not put your signature or write any word or mark any mark, sign or writing whatsoever on the ballot paper other than the mark required to record your vote.

After you have recorded your vote on the ballot paper, place the ballot paper in the smaller cover marked A sent herewith. Close the cover and secure it by seal or otherwise.

You may then sign the declaration in Form 13A which is sent herewith in the presence of the officer (as defined in Rule 27J) of the Conduct of Elections Rules, 1961 and obtain the attestation of your signature by such authorised officer. Extracts of Rule 27J of the Conduct of Elections Rules, 1961 are enclosed herewith.

If you are unable to mark the ballot paper and sign the declaration yourself in the manner indicated above by reason of illiteracy, blindness or other infirmity, you are entitled to have your vote marked and declaration signed on your behalf by any of the authorised officers as mentioned above. Such an Officer will, at your request mark the ballot paper in your presence and in accordance with your wishes. He will also complete the necessary certificate in this behalf.

After your declaration has been signed and your signature has been attested, place the declaration in Form 13A as also the smaller cover marked A containing the ballot paper in the larger cover marked B. After closing the larger cover, send it to the Returning Officer by post or by messenger. You have to give your full signature in the space provided on the cover marked B. No postage stamp need be affixed by you if the cover is posted in India. If, however, you are an elector employed under the Government of India on a post outside India, you should return the cover to the Returning Officer concerned direct by air mail service after the requisite postage stamp is fully affixed thereon by the office in which you are serving except where it is sent by diplomatic bag. You must ensure that the cover reaches the Returning Officer before.....(hour) on.....(date).

Please note that:—

(i) if you fail to get your declaration attested or certified in the manner indicated above, your ballot paper will be rejected; and

(ii) if the cover reaches the Returning Officer after.....(hour) on .....(date) your vote will not be counted.]

1. Form 13E, which was ins. by Notifn. No. S.O. 321 (E), dated the 1st May, 1996, subs. by Notifn. No. S.O. 628(E), dated 4th August, 1999.

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

[1][FORM 13F
[*See* rule 27N(*3*)]

Serial No.....

Appointment of proxy by classified service voter to give vote.

I.....(name of the classified service voter) aged about.....s/o, d/o, w/o .....r/o.....presently working as.....and posted at.....am entitled to appoint proxy under sub-rule (2) of rule 27N of the Conduct of Election Rules, 1961. I hereby appoint.....(name of the proxy) aged about.....s/o, d/o, w/o.....r/o.....as my proxy to give vote on my behalf and in my name in.....Assembly constituency and/or.....Parliamentary constituency of the State/Union territory of.....in which I am entitled to give vote under the Representation of the People Act, 1951 (43 of 1951) and the rules made thereunder.

.....
(Signature of proxy)

.....
(Signature of classified service voter)

Serial number of his name and part no. of electoral roll of the concerned constituency.....

Serial number of his name in the last part of electoral roll of the concerned constituency.....
Service Identity Card No.....
Name of the Force to which he belongs.....

Note: (*1*) The person to be appointed as proxy shall be an ordinary resident in the constituency concerned and of not less than eighteen years of age and shall not be a person disqualified for registration as an elector in an electoral roll under section 16 of the Representation of the People Act, 1950 (43 of 1950).

(*2*) The signature of the classified service voter and the proxy shall be made before a First Class Magistrate or Notary or the Commanding Officer of the Unit concerned who shall verify the signatures under his hand and seal. In case of First Class Magistrate or Notary verifying the signature, he shall personally check the service identity card of the classified service voter to authenticate veracity of the classified service voter.

(*3*) Score out the word (s) which are not applicable.

Receipt of Form 13F for the appointment of proxy by classified service voter

(To be handed over to the person depositing the said form)

Serial No.....

Received Form 13F of Shri/Smt./Kum.....

Date.....

.....
Returning Officer

---

1. Ins. by Notifn. No. S.O. 903(E), dated the 5th August, 2003.

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Conduct of Elections Rules, 1961
(Statutory Rules and Order)

FORM 13G
[*See* rule 27N(*4*)]

Serial No.....

Revocation of appointment of proxy or revocation of appointment of proxy and appointment of substitute proxy by classified service voter to give vote

I.....(name of the classified service voter) aged about.....s/o, d/o, w/o .....r/o.....presently working as.....and posted at.....had appointed.....(name of the proxy) aged about.....s/o, d/o, w/o.....r/o.....as my proxy to give vote on my behalf and in my name in.....Assembly constituency and/or.....Parliamentary constituency of the State/Union territory of.....

2. I hereby revoke the appointment of my said proxy and do not wish to appoint any substitute proxy.

OR

Whereas such proxy has died/I hereby revoke appointment of the said proxy and being entitled to appoint substitute proxy under sub-rule (*4*) of rule 27N of the Conduct of Election Rules, 1961, hereby appoint.....(name of the substitute proxy) aged about.....s/o, d/o, w/o.....r/o.....as substitute proxy who shall hereafter give vote on my behalf and in my name in.....Assembly constituency and/or.....Parliamentary constituency.....of the State/Union territory of.....in which I am entitled to give vote under the Representation of the People Act, 1951 (43 of 1951) and the rules made thereunder.

.....
(Signature of proxy)

.....
(Signature of classified service voter)

Serial number of his name
and part no. of electoral roll of the
concerned constituency.....

Serial number of his name in the last
part of electoral roll of the concerned
constituency.....
Service Identity Card No.....
Name of the Force to which he
belongs.....

Note: (*1*) The person to be appointed as proxy shall be an ordinary resident in the constituency concerned and of not less than eighteen years of age and shall not be a person disqualified for registration as an elector in an electoral roll under section 16 of the Representation of the People Act, 1950 (43 of 1950).

(*2*) The signature of the classified service voter and the proxy shall be made before a First Class Magistrate or Notary or the Commanding Officer of the Unit concerned who shall verify the signatures under his hand and seal. In case of First Class Magistrate or Notary verifying the signature, he shall personally check the service identity card of the classified service voter to authenticate veracity of the classified service voter.

(*3*) Score out the word (s) which are not applicable.

Receipt of Form 13G for revocation of appointment of proxy or revocation of appointment of proxy and appointment of substitute proxy by classified service voter to give vote.

(To be handed over to the person depositing the said form)

Serial No.....
Received Form 13G of Shri/Smt./Kum.....
Date.....

.....
Signature and Seal
Returning Officer.]

Conduct /of Elections Rules, 1961
(Statutory Rules and Order)

FORM 14

[*See* rule 36(*2*)(*c*)]

LIST OF CHALLENGED VOTES

Election to the.....from the.....constituency.*

[1][Polling Station Number and Name of Polling Station.....in.....Assembly constituency/Name of place of poll .....]

Serial number of entry	Name of electoral	Part of roll	Elector's name in that part	Signature or thumb impression of the person challenged
1	2	3	4	5
1. 2. 3. 4. 5. 6. 7. 8. 9. 10.				

Address of the person challenged	Name of identifier, if any	Name of challenger	Order of Presiding Officer	Signature of challenger on receiving refund of deposit
6	7	8	9	10

Date.....

.....
Signature of Presiding Officer.

*Appropriate particulars of the election to be inserted here.

1. Subs. by Notifn. No. S.O. 565(E), dated the 4th August, 1984.

[1][FORM 14A

[*See* rules 40(2) and 40A(*2*)]

LIST OF †ILLITERATE, BLIND AND INFIRM VOTERS

Election to the .....**.....*from the.....constituency*/by the elected members**/members of the Legislative Assembly of .....(State).

[2][Number and Name of Polling Station.....in.....Assembly constituency/Name of place of poll.....]

Part No. & Sl.No. of elector	Full name of elector	Full name of companion	Address of companion	Signature of companion

Date.....

Signature of Presiding Officer.]

†The word "illiterate" not applicable in the case of election from Assembly/Parliamentary constituency.

*Strike off whichever is inapplicable.

** Strike off whichever is inapplicable.]

1. Subs. by Notifn. No. S.O. 2362, dated the 3rd July, 1970, for Form 14A.
2. Subs. by Notifn. No. S.O. 563(E), dated the 4th August, 1984, for certain words.

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

FORM 15

[*See* rule 42(*2*)]

LIST OF TENDERED VOTES

Election in the*.....from the.....constituency.

[1][Number and Name of Polling Station.....in.....Assembly Constituency/ Name of place of poll.....]

Part number, serial number and name of elector	Address of elector	Serial number of tendered ballot paper	Serial number of ballot paper issued to the person who has already voted	Signature or thumb impression of person tendering vote
1	2	3	4	5

Date.....

Signature of Presiding Officer.

*Appropriate particulars of the election to be inserted here.

1. Subs. by Notifn. No. S.O. 565(E), dated the 4th August, 1984, for certain words.

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

[1][FORM 16

[*See* rules 45, 56(*7*) and 56A(*7*)]

PART I.—*Ballot Paper Account*

Election to the.....from the.....constituency.

Name of Assembly Segment.....
(in the case of election from a Parliamentary constituency)

No. and Name of Polling Station.....

	Serial Nos.		Total No.
	From	To	
1. Ballot papers received			
2. Ballot papers unused (*i.e.* not issued to voters)—			
(a) With the signature of Presiding Officer			
(b) Without the signature of Presiding Officer			
*Total : (a+b)			
3. *Ballot papers used at the Polling Station (1—2=3)			
4. *Ballot papers used at the polling station but NOT INSERTED INTO THE BALLOT BOX:			
(a) Ballot papers cancelled for violation of voting procedure under rule 39			
(b) Ballot papers cancelled for other reasons.			
(c) Ballot papers used as tendered ballot papers			
*Total: (a+b+c)			
5. *Ballot papers to be found in the ballot box (3—4—5)			

*(Serial numbers need not be given)

Date .....

Signature of the Presiding Officer.

1. Form 16 ins. by Notifn. No. S.O. 470A, dated the 27th January, 1971 and subs. by Notifn. No. S.O. 518(E), dated the 7th September, 1979.

PART II.—*Result of Counting*

I. Name of candidate	Number of valid votes cast
1.	
2.	
3.	
4.	
5.	
etc.	
II. Rejected Ballot Papers	
III. TOTAL	

Whether the total number of ballot papers shown against item No. III above tallies with the total shown against item No. 5 of Part I or any discrepancy notice between these two totals.

Place.....
Date.....

Signature of the Counting Supervisor

Place.....
Date.....

Signature of the returning Officer.]

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

[1][FORM 16A
[*See* rules 45 and 55B(*1*)]
(*To be used in constituencies specified under rule* 59A)

Election to the.....from the.....constituency. Name of Assembly Segment.....: (in the case of election from a Parliamentary constituency) No. and Name of Polling Station .....

	Serial Nos.		Total No.
	From	To	
1. Ballot papers received			
2. Ballot papers unused (*i.e.* not issued to voters)—			
(a) With the signature of Presiding Officer			
(b) Without the signature of Presiding Officer			
*Total : (a+b)			
3. *Ballot papers used at the Polling Station (1—2=3)			
4. *Ballot papers used at the polling station but NOT INSERTED INTO THE BALLOT BOX :			
(a) Ballot papers cancelled for violation of voting procedure under rule 39.			
(b) Ballot papers cancelled for other reason.			
(c) Ballot papers used as tendered ballot papers			
*Total : (a+b+c)			
5. *Ballot papers to be found in the ballot box (3—4=5)			

*(Serial numbers need not be given)

Date..... Signature of the Presiding Officer.

PART II—Result of Initial counting

1. Total number of ballot papers found in the ballot box(es) used at the polling station.....
2. Discrepancy, if any, between the total number as shown against item 1 in this Part and the total number of ballot papers to be found in the ballot box(es) shown in item 5 of Part I.....

Date..... Signature of Counting Supervisor

Signature of the Returning Officer.]

1. Original Form 16, which was renumbered as Form 16A by Notifn. No. S.O. 479 A, dated the 27th January, 1971, omitted by Notifn. No, 518(E), dated the 7th September, 1979 and again ins. by Notifn. No. S.O. 958(E), dated the 17th November, 1989.

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

FORM 17
[*See* rule 49(*3*)(*f*)]

Tendered Ballot Paper

Election to the*.....from the.....constituency
.....Serial number of Ballot paper.....
Polling Station .....
Name of Elector.....
Serial number of elector ..... in Part number.....of the electoral roll.

Address of elector.....
Name of candidate in whose favour vote is tendered.....

Date .....

*Appropriate particulars of the election to be inserted here.

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

[1][FORM 17A
(*See* rule 49L)

Register of Voters

Election to the House of the People/Legislative Assembly of the State/Union territory ..... from ..... Constituency No. and Name of Polling Station..... Part No. of Electoral Roll.....

Sl. No	Sl. No. of elector in the electoral roll	Details of the document produced by the elector in proof of his/her identification	Signature/Thumb impression of elector	Remarks
(1)	(2)	(3)	(4)	(5)
1. 2. 3. 4.				

etc.

—— Signature of the Presiding Officer.

FORM 17B
(*See* rule 49P)
List of Tendered Votes

Election to the House of the People/Legislative Assembly of the State/Union territory.....from.....Constituency.

No. and Name of Polling Station.....
Part No. of Electoral Roll.....

Sl. No.	Name of elector	Sl.No. of elector in electoral roll	Sl. No. in Register of voters (Form 17A) of persons who has already voted in place of elector	Signature/ Thumb impression of elector
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				

Date.....

Signature of the Presiding Officer.

1.Subs. by Notifn. No. S.O. 728(E), dated the 8th May, 2007.

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

FORM 17C
[*See* rules 49S and 56C(*2*)]

PART I.—ACCOUNT OF VOTES RECORDED

Election to House of the People/Legislative Assembly of the State/Union territory.....from.....Constituency.

No. and Name of Polling Station.....
Identification No. of Voting Control Unit.....

Machine used at the Polling Station balloting Unit:—

1. Total No. of electors assigned to the Polling Station

2. Total No. of voters as entered in the Register for Voters (Form 17A)

3. No. of voters deciding not to record votes under rule 49-O

4. No. of voters not allowed to vote under rule 49M

5. Total No. of votes recorded as per voting machine

6. Whether the total No. of votes as shown against item 5 tallies with the total No. of voters as shown against item 2 *minus* Nos. of voters deciding not to record votes as against item 3 *minus* No. of Voters as against item 4 (2-3-4) or any discrepancy noticed.

7. No. of voters to whom tendered ballot papers were issued under rule 49P.

8. No. of tendered ballot papers.

	Sl. No. From	To
(a) received for use		
(b) issued to electors		
(c) not used and returned		

9. Account of papers seals
Sl. Nos.

	From	To
1. Serial Numbers of paper seals supplied From .....to		
2. Total Numbers supplied		
3. Number of paper seals used		
4. Number of unused paper seals returned to Returning Officer (Deduct item 3 from item 2)		

5. Serial number of damaged paper seal, if any

Signature of polling agents.

1_____

2_____

3_____

4_____

5_____

6_____

Date.....
Place.....

Signature of Presiding Officer
Polling Station No .....

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

PART II.—RESULT OF COUNTING

Sl. No.	Name of Candidate	No. of Votes recorded
1.		
2.		
3.		
4.		
5.		
6.		
Total		

Whether the total nos. of votes shown above tallies with the total No. of votes shown against item 5 of Part I or any discrepancy noticed between the two totals.

Place.....
Date.....

—— Signature of Counting Supervisor
Name of candidate/election agent/counting agent
Full signature

1.

2.

3.

4.

5.

6.

7.

8.

Place .....
Date.....

Signature of Returning Officer.]

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

FORM 18
[*See* rule 52(*2*)]

Appointment of Counting Agents

Election to the.....from the.....constituency.

To

The Returning Officer,

I,.....*a candidate/the election agent of.....who is a candidate at the above election, do hereby appoint the following persons as my counting agents to attend the counting of votes at.....:

Name of the Counting agent	Address of the counting agent.
1.	
2.	
3.	
etc.	

We agree to act as such counting agents — Signature of *candidate/election agent.

1.
2.
3.
etc.

Place..... — Signature of counting agents.
Date.....

DECLARATION OF COUNTING AGENTS
(*To be signed before the Returning Officer*)

We hereby declare that at the above election we will not do anything forbidden by section 128$ of the Representation of the People Act, 1951 (43 of 1951), which *we have read/has been read over to us.

1.....
2.....
3.....
etc.

Date..... — Signature of counting agents.

Signed before me.

Date..... — Returning Officer.

*Strike off the inappropriate alternative.
$Section 128 of the Representation of the People Act, 1951:—

"128. *Maintenance of secrecy of voting.*—(1) Every Officer, clerk, agent or other persons who performs any duty in connection with the recording or counting of votes at an election shall maintain and aid in maintaining, the secrecy of the voting and shall not (except for some purpose authorised by or under any law) communicate to any person any information calculated to violate such secrecy.

(2) Any person who contravenes the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to three months or with fine or with both."

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

FORM 19

[*See* rule 52(*4*)]

Revocation of Appointment of counting Agents

*Election of the**.....

To

The Returning Officer,

I,.....[the election agent of..... a candidate at the above election hereby revoke the appointment of..... my/his counting agent.

Place.....

Date..... Signature of person revoking.

*Here insert one of the following alternatives as may be appropriate:—
(1) House of the People from the.....constituency.
(2) Legislative Assembly from the.....constituency.
(3) Council of States by the elected members of the Legislative Assembly of.....(State).
(4) Council of States by the members of the electoral college of..... (Union territory).
(5) Legislative Council by the members of the Legislative Assembly.
(6) Legislative Council from the.....constituency.

N.B.—Omit the Words[ ] as necessary.

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

[1][FORM 20

[*See* rule 56(7)]

Final Result Sheet

(*To be used for recording the result of voting at polling stations other than notified polling stations*)

Election to the.....from the.....constituency.

PART I

(*To be used both for Parliamentary and Assembly elections*)

Name of the Assembly segment (in the case of election from a Parliamentary constituency).....

Total No. of electors in Assembly constituency/segment.....

Serial No. of Polling Station	No. of valid votes cast in favour of A B C	Total of valid Votes	No. of rejected votes	Total No. of tendered votes
(1)				
(2)				
(3)				
etc.				
TOTAL No. of votes recorded at Polling Stations.				
No. of votes recorded on postal ballot papers. (To be filled in the case of election from an Assembly constituency.)				
TOTAL votes polled.				

Place.....
Date.....

Returning Officer.

1. Subs. by Notifn. No. S.O. 518(E), dated the 7th September, 1979.

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

PART II

(*To be used for a Parliamentary election only*)

Name of Assembly segment	No. of valid votes cast in favour of A	B	C	Total of valid Votes	No. of rejected votes	Total No. of tendered votes
(1)						
(2)						
(3)						
etc.						
TOTAL						
No. of votes recorded on postal ballot papers.						
GRAND TOTAL						

Place.....
Date.....

Returning Officer.

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

FORM 20

(*See* rule 59)

Final Result Sheet

(To be used for recording the result of voting at notified polling stations)

Election to the*.....from the.....constituency.

Polling Station		Number of the ballot papers found in the ballot box of										Total for polling Station	Number of tendered votes
S.No.	Name	A		B		C		D					
		Valid	Rejected	Valid	Rejected	Valid	Rejected	Valid	Rejected	Valid	Rejected	Total	
1	2	3	4	5	6	7	8	9	10	11	12	13	14
Total													

Number of valid votes polled by

	A	B	C	D	Total
Recorded at polling stations					
Recorded on postal ballot papers					
Total votes polled					

Place.....

Date.....

Returning Officer.

*Appropriate particulars of the election to be inserted here.

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

[1][FORM 20A
[*See* rule 56B (*7*)]
Final Result Sheet

(*To be used for recording the result of voting at polling stations in constituencies specified under Rule 59A*)

Election to the.....
from the.....constituency.

Polling Station No.	Total votes found in the ballot box(es)	No. of tendered votes
(1)	.....	.....
(2)	.....	.....
(3)	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
TOTAL		

1. Total number of valid votes recorded for candidates and of rejected ballot papers	Candidate's valid votes				Valid votes Total	Number of rejected ballot papers	Valid and rejected votes Total
	A	B	C	D			
1st round.....	....	....	....	.....	.....	.....	.....
2nd round.....	....	....	....	.....	.....	.....	.....
3rd round.	....	....	....	.....	.....	.....	.....
4th round.....	....	....	....	.....	.....	.....	.....
5th round.	....	....	....	.....	.....	.....	.....
.....							
.....							
.....							
TOTAL							

2. Total number of valid votes recorded on postal ballot papers for candidates and of rejected postal ballot papers	.....	.....	.....	.....	.....	.....	.....
GRAND TOTAL							

Place.....
Date.....

Returning Officer

Name of assembly constituency	(*For Parliamentary elections only*) Candidate's valid votes				Valid votes Total	Number of rejected ballot papers	Valid and rejected votes Total
	A	B	C	D			
1.1.....	....	....	....	.....	.....	.....	.....
2.....	....	....	....	.....	.....	.....	.....
3.....	....	....	....	.....	.....	.....	.....
etc.							
TOTAL							

1. Ins. by Notifn. No. S.O. 958(E), dated the 17th November, 1989.

II. Total number of valid votes recorded on postal ballot papers for candidates and of rejected postal ballot papers.....

GRAND TOTAL

Place.....
Date.....

Returning Officer.]

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

[1][FORM 21

(*See* rule 11(1))

(*For use in General Election when seat is uncontested*)

Declaration of the result of Election under sub-section (2)*/sub-section (3)* of section 53 of the Representation of the People Act, 1951.

Election to the†.....

In pursuance of the provisions contained in sub-section (2)*/sub-section (3)* of section 53 of the Representation of the People Act, 1951, read with sub-rule (1) of rule 11 of the Conduct of Elections Rules, 1961, I declare that—

.....(Name)
.....(Address)

[2][sponsored by.....
(name of the recognised/registered political party)]

has been duly elected to fill the seat in that House from the above constituency.

Place.....

Signature.....

Date.....

Returning Officer.]

*Score out, if inappropriate.

†Here insert one of the following alternatives as may be appropriate:—

(1) House of the People from the.....Parliamentary constituency in the State/Union territory of.....

(2) Legislative Assembly of the State/Union territory of.....from the.....Assembly constituency.

(3) Metropolitan Council of the Union territory of Delhi from the.....Metropolitan Council constituency.

1. Ins. by Notifn. No. S.O. 4542, dated the 20th December, 1968 (w.e.f. 1-1-1969).
2. Ins. by Notifn. No. S.O. 565(E), dated the 4th August, 1984.

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

FORM 21A

[*See* rule 11(1)]

(For use in General Election when seat is uncontested)

Declaration of the result of Election under sub-section (2)*/sub-section (3)* of section 53 of the Representation of the People Act, 1951.

Election to the[1].....

In pursuance of the provisions contained in sub-section (2)*/sub-section (3)* of section 53 of the Representation of the People Act, 1951, read with sub-rule (1) of rule 11 of the Conduct of Elections Rules, 1961, I declare that—

.....(Name)
.....(Address)
.....(Name)
.....(Address)

[1][sponsored by..... (name of the recognised/registered political party)]
[1][Sponsored by .....(name of the recognised/registered political party)]

has been/have been duly elected to fill the seat(s) in that House of.....**.....member(s) retiring on.....(date, month and year) on the expiration of their term of office.

Place.....
Date.....

Signature.....
Returning Officer.

*Score out, if inappropriate.

[1]Here insert one of the following alternatives as may be appropriate:—

(1) Council of States by the elected members of the Legislative Assembly of.....(State).
(2) Council of States by the members of the electoral college of.....(Union territory).
(3) Legislative Council of.....(State) by the members of the Legislative Assembly.
(4) Legislative Council of.....(State) from the .....(Local Authorities'/Graduates'/Teachers') constituency.

**Fill up the number of members retiring.

1. Ins. by Notifn. No. S.O. 565(E), dated the 4th August, 1984.

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

FORM 21B

[*See* rule 11(*1*)]

(*For use in Election to fill a casual vacancy when seat is uncontested*)

Declaration of the result of Election under sub-section (2)*/sub-section (3)* of section 53 of the Representation of the People Act, 1951.

Election to the†.....

In pursuance of the provisions contained in sub-section (2)*/sub-section (3)* of section 53 of the Representation of the People Act, 1951, read with sub-rule (1) of rule 11 of the Conduct of Elections Rules, 1961, I declare that—

.....(Name)
.....(Address) [1][sponsored by.....(name of the recognised/ registered political party)] has been/have been duly elected to fill the vacancy caused in that House by the

*resignation of.....
*death of.....
*election of.....having been declared void.

*seat of.....*having become vacant. / *having been declared

Place.....

Date.....

Signature.....
Returning Officer.

*Score out, if inappropriate.

†Here insert one of the following alternatives as may be appropriate:—

(1) House of the People from the..... Parliamentary constituency in the State/Union territory of.....
(2) Legislative Assembly of the State/Union territory of..... from the.....Assembly constituency.
(3) Metropolitan Council of Delhi from the.....Metropolitan Council constituency.
(4) Council of States by the elected members of the Legislative Assembly.....(State).
(5) Council of States by the members of the electoral college of.....(Union territory).
(6) Legislative Council of.....(State) by the members of the Legislative Assembly.
(7) Legislative Council of.....(State) from the.....(Local Authorities'/Graduates'/Teachers') constituency.

1. Ins. by Notifn. No. S.O. 565(E), dated the 4th August, 1984.

FORM 21C

(*See* rule 64)

(*For use in General Election when seat is contested*)

Declaration of the result of Election under section 66 of the Representation of the People Act, 1951.

*Election to the House of the People from the.....Parliamentary constituency in.....(State/Union territory).

---

*Election to the Legislative Assembly of.....(State/Union territory) from.....Assembly constituency.

---

*Election to the Metropolitan Council of Delhi from.....Metropolitan Council constituency.

In pursuance of the provisions contained in section 66 of the Representation of the People Act, 1951, read with rule 64 of the Conduct of Elections Rules, 1961, I declare that—

.....(Name)

.....(Address) [1][sponsored by.....(name of the recognised/registered political party)] has been duly elected to fill the seat in that House from the above constituency.

Place.....
Date.....

Signature .....
Returning Officer.

---

*Score out, if inappropriate.

---

1. Ins. by Notifn. No. S.O. 565(E), dated the 4th August, 1984.

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

FORM 21D

(*See* rule 64)

(*For use in Election to fill a casual vacancy when seat is contested*)

Declaration of the result of Election under section 66 of the Representation of the People Act, 1951.

*Election to the House of the People from the..... Parliamentary constituency in..... (State/Union territory).

*Election to the Legislative Assembly of..... (State/Union territory) from.....Assembly constituency.

*Election to the Metropolitan Council of Delhi from.....Metropolitan Council constituency. In pursuance of the provisions contained in section 66 of the Representation of the People Act, 1951, read with rule 64 of the Conduct of Elections Rules, 1961, I declare that—

.....(Name)

.....(Address) [1][Sponsored by.....(name of the recognised/registered political party)] has been duly elected to fill the vacancy caused in that House by the

*resignation of .....

*death of.....

*election of.....having been declared void.

*seat of ..... having become.

having been declared vacant.

Place.....
Date.....

Signature .....
Returning Officer.

*Score out, if inappropriate.

1. Ins. by Notifn. No. S.O. 565(E), dated the 4th August, 1984.

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

[1][FORM 21E]

(*See* rule 64)

Return of Election

Election to the.....from the.....constituency

Return of Election

[2][Serial No.	Name of candidate	Party affiliation	Number of votes polled]

[3][Total number of electors.....]

Total number of valid votes polled.....

Total number of rejected votes.....

Total number of tendered votes.....

I declare that—

.....(Name)
of..... (address)

has been duly elected to fill the seat.

Place .....

Date .....

Returning Officer.

1. Renumbered by Notifn. No. S.O. 4542, dated the 20th December, 1968 (w.e.f. 1-1-1969).
2. Subs. by Notifn. No. S.O. 565(E), dated the 4th August, 1984, for certain words.
3. Ins., *ibid.*

FORM 22

(*See* rule 66)

Certificate of Election

I, Returning Officer for the.....Parliamentary/Assembly constituency in the State of.....hereby certify that I have on the.....day of ..... 20..... declared Shri..... of.....[1][sponsored by.....(name of the recognised/registered political party)] to have been duly elected by the said constituency [2][in the General Election/Bye-election] to be a member of the House of the People/Legislative Assembly and that in token thereof I have granted to him this certificate of election.

Place .....
Date .....

.....

Returning Officer,
for the.....Parliamentary
Assembly constituency.

SEAL

FORM 22A
[*See* rule 39AA(2)]

Appointment letter

Election of the ----------

I.....*President/General Secretary of.....Party do hereby appoint the following persons as the authorised agents of the Party to verify under rule *39AA/ rule 42/ rule 42A/ rule 84 as to whom the electors who are the members of the said political party have cast their votes. Photographs of the aforesaid authorised agents are pasted hereunder and is attested under my hand and seal.

Name of the authorised agents — Address of the authorised agents

1.....
2.....

Signature of * President/
General Secretary of the Party)

(Seal)

We agree to act as such authorised agents — Signature of the authorised agents

1.....
2.....

Space for the photographs

*Strike off the inappropriate alternative.]

---

1. Ins. by Notifn. No. S. O. 961(E), dated the 29th December, 1986.
2. Ins. by Notifn. No. S. O. 565(E), dated the 4th August, 1984.
3. Ins. by Notifn. No. S. O. 272 (E), dated the 27 th February, 2004.

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

[1][FORM 23

[*See* rule 84(1)(a)]

(*For use in Biennial Election when seat is contested*)

Declaration of the result of Election under section 66 of the Representation of the People Act, 1951.

Election to the*.....

In pursuance of the provisions contained in section 66 of the Representation of the People Act, 1951, read with clause (a) of sub-rule (1) of rule 84 of the Conduct of Elections Rules, 1961, I declare that—

.....(Name)
.....(Address) [2][sponsored by..... (name of the recognised/registered political party)]

.....(Name)
.....(Address) [2][sponsored by..... (name of the recognised/registered political party)]

has been/have been, duly elected to fill the seat(s) in that House of a .....!member(s) retiring on..... (date, month and year) on the expiration of their term of office.

Place.....
Date.....

Signature.....

Returning Officer.]

---

* Here insert one of the following alternatives as may be appropriate:—

(1) Council of States by the elected members of the Legislative Assembly of.....(State).
(2) Council of States by the members of the electoral college of.....(Union territory).
(3) Legislative Council of..... (State) by the members of the Legislative Assembly.
(4) Legislative Council of.....(State) from the..... (Local Authorities'/Graduates'/Teachers') constituency.

** Score out, if inappropriate.
!Fill up the number of members retiring.

---

1. Ins. by Notifn. No. S. O. 4542, dated the 20th December, 1968 (w.e.f. 1-1-1969).
2. Ins. by Notifn. No. S. O. 565(E), dated the 4th August, 1984.

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

FORM 23A

[*See* rule 84(1)(a)]

(For use in Election to fill a casual vacancy when seat is contested)

Declaration of the result of Election under section 66 of the Representation of the People Act, 1951

Election to the[1].....

In pursuance of the provisions contained in section 66 of the Representation of the People Act, 1951, read with clause (a) of sub-rule (1) of rule 84 of the Conduct of Elections Rules, 1961, I declare that—

.....(Name)

.....(Address) [1][sponsored by.....(name of the recognised/registered political party)] has been duly elected to fill the vacancy caused in that House by the

*resignation of.....

*death of.....

*election of.....having been declared void.

*having become
*seat of....._____ vacant.
*having been declared

Place.....

Date.....

Signature.....

Returning Officer.

---

[1] Here insert one of the following alternatives as may be appropriate: —

(1) Council of States by the elected members of the Legislative Assembly of .....(State).
(2) Council of States by the members of the electoral college of.....(Union territory).
(3) Legislative Council of.....(State) by the members of the Legislative Assembly.
(4) Legislative Council of.....(State) from the.....(Local Authorities'/Graduates'/Teachers') constituency.

*Score out, if inappropriate.]

---

1. Ins. by Notifn. No. S.O. 565(E), dated the 4th August, 1984.

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

[1][FORM 23B]

[2][*See* rule 84(1)(b)]

Return of Election

Election to the Council of States

Election to the Legislative Council by Members of Assembly/..... constituency.

The result of the poll and of the transfer of votes is as follows:—
Number of valid votes.....
Number of members to be elected.....
Quota (number of votes sufficient to secure the election of a candidate).....

Names of candidates	First Count	Second Count		Third Count		Fourth Count		Name of elected candidates and order of election
	Votes polled by each candidate	Transfer of	Result	Transfer of	Result	Transfer of	Result	
Non-transferable papers								
Loss due to fractions								
Total								

I declare that—

(1) (Name).....
(Address).....

[3][Sponsored by.....(name of the recognised/registered political party)]

(2) (Name).....
(Address).....

etc.....has/have been duly elected.

(Signature)

Returning Officer.

Dated the.....day of.....20 .

---

1. Renumbered by Notifn. No. S.O. 4542, dated the 20th December, 1968 (w.e.f. 1-1-1969).
2. Subs., *ibid.*
3. Ins. by Notifn. No. S. O. 961(E), dated the 29th December, 1986.

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

FORM 24

(*See* rule 85)

Certificate of Election

I, Returning Officer for the election to the.....Council of States/Legislative Council by the elected members of the.....Legislative Assembly.....Local Authorities'/Graduates'/Teachers' constituency/members of the.....Legislative Assembly hereby certify that I have on the.....day of.....19.....declared Shri.....[1][sponsored by.....(name of the recognised/registered political party)] to have been duly elected to be a member of the Council of States/Legislative Council and that in token thereof I have granted to him this certificate of election.

Place.....

Date.....

.....
Returning Officer.

for the election to the Council of States/Legislative Council.

SEAL

1. Ins. by Notifn. No. S. O. 961(E), dated the 29th December, 1986.

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

[1][FORM 24A
(*See* rule 85B)

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

1. Name of Political Party:

2. Status of the Political Party:
(recognised/unrecognised)

3. Address of the headquarters of the Political Party:

4. Date of registration of Political Party with Election Commission:

5. Permanent Account Number (PAN) and Income-tax Ward/Circle where return of the political party is filed:_____

6. Details of the contributions received, in excess of rupees twenty thousand, during the Financial Year:20 – . –20 .

Serial number	Name and complete address of the contributing person/company	PAN (if any_ and Income-Tax Ward/Circle	Amount of contribution (Rs.)	Mode of contribution *(cheque/demand draft/cash)	Remarks

*In case of payment by cheque/demand draft, indicate name of the bank and branch of the bank on which the cheque/demand draft has been drawn.

7. In case the contributor is a company, whether the conditions laid down under section 293A of the Companies Act, 1956 (1 of 1956) have been complied with (A copy of the certificate to this obtained from the company should be attached).

Verification

I,_____(full name in Block letters), son/daughter of _____solemnly declare that to the best of my knowledge and belief, the information given in this Form is correct, complete and truly stated.

I further declare that I am verifying this form in my capacity as _____on behalf of the Political Party above named and I am also competent to do so.

(Signature and name of the Treasurer/Authorised person)]

Date:_____
Place:_____

1. Ins. by Notifn. No. S.O. 1283(E), dated the 10th November, 2003.

[1][FORM 25

(*See* rule 94A)

Affidavit

I, ...,the petitioner in the accompanying election petition calling in question the election of Shri/Shrimati.....(respondent No.....in the said petition) make solemn affirmation/oath and say—

(a) that the statements made in paragraphs.....of the accompanying election petition about the commission of the corrupt practice of*.....,and the particulars of such corrupt practice mentioned in paragraphs.....of the same petition and in paragraphs.....of the Schedule annexed thereto are true to my knowledge;

(b) that the statements made in paragraphs.....of the said petition about the commission of the corrupt practice of*.....and the particulars of such corrupt practice given in paragraphs.....of the said petition and in paragraphs.....of the Schedule annexed thereto are true to my information;

(c)

(d)

etc.

Signature of deponent.

Solemnly affirmed/sworn by Shri/Shrimati.....at.....this.....day of.....19 .

Before me,
Magistrate of the first class/Notary/
Commissioner of Oaths.]

* Here specify the name of the corrupt practice.

1. Added by Notifn. No. S.O. 597(E), dated the 27th February, 1962.

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

[1][FORM 26
(*See* rule 4A)

Affidavit to be furnished by the candidate before the returning officer for election to .....(name of the House) from.....constituency (name of the constituency)

I, ..., son/daughter/wife of .....aged about.....years, resident of .....candidate at the above election, do hereby solemnly affirm/state on oath as under:—

1. I am/am not accused of any offence(s) punishable with imprisonment for two years or more in a pending case(s) in which a charge(s) has/have been framed by the court(s) of competent jurisdiction.

If the deponent is accused of any such offence(s) he shall furnish the following information:—

(i) Case/First information report No./Nos. .....

(ii) Police station(s).....District(s).....State(s).....

(iii) Section(s) of the concerned Act(s) and short description of the offence(s) for which the candidate has been charged.....

(iv) Court(s) which framed the charge(s).....

(v) Date(s) on which the charge(s) was/were framed.....

(vi) Whether all or any of the proceeding(s) have been stayed by any court(s) of competent jurisdiction.....

2. I have been/have not been convicted of an offence(s) [other than any offence(s) referred to in sub-section (1) or sub-section (2), or covered in sub-section (3), of section 8 of the Representation of the People Act, 1951 (43 of 1951)] and sentenced to imprisonment for one year or more.

If the deponent is convicted and punished as aforesaid, he shall furnish the following information:

(i) Case/First information report No./Nos. .....

(ii) Court(s) which punished.....

(iii) Police station(s).....District(s).....State(s).....

(iv) Section(s) of the concerned Act(s) and short description of the offence(s) for which the candidate has ever been charged.....

(v) Date(s) on which the sentence(s) was/were pronounced.....

(vi) Whether the sentence(s) has/have been stayed by any court(s) of competent jurisdiction.....

Place:

Date: Signature of deponent

VERIFICATION

I, the above-named deponent, do hereby verify and declare that the contents of the affidavit are true and correct to the best of my knowledge and belief, no part of it is false and nothing material has been concealed therein.

Verified at .....this.....day of....., 20.....

Signature of deponent

Note: The columns in this Form which are not applicable to the deponent may be struck off.]

1. Ins. by Notifn. No. S.O. 935(E), dated the 3rd September, 2002.

Conduct of Elections Rules, 1961
(Statutory Rules and Order)

SCHEDULE
(*See* rule 83)

[1][Illustration of the procedure as to the counting of votes at an election on the single transferable vote system when more than one seat is to be filled.]

Assume that there are seven members to be elected, sixteen candidates, and one hundred and forty electors.

The valid ballot papers are arranged in separate parcels according to the first preference recorded for each candidate, and the papers in each parcel counted. —

Let it be assumed that the result is as follows:—

A	12
B	8
C	6
D	9
E	10
F	7
G	4
H	19
I	13
J	5
K	14
L	8
M	10
N	6
O	4
P	5
TOTAL	140

Each valid ballot paper is deemed to be of the value of one hundred and the values of the votes obtained by the respective candidates are as shown in the first column of the result sheet.

The values of all papers are added together and the total 14,000 is divided by eight (*i.e.* the number which exceeds by one the number of vacancies to be filled) and 1,751 (*i.e.* quotient 1,750 increased by one) is the number sufficient to secure the return of a member and is called the quota.

The operation may be shown thus:—

$$\text{Quota} \times \frac{14,000}{8} + 1 - 1,750 + 1 = 1,751$$

The candidate H, the value of whose votes exceeds the quota, is declared elected.

As the value of the papers in H's parcel exceeds the quota, his surplus must be transferred. His surplus is 149, *i.e.*, 1,900 less 1,751.

The surplus arises from original votes, and therefore, the whole, of H's papers are divided into sub-parcels according to the next preferences recorded thereon, a separate parcel of the exhausted papers being also made.

1. Subs. by Notifn. No.S.O. 3662, dated the 12th October, 1964.

Let it be assumed that the result is as follows:—

	Papers
B is marked as next available preference on	7
D is marked as next available preference on	4
E is marked as next available preference on	4
F is marked as next available preference on	3
Total of the unexhausted papers	18
No. of exhausted papers	1
Total of papers	19

The values of the papers in the sub-parcels are as follows:—

B	700
D	400
E	400
F	300
Total values of unexhausted papers	1,800
Value of exhausted papers	100
TOTAL VALUE	1,900

The value of the unexhausted papers is 1,800 and is greater than the surplus. This surplus is, therefore, transferred as follows:—

All the unexhausted papers are transferred, but at a reduced value, which is ascertained by dividing the surplus by the number of unexhausted papers.

The reduced value of all the papers, when added together, with the addition of any value lost as the result of the neglect of fractions, equals the surplus. In this case the new value of each paper transferred is

$$\frac{\text{149 (the surplus)}}{\text{18 (the number of unexhausted papers)}}$$

the residue of the value of each paper (100-8=92), being required by H for the purpose of constituting his quota, *i.e.*, one exhausted paper value (100) plus the value (1,656) of 18 unexhausted papers.

These values of the sub-parcels transferred are:—

B=56 (*i.e.*, seven papers at the value of 8);
D=32 (*i.e.*, four papers at the value of 8);
E=32 (*i.e.*, four papers at the value of 8);
F=24 (*i.e.*, three papers at the value of 8).

These operation can be shown on a transfer sheet as follows:

Transfer Sheet

Value of surplus (H's) to be transferred	149
Number of papers in H's parcel	19
Value of each paper in parcel	100
Number of unexhausted papers	18
Value of unexhausted papers	1,800

New value of each paper transferred = $\frac{\text{Surplus}}{\text{number of unexhausted papers}} = \frac{149}{18} = 8$

Names of candidates marked as the next available preference	Number of papers to be transferred	Value of sub-parcels to be transferred
B.	7	56
D.	4	32
E.	4	32
F.	3	24
TOTAL	18	144
Number of exhausted papers	1	..
Loss of value owing to neglect of fractions	..	5
TOTAL	19	149

The values of the sub-parcels are added to the values of the votes already credited to the candidates B,D,E and F. This operation is shown on the result sheet.

There being no further surplus the candidate lowest on the poll has now to be excluded. G and O both have 400.

The returning officer casts lots and G is chosen to be excluded.

Being original votes, G's papers are transferred at the value of 100 each. A who was marked as next preference on two papers receives 200, while D and E were each next preference on one paper and receiving 100 each. O now being lowest is next excluded and his 400 is similarly transferred to I, B and K, I receiving 200 and B and K 100 each.

This leaves J and P lowest with 500 each and J is chosen by lot for exclusion first. His papers are transferred at the value of 100 each to A, B, D and I, the three first named receiving 100 each, and I who had the next preference on two papers receiving 200. P is then excluded and his papers are transferred to E, L and K, the two first named receiving 100 each, and K, who had the next preference on three papers, receiving 300.

K now exceeds the quota and is declared elected.

Prior to further exclusion, K's surplus of 49 has to be distributed.

The sub-parcel last transferred to K consisted of 3 votes transferred at the value of 100 each. This sub-parcel is examined; there are no exhausted papers and B, F, and I are each next preference on one paper and one paper is transferred to each of them at a reduced value determined by dividing the surplus (49) by the number of unexhausted papers (3), B, F and I accordingly receive 16 each.

The process of exclusion is now proceeded with.

C and N have 600 each, and C is chosen by lot for exclusion first. He has 6 original votes; B, D and E are each next preference on two papers, and each receives 200. N is then excluded, A is next preference on 3 of his papers, and receives 300; F, I and L are each next preference on one paper and receive 100 each.

This brings A and I above the quota and they are declared elected. Their surplus have now to be distributed and I's surplus which is the larger, 65, is dealt with first.

The last sub-parcel transferred to I consisted of one paper transferred at the value of 100, D is next preference on this paper, and receives the whole surplus of 65.

A's surplus of 49 is then dealt with. The last sub-parcel transferred to him consisted of 3 papers transferred at the value of 100 each. B was next preference two of these papers and E on one, and the papers are transferred accordingly. The value to be transferred is 16 per paper, *i.e.*, the surplus (49), divided by the number of the unexhausted (3). B accordingly receives 32 and E 16.

No other candidate having reached the quota, the process of exclusions is proceeded with, and F who is now lowest with 840, is excluded.

His seven original votes are transferred first B, D and E are next preference on three, two and two papers, respectively, and receive respectively 300, 200 and 200.

The transferred votes are next transferred in the order of their transfers to F. The 3 votes received at the value of eight each at the distribution of H's surplus are transferred at the same value to L who was next preference on all 3 papers.

The vote valued at sixteen received by F at the distribution of K's surplus, goes at the same value to M, who was next preference on that paper. The vote transferred at the value of 100 on the exclusion of N is then transferred at the same value to D, who thus received a total of 300.

No continuing candidate having reached the surplus, N, who is now lowest with 1016 is excluded.

His ten original votes are transferred first. B and D are first preference on three papers each and E and L on two each. B and D accordingly receive 300 each, and E and L 200 each. This brings B, D and E above the quota and they are declared elected. The requisite number of candidates having now been elected, the election is at an end, and it is unnecessary to proceed to the transfer of M's transferred votes.

Full details are shown in the result sheet.

Value of votes:14,000

RESULT SHEET

Quota=$\frac{14,000}{8}$ +1=1751

Name of Candidates	Value of Votes at First Count	Distribution of H.S. surplus	Result	Distribution of Votes of G and O	Result	Distibution of votes of J and P	Result	Distribution of K's surplus
1	2	3	4	5	6	7	8	9
A	1,200	—	1,200	+200	1,400	+100	1,500	—
B	800	+56	856	+100	956	+100	1,056	+16
C	600	—	600	—	600	—	600	—
D	900	+32	932	+100	1,032	+100	1,132	—
E	1,000	+32	1,032	+100	1,132	+100	1,232	—
F	700	+24	724	—	724	—	724	+16
G	400	—	400	-400	—	—	—	—
H	1,900	-149	1,751	—	1,751	—	1,751	—
I	1,300	—	1,300	+200	1,500	+200	1,700	+16
J	500	—	500	—	-500	500	—	—
K	1,400	—	1,400	+100	1,500	+300	1,800	-49
L	800	—	800	—	800	+100	900	—
M	1,000	—	1,000	—	1,000	—	1,000	—
N	600	—	600	—	600	—	600	—
O	400	—	400	-400	—	—	—	—
P	500	—	500	—	-500	500	—	—
Loss of value by neglect of fraction	—	+5	5	—	5	—	5	+1
Total	14,000	—	14,000	—	14,000	—	14,000	—

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Value of votes: 14,000

RESULT SHEET.—contd.

Quota = 14,000 / 8 + 1 = 1751

Result	Distribution of votes of C and N	Result	Distribution of surplus of I and A	Result	Distribution of F's votes	Result	Distribution of M's votes	Result	Result of Election
10	11	12	13	14	15	16	17	18	19
1,500	+300	1,800	+49	1,751	—	1,751	—	1,751	Elected
1,072	+200	1,272	+32	1,304	+300	1,604	+300	1,904	Elected
600	-600	—	—	—	—	—	—	—	Not Elected
1,132	+200	1,332	+65	1,397	+300	1,697	+300	1,997	Elected
1,232	+200	1,432	+16	1,448	+200	1,648	+200	1,848	Elected
740	+100	840	—	840	-840	—	—	—	Not Elected
—	—	—	—	—	—	—	—	—	Not Elected
1,751	—	1,751	—	1,751	—	1,751	—	1,751	Elected
1,716	+100	1,816	-65	1,751	—	1,751	—	1,751	Elected
—	—	—	—	—	—	—	—	—	Not Elected
1,751	—	1,751	—	1,751	—	1,751	—	1,751	Elected
900	+100	1,000	—	1,000	+24	1,024	+200	1,224	Not Elected
1,000	—	1,000	—	1,000	+16	1,016	1,000	+16	Not Elected
600	-600	—	—	—	—	—	—	—	Not Elected
—	—	—	—	—	—	—	—	—	Not Elected
—	—	—	—	—	—	—	—	—	Not Elected
6	—	6	+1	7	—	7	—	7	
14,000	—	14,000	—	14,000	—	14,000	—	14,000	—