

Representation of People Act

LEARNING OBJECTIVES

In this Chapter, you will learn about:

- Fundamental Concepts Regarding Indian Election
- The Election Commission of India – Powers and Functions
- The Representation of People Act – An Introduction
- Background of the Representation of People's Acts
- An Overview of Representation of People's Acts 1950 and 1951
- Important Provisions of Representative of People's Acts 1950 and 1951
- Criminalisation of Politics
- Electoral Reforms
- Recent Landmark Judgments of the Supreme Court
- Q & A Regarding Elections and Process Associated with It
- Conclusion

“The only way in which you can establish democracy by the will of the people is by the conduct of free and fair elections”

—Former Chief Election Commissioner Shri. T.N. Seshan in his ‘a heart full of burden’

9.1 FUNDAMENTAL CONCEPTS REGARDING INDIAN ELECTION

The following are the fundamental bases which are important in order to understand the electoral system in the country. The Representation of the People's Act deals with all the points mentioned in the following list, and understanding these fundamentals will better help the readers grasp its provisions.

9.1.1 Indian Election Scenario

India is a constitutional democracy with a parliamentary system of Government, and at the heart of the system is a commitment to hold regular, free and fair elections. These elections determine

the composition of the Government, the membership of the two houses of Parliament, the State and Union Territory legislative assemblies, and the Presidency and Vice Presidency

Elections are conducted according to the constitutional provisions, supplemented by laws made by the Parliament. The major laws are Representation of the People Act, 1950, which mainly deals with the preparation and revision of electoral rolls; and the Representation of the People Act, 1951 which deals, in detail, with all aspects of conduct of elections and post-election disputes. The Supreme Court of India has held that where the enacted laws are silent or make insufficient provision to deal with a given situation in the conduct of elections, the Election Commission has the residuary powers under the Constitution to act in an appropriate manner.

9.1.2 Indian Elections – Scale of Operation

Elections in India are events involving political mobilisation and organisational complexity on an amazing scale. In the 2004 election to Lok Sabha there were 1351 candidates from six National parties, 801 candidates from 36 State parties, 898 candidates from officially recognised parties and 2385 independent candidates. A total number of 38,99,48,330 people voted out of total electorate size of 67,14,87,930. The Election Commission employed almost 4 million people to run the election. A vast number of civilian police and security forces were deployed to ensure that the elections were carried out peacefully.

Conduct of General elections in India for electing a new Lower House of Parliament (Lok Sabha) involves management of the largest event in the world. The electorate exceeds 670 million electors in about 7,00,000 polling stations spread across widely varying geographic and climatic zones. Polling stations are located in the snow-clad mountains in the Himalayas, the deserts of the Rajasthan and in sparsely populated islands in the Indian Ocean.

9.1.3 Constituencies and Reservation of Seats

The country has been divided into 543 parliamentary Constituencies, each of which sends one MP to the Lok Sabha, the lower house of the Parliament. The size and shape of the parliamentary constituencies are determined by an independent Delimitation Commission, which aims to create constituencies which have roughly the same population, subject to geographical considerations and the boundaries of the states and administrative areas.

9.1.4 How Constituency Boundaries are Drawn Up

Delimitation is the redrawing of the boundaries of parliamentary or assembly constituencies to make sure that there are, as near as practicable, the same number of people in each constituency. In India boundaries are meant to be examined after the ten-year census to reflect changes in population, for which Parliament by law establishes an independent Delimitation Commission, made up of the Chief Election Commissioner and two judges or ex-judges from the Supreme Court or High Court. However, under a constitutional amendment of 1976, delimitation was suspended until after the census of 2001, ostensibly so that state's family-planning programs would not affect their political representation in the Lok Sabha and Vidhan Sabhas. This has led to wide discrepancies in the size of constituencies, with the largest having over 25,00,000 electors, and the smallest less than 50,000. Delimitation exercise, with 2001 census data released on 31st December 2003, has been completed.

9.1.5 Reservation of Seats

The Constitution puts a limit on the size of the Lok Sabha of 550 elected members, apart from two members who can be nominated by the President to represent the Anglo-Indian community.

There are also provisions to ensure the representation of scheduled castes and scheduled tribes, with reserved constituencies where only candidates from these communities can stand for election.

9.1.6 System of Election

Elections to the Lok Sabha are carried out using a first-past-the-post electoral system. The country is split up into separate geographical areas, known as constituencies, and the electors can cast one vote each for a candidate (although most candidates stand as independents, most successful candidates stand as members of political parties), the winner being the candidate who gets maximum votes.

9.1.7 Parliament

The Parliament of the Union consists of the President, the Lok Sabha (House of People) and the Rajya Sabha (Council of States). The President is the head of the State, and he appoints the Prime Minister, who runs the Government, according to the political composition of the Lok Sabha. Although, the Government is headed by a Prime Minister, the Cabinet is the central decision making body of the Government. Members of more than one party can make up a Government, and although the governing parties may be a minority in the Lok Sabha, they can only govern as long as they have the confidence of a majority of MPs, the members of the Lok Sabha. As well as being the body, which determines whom, makes up the Government, the Lok Sabha is the main legislative body, along with the Rajya Sabha.

9.1.8 Rajya Sabha – The Council of the States

The members of the Rajya Sabha are elected indirectly, rather than by the citizens at large. Rajya Sabha members are elected by each State Vidhan Sabha using the single transferable vote system. Unlike most federal systems, the number of members returned by each State is roughly in proportion to their population.

At present there are 233 members of the Rajya Sabha elected by the Vidhan Sabhas, and there are also twelve members nominated by the President as representatives of literature, science, art and social services. Rajya Sabha members can serve for six years, and elections are staggered, with one third of the assembly being elected every 2 years.

9.1.9 Nominated Members

The President can nominate two members of the Lok Sabha if it is felt that the representation of the Anglo-Indian community is inadequate, and 12 members of the Rajya Sabha, to represent literature, science, art and the social services.

9.1.10 State Assemblies

India is a federal country, and the Constitution gives the States and Union Territories significant control over their own Government. The Vidhan Sabhas (legislative assemblies) are directly elected bodies set up to carry out the administration of the Government in the 28 States of India. In some States there is a bicameral organisation of legislatures, with both an Upper and Lower House. Two of the seven Union Territories viz., the National Capital Territory of Delhi and Pondicherry also have legislative assemblies.

Elections to the Vidhan Sabhas are carried out in the same manner as for the Lok Sabha election, with the States and Union Territories divided into single-member constituencies, and the first-past-the-post electoral system used. The assemblies range in size, according to population. The largest Vidhan Sabha is for Uttar Pradesh, with 403 members; the smallest Pondicherry, with 30 members.

9.1.11 President and Vice President

The President is elected by the elected members of the Vidhan Sabha, Lok Sabha, and Rajya Sabha, and serves for a period of 5 years (although they can stand for re-election). A formula is used to allocate votes so there is a balance between the population of each State and the number of votes assembly members from a State can cast, and to give an equal balance between State Assembly members and National Parliament members. If no candidate receives a majority of votes there is a system by which losing candidates are eliminated from the contest and votes for them transferred to other candidates, until one gains a majority. The Vice President is elected by a direct vote of all members elected and nominated, of the Lok Sabha and Rajya Sabha.

9.1.12 Who Can Vote?

The democratic system in India is based on the principle of universal adult suffrage; that any citizen over the age of 18 can vote in an election (before 1989 the age limit was 21). The right to vote is irrespective of caste, creed, religion or gender. Those who are deemed unsound of mind, and people convicted of certain criminal offences are not allowed to vote.

9.1.13 The Electoral Roll

The electoral roll is a list of all people in the constituency who are registered to vote in Indian Elections. Only those people with their names on the electoral roll are allowed to vote. The electoral roll is normally revised every year to add the names of those who are to turn 18 on the 1st January of that year or have moved into a constituency and to remove the names of those who have died or moved out of a constituency.

If one is eligible to vote and is not on the electoral roll, they can apply to the Electoral Registration Officer of the constituency, who will update the register. The updation of the Electoral Roll stops only during an election campaign, after the nominations for candidates are closed.

9.1.14 Computerisation of Rolls

In 1998 the Commission took a historic decision to computerize the entire electoral rolls of 620 million voters. This work has been completed and now well-printed electoral rolls are available. The photo identity card number of the voter has also been printed in the electoral rolls, for cross linking. The printed electoral rolls as well as CDs containing these rolls are available for sale to general public. National and State parties are provided these free of cost after every revision of electoral rolls. Entire country's rolls are also available on Election Commission's website.

9.1.15 Electors' Photo Identity Cards

In an attempt to improve the accuracy of the electoral roll and prevent electoral fraud, the Election Commission ordered the making of photo identity cards for all voters in the country in August 1993. To take advantage of latest technological innovations, the Commission issues

revised guidelines for EPIC Program in May 2000. More than 450 million identity cards have been distributed till now.

Electoral Photo Identity Card (EPIC) is an identity document issued by the Electoral Registration Officer. The EPIC contains details of the elector like Name, Father's/Mother's/Husband's Name, Date of Birth/Age on the qualifying date, Sex, Address and most importantly, the photograph of the elector. EPIC is a permanent document for an elector. It is to be used by the elector to establish one's identity at the time of polls. It is compulsory for an elector who has been issued an EPIC to produce the EPIC at the time of polling to enable voting.

Every EPIC is issued under a unique EPIC Number. EPIC Number is an alphanumeric string with 3 alphabetical codes followed by a seven-digit number. While the first 3 alphabetical codes, called the Functional Unique Serial Number (FUSN) code is unique for every Assembly Constituency and is provided by the Election Commission, the numeric code that follows the FUSN code is a six digit running serial number followed by one digit checksum making a total of seven digits

9.1.16 When Do Elections Take Place?

Elections for the Lok Sabha and every State Legislative Assembly have to take place every five years, unless called earlier. The President can dissolve Lok Sabha and call a general election before five years is up, if the Government can no longer command the confidence of the Lok Sabha, and if there is no alternative Government available to take over.

Governments have found it increasingly difficult to stay in power for the full term of a Lok Sabha in recent times, and so elections have often been held before the five-year limit. A constitutional amendment passed in 1975, as part of the Government declared emergency, postponed the election due to be held in 1976. This amendment was later rescinded, and regular elections resumed in 1977.

Holding of regular elections can only be stopped by means of a constitutional amendment and in consultation with the Election Commission, and it is recognised that interruptions of regular elections are acceptable only in extraordinary circumstances.

9.1.17 Scheduling the Elections

When the five-year limit is up, or the legislature has been dissolved and new elections have been called, the Election Commission puts into effect the machinery for holding an election. The constitution states that there can be no longer than 6 months between the last session of the dissolved Lok Sabha and the recalling of the new House, so elections have to be concluded before then.

In a country as huge and diverse as India, finding a period when elections can be held throughout the country is not simple.

The Election Commission, which decides the schedule for elections, has to take account of the weather – during winter constituencies may be snow-bound, and during the monsoon access to remote areas restricted, the agricultural cycle – so that the planting or harvesting crops is not disrupted, exam schedules – as schools are used as polling stations and teachers are employed as election officials, and religious festivals and public holidays. On top of this there are the logistical difficulties that go with holding an election – sending out ballot boxes or EVMs, setting up polling booths, recruiting officials to oversee the elections.

The Commission normally announces the schedule of the elections in a major press conference a few weeks before the formal process is set in motion. The Model Code of Conduct for guidance of candidates and political parties immediately comes into effect after such announcement. The formal process for the elections starts with the Notification or Notifications calling upon the electorate to elect members of a House. As soon as notifications are issued, candidates can start filling their nominations in the constituencies from where they wish to contest. These are scrutinised by the Returning Officer of the constituency concerned after the last date for the same is over after about a week. The nominated candidates can withdraw from the contest within two days from the date of scrutiny. Contesting candidates get at least two weeks for political campaign before the actual date of poll. On account of the vast magnitude of operations and the massive size of the electorate, polling is held at least on three days for the national elections. A separate date for counting is fixed and the results is declared for each constituency by the concerned Returning Officer. The Commission compiles the complete list of members elected and issues an appropriate notification for the due Constitution of the House. With this, the process of elections is complete and the President, in case of the Lok Sabha, and the Governors of the concerned States, in case of the State Legislatures, can then convene their respective Houses to hold their sessions. The entire process takes around 5 to 8 weeks for the national elections, 4 to 5 weeks for separate elections only for Legislative Assemblies.

9.1.18 Candidates in Election

Any Indian citizen who is registered as a voter and is over 25 years of age is allowed to contest elections to the Lok Sabha or State Legislative Assemblies. For the Rajya Sabha the age limit is 30 years.

Every candidate has to make a deposit of ₹10,000/- for Lok Sabha election and ₹5000 for Rajya Sabha or Vidhan Sabha elections, except for candidates from the SC and ST who pay half of these amounts. The deposit is returned if the candidate receives more than one-sixth of the total number of valid votes polled in the constituency. Nominations must be supported at least by one registered elector of the constituency, in the case of a candidate sponsored by a registered party and by ten registered electors from the constituency in the case of other candidates. Returning Officers, appointed by the Election Commission, are put in charge to receive nominations of candidates in each constituency, and oversee the formalities of the election.

9.1.19 Number of Candidates

The number of candidates contesting each election has steadily increased. In the general election of 1952 the average number of candidates in each constituency was 3.8; by 1991 it has risen to 16.3, and in 1996 stood at 25.6.

As it was far too easy for 'frivolous' candidates to stand for election, certain remedial measures were taken in August 1996, which included increasing the size of deposit and increasing the number of people who have to nominate a candidate. The impact of such measures was quite considerable at the elections which were subsequently held. As a result, in 1998 Lok Sabha elections, the number of candidates came down to an average of 8.74 per constituency. In 1999 Lok Sabha elections, it was 8.6, and in 2004 it was 10.

9.1.20 Campaign

The campaign is the period when the political parties put forward their candidates and arguments with which they hope to persuade people to vote for their candidates and parties. Candidates are given a week to put forward their nominations. These are scrutinised by the Returning Officers and if not found to be in order can be rejected after a summary hearing. Valid nominated candidates can withdraw their nominations within two days after their nominations have been scrutinised. The official campaign lasts at least two weeks from the drawing up of the list of nominated candidates, and officially ends 48 hours before polling closes.

During the election campaign, the political parties and contesting candidates are expected to abide by a Model Code of conduct evolved by the Election Commission on the basis of a consensus among political parties. The Model Code lays down broad guidelines as to how the political parties and candidates should conduct themselves during the election campaign. It is intended to maintain the election campaign on healthy lines, avoid clashes and conflicts between political parties or their supporters and ensure peace and order during the campaign period and thereafter, until the results are declared. The Model Code also prescribes guidelines for the ruling party either at the Centre or in the State to ensure that level field is maintained and that no cause is given for any complaint that the ruling party has used its official position for the purposes of its election campaign.

Once an election has been called, parties issue manifestos detailing the programmes they wish to implement if elected to Government, the strengths of their leaders, and the failures of opposing parties and their leaders. Slogans are used to popularise and identify parties and issues, and pamphlets and posters are distributed to the electorate. Rallies and meetings where the candidates try to persuade, cajole and enthuse supporters, and denigrate opponents, are held throughout the constituencies. Personal appeals and promises of reform are made, with candidates travelling the length and breadth of the constituency to try to influence as many potential supporters as possible. Party symbols abound, are printed on posters and placards.

9.1.21 Polling Days

Polling is normally held on a number of different days in different constituencies, to enable the security forces and those monitoring the election to keep law and order and ensure that voting during the election is fair.

9.1.22 Ballot Papers and Symbols

After nomination of candidates is complete, a list of competing candidates is prepared by the Returning Officer, and ballot papers are printed. Ballot papers are printed with the names of the candidates (in languages set by the Election Commission) and the symbols allotted to each of the candidates. Candidates of recognised parties are allotted their party symbols.

9.1.23 Voting

Voting is done by secret ballot. Polling stations are usually set up in public institutions, such as schools and community halls. To enable as many electors as possible to vote, the officials of the Election Commission try to ensure that there is a polling station within 2 km of every voter, and

that no polling stations should have to deal with more than 1500 voters. Each polling station is open for at least 8 hours on the day of the election.

Since 1998, the Commission has increasingly used Electronic Voting Machines instead of ballot boxes. In 2003, all State elections and byelections were held using EVMs. Encouraged by this, the Commission took a historic decision to use only EVMs for the Lok Sabha election due in 2004. More than 1 million EVMs were used in this election.

9.1.24 Political Parties and Elections

Political parties are an established part of modern mass democracy, and the conduct of elections in India is largely dependent on the behaviour of political parties. Although many candidates for Indian elections are independent, the winning candidates for Lok Sabha and Vidhan Sabha elections usually stand as members of political parties, and opinion polls suggest that people tend to vote for a party rather than a particular candidate. Parties offer candidates organisational support, and by offering a broader election campaign, looking at the record of Government and putting forward alternative proposals for government, help voters make a choice about how the Government is run.

9.1.25 Registration with Election Commission

Political parties have to be registered with the Election Commission. The commission determines whether the party is structured and committed to the principles of democracy, secularism and socialism in accordance with the Indian Constitution and would uphold the sovereignty, unity and integrity of India. Parties are expected to hold organisational elections and have a written constitution.

9.1.26 Recognition and Reservation of Symbols

According to certain criteria, set by the Election Commission regarding the length of political activity and success in elections, parties are categorised by the Commission as National or State parties, or simply declared registered – unrecognised parties. How a party is classified determines a party's right to certain privileges, such as access to electoral rolls and provision of time for political broadcasts on the state-owned television and radio stations – All India Radio and Doordarshan – and also the important question of allocation of the party symbol. Party symbols enable illiterate voters to identify the candidate of the party they wish to vote for. National parties are given a symbol that is for their use only, throughout the country. State parties have the sole use of a symbol in the State in which they are recognised as such registered-unrecognised parties can choose a symbol from a list of 'free' symbols.

9.1.27 Limit on Poll Expenses

Amendment in October 2003 has increased expenses limits. For Lok Sabha seats in bigger States, it is ₹25,00,000. In other States and Union territories, it varies between ₹10,00,000 to ₹25,00,000. Similarly, for Assembly seats, in bigger states, it is ₹10,00,000, while in other States and Union Territories, it varies between ₹5,00,000 to ₹10,00,000.

Although supporters of a candidate can spend as much as they like to help out with a campaign, they have to get written permission of the candidate, and whilst parties are allowed to spend as much money on campaigns as they want, recent Supreme Court judgement have said

that, unless a political party can specifically account for money spent during the campaign, it will consider any activities as being funded by the candidates and counting towards their election expenses. The accountability imposed on the candidates and parties has curtailed some of the more extravagant campaigning that was previously a part of Indian elections.

9.1.28 Free Campaign Time on State-Owned Electronic Media

By Election Commission, all recognised National and State parties have been allowed free access to the state-owned electronic media – AIR and Doordarshan – on an extensive scale for their campaigns during elections. The total free time allocated extends over 122 hours on the state-owned television and radio channels. This is allocated equitably by combining a base limit and additional time linked to poll performance of the party.

9.1.29 Splits and Mergers and Anti-Defection Law

Splits, mergers and alliances have frequently disrupted the compositions of political parties. This has led to a number of disputes over which section of a divided party gets to keep the party symbol, and how to classify the resulting parties in terms of national and State parties. The Election Commission has to resolve these disputes, although its decisions can be challenged in the courts.

9.1.30 Election Petitions

Any elector or candidate can file an election petition if he or she thinks there has been malpractice during the election. An election petition is not an ordinary civil suit, but treated as a contest in which the whole constituency is involved. Election petitions are tried by the High Court of the State involved, and if upheld can even lead to the restaging of the election in that constituency.

9.1.31 Election Observers

The Election Commission appoints a large number of observers to ensure that the campaign is conducted fairly, and that people are free to vote as they choose. Observers also keep a check on the amount that each candidate and party spends on the election.

9.1.32 Counting of Votes

After the polling is finished, the votes are counted under the supervision of Returning Officers and Observers appointed by the Election Commission. After the counting of votes is over, the Returning Officer declares the name of the candidate to whom the largest number of votes has been given as the winner, and as having been returned by the constituency to the concerned house.

9.1.33 Media Coverage

In order to bring as much transparency as possible to the electoral process, the media are encouraged and provided with facilities to cover the election, although subject to maintaining the secrecy of the vote. Media persons are given special passes to enter the polling stations to cover the poll process and the counting halls during the actual counting of votes.

9.1.34 Model Code of Conduct

A visible and rigorous enforcement of Model Code of Conduct enhances the credibility of the elections and gives confidence to the stakeholders/voters. It is ensured that official machinery for the electoral purposes is not misused. It is also ensured that electoral offences, malpractices and corrupt practices such as impersonation, bribing and inducement of voters, threat and intimidation to the voters, is prevented by all means. Introduction of photo electoral roll by the Election Commission is expected to play a crucial role in minimising the scope for impersonation.

9.1.35 Vulnerability Mapping

The threat and intimidation to the voters particularly, the voters from vulnerable sections of the society in some parts of the country has been a cause of concern. With a view to meet this challenge, the Commission has recently introduced the system of 'Vulnerability Mapping'. A free and fair election can be conducted only in a conducive atmosphere from the law and order point of view. Hence, it becomes imperative to keep track of the law and order situation during the run up to the election and on the poll day.

9.1.36 Electronic Voting Machines

The Electronic Voting Machine was used universally in all polling stations in the country during the Lok Sabha election 2004. However, the voter awareness about the EVM cannot be taken for granted. It is an endeavour of the Commission to spread the awareness about the EVM among all the voters particularly, in the remote areas and among the new voters. The Commission has introduced the system of randomisation of EVMs for allotment of EVMs to the polling stations and specific responsibility has been given to the Returning Officer. By the system, the first-level checking of EVMs are carried out only by BEL/ECIL Engineers, as the case may be, only at the District Headquarters. At this stage, the EVMs are randomised in the presence of representative of recognised political parties for distribution to Assembly Constituencies. The second randomisation of EVMs for allotting to specific polling stations is done in the presence of candidate or his election agent or authorised representative of the candidate and Election Commission's Observer.

9.1.36.1 Voter Verifiable Paper Audit Trail System (VVPAT)

The Election commission has introduced VVPAT system at selected polling stations and has ordered that a printer with drop box of such design, as may be approved by the Election Commission may also be attached to a voting machine for printing a paper trail of vote, in such constituency or constituencies or parts thereof as the Election commission may direct where printer for paper trail is used, the electors shall be able to view through the transparent window of the printer, the printed paper slip showing the serial number, name and the symbol of the candidate to whom he has cast his vote before such slips gets cut and drops in the drop box of the printer.

9.1.36.2 None of the Above: NOTA

The provision of NOTA option is an expression of decision not to vote for the contesting candidates. The Hon'ble Supreme Court, in its judgments dated 27th September, 2013, in a writ Petition No 161 of 2004 directed that the Commission should make necessary provision in the ballot papers/EVM for 'None of the Above (NOTA)' option so that the electors who do

not wish to vote for any of the candidates can exercise their right not to vote for any candidate without violation of the secrecy of their decision. A ballot panel with the words 'None of the Above: NOTA' will be available after the panel containing the name and particulars of the last candidate on the ballot paper. The electors who do not wish to vote for any of the candidate can exercise their right not to vote for any candidate without violation of the secrecy of their decision. For example, if there are 15 candidates contesting the election, the words 'None of the Above' shall be written on the 16th panel and the ballot button against such 16th panel shall also be kept open.

9.2 THE ELECTION COMMISSION OF INDIA – POWERS AND FUNCTIONS

9.2.1 Constitutional Body

India is a socialist, secular, democratic republic and the largest democracy in the world. The modern Indian nation State came into existence on 15th August 1947. Since then free and fair elections have been held at regular intervals as per the principles enshrined in the Constitution, Electoral Laws and System.

The Constitution of India has vested in the Election Commission of India the superintendence, direction and control of the entire process for conduct of elections to Parliament and Legislature of every State and to the offices of President and Vice President of India.

Election Commission of India is a permanent Constitutional body. The Election Commission was established in accordance with the Constitution on 25th January 1950. The commission celebrated its Golden Jubilee in 2001.

Originally the commission had only a Chief Election Commissioner. It currently consists of Chief Election Commissioners and two Election Commissioners.

For the first time two additional Commissioners were appointed on 16th October, 1989 but they had a very short tenure till 1st January, 1990. Later, on 1st October, 1993 two additional Election Commissioners were appointed. The concept of multi-member Commission has been in operation since then, with decision-making power by majority vote.

9.2.2 Appointment and Tenure of Commissioners

The President appoints Chief Election Commissioner and election Commissioners. They have tenure of six years, or up to the age of 65 years, whichever is earlier. They enjoy the same status and receive salary and perks as available to Judges of the Supreme Court of India. The Chief Election Commissioner can be removed from office only through impeachment by Parliament.

9.2.3 Transaction of Business

The Commission transacts its business by holding regular meetings and also by circulation of papers. All Election Commissioners have equal say in the decision making of the Commission. The commission, from time to time, delegates some of its executive functions to its officers in its Secretariat

9.2.4 Setup

The Commission has a separate Secretariat at New Delhi, consisting about 300 officials, in a hierarchical setup.

Two or three Deputy Election Commissioners who are the senior most officers in the Secretariat assist the Commission. They are generally appointed from the National Civil Service of the country and are selected and appointed by the Commission with tenure. Directors, Principal Secretaries, and Secretaries, Under Secretaries and Deputy Directors support the Deputy Election Commissioners in turn. There is a functional and territorial distribution of work in the Commission.

The work is organised in Divisions, Branches and sections; each of the last mentioned units is in charge of a Section Officer. The main functional divisions are Planning, Judicial, Administration, information Systems, Media and Secretariat Coordination. The territorial work is distributed among separate units responsible for different zones into which the 35 constituent States and Union Territories of the country are grouped for convenient management.

At the State level, the election work is supervised, subject to overall superintendence, direction and control of the Commission, by the Chief Electoral Officer of the State, who is appointed by the Commission from amongst senior civil servants proposed by the concerned State Government. He is, in most of the States, a full-time officer and has a small team of supporting staff.

At the district and constituency levels, the district Election Officers, Electoral Registration Officers and Returning Officers, who are assisted by a large number of junior functionaries, perform election work. They all perform their functions relating to elections in addition to their other responsibilities. During election time, however, they are available to the Commission, more or less, on a full-time basis.

The gigantic task force for conducting a countrywide general election consists of nearly five million polling personnel and civil police forces. This huge election machinery is deemed to be on deputation to the Election Commission and is subject to its control, superintendence and discipline during the election period, extending over a period of one and half to two months.

9.2.5 Budget and Expenditure

The Secretariat of the Commission has an independent budget, which is finalised directly in consultation between the commission and the Finance Ministry of the Union Government. The latter generally accepts the recommendation of the Commission for its budgets. The major expenditure on actual conduct of elections is, however, reflected in the budgets of the concerned constituent units of the Union, States and Union Territories. If elections are being held only for the Parliament, the expenditure is borne entirely by the Union Government while for the elections being held only for the State Legislature, the expenditure is borne entirely by the concerned State. In case of simultaneous elections to the Parliament and State Legislature, the expenditure is shared equally between the Union and the State Governments. For capital equipment, expenditure related to preparation for electoral rolls and the scheme for Electors Identity Cards too, the expenditure is shared equally.

9.2.6 Executive Interference Barred

In the performance of its functions, Election Commission is insulated from executive interference. It is the commission which decides the election schedules for the conduct of elections, whether general elections or byelections. Again, it is the commission which decides on the location of polling stations, assignment of voters to the polling stations, location of counting centres, arrangements to be made in and around polling stations and counting centres and all allied matters.

9.2.7 Political Parties and the Commission

Political parties are registered with the Election Commission under the law. The Commission ensures inner party democracy in their functioning by insisting upon them to hold better organisational elections at periodic intervals. Political parties so registered with it are granted recognition at the State and National levels by the Election Commission on the basis of their poll performance at general elections according to criteria prescribed by it. The Commission, as a part of its quasi-judicial jurisdiction, also settles disputes between the splinter groups of such recognised parties.

Election Commission ensures a level playing field for the political parties in election fray, through strict observance by them of a Model Code of Conduct evolved with the consensus of political parties.

The commission holds periodical consultations with the political parties on matters related to the conduct of elections, compliance of Model Code of Conduct and new measures proposed to be introduced by the Commission on election-related matters.

9.2.8 Advisory Jurisdiction and Quasi-Judicial Functions

Under the Constitution, the Commission also has advisory jurisdiction in the matter of post-election disqualification of sitting members of Parliament and State Legislatures. Further, the cases of persons found guilty of corrupt practices at elections which come before the Supreme Court and High Courts are also referred to the Commission for its opinion on the question as to whether such person shall be disqualified and, if so, for what period. The opinion of the Commission in all such matters is binding on the President or, as the case may be the Governor to whom such opinion is tendered.

The Commission has the power to disqualify a candidate who has failed to lodge an account of his election expenses within the time and in the manner prescribed by law. The Commission also has the power for removing or reducing the period of such disqualification under the law.

9.2.9 Judicial Review

The decisions of the Commission can be challenged in the High Court and the Supreme Court of the India by appropriate petitions. By long standing convention and several judicial pronouncements, once the actual process of elections has started, the judiciary does not intervene in the actual conduct of the polls. Once the polls are completed and result declared, the commission cannot review any result on its own. This can only be reviewed through the process of an election petition, which can be filed before the High Court, in respect of elections to the Parliament and State Legislatures. In respect of elections for the offices of the President and Vice President, such petitions can only be filed before the Supreme Court.

9.2.10 Media Policy

The Commission has a comprehensive policy for the media. It holds regular briefings for the mass media – print and electronic – on a regular basis, at close intervals during the election period and on specific occasions as necessary on other occasions. The representatives of the media are also provided facilities to report on actual conduct of poll and counting.

They are allowed entry into polling stations and counting centres on the basis of international and national media. The Commission also publishes statistical reports and other

documents which are available for research and study to members of the academic fraternity; media representatives and anybody else interested.

The Commission has, in cooperation with the State owned media – Doordarshan and All India radio – taken up a major campaign for awareness of voters. The Prasar Bharti Corporation which manages the national Radio and Television networks, has brought out several innovative and effective short clips for this purpose.

9.2.11 International Cooperation

India is a founding member of the International Institute for Democracy and Electoral Assistance (IDEA) Stockholm, Sweden. In the recent past, the Commission has expanded international contacts by way of sharing of experience and expertise in the areas of Electoral Management and Administration, Electoral Laws and Reforms. Election Officials from the national electoral bodies and other delegates from the several countries – Russia, Sri Lanka, Nepal, Indonesia, South Africa, Bangladesh, Thailand, Nigeria, Namibia, Bhutan, Australia, the United States and Afghanistan etc. – have visited the Commission for a better understanding of the Indian Electoral Process. The Commission has also provided experts and observers for elections to other countries in cooperation with the United Nations and the Commonwealth Secretariat.

9.2.12 New Initiatives

The Commission has taken several new initiatives in the recent past. Notable among these are, a scheme for use of state-owned electronic media for broadcast/telecast by political parties, checking criminalisation of politics, computerisation of electoral rolls, providing electors with Identity cards, simplifying the procedure for maintenance of accounts and filling of the same by candidates and a variety of measures for a strict compliance of Model Code of Conduct, for providing a level playing field to contestants during the elections.

9.3 THE REPRESENTATION OF PEOPLE ACT – AN INTRODUCTION

In modern times, unless otherwise indicated, the word democracy stands for representative democracy, a practice whereby the people choose their *representatives*, who conducts the government on behalf of their electorates, the people. If people choose their representatives and vest (if nor surrender) with them their power, then how to ensure that they would stay moral and represent the genuine interests of the people?

‘And the people always put forward a single champion of their interests, whom they nurse to greatness. Here, plainly enough, is the root from which despotism invariably springs’, Plato warned us so in his *Republic* which he wrote around 380 BC. The reader by now might have got an assumption that the modern representative democracies must have devised some mechanism to ensure that such champions of peoples interest remain great, and if they fail in their greatness, they would be deprived of their power. Undoubtedly, the world’s largest democracy has its own mechanism to make certain this idea.

It comes to us in the form of Constitutional provisions, the Representation of People’s Act 1950 and the Representation of People’s Act 1951. The two acts stand today along with several amendments and a wide array of healthy and active judicial interpretations. Together they serve as the guardian of our representative democracy and electoral politics. What are such provisions of

Constitution and these two Acts dealing with the representatives and electorates? Whether these provisions had prevented the Plato-warned-not-so-great personalities from entering the Parliament or State Legislatures? Or even if they have entered whether they have been disqualified promptly? Had the electors played their part in keeping Indian democracy healthy? These questions, in the same order, would remain as the guiding force for both the author and the reader, the active citizens of the Indian democracy, in their respective attempts of exploring and understanding.

9.4 BACKGROUND OF THE REPRESENTATION OF PEOPLE'S ACTS

The Constitution when came into force, contained certain articles which laid down the basic fundamental details regarding peoples representatives, elections and the election machinery. As they themselves would not be sufficient, the articles empowered the Parliament to enact laws to supplement them. As the reader knows, since independence on 15th August, 1947, the Constituent Assembly functioned as the Provisional Parliament. Part XXI of the Constitution contained the translational provisions. It empowered the Provisional Parliament to make legislations. The first general election to the Indian Parliament was to be held once the Constitution gets ready. This necessitated the Provisional Parliament to make an act to govern the election. Accordingly the Provisional Parliament enacted two acts in succession, '*The Representation of the People's Act 1950*' and '*The Representation of the People's Act 1951*', before the first general election which was held from October 1951 to March 1952. Governance is a dynamic process which has to keep pace with the changing aspirations and needs of the society. Accordingly the Act was amended several times (the latest one being 2010) to incorporate and repeal certain provisions.

9.5 AN OVERVIEW OF THE REPRESENTATION OF PEOPLE'S ACTS 1950 AND 1951

Representation of People's Act 1950

This Act contains 32 Sections in 8 Parts

PART I (Sec. 1 and 2)	• Gives the title and definitions
PART II (Sec. 3 to 13)	• Provides for allocation of seats and delimitation of Constituencies in the Lok Sabha and the State Legislative Assemblies and Councils
PART IIA (Sec. 13A to 13CC)	• Details the officers connected with the preparation of Electoral Rolls
PART IIB (Sec. 13D)	• Provides for Electoral Rolls of Parliamentary Constituencies
PART III (Sec. 14 to 25A)	• Provides for Electoral Rolls for Assembly Constituencies
PART IV (Sec. 27)	• Provides for Electoral Roll for Council Constituencies
PART IVA (Sec. 27A to 27K)	• Provides for the manner of filling seats in the Council of States
PART V (Sec. 28 to 32)	• Gives general provisions with regard to the jurisdiction of Civil Courts; making available staff from local authorities, etc.

Along with the above Parts, the Act has got four Schedules. They are,

- The First Schedule – Allocation of seats in the House of the People.
- The Second Schedule – Total number of seats in the Legislative Assemblies.

- The Third Schedule – Allocation of seats in the Legislative Councils.
- The Fourth Schedule – Local authorities for purposes of elections to Legislative Councils.

Representation of People's Act 1951

This Act contains 171 Sections in 13 Parts

PART I (Sec. 1 and 2)	• Preliminary
PART II (Sec 3-I IB)	• Qualifications and Disqualifications
PART III (Sec 12-16)	• Notification of General Elections
PART IV (Sec 19-29)	• Administrative Machinery for Conduct of Elections
PART IV A (Sec 29A-29C)	• Registration of Political Parties
PART V (Sec 30-78)	• Conduct of Elections • Free Supply of Certain Material to Candidates of Recognised
PART V A (Sec 78A-78B)	• Political Parties
Part VI (Sec 79-122)	• Disputes Regarding Elections
Part VII (Sec 123-138)	• Corrupt Practices and Electoral Offences
Part VIII (Sec 139-146C)	• Disqualifications
Part IX (Sec 147-151A)	• Byelections
Part X (Sec 152-168)	• Miscellaneous
Part XI (Sec 169-171)	• General

While the provisions of Parts II A, II B, III and IV of RP Act 1950 and Parts II, VI, VII and VIII of RP Act 1951 and the issues emerged out of them would be the subject matter of this unit, the remaining Parts would be discussed under the next unit, '*Constitutional Provisions and Representation of the People Act II– Election Machinery, Elections and Electoral Reforms*'.

9.6 IMPORTANT PROVISIONS OF REPRESENTATION OF PEOPLE'S ACTS 1950 AND 1951

The Representation of People's Acts have a number of significant provisions which deals with the election process. The Parliament framed these rules in order to effectively conduct the elections in the country. The following are some of the important provisions in the Act, and by studying this we would be able to analyse various problems and issues associated with it.

9.6.1 Qualifications of Elected Representatives of People in Parliament and Assembly (RP Act, 1951)

The Representative of People Act talks about the qualification of persons who can contest the election. Apart from the Act, the Constitution also contains provisions regarding the qualification of person contesting the elections. The qualifications are provided under the Articles 84 and 173 of the Constitution.

Constitutional Provisions: A person shall not be qualified to be chosen to fill a seat in Parliament unless

- a. He is a citizen of India.
- b. As per the Third Schedule, he makes and subscribes oath or affirmation before some person authorised by the Election Commission
- c. He is not less than 25 years of age with regard to lower house – Lok Sabha not less than 30 years with regard to the Council of States – Rajya Sabha.
- d. He is not less than 25 years of age with regard to lower house – Legislative Assembly, not less than 30 years with regard to the Legislative Council.
- e. He possesses other such qualifications as prescribed under any law made by the Parliament.

Provisions for Qualifications under the Representative of People's Act 1951:

- a. A person is not qualified to be chosen as representative in the State assembly or council unless he is an elector.
- b. A person shall not be qualified to be chosen to fill a seat in the **House of the People** unless
 - (i) In the case of a seat reserved for the Scheduled Castes in any State, he is a member of any of the Scheduled Castes and is an elector for any Parliamentary constituency in the State.
 - (ii) In the case of a seat reserved for the Scheduled Tribes in any State (other than those in the autonomous districts of Assam), he is a member of any of the Scheduled Tribes, whether of that State or of any other State (excluding the tribal areas of Assam), and is an elector for any Parliamentary constituency.
 - (iii) In the case of a seat reserved for the Scheduled Tribes in the autonomous districts of Assam or in the Union territory of Lakshadweep, a person has to satisfy two conditions. One, he should be a member of any of those Scheduled Tribes and two, he should be an elector for the Parliamentary constituency in that autonomous district or the Union Territory, respectively.
 - (iv) In the case of the seat allotted to the State of Sikkim, he is an elector for the Parliamentary constituency for Sikkim.
 - (v) In the case of any other seat, he is an elector for any Parliamentary constituency.
- c. A person shall not be qualified to be chosen to fill a seat in the **Legislative Assembly of a State** unless
 - (i) 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, and is an elector for any Assembly constituency in that State.
 - (ii) In the case of a seat reserved for an autonomous district of Assam, he is a member of a Scheduled Tribe of any autonomous district and is an elector for the Assembly constituency in which such seat or any other seat is reserved for that district.
 - (iii) In the case of any other seat, he is an elector for any Assembly constituency in that state.

- d. A person shall not be qualified to be chosen to fill a seat in the **Legislative Council of a State** unless
 - (i) He is an elector for any Assembly constituency in that state.
 - (ii) He is ordinarily a resident of the State.

9.6.2 Disqualifications of an Elected Representative of People in Parliament and Assembly (RP Act 1951)

The following are the provisions regarding disqualification of a member as provided in the Constitution and the Representative of People's Act. The Articles 102 and 191 in the Constitution of India talk about these provisions of disqualification. The Constitution now also lays down an additional disqualification on the ground of 'defection', but it is relevant only for sitting members of Parliament and state legislatures for continuing as such member. Part 102(2) and 191(2) read with the Tenth Schedule to the Constitution].

Constitutional Provisions: A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament or State Legislature

- a. If he holds any office of profit under the Government of India or the Government of any State, other than those office declared by Parliament by law (a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that he is a Minister either for the Union or for such State).
- b. If he is of unsound mind and declared so by a competent court.
- c. If he is an undischarged insolvent.
- d. If he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or has acknowledged allegiance or adherence to a foreign state.
- e. If he is so disqualified by/under any law made by the Parliament.
- f. A person shall be disqualified for being a member of either House of Parliament or the Legislative Assembly or Legislative Council of a State if he is so disqualified under the Tenth Schedule – Anti-defection law.

Provisions for Disqualifications under the RP Act 1951:

These disqualifications have been presently prescribed by the Parliament in chapter III of Part II of the 1951 Act, containing Sections 7 to 11 thereof. These disqualifications are:

- a. Disqualification on conviction for certain offences (S 8);
- b. Disqualification on ground of commission of corrupt practices (S 8A);
- c. Disqualification for dismissal from government service for corruption or disloyalty (S 9);
- d. Disqualification for contract with 'appropriate government' (S 9A);
- e. Disqualification for holding office under government company (S 10); and
- f. Disqualification for failure to lodge account of election expenses (S 10A).

'Disqualification' is defined in Section 7(b) to mean disqualification 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.

'Appropriate government' is defined in Section 7(a) to mean in relation to any disqualification for membership of Parliament, the Central Government, and in relation to any disqualification for membership of a state legislature, the government of the state concerned.

(a) Disqualification on Conviction for Certain Offences

Object of the provision: Conviction for certain offences—electoral, economic or criminal—has been considered by the Parliament a sufficient ground for disqualification of the convicted person for membership of Parliament and of state legislatures (**Section 8, 1951 Act**). The Supreme Court has observed in *K Prabhakaran v P Jayarajan*, that the purpose of enacting disqualification under **Section 8**: ‘.... is to prevent criminalisation of politics. Those who break the law should not make the law’.

Classification of offences: Parliament has classified offences under Section 8 into three categories having regard to the nature and gravity of those offences.

The first category of offences is listed out in S8 (1), where the mere conviction itself, without reference to any quantum of punishment therefore, attracts disqualification. These offences are:

- a. Section 153 A – (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 171 E (offence of bribery) or Section 171 F (offence of undue influence or personation at an election) or sub-section (1) or sub-section (2) of section 376 or Sec 376A or Sec 376B or Sec 376C or Sec 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 1860;
- b. The protection of Civil Rights Act 1955, which provides for punishment for the preaching and practice of ‘untouchability’, and for the enforcement of any disability arising there from;
- c. Section 11 (offence of importing or exporting prohibited goods) of the Customs Act 1962;
- 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;
- e. The Foreign Exchange (Regulation) Act 1973;
- f. The Narcotic Drugs and Psychotropic Substances Act 1985;
- g. Section 3 (offence of committing terrorist acts) or Section 4 (offence of committing disrupting activities) of the Terrorist and Disruptive Activities (Prevention) Act 1987;
- h. Section 7 (offence of contravention of the provisions of Sections 3 to 6) of the Religious Institutions (Prevention of Misuse) Act 1988;
- 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 cl (a) of sub-Section (2) of Section 136 (offence of fraudulently defacing or fraudulently destroying any nomination paper) of the Representation of the People Act 1951;
- j. Section 6 (offence of conversion of a place of worship) of the Places of Worship (Special Provisions) Act 1991;

- 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;
- l. The Commission of Sati (Prevention) Act 1987;
- m. The Prevention of Corruption Act 1988;
- n. The Prevention of Terrorism Act 2002

The disqualification under this Section 8(1) is for a period of six years from the date of conviction where the convicted person is sentenced to fine only. Where, however, the convicted person is sentenced to imprisonment for any period, he shall be disqualified from the date of conviction and shall continue to be disqualified for a further period of six years since his release.

The second category of offences listed in **Section 8(2)** relate to **hoarding or adulteration of food or drugs or dowry**, where the conviction coupled with a sentence of imprisonment for not less than six months invites disqualification. The resultant disqualification runs during the period of sentence of imprisonment and for a further period of six years from the release.

The third category in **Section 8(3)** includes all other offences for which a person is convicted and sentenced to imprisonment for not less than two years. Here also, the disqualification is operative during the period of sentence of imprisonment and for a further period of six years from his release.

(b) **Section 8(4) of the RP Act 1951**

Other than the above-mentioned offences, **Section 8(4)** of the RP Act 1951 says that, if a person convicted of any offence and sentenced to imprisonment for not less than two years in any other case 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. But in this case if the convicted person makes an appeal to a higher court against the verdict given in the lower court within a period of three months of the lower court's conviction then he can continue to be a member until the appeal is disposed in the higher court. (One has to note here that on 10th July, 2013, in the *Lilly Thomas v. Union of India* Case, the Supreme Court has struck down this provision as unconstitutional and hence void. This would be discussed later under '*Judiciary and RP Act—A Savior for Cleansing Electoral Politics*'))

(c) **Disqualification for Dismissal from Government Service for Corruption or Disloyalty**

Dismissal for corruption or disloyalty – A government servant dismissed for corruption or for disloyalty to the state shall be disqualified for five years from the date of such dismissal [**Section 9(1), 1951 Act**]. The words 'corruption' and 'disloyalty to the state' have not been defined in the 1951 – Act, and these words will have to take their respective meanings from other relevant laws, like the Prevention of Corruption Act 1988 and the Indian Penal Code 1860.

If during the period of five years since dismissal, any dismissed government servant wishes to contest an election, he has to produce a certificate from the Election Commission that he has not been dismissed for corruption or disloyalty to the state and such certificate by the Election commission shall be conclusive of the fact [**Section 9(2), 1951 Act**]. Such certificate has to be annexed to the nomination paper itself and in the absence of such certificate accompanying a nomination paper, the candidate shall not be deemed to be duly nominated and his nomination shall be liable to be rejected on this ground alone [s 33(3), 1951 Act].

(d) **Disqualification for Contracts with Government**

Disqualification for contracts, underlying object – A contract by a person with the government may also disqualify him for membership of Parliament and of state legislatures [**Section**

9A, 1951 – Act]. The underlying intention here also is to ensure that there is no conflict between public duty and private interests.

Contracts which disqualify – But it is not every contract with the government which attracts disqualification. Only specified types of contracts entail disqualification. Under the present law, a person shall be disqualified by reason of a contract with the government if: (a) the contract has been entered into by him in the course of his trade or business; (b) the contract is for the supply of goods to, or for the execution of any works undertaken by, the government; (c) the contract is with the appropriate government; and (d) the contract is still subsisting.

(e) Disqualification for Holding Office under Government Company

Only specified offices to attract disqualification – While dealing with the question of disqualification on holding an office of profit, it has been mentioned that, according to the tests laid down by the Supreme Court for determining the question whether an office shall entail disqualification, the employees of government companies, corporations and undertakings shall normally not attract the disqualification for the purpose under the Constitution. However, it is provided by Parliament that if a person is holding the office of a: (i) managing agent; (ii) manager; or (iii) secretary of any company or corporation (other than a cooperative society) in the capital of which the appropriate government has not less than 25% shares, such person shall also be disqualified (s 10, 1951 Act). It, however, deserves to be noted that the disqualification shall be attracted only by the persons holding the above-mentioned offices and not by the other employees of such government companies or corporations. Further, all cooperative societies also fall outside the purview of this disqualificatory provision. No definition of managing agent, manager or secretary has been provided in the 1951 Act, and these offices may derive their meanings from the Companies Act 1956.

A clerk in the Coal India Ltd., a government company, was not held to be holding the office of Manager though he occasionally performed some supervisor function. A Khalasi or meter reader holding a non-executive post in Bokaro Steel Plant, a government company, was also held not to be disqualified within the meaning of **Section 10** of the 1951 Act or art 191 (1) (a) of the Constitution.

(f) Disqualification for Failure to Lodge Account of Election Expenses

Disqualification for failure without good reason or justification – Every candidate at an election to the House of the People or to a state legislative assembly has to keep and maintain a separate account of his election expenses incurred or authorised by him or by his election agent between the date on which he has been nominated as such candidate and the date of declaration of result of the election, both dates inclusive [**Section 77(1), 1951 Act**]. The law further requires that every contesting candidate shall lodge a true copy of the account of his election expenses with the district election officer of the district in which his constituency falls, within a period of 30 days from the date of declaration of result of the election (**Section 76**).

Rule 86 of the 1961 Rules prescribes that the account should be maintained from day to day and should show the particulars mentioned in that rule. In order to ensure that the candidates maintain their accounts in the manner required, the Election Commission has now devised a register in which such account is to be maintained by every candidate. It is supplied by the returning officer to each candidate as soon as he files his nomination paper. After the election, this very register is now required to be submitted by the candidate to the district election officer, along with some abstract statements showing the details of his expenditure under various heads and sub-heads. The account of expenditure may be maintained in English, Hindi or any local language in which the electoral roll is printed.

If a candidate fails to lodge the account of his election expenses within the time and in the manner required, he shall be disqualified by the Election Commission, if he has no good reason or justification for his failure (**Section 10A**). Such disqualification shall be operative for a period of three years from the date of order of the Election Commission so disqualifying him.

(g) Disqualification on Ground of Commission of Corrupt Practices

Apart from the above conditions, *a candidate contesting in an election* shall be disqualified on account of '**corrupt practices**' made by him during and in election. There are some corrupt practices which are provided in the IPC, but these are general in nature and relate to all elections held under any law to any elective body. The provisions under the Representative of People's Act, 1951, is applicable only to the elections held to the State legislature and the Parliament, it does not cover other elections including to that of the office of President and Vice President.

In cases of corrupt practices, whether it is committed by the candidate or any person authorised by the candidate, it has the effect of vitiating the whole election and the whole constituency suffers as it would have to face re-election. Hence, the person committing such acts suffers from criminal liability.

Any such corrupt practices can be dealt by means of an election petition, and only when the said election is over in accordance with the provisions under Article 329 of Constitution of India.

If the high court in the trial of an election petition, or the Supreme Court on appeal, finds a person guilty of commission of corrupt practice, it names him so by an order under **Section 99** of the 1951 Act. Such guilty person may invite disqualification for contesting elections in future to Parliament and state legislatures [**Section 8A (1), 1951 Act**], for six years from the date the order of the court, finding him guilty takes effect [proviso to **Section 8A (1)**].

The person so found guilty of commission of corrupt practice under **Section 99** may not necessarily be a candidate at the election. He can even be a third person.

The question whether such a person should be disqualified and, if so, for what period, is determined by the President. Before giving his decision in the matter, the President is required to obtain the opinion of the Election Commission and he is bound to act according to such opinion [**Section 8A (3)**].

Meaning of corrupt practice – The term 'corrupt practice' here means only the corrupt practices as defined in **Section 123** of the 1951 Act, and not any other irregularity or malpractice at an election.

According to Section 123 of the Act, the following are the 'corrupt practices' done by a candidate.

- a. **Bribery** – providing any gift, offer of promise or of any gratification with the object of influencing the voter to vote or to stop from voting; to a candidate to withdraw from contesting.
- b. **Undue influence** – any direct or indirect interference or attempt to interfere with the free exercise of any electoral right, by threatening any candidate or any elector with physical injury and social ostracism, or ex-communication or expulsion from any caste or community.
- c. The appeal 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.
- d. 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.

- e. The propagation of the practice or the commission of sati or its glorification by a candidate.
- f. The publication by a candidate of any statement of fact which is false in relation to the personal character or conduct of any other candidate.
- g. The obtaining of any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, from any person in the Government service.
- h. Booth capturing by a candidate or his agent or other person (inserted in 1989).

But here in this '*corrupt practices*' matter, the procedure for disqualification is different from that of others specified under para 1 to 7. Let us see what is the procedure for it? First, regarding corrupt practices done by a candidate who contests in election, it has to be challenged in the High Court under whose jurisdiction the offence takes place. It cannot be challenged through an ordinary case but only through an electoral petition. What does an electoral petition mean? The Act defines it as a petition calling in question any election presented to the High Court *by any candidate at such election or any elector* within 45 days from the date of election of the returned candidate. The High Court may reject the petition if it does not comply with the provisions of the Act. Or as soon as after an election petition has been presented to the High Court, it shall be referred to the Judge/Judges who has/have been assigned by the Chief Justice for the trial of election petitions. The Act says, '*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. 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*'. The High court may declare the election of all or any of the returned candidates to be void and even has the power to declare in its order that the petitioner or any other candidate to have been duly elected. But one has to note here that the order of the High Court alone cannot disqualify the person. It can only declare that particular election to be void. The person can be disqualified to stand in further elections only by the President of India. But before taking any decision on that matter, the President has to act in accordance with the advice given by the Election Commission. So in the analysis, one could see that in the ultimate, the Election Commission wields power with respect to disqualifying a representative on the grounds of 'corrupt practices'.

9.6.3 Registration of Political Parties

Part IV A, Section 29A of The Representation of the People Act, 1951 empowers the Election Commission of India to register associations and bodies as political parties. All such associations or political parties in their Memorandum of the Rules should 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 and the decision taken by the Commission shall be final.

There are many benefits of registering a party. First, the Representation of People's Act allows political parties to accept contributions voluntarily offered to it by any person or company other than a government company. Apart from this, candidates of registered parties get preference in allotment of election symbols. Other candidates are identified as independents and do not get preference in symbol allocation.

Registered political parties, in course of time, can get recognition as 'State Party' or 'National Party' subject to the **fulfilment of the conditions prescribed by the Commission in the Election Symbols (Reservation and Allotment) Order, 1968**, as amended from time to time.

If a party is recognised as a 'State Party', it is entitled for exclusive allotment of its reserved symbol to the candidates set up by it in the state in which it is so recognised, and if a party is recognised as a 'National Party' it is entitled for exclusive allotment of its reserved symbol to the candidates set up by it throughout India. Recognised 'State' and 'National' parties need only one proposer for filing the nomination and are also entitled for two sets of electoral rolls free of cost at the time of revision of rolls and their candidates get one copy of electoral roll free of cost during General Elections. Further they get broadcast/telecast facilities over Akashvani/Doordarshan during general elections. Political parties are entitled to nominate 'Star Campaigners' during General Elections. A recognised National or State party can have a maximum of 40 'Star campaigners' and a registered un-recognised party can nominate a maximum of 20 'Star Campaigners'. The travel expenses of star campaigners are not to be accounted for in the election expense accounts of candidates of their party.

The registered Political party has to keep the commission duly informed of any change in its name, head office, office bearers, address or any other matters.

A political party shall be treated as a recognised political party in a State, if and only if the political party fulfils any of the following conditions:

- At General Elections or Legislative Assembly elections, the party has won 3% of seats in the legislative assembly of the State (subject to a minimum of 3 seats).
- At a Lok Sabha General Elections, the party has won 1 Lok Sabha seat for every 25 Lok Sabha seats allotted for the State.
- At a General Election to Lok Sabha or Legislative Assembly, the party has polled minimum of 6% of votes in a State and in addition it has won 1 Lok Sabha or 2 Legislative Assembly seats.
- At a General Election to Lok Sabha or Legislative Assembly, the party has polled 8% of votes in a State.

Similarly, a political party shall be treated as a recognised national party, if and only if the political party fulfils any of the following conditions:

- The party wins 2% of seats in the Lok Sabha (11 seats) from at least three different states.
- At a General Election to Lok Sabha or Legislative Assembly, the party polls 6% of votes in four states and in addition it wins 4 Lok Sabha seats.
- A party gets recognition as a State Party in four or more states.

Both national and state parties have to fulfil these conditions for all subsequent Lok Sabha or State elections. Else, they lose their status.

9.6.4 Election Petitions

Part VI of RPA, 1951 deals with the disputes regarding the elections and provides for the manner of presentation of election petitions, their trial and procedure. **Section 80 of RPA, 1951** provides that, 'No election shall be called in question except by an election petition presented in accordance with the provisions of this part'. The power is given to High Court to try these

matters. Thus, the High Court of the particular state has the original jurisdiction to deal with such matters related to the election.

An election petition is a procedure for inquiring into the validity of the election results of Parliamentary or local government elections. In other words, it is a means under law to challenge the election of a candidate in a Parliamentary, Assembly or local election. It can be filed by any candidate, or an elector relating to the election personally, to the authorised officer of the High Court. It shall be filed within the time period of 45 days from the date of declaration of results.

The grounds for filing the election petition are given under Section 100 of the RPA. The election of a particular candidate can be declared void under section 100 of the Representation of People Act, 1951, if the High Court is of the opinion that

- a. On the date of his election a returned candidate was not qualified or was disqualified to be chosen to fill the seat.
- b. 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.
- c. the nomination has been improperly accepted.
- d. any improper reception, refusal or rejection of any vote or the reception of any vote which is void is done.
- e. the candidate has not complied with the provisions of the Constitution or RPA or any rules or orders made under this act.

When many election petitions 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. The Representation of Peoples Act recommends that every election petition shall be tried as expeditiously as possible and as far as practicable for the interests of justice. Every endeavour, its suggests, should be made on the part of the High Court to conclude a trial for an election petition within six months from the date on which the election petition was presented to the High Court for trial. And when the election of a candidate is declared void, any of his acts or proceedings in which that candidate has participated as a Member of Parliament or State Legislature, 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.

9.6.5 Delimitation of Constituencies

The concept of delimitation involves not only demarcation or redrawing of boundaries of the territorial constituencies, but also adjustments in the allocation of seats to various states in the Lok Sabha and in the legislative assembly of the State.

The basic objective of the delimitation is to secure an equal representation for equal segments of the population in legislative bodies.

Principles of Delimitation laid down by The Constitution of India

- Constitution mandates that Delimitation of constituencies as determined by the authority, which was entrusted with the task, should be final and there should not be any intervention by any authority. This has been provided in the **Article 329 (a)** of the Indian Constitution.

- The constitution provided that, upon the completion of each census, the representation of several territorial constituencies in the house of people and legislative assembly of each state shall be, as parliament may by law determined (Article 81 (3) and 174) but Constitution was silent on who should undertake the initial territorial divisions. This gap has been filled by Representation of People Act, 1950.
- As per the constitutional mandate, delimitation has been done after every census.
- After the 1951 census, delimitation became due in all the states, Election Commission recommended to the government that the future delimitation of constituencies should be made by an independent commission and the decisions of such commission should be made final in law.

The government accepted their suggestion of the Election Commission and accordingly provided for the constitution of an independent Delimitation commission under the Delimitation Commission Act, 1952.

It has been done successively after the decennial censuses of 1961 and 1971. The **forty second Amendment Act, 1976** freezed the number of seats allocated to various states in the house of people, the total number of seats in the various state legislative assemblies and the extent of all parliamentary and assembly constituencies until the next census taken after the year 2000.

The **Constitution (Eighty Fourth Amendment) Act 2001**, provided that the number of seats allocated to various states in the house of people and the total number of seats in the state legislative assemblies, as determined on the basis of 1971 census, would remain further frozen till the **year 2026**. But that eighty fourth constitutional amendment further provided that all parliamentary and assembly constituencies in the country would be delimited afresh on the basis of 1991 census. Subsequently delimitation without increasing the number of seats has been done.

Authority to Delimit Council Constituencies

The power to delimit council constituencies is vested with the President. The President makes the order delimiting council constituencies on the basis of recommendation of Election Commission.

The procedure laid down in **section 13 of the Representation of the People Act, 1950**, was followed in delimiting the constituencies in 1951. In actual experience it was found that the procedure did not work very smoothly or satisfactorily. In particular, sub-section (3) of that section made the Delimitation Orders issued by the President subject to amendments by the Parliament and many of them were in fact materially amended by the Parliament.

The Election Commission recommended to the Government accordingly that future delimitation of constituencies should be made by an independent body, more or less judicial in composition and that the scheme of delimitation worked out by it should be made final in law. This recommendation was accepted and the Delimitation Commission Act, 1952 (Act 81 of 1952) was enacted by the Parliament. Under this Act, a Commission is required to be constituted for readjusting the representation of the territorial constituencies of the House of the People and the Legislative Assembly of each State, other than Jammu and Kashmir, and delimiting these constituencies. The Commission is to consist of three members, two of the members being serving or retired Judges of the Supreme Court or High Courts, while the third member is to be the Chief Election Commissioner ex-officio. The Commission that was eventually set up had a retired Judge of the Supreme Court as its Chairman and a retired Chief Justice of a High Court as the second member. The law provides that in the performance of its duties, the Commission

is to be assisted by two to seven associate members for each State drawn from the members of the House of the People representing the State and of the Legislative Assembly of the State. The associate members were appointed by the Speaker of the House of which they were members. In making these appointments due regard was paid by the Speaker to the composition of the House. The associate members were not given the right to vote or to sign any decision of the Commission. In the case of the three Part 'C' States — Kutch, Manipur and Tripura which had no Legislative Assemblies, the two members of the House of the People representing each of the States were appointed as the associate members for the State.

All decisions were taken by the Delimitation Commission after consultation with the associate members. In case of any difference of opinion amongst the members of the Commission, the opinion of the majority prevailed.

The Delimitation Commission Act laid down the procedure to be followed by the Commission in readjusting the representation and in delimiting the constituencies. The Commission was first to determine on the basis of the latest census figures the number of seats to be allotted to each of the states in the House of the People and to its Legislative Assembly. The Commission was also required in respect of each state to determine on the basis of the figures of population the number of seats, if any, to be reserved for the Scheduled Castes and the Scheduled Tribes of the State in the House of the People and in its Legislative Assembly. The Commission was then to distribute the seats so reserved amongst the constituencies to be delimited for the House of the People and the Legislative Assembly.

The following were the principles, to be followed in the delimitation of constituencies:

- a. Every constituency shall be either a single-member or a two-member constituency.
- b. The Commission was given the discretion, however, to continue either or both of the existing three-member constituencies. (These were a-House of the People constituency in West Bengal and a Legislative Assembly constituency in Bombay). In any such three-member constituency, one seat was to be reserved for the Scheduled Castes and another for the Scheduled Tribes.
- c. Wherever practicable, seats were to be reserved for the Scheduled Castes or for the Scheduled Tribes in single-member constituencies.
- d. In every two-member constituency, one seat was to be reserved either for the Scheduled Castes or for the Scheduled Tribes, while the other seat would not be so reserved.
- e. Constituencies in which a seat is reserved either for the Scheduled Castes or for the Scheduled Tribes were, as far as practicable, to be located in areas in which the population of the Scheduled Castes or, as the case may be, of the Scheduled Tribes is most concentrated. In regard to the Scheduled Castes, however, care was to be taken to distribute the seats reserved for them in different areas of the State.
- f. All constituencies should, as far as practicable, consist of geographically compact areas, and in delimiting them, regard was to be had to physical features, the existing boundaries of administrative units, facilities of communication and public convenience.

9.6.6 Electoral Roll – Issues Concerning Qualifications and Disqualifications of an Elector

For a free and fair election, an accurate and error-free electoral roll is the most important prerequisite. Some of the electoral malpractices like bogus voting and impersonations can be

attributed, to a large extent to the defective electoral rolls. For enhanced participation of electors in the electoral process and reducing the electoral malpractices, it is essential to improve the registration processes which will in turn increase the credibility of the electoral rolls. Therefore, adequate stress has to be given to the preparation and revision of the electoral rolls.

Constitutional provisions in regard to electoral roles:

1. Under Article 324(1) of the Constitution of India, the superintendence, direction and control of the preparation of the electoral rolls for all elections to Parliament and to the Legislature of every state is vested in the Election Commission.
2. Article 325 of Constitution of India provides that there shall be one general electoral roll for every territorial constituency and no person shall be ineligible for inclusion in any such roll or claim to be included on grounds only of religion, race, caste or sex.
3. Under Article 326 of Constitution of India, every person who is a citizen of India and who is not less than 18 years of age and is not disqualified under the Constitution or any law made by the appropriate legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any election to the House of the People or to a State Legislative Assembly.
4. The Parliament has been authorised by Article 327 of the Constitution to make provisions by law with respect to all matters relating to elections to either House of Parliament or to the House or either House of the Legislature of a State including preparation of electoral rolls. In exercise of such power, the Parliament has enacted the Representation of the People Act 1950.

Provisions of Representation of People's Act 1950 with regard to electoral roles

The RP Act 1950 has conferred on the Central Government, the power to make rules, after consulting the Election Commission for carrying out the purposes of the aforesaid Act. In exercise of this power the Central Government has promulgated the Registration of Electors Rules (RER), 1960. The Election Commission has issued various directions under the RPA, 1950 and the RER, 1960 from time to time. In addition, the Commission has also issued a number of instructions and clarifications. All the above constitute the framework of law under which the preparation and revision of electoral roll has to be carried out.

The Delimitation of Parliamentary and Assembly Constituencies Order, as amended from time to time, defines the territorial extent of each Assembly Constituency and the Parliamentary Constituency. A number of Assembly Constituencies comprise a Parliamentary Constituency. All Assembly and Parliamentary Constituencies are territorial, that is, have fixed geographical boundaries. An exception is the Sangha Assembly Constituency in Sikkim which comprise of monks residing in recognised monasteries all over the State of Sikkim.

The electoral rolls are maintained Assembly Constituency (AC) wise. The electoral roll of a Parliamentary Constituency consists of the electoral rolls for all the assembly constituencies comprised within that parliamentary constituency. J&K and Union Territories (UTs) not having a Legislative Assembly are the exceptions. In them the electoral rolls are prepared separately for Parliamentary Constituencies and separately for Assembly Constituencies.

In order to maintain the credibility of roll and to keep it updated, the aforesaid Acts and Rules provide for periodic revision of rolls. It is prepared based on house to house visit by the Enumerator. The electoral rolls are prepared or revised with reference to

- First day of January of the year in which the rolls are so prepared or revised.
- Before each general election to the House of the People or to the Legislative Assembly of a State.
- Before each byelection to fill a casual vacancy in a seat allotted to the constituency.
- Further, the Election Commission may at any time, direct a special revision of the electoral roll for any constituency or part of a constituency.

Publication of the Roll

Putting the roll on the website, immediately as it is published, is a very important step in the revision process. The website shall further facilitate an elector to check whether he/she has been registered as an elector or not and what are the details registered against his/her entry in the roll.

Disqualifications for Registration in an Electoral Roll

- According to the RP Act 1950, a person shall be disqualified for registration in an electoral roll if he/she
 - Is not a citizen of India; or
 - Is of unsound mind and stands so declared by a competent court; or
 - Is, for the time being, disqualified from voting under the provisions of any law relating to corrupt practices and other offences in connection with elections.
- The name of any person who becomes so disqualified after registration shall forthwith be struck off from the electoral roll in which it is included.
- No person shall be entitled to be registered in the electoral roll for more than one constituency and no person shall be entitled to be registered in the electoral roll for any constituency more than once.

Qualifications and Conditions for Registration in an Electoral Roll

- According to the provisions of RP Act 1950, subject to the above said restrictions, every person shall be entitled to be registered in the electoral roll of the Constituency who-
 - Is not less than 18 years of age on the qualifying date and
 - Is a permanent resident of the constituency.
- Members of Parliament and the State Legislatures are entitled to be registered in their home constituencies notwithstanding the fact that they are away from their normal place of residence in connection with their activities as legislators.
- Inmates of jails, other legal custody, hospitals, beggar homes, asylums etc. should not be included in the electoral rolls of the constituency in which such institutions are located.
- Students, if otherwise eligible, living in a hostel or mess or lodge more or less continuously, can be held to be ordinarily resident in the place where the hostel or mess or lodge is situated. However, if they so wish, they have the option of retaining their enrolment at their residence with their parents instead.
- Service voters: Normally, the serving members of the armed forces of the Union or the central paramilitary forces, State Armed Police personnel posted outside the state, and the government servants posted outside India in Indian Missions/High Commissions are enrolled in their native places and not at their places of postings. They are called 'Service Voters'.
- Overseas electors: The RP Act 1950 was amended in 2010 and was provided that every overseas elector, that is, an Indian citizen who is absenting from his place of

ordinary residence in India owing to employment, education or otherwise, and has not acquired citizenship of any other country and who is not included in the electoral roll, is entitled to have his/her name registered in the electoral roll of the constituency in which his/her place of residence in India as mentioned in his/her passport is located. In order to facilitate the NRIs and improve their enrolment in the electoral rolls, Form 6A shall be distributed among the family members of overseas electors, residing in India, through the Booth Level Officer (BLO) in the area assigned to him/her.

- g. Persons holding declared offices: The holder of a declared officers such as President, Vice President, Governors, Ministers etc., who desire to be registered as an elector in the constituency in which, but for his holding such office, he would have been ordinarily resident, can also get registered there.

Penal Provisions

1. If any person deployed to perform any official duty in connection with the preparation, revision or correction of an electoral roll, is guilty of any act or omission in breach of such official duty, he shall be punishable with imprisonment for a term which shall not be less than 3 months but may extend to 2 years and with fine.
2. The responsibility for getting the names of ineligible persons entered in the electoral roll can be placed squarely on the head of the family and if he provides false information, then he shall be punished with imprisonment for a term which may extend to one year, or with fine or with both.

9.7 CRIMINALISATION OF POLITICS

The understanding of the process of Criminalisation of politics is of special concern to an active citizen of Indian democracy because the Indian Constitution, following the British practice, envisages the principle of Parliamentary Supremacy. The Parliament is constituted out of representatives, the representatives are part and parcel of politics and the criminalisation of politics would necessarily lead to criminalisation of the representative institution, which would in turn gets reflected in the governance of this largest democracy. The problem becomes more acute when one takes into account of the structure that the real administrators, the Executive is drawn from the Parliament and they remain as an executive as long as they hold majority in the Parliament. India, with still being a home to millions of poor and ignorant population, the subject can be neglected by its active citizens only in their own and their nation's peril.

9.7.1 The Process of Criminalisation of Politics – Why and How?

9.7.1.1 Use of Muscle Power to Win Elections

As early as in 1977, the National Police Commission headed by Dharam Vira observed: *‘the manner in which different political parties have functioned, particularly on the eve of periodic election, involves the free use of musclemen and ‘Dadas’ to influence the attitude and conduct of sizable sections of the electorate’*. When a candidate thinks that he cannot come to power since the people have no faith in him, he chooses the other way, that is, to generate fear to gather peoples vote. Moreover, having musclemen at their command would help them to capture election booths and tamper the EVM or ballot box. Since the voters are common people in most cases, they are too reluctant to take measures that would curtail the criminal activities.

This initial practice has given way to another trend presently, that is, giving tickets to the confirmed criminals and history sheeters. In a country where most of the voters are common people who are reluctant to question the criminals, and where the institutional mechanisms entrusted with the task of conducting free and fair elections are either inadequate or corrupted, then fielding a criminal directly by the party would ensure victory for sure. Moreover, it would be more beneficial for a criminal to get himself elected as this would give him a direct control over administration. In case of India, though after the introduction of EVM and through various electoral reforms, elections in the past decade seems comparatively free from violent instances, it is not completely free of such instances.

9.7.1.2 Money Power to Win Elections

Corruption and criminalisation goes hand in hand together. The expenses in elections to Parliament and State Legislatures are very high and it is a widely accepted fact that this huge election expenditure is the major root cause for corruption in India. Unless a candidate spends lakhs of rupees, he wouldn't get elected and even if he gets elected, the total salary he receives during his tenure as an MP/MLA will be very less compared to his actual election expenses. How can he bridge the gap between the income and expenses? Publicly, through donations and secretly, through illegal means. A political party has to reach millions of voters, face Union, State and Panchayat elections almost round the year. Where is this money to come from? Only criminal activity can generate such large sums of untaxed funds. This facilitates the entry of criminals in politics. They have money and muscle, so they win and help others in their party win as well.

9.7.1.3 Vote Bank Politics

The majority are the people those who do not know why they ought to vote in this country. Therefore, majority of the voters are easily manoeuvrable and purchasable. Their support is easier to gain for the crooked than the hardworking and honest persons. The muscle and money power fetches important votes. Elections are won and lost on swings of just 1% of the vote, so parties cynically woo every possible vote bank, including those headed by accused robbers and murderers. Legal delays in convicting criminals ensures that the process remain unchecked.

9.7.1.4 Corruption at the Institutional Levels

Corruption had become a serious problem in our country that almost every democratic institution, right from the lower organs to supreme organs, is not out from its ugly tentacles. Corrupted institutions of democracy would naturally facilitate the entry of criminal elements. For instance, the Transparency International's Corruption Perception Index (CPI) placed India at 94th rank out of 176 nations in its December 2012 report. India had a score of 36 out of 100 on a scale from 0 (highly corrupt) to 100 (very clean). First launched in 1995, the corruption perceptions index has been widely credited with putting the issue of corruption on the international policy agenda. The report is based on an average of 13 different surveys and assessments from 12 different institutions including World Bank's Country Performance and Institutional Assessment, the World Economic Forum, World Justice Project and Global Insight Country Risk Ratings. India was ranked 72 among 180 countries in 2007, at 87 in 2010 and the position was 95 in 2011. There are also instances of voters choosing to elect those parties which lure them with cash or kind.

This tactic of luring voters is effective in the case of gullible illiterate and passive voters who are ignorant of the consequences of their action. The political parties take undue advantage

of this ignorance and the result is that the voter is left to suffer for next five years. Most of the rural masses who do not have enough access to literacy or media or news channels may not be able to judge the political parties and there is the possibility of them voting for the wrong candidate. Yet another pertinent aspect is the caste factor. The caste factor plays a crucial role during election and many a time a voter prefers to vote for a party or a candidate based on his caste and religion, without bothering about the present scenario. Criminalisation of politics can be prevented to a great extent if a voter is aware enough and chooses the best and ideal candidate.

9.7.1.5 Denial of Justice and Rule of Law

Laws that are either ridiculously in deterrent against certain offences or improperly enforced against convicted criminals further encourage the process of criminalisation. A majority of the provisions in the RP Act provides punishments which are far from ground reality. For example Section 130 of RP Act 1951 prohibits canvassing in or near polling station, soliciting the vote of any elector, persuading any elector not to vote for any particular candidate or persuading any elector not to vote at the election and are termed as 'Electoral Offences'. Any person who contravenes these provisions is punishable with fine which may extend to ₹250, says the same section. Even if the laws are deterrent to the level of disqualifying a candidate, the problem of delayed verdicts by the judiciary ensures representative institutions a safe heaven for criminals.

9.7.1.6 Non-Transparency in the Functioning of Political Parties

The major share of funding for Political Parties comes from voluntary contribution. One knows that undeniably such monetary sources influence voting behaviour. The high cost of elections provides logic for corruption in the public arena. A heavy donor invariably becomes a benefiter, as the law of pressure group politics would suggest. As the reader know already, in the 2003 order, the Election Commission of India, in pursuance of the Supreme Court judgment dated 13th March, 2003 mandated that candidates for electoral office must submit an affidavit disclosing his assets and liabilities. This order, however, does not apply to political parties. Though all the major commissions of reforms viz., Law Commission, Administrative Reforms Commission, National commission for Review of working of Constitution and Election Commission had called for annual disclosure of accounts of political parties, this has not been enforced so far.

In 2011, an RTI query was made by the Association for Democratic Rights to the Central Information Commission since political parties had refused to share information although by all accounts they were public bodies. The appeals were upheld in an order dated 3rd June issued by the full bench of CIC, which ruled that six national political parties needed to provide information as sought by establishing the RTI apparatus as required. The logic was that they were recipients of valuable state resources in the form of land, accommodation, and tax exemptions which amounted to 'substantial funding' by the public exchequer. Accordingly, they were to be treated as public bodies and made answerable as such. But this has not been enforced adequately so far.

9.8 ELECTORAL REFORMS

India's democratic setup is a paradigm for many countries in the world due to its remarkable success over the past six decades. The heart of India's democratic system witnesses regular elections with the participation of the largest electorate in the world. In order to safeguard the core values

of fair and free elections in this dynamic scenario, it is important to have a just and unbiased electoral process with a greater citizen participation. Thus, in accordance to the responsibility bestowed upon by the Constitution of India, the Election Commission of India has always remained actively involved in finding out ways through which the purity and integrity of the election process is preserved.

However, there are certain challenges and issues that electoral system has faced over the years. Trust and confidence of citizens in electoral system can be affected if these challenges remain unattended. Thus, keeping in view these difficulties the Election Commission of India after conducting extensive study and research recommends certain changes that need to be taken up expeditiously to amend certain provisions of law.

These suggested reforms will prove to be extremely useful in addressing the existing issues and challenges and would go a long way in enhancing the quality of democracy in India. The following are the reforms as suggested by the Election Commission of India.

9.8.1 Amendment Proposed to Constitution of India

- (a) **Constitutional protection for all members of the Election Commission of India:** Under Clause (2) of Article 324, the Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time specify and the appointment of the Chief Election Commissioner and Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President.

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

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

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

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

'As pointed out earlier, the scheme of Article 324 clearly envisages a multi-member body comprising the CEC and the ECs. The RCs may be appointed to assist the Commission. If that be so the ECs cannot be put on par with the RCs. As already pointed out, ECs form part of the Election Commission unlike

the RCs. Their role is, therefore, higher than that of RCs. If they form part of the Commission it stands to reason to hold that they must have a say in decision-making. If the CEC is considered to be a superior in the sense that his word is final, he would render the ECs non-functional or ornamental. Such an intention is difficult to cull out from Article 324 nor can we attribute it to the Constitution-makers. We must reject the argument that the ECs' function is only to tender advice to the CEC'.

Reason for the proposed reform

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

Law Commission's Recommendation

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

- In sub-section (5), delete the words 'the Election Commissioners and' appearing after the words 'tenure of office of'.
- In the first proviso to sub-section (5), after the words 'Chief Election Commissioner' appearing before 'shall not be removed', add the following words, 'and any other Election Commissioner'; also, after the words 'conditions of service of the Chief Election Commissioner', add the following words, 'and any other Election Commissioner'.
- In the second proviso to sub-section (5), after the words 'provided further that', delete the words 'any other Election Commissioner or' occurring before 'a Regional Commissioner'.

9.8.2 Matters Related to Electoral Roll

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

Reasons for the reform proposed

There is a non-uniformity of practice amongst States which causes duplication of essentially the same task between two different constitutional bodies, that is, the Election Commission

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

Law Commission's Recommendation

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

- (b) **Section 60 of the Representation of the People Act, 1950:** Under section 20A of The Representation of the People Act, 1950, Indian citizens living abroad owing to employment, education or otherwise, and have not acquired citizenship of another country, are entitled to be enrolled as elector in the native constituency in India in which his/her home address falls. Persons enrolled in the electoral roll under this section are called 'overseas electors'. The overseas electors have not been given any special voting facility which means that they can vote in person in the polling station concerned in the constituency in which they are enrolled.

Reason for the proposed reform:

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

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

Section 14 (b) is as follows:

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

Reasons for the proposed reform:

Having only one qualifying date means that a large number of young persons who complete 18 years after 1st January would have to wait for next year for enrolment and would not be able to participate in elections held in the meanwhile. The Commission suggested that the

law may be amended so that a person can be enrolled in the roll the day he or she turns 18. By such amendment, the principle of universal adult franchise is also respected and no person is deprived from enrolment for a period of one year.

9.8.3 Issues Related to Election Management

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

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

Reasons for the proposed reform:

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

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

Reason for proposed reform:

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

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

- (i) Introduce enhanced sentence of a minimum of two years under section 125A.
- (ii) Include conviction under section 125A as a ground of disqualification under section 8(1) of The Representation of the People Act, 1951.
- (iii) Set up an independent method of verification of winners' affidavits to check the incidence of false disclosures in a speedy fashion.

- (iv) Include the offence of filing a false affidavit as a corrupt practice under section 123 of The Representation of the People Act, 1951.

(c) **Section 126 of the Representation of the People Act, 1951**

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

Reasons for proposed reform:

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

- (d) **Adjournment of poll or countermanding of election on the ground of bribery:** Article 324 of the Constitution vests in the Election Commission the superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of the President and Vice President held under the Constitution. The powers conferred thereunder are of widest amplitude as held by the Hon’ble Supreme Court in *Mohinder Singh Gill v. Chief Election Commissioner* (1978 SC851).

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

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

Reason for proposed Reform:

Over the period of time, especially in the recent years, money has played a key role in influencing the ‘decision making’ at the polls. There have been several instances of seizure of large amount of cash, liquor, gift items etc. from the candidates and their agents during the elections. In some cases, following large-scale instances of bribing of electors by candidates and workers of political parties, the Commission, using its plenary powers under Article 324 resorted to cancellation of the election process.

9.8.4 Issues Related to Logistics and Election Officials

- (a) **Section 13CC of the Representation Of The People Act, 1950 And Section 28a of the Representation Of The People Act, 1951:** Section 13CC of the Representation of the People Act, 1950 states that:

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

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

‘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’.

Reasons for the reforms proposed

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

- (b) **Empowering the District Election Officer to requisition:** Section 159(1) of The Representation of the People Act, 1951 states that

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

Reasons for proposed reforms

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

9.8.5 Issues Related to Nomination of Candidates

- (a) **Section 33(7) of the Representation of the People Act, 1951 – Restriction on the number of seats from which one may contest:** As per the law of India, as it stands today, a candidate is permitted to contest an election from two different constituencies in a general election or a group of byelections or biennial elections. **Subsection (7) of**

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

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

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

Reasons for the proposed reform

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

- (b) **Disqualifications under Chapter III of the Representation of the People Act, 1951:** In the judgement dated 7th August, 2015, the Hon'ble Delhi Court has directed the Election Commission to consider the possibility, if any, of putting an impediment on a defaulter of public dues contesting election in order to ensure quick recovery of the said dues. In pursuance of the said judgement, the Commission has recommended amending provisions for disqualifications laid down in Chapter III of The Representation of the People Act, 1951 so as to provide for disqualification in the event of defaulting in clearing public dues.

Direction of the Delhi High Court: The High Court made the following observations in its judgment:

- According to the report by India Today, the politicians and political parties in occupation of government accommodation allotted to them were in default of payment of electricity, water and telephone charges with respect thereto and no steps were being taken by the municipal and other governmental agencies for recovery of the said public dues. It was further reported that some politicians and political parties also owed money to five-star hotels run by India Tourism Development Corporation Ltd. (ITDC), a Public Sector Corporation, for events, functions held therein or for use thereof and that the ITDC, run and managed by bureaucrats under the control of the said politicians had also not taken any action for recovery of the said dues which were again public money.

- The zeal with which the public bodies try to recover dues from ordinary citizens was found to be totally missing in the case of politicians and political parties and which in fact had resulted in the accumulating arrears. There is a total lack of will on the part of governmental agencies to whom dues are owed, to recover the same from the politicians and political parties.
- The possibility of having the recoveries effected through the Lok Sabha and Rajya Sabha Secretariats by virtue of Rule 23 of the Members of Parliament (Travelling and Daily Allowances) Rule, 1957 also proved to be futile since the amounts due being very huge could not be recovered by way of deduction from the salaries.
- Neither the persuasion by the Supreme Court of the governmental agencies to whom dues are owed could prompt them for recovery nor did the different avenues explored by the Court for recovery have any substantial success due to the reluctance on the part of the governmental agencies to treat the political masters equally, as they treat other citizens.
- The defaulter politicians and political parties are found to have misused their position of power for their own benefit and gain which is against the simple premise of law that the public offices shall not be the workshops of personal gain.
- This calls for issue of directions to ensure that the MPs, MLAs and the political parties, taking advantage of the clout enjoyed by them over the officials of the municipal, electricity, water, telephone and other facilities agencies, are not able to escape without paying the dues.

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

- The ECI to, as directed in the earlier orders in this petition, continue to insist upon the candidates desirous of contesting an election to Parliament or to Legislative Assembly, along with their nomination form furnishing an affidavit of their being not in arrears of any public dues and if such candidate is in occupation of or in the past ten years been in occupation of any government accommodation to furnish a No Dues Certificate from the agency providing electricity, water and telephone to the said accommodation.
- The ECI to also within six months consider the possibility if any of putting any impediment to a defaulter of public dues contesting election, to ensure quick recovery of the said dues.

9.8.6. Issues Related to Decriminalisation of Politics

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

The Election Commission proposed in its set of proposals of 1998 and 2004 that Section 8 of the Representation of the People Act, 1951 should be amended to disqualify those persons from contesting election who are accused of an offence punishable by an imprisonment of 5 years or more even when trial is pending, given that the Court has framed charges against the person. To prevent misuse of the provision by the ruling party, the Commission

suggested a compromise whereas only cases led prior to six months before an election would lead to disqualification of a candidate. In addition, the Commission proposed that candidates found guilty by a Commission of Enquiry should stand disqualified.

Some Important Judgements

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

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

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

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

The Hon'ble Supreme Court in *Krishnamoorthy v. Sivakumar & Ors.* (2015) case, while observing that the crucial recognised ideal which is required to be realised is eradication of criminalisation of politics and corruption in public life decided that 'disclosure of criminal antecedents of a candidate, especially, pertaining to heinous or serious offence or offences relating to corruption or moral turpitude at the time of filing of nomination paper as mandated by law is a categorical imperative and concealment or suppression of this nature deprives the voters to make an informed and advised choice as a consequence of which it would come within the compartment of direct or indirect interference or attempt to interfere with the free exercise of the right to vote by the electorate, on the part of the candidate'.

Reasons for the proposed amendment

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

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

Recommendation by Law Commission

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

Once the said period expires, two consequences may ensue: (i) The person may be automatically disqualified at the end of the said time period

(ii) The right to vote, remuneration and prerequisites of office shall be suspended at the end of the said period up to the expiry of the House.

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

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

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

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

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

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

Earlier Goswami Committee in its report in 1990 on Electoral Reforms had suggested parallel recommendation, which read as follows: 'Election Commission shall have the power

to make recommendations to the appropriate authority to (a) refer any matter for investigation to any agency specified by the Commission and (b) prosecute any person who has committed an electoral offence under this Act or (c) appoint any special court for the trial of any offence or offences under this Act (RP Act 1951)'.

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

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

Reasons for the proposed reform

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

The proposal was to initiate swift action against those persons who attempt to misuse religious sentiments or making appeals to voters through the mode of their piety by holding disguised religious rallies in places of worship as political supplication, to strengthen the existing provisions in the Codes of Conduct and other election-related laws.

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

- (c) **Making bribery in elections a cognizable offence:** The phenomenon of bribing of voters with money and essential commodities and buying out local representatives has always plagued Indian elections. Section 123(1) of The Representation of the People Act 1951 defines 'Bribery' as any gift, offer or promise by a candidate or his agent or any other person with the consent of a Candidate or his election agent giving gratification, to any person whomsoever, with the object, directly or indirectly of inducing
- (i) A person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at an election.
 - (ii) An elector to vote or refrain from voting at an election.
 - (iii) An elector for having voted or refrained from voting.

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

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

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

Reasons for the proposed reform

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

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

9.8.7 Issues Related to Reforms in Political Parties

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

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

‘34. However, there are three exceptions where the Commission can review its order registering a political party. First is where a political party obtained its registration by playing fraud on the Commission, Second, it arises out of Sub-section (9) of Section 29A of the Act and third, any like ground where no enquiry is called for on the part of the Election Commission, for example, where the political party concerned is declared unlawful by the Central Government under the provision of the Unlawful Activities (Prevention) Act, 1967 or any other similar law.

35. Coming to the first exception, it is almost settled law that fraud vitiates any act or order passed by any quasi-judicial authority even if no power of review is conferred upon it. In fact, fraud vitiates all actions. In *Smith v. East Ellis Rural Distt. Council* - (1956) 1 All E.R. 855 it was stated that the effect of fraud would normally be to vitiate all acts and order. In *Indian Bank v. Satyam Fibres (India) Pvt. Ltd.* - MANU/SC/0657/1996 : AIR1996SC2592, it was held that a power to cancel/recall an order which has been obtained by forgery or fraud applies not only

to courts of law, but also to statutory tribunals which do not have power of review. Thus, fraud or forgery practised by a political party while obtaining a registration, if comes to the notice of the Election Commission, it is open to the Commission to de-register such a political party.

36. The second exception is where a political party changes its nomenclature of association, rules and regulation abrogating the provisions therein conforming to the provisions of Section 29A(5) or intimating the Commission that it has ceased to have faith and allegiance to the Constitution of India or to the principles of socialism, secularism and democracy, or it would not uphold the sovereignty, unity and integrity of India so as to comply the provisions of Section 29A(5). In such case, the very substratum on which the party obtained registration is knocked off and the Commission in its ancillary power can undo the registration of a political party. Similar case is in respect of any like ground where no enquiry is called for on the part of the Commission. In this category of cases, the case would be where a registered political party is declared unlawful by the Central Government under the provisions of Unlawful Activities (Prevention) Act, 1967 or any other similar law. In such cases, power of the 'Commission to cancel the registration of a political party is sustainable on the settled legal principle that when a statutory authority is conferred with a power, all incidental and ancillary powers to effectuate such power are within the conferment of the power, although not expressly conferred. But such an ancillary and incidental power of the Commission is not an implied power of revocation. The ancillary and incidental power of the Commission cannot be extended to a case where a registered political party admits that it has faith in the Constitution and principles of socialism, secularism and democracy, but some people repudiate such admission and call for an enquiry by the Election Commission. Reason being, an incidental and ancillary power of a statutory authority is not the substitute of an express power of review.

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

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

'Under Section 29 (A) Representation of People Act, 1951, the Election Commission of India has been given power to register political parties but the power of de-registration of political parties has not been given to Election Commission of India under that law. However, the Election Commission of India has assumed the power under para 16 A of the Election

Symbol (Reservation and Allotment) Order, 1968 to de-recognise the political parties in the event of violation of Model Code of Conduct. The net effect of de-recognition of political party makes that party almost dysfunctional as its symbol is taken away. The Committee, therefore, recommends that the power to de-recognise political parties on account of violation of Model Code of Conduct may be incorporated in the Representation of People Act, 1951 itself.

Reasons for the proposed reforms

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

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

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

Reason for the proposed reform

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

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

Section 29C of The Representation of the People Act, 1951 states that the treasurer of a political party or any other person authorised by the political party in its behalf shall, in each financial year, prepare a report declaring the donations received from persons or non-government companies in that financial year. Section 29C (3) states that the said report must be submitted before the due date for furnishing a return of its income of that financial year under section 139 of the Income Tax Act, 1961 to the Election Commission.

Section 29C (4) provides that tax exemption under section 13A of the Income Tax Act will not be availed to a political party which fails to submit the said report.

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

Reason for the proposed reform

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

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

Reason for the proposed reform

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

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

Reason for the proposed reform

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

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

Reason for the proposed reform

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

- (g) **Ceiling of campaign expenditure by political parties:** There is no limit on the campaign expenditure by political parties.

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

'2.28.3 Furthermore, Section 77 of the RPA only regulates the election expenses of candidates. Political parties are free to spend any amount as long as it is for the general party

propaganda, and not towards an independent candidate. Thus, there is no ceiling on party expenditure. It is recommended that the law on this point does not change, namely that there are no caps on party expenditure under the RPA given that it would be very difficult to fix an actual, viable limit of such a cap and then implement such a cap. In any event, as the experience with section 77(1) discussed above reveals, in the 2009 Lok Sabha elections, on average candidates showed election expenditures of 59% of the total expenses limit. There is no reason why the same phenomenon of under-reporting will not transpire amongst parties.

2.28.4 Placing legislative ceilings on party expenditure or contributions will not automatically solve the problem, especially without putting in place a viable alternative of complete state funding of elections (which in itself is next to impossible right now). Our previous experience in prohibiting corporate donations in 1969 did not lead to a reduction in corporate donations. Instead, in the absence of any alternative model for raising funds, it greatly increased illegal, under the table and black money donations.

2.28.5 Although the problem of black money and under-reporting will remain under the existing regime of no caps on individual contribution and party expenses, it has to be tackled through a stricter implementation of the anti-corruption laws and RTI and improved disclosure norms. It might be desirable to regularly re-examine the 7.5% profit cap on company's contributions in light of the intended rationale, since the former can become a meaningless limit in the context of big companies'.

Reason for the proposed amendment

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

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

There is no prescribed number of star campaigners for byelections.

Reason for the proposed reform

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

9.8.8 Issues Related to Election Campaign and Advertisement

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

The Representation of the People Act under section 126A bans conducting and disseminating results of exit polls during the period starting from commencement of polls till the completion of polls in all phases. According to the present scheme of The Representation of the People Act, 1951, section 126(1) (b) which prohibits the display of any election matter during the period of 48 hours before the hour fixed for conclusion of poll, is only limited to display by means of ‘cinematograph, television or other similar apparatus’; and does not deal with the independence and robustness of the opinion polls themselves. However, there exists a lacuna as a ban on publishing such election matters in electronic media does not extend itself to print media. New sections 126A and 126B for the restriction on publication and dissemination of result of exit polls. However, in the present framework there is no restriction on conducting opinion polls or disseminating results of opinion polls even in phased elections.

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

Reasons for the proposed reform

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

Law Commission’s Recommendation

The Law Commission in its Report in the year 2015 endorsed the view of the Commission and has called for the regulation of opinion polls so as to ensure that first, the credentials of the organisations conducting the poll is made known to the public; second, the public has a chance to assess the validity of the methods used in conducting the opinion polls; and third, the public is made adequately aware that opinion polls are in the nature of forecasts or predictions, and as such are liable to error.

- (b) **Ban on government-sponsored advertisement before elections:** In politics, there exists use of advertising campaigns to influence political debate, and ultimately the voters. Presently, there is a trend wherein the Central and various State Governments embark upon ‘election advertising’ in the guise of providing information to the public. Such kind of an advertisement released with an eye on the election contain material intended or likely to affect voting in an upcoming election.

Reasons for the proposed reform

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

The Item VII clause (iv) of the Model Code of Conduct for the Guidance of Political Parties and Candidates, prohibits the issue of advertisement at the cost of public exchequer in the newspapers and other media. The misuse of official mass media during the election period for partisan coverage of political news and publicity regarding achievements with a view to furthering the prospects of the party in power is also prohibited under the said Item

VII. However, the problem arises as the Model Code of Conduct comes into operation only from the date on which the Commission announces an election and the advertisements released prior to the announcement of elections are not prohibited under the Model Code of Conduct.

(c) **Section 126 of the Representation of the People Act, 1951**

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

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

Reasons for the proposed reform

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

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

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

Reasons for proposed reforms

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

To make the matter worse, the whole exercise of publishing paid news involves use of unaccounted money and under reporting of election expenses of the candidates indulging in the malpractice. The influence of money also has the potential in resulting in uneven

elections between people with dissimilar financial statures. Thus, in order to have 'fair' election in a democracy, a level playing field is paramount. This can only be achieved by mitigating the influence of money in elections.

(e) **Section 125A of the Representation of the People Act, 1951**

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

Reasons for proposed reforms

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

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

9.8.9 Issues Related to Election Expenses and Election Petitions

(a) **Sections 78, 81 and 84 of the Representation of the People Act, 1951**

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

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

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

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

Reason for the proposed reform

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

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

(b) **Election expenditure in case of adjournment of poll under Section 52 of the Representation of the People Act, 1951**

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

Reason for the proposed reform

Subsequent to the death of a candidate of a recognised party, the Election Commission calls 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. In order to ensure parity between the new candidate and the other contesting candidates, latter should be permitted to further incur election expenditure.

- (c) **Appointment of additional judges in the High Courts:** Article 224 of the Constitution of India states:

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

The judges to people ratio is low in India and there is a need to appoint additional judges to clear the backlog of cases. The Commission has proposed that appointment of additional Judges in High Courts for trying election petitions to ensure their speedy disposal should be considered.

9.8.10 Other Such Issues Related to Election

- (a) **Form 26 under Rule 4A of the Conduct of Elections Rules, 1961:** Presently, the existing Form 26 (the format in which the candidates are required to submit affidavit) does not contain any clause requiring information with respect to the sources of income of the candidate

Reason for the proposed reform

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

- (b) **Rule-making authority to be vested in Election Commission:** The present framework of **The Representation of the People Act 1950 and 1951 under Section 28 and 169**, respectively empowers the Central Government to make rules after consultation with the Election Commission. However, the Central Government is not bound to accept such views or recommendations of the Commission.

Reasons for the proposed reform

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

9.9 RECENT LANDMARK JUDGEMENTS OF THE SUPREME COURT

In the discharge of its constitutional responsibility of conducting free, fair and peaceful elections in the country, the hands of the Election Commission have been strengthened by the Supreme Court of India, by its several landmark judgements, pronouncing upon the provisions of the Constitution of India, and the laws relating to the elections. These judgements of the Supreme Court are the guiding stars not only for the Courts, but also for the Election Commission, its electoral machinery, Governments at the Centre and in the states, political parties and the candidates contesting elections.

Together with the Election Commission, the Supreme Court had played a commendable role in making the political arena clean from corrupts and criminals. To begin with, let us have a look at the two important developments that took place in 1996. The first was the Supreme Court's notices to political parties in January to file returns required by the Income Tax and Wealth Tax Acts by 20 February, in response to a public interest petition filed by a private citizens' group, after the parties did not respond to notices issued by the Income Tax Department. This forced parties, none of which had filed for all the years since 1979 as required, to do so. (However they did this only for 1994–1995).

The second important development was the Supreme Court's order of 4 April, 1996, shortly before the general elections, interpreting Explanation 1 of Section 77(1) of the RPA such that election expenditure by a political party would not be clubbed with that of a candidate for the purposes of the spending ceiling only if the party had submitted audited accounts of its income and expenditures, something that no party had done. This constrained conspicuous party spending on behalf of the candidate during the 1996 campaign.

On 2nd May, 2002, the Supreme Court by upholding a PIL made by Association for Democratic Reforms, held that the right to information – the right to know antecedents, including the criminal past, or assets of candidates – was a fundamental right under Article 19(1) (a) of the Constitution and that the information was fundamental for survival of democracy. In its judgement, it directed the Election Commission to call for information on affidavit from each candidate seeking election to Parliament or the State Legislature as a necessary part of the nomination papers on: Whether the candidate has been convicted/acquitted/discharged of any criminal offence in the past – if any, whether the candidate was accused in any pending case of any offence punishable with imprisonment for two years or more, and in which charge was framed or cognizance taken by the court of law. If so, requires the details thereof; the assets (immovable, movable, bank balance, etc.) of a candidate and of his/her spouse and that of the dependents; liabilities, if any, particularly of any overdue of any public financial institution or Government dues; educational qualifications of the candidate.

The Election Commission then proposed amendment of statutory rules and the format of nomination papers, to give effect to this judgment of the Supreme Court. But political parties believed that the Election Commission and the judiciary were overstepping their powers. At the all-party meeting, held on 8th July, 2002, representatives of 21 political parties decided that the Election Commission's order should not be allowed to be implemented. The Supreme Court again came out as a guardian of the citizen's right to information. The Apex Court gave its judgment on 13th March, 2003, basically asserting its previous June 2002 decision, which required full disclosure by all candidates. The order made it clear that failing to furnish the relevant affidavit shall be considered as a violation of the Supreme Court's order and as such the nomination papers shall be liable to be rejected by the Returning Officer. Furnishing of wrong or incomplete information shall result in the rejection of nomination papers, apart from inviting penal consequences under the Indian Penal Code. The 2004 General Elections were conducted under these rules.

The above order is an effective step to make democracy healthy and unpolluted. Citizens have every right to know about the persons whom they prefer as their representatives. The EC has directed all Returning Officers to display the copies of nomination papers and affidavits filed by candidates to the general public and representatives of print and electronic media, free of cost.

One has to notice two things here. One is that, this judgement was given way back in 2002, when the country did not have Right to Information Act (which makes Government officials liable for punishment if they fail to respond to people within a stipulated timeframe). The Act was

enacted only in 2005. The other is that some of the parties would be able to draw advantage from the Supreme Court order because they already have efficient watchdog systems and batteries of lawyers in place that would permit them to file counter-affidavits and challenge nominations of opposing candidates within hours of their being filed.

With regard to the reformation of Election Commission, there was a longstanding demand to make the EC a multi-member body. The Supreme Court in the *S.S. Dhanoa v. Union of India* case, 1991 had observed: *'When an institution like the Election Commission is entrusted with vital functions and is armed with exclusive and uncontrolled powers to execute them, it is both necessary and desirable that the powers are not exercised by one individual, however wise he may be. It also conforms to the tenets of democratic rule'*. With the 1993 Constitution Amendment Act, the Election Commission was made a multi-member body. The Act provided that the decision of three members 'shall, as far as possible, be unanimous'. But in case of difference of opinion among three members, the matter 'shall be decided according to the opinion of the majority'.

In a landmark judgement that may lead to decriminalisation of politics, the Supreme Court on 10th July, 2013 struck down the provision viz., Section 8(4) of RP Act 1951.

The following are some of the recent landmark judgements delivered by the Supreme Court of India.

(a) **Subramaniam Swamy v. Election Commission of India [CA No. 5803 of 2008],**

Supreme Court: The Appellant filed the Appeal for striking down paragraph 10A of the Symbols Order as it denies equality before the law that is violative of Article 14 of the Constitution of India.

The appellant alleged that the provisions of Para 10A of the Election Symbols (Reservation and Allotment) Order, 1968, as amended pre 2001, suffers from the vice of arbitrariness and amounts to an undemocratic act which does not pass the acid test of equality before law under Article 14 of the Constitution – symbol reserved for a party is an intellectual property that could not be taken away by a legislation, and in addition seeking a direction to the Commission to amend the said Para 10A suitably.

The Court held that Symbols Order promulgated by the Election Commission on 31/08/1968 in exercise of powers conferred by Article 324 read with Section 29A of the R.P. Act, 1951 and Rules 5 and 10 of the Conduct of Elections Rules, 1961 to provide for reservation, choice and allotment of symbols at elections in Parliamentary and Assembly Constituencies, for recognition of political parties and for matters connected therewith, is perfectly in consonance with the democratic principles.

The concept of recognition of political party is no doubt inextricably connected with the concept of symbol of that party but only a political party having substantial following has a right for a reserved symbol. A party which remains only in the records can never be equated and given the status of a recognised political party in a democratic set up.

With regard to the challenge to the constitutionality of Para 10A of the Symbols Order providing for concession to candidates set up by an unrecognised party, which was earlier recognised as a National or State Party not earlier than six years from the date of notification of the election, for allotment of the symbol reserved earlier for it, it was held that the rationale for providing six years period in para 10A is perfectly reasonable as it gives the party opportunity to prove its continued following in the fresh elections within six years.

The Court did not agree to read down the provisions of clause 10A so as to avoid the mention of six years as that would amount to absurdity vis-a-vis paras 5 and 6 of the Symbol

Order. Provisions of Para 10A has to be read and interpreted in terms of other connected provisions in Paras 5, 6, 6A, 6B and 6C and also the objects on the Preamble to the Symbols Order.

It further held that a symbol may be an outcome of intellectual exercise but it does not become an 'intellectual property' of the party for which it is reserved and the Commission has every right to deprive a particular party with a dismal performance of that reserved symbol. Election Symbol is only the insignia which is associated with the particular political party that helps millions of illiterate voters to properly exercise their right to franchise in favour of candidate of their choice belonging to a particular party.

With regard to the prayer of the appellant to freeze the symbol of a recognised political party after the party loses eligibility criteria for such recognition as per Symbols Order, the Apex Court observed that though there is no such provision of freezing of any particular symbol in the said Order the issue can be considered by the Commission in case the issue is raised before it by the appellant party.

- (b) **DMDK & Another v. Election Commission of India [WP (C) No. 532 of 2008], Supreme Court 176:** A bunch of writ petitions and SLPs were filed to challenge the constitutional validity of the amendment made by the Commission in para 6 of the Election Symbols (Reservation and Allotment) Order, 1968, vide Notification dated 1st December, 2000, to prescribe that in order to be recognised as a State Party in the State, a political party would have to secure not less than 6% of the total valid votes polled in the State and should also have returned at least 2 members to the Legislative Assembly of the State.

The petitioner political party 'DesiyaMурpokkuDravidaKazharam', a registered unrecognised political party under Sec.29A of the R.P. Act, 1951, was refused recognition as a 'State Party' by the Election Commission despite having secured 8.33% of the valid votes polled and returning 1 (one) candidate to the Assembly during the general election to the Tamil Nadu Legislative Assembly, 2006, on the ground that it did not qualify the benchmark of returning at least two members to the Legislative Assembly in addition to securing the minimum percentage of votes of 6% prescribed under the amended para 6A of the Symbols Order 1968. It was contended that the classification of parties into recognised and unrecognised parties on the basis of the seats won during an election and the percentage of votes polled, is unreasonable and arbitrary, having no nexus with the purpose sought to be achieved. It causes hardship to political parties as it imposes two conditions clubbed with other conditions that are highly anomalous and therefore liable to be struck down. It further contended that denying a common election symbol to the candidates of unrecognised political parties vis-a-vis recognised political parties' results in hostile discrimination by the Commission.

It was also contended that the symbol in the context of an illiterate electorate is absolutely necessary for a free and fair election and equating established parties with newly-formed parties is a disadvantage to the newly formed parties and thus violative of Article 14 and was, therefore, liable to be struck down.

The Supreme Court (a Three-Judge Bench and the judgment by a majority decision) rejected the challenge to the vires of the Election Symbols Order, 1968, and held that the constitutional validity of the 1968 Order and the power of the Commission under para 15 of that order to settle issues relating to claims of splinter groups of recognised political parties to be the original party has been decided by a three-judge bench of the Supreme Court in Sadiq Ali's case 40 years ago.

It further held that in order to gain recognition as a political party and to become entitled to the allotment of a common symbol, a party has to prove itself to establish its credibility as a serious player in the political arena of the state by achieving the benchmark laid down by the Commission under the Symbols Order, 1968, after taking into account the ground realities of conducting a state-wide poll.

- (c) **S. Subramaniam Balaji v. Govt. of Tamil Nadu & Others [CA No. 5130 of 2013], Supreme Court 273:** In the manifestos released by the two recognised State political parties in the State of Tamil Nadu, namely, Dravida Munnetra Kazhagam (DMK) and All India Anna Dravida Munnetra Kazhagam (AIADMK) during the general election to the Legislative Assembly of Tamil Nadu held in the year 2006, promises/offer of several articles to the electorate were made. The Appellant in the above referred cases, Shri S. Subramaniam Balaji, filed complaint seeking initiation of action in respect of the said promises on the ground that such promises of 'freebies' amount to bribery within the meaning of section 123 (1) of the Representation of the People Act, 1951 and Section 171-B of the IPC.

He also filed two writ petitions Nos. 9013 of 2006 and 1071 of 2007 before the Madurai Bench of the High Court of Madras challenging the propriety of the expenses incurred by the state government out of the state exchequer for fulfilling the promises of distribution of several household articles, such as, colour television sets, etc. made in their election manifestos to woo the gullible electorate with an eye on their votes. It was alleged that this amounted to corrupt practice and was unauthorised, impermissible and ultra vires the Constitutional mandates. The Madras High Court by its Order dated 25th June, 2007 dismissed both the writ petitions holding that the action of the state government in distributing free colour TVs could not be branded as a waste of public money.

The Appellant preferred an Appeal by way of SLP (C) No.21455 of 2008 before the Supreme Court being aggrieved by the judgment passed by the Madurai Bench of the High Court of Madras in the said two writ petitions filed by the Appellant. During the pendency of the SLP, the schedule of next general election to the Tamil Nadu Legislative Assembly due in the year 2011 was announced.

Both the parties, DMK and AIADMK, again released their election manifestos with a volley of promises of supply of articles like, grinders, mixies, electric fans, laptop computers, 4-gm gold thalis, ₹50,000 cash for girl's marriage, green houses, 20 kg rice, etc. to the people if they come to power.

The appellant separately filed a complaint dated 22nd March, 2011 before the Election Commission seeking initiation of action in respect of the above freebies as corrupt practices under Section 123 of the RP Act, 1951 and requested to disqualify all such candidates on the ground that such promises amount to bribery within the meaning of Section 123(1) of the 1951 Act and Section 171-B of the IPC.

The Appellant also filed complaint before the Comptroller and Auditor General of India and Accountant General of Tamil Nadu against the transfer of consolidated fund of the state for fulfilling the promises of freebies made in the election manifestos. The Appellant again challenged the promises of freebies by filing another Writ Petition No.17122 of 2011 on 19th July, 2011, before the High Court of Judicature at Madras on the same ground that such promises are unauthorised, impermissible and ultra vires the Constitutional mandates.

The Hon'ble High Court directed the Commission to dispose of the representations made by the Petitioner.

The Commission informed the complainant/appellant on the basis of the existing legal provisions that commission of a corrupt practice by a candidate under Section 123(1) of R.P. Act, 1951 can be raised only before the High Court in an election petition and such candidate can be disqualified only on being found guilty by the High Court and not otherwise. Likewise, any person committing the offence of bribery under Section 171 (B) of IPC can be disqualified only on conviction by the competent court and not otherwise. It was also informed that declaration of public policy or promise of public action, is neither a corrupt practice nor electoral offence under proviso (b) to clause (2) of Section 123 of R.P. Act, 1951 and proviso to Section 171B(1) and Section 171C(2) of IPC. The Commission also conveyed its feeling that the promise of such freebies at government cost could disturb the level playing field and vitiate the electoral process and expressed its willingness to implement any directions or decision of the Court in this regard.

The Supreme Court vide its judgment dated 5th July, 2013 held that promises in the election manifesto do not constitute a corrupt practice under Section 123 of the RP Act, 1951. It held that the Directive Principles of State Policy enshrined in the Constitution enjoin upon the State to frame various welfare measures for the citizens and therefore there can be no objection to the promise of such welfare measures in election manifestos. As long as the schemes come within the realm of public purpose and money is withdrawn by passing suitable Appropriation Bill, they are in consonance with Article 14 of the Constitution. The Supreme Court dismissed the petition de hors the jurisdiction issue raised verbally by the respondent State Government of Tamil Nadu at the time of hearing.

The Court, however, observed that even though framing of manifestos is the right of the political parties, it cannot overlook the undesirable impact of some of the promises and offers on the conduct of free and fair elections and maintaining level playing field for all political parties and candidates. It advised the political parties to avoid making those promises which are likely to vitiate the purity of the election process or exert undue influence on the voters in exercising their franchise.

Accordingly, it directed the Election Commission to frame guidelines with regard to the contents of election manifestos in consultation with all the recognised political parties. It also laid down the following guiding principles for framing of such guidelines:

- (i) Although the law is obvious that the promises in the election manifesto cannot be construed as 'corrupt practice' under Section 123 of RP Act, the reality cannot be ruled out that distribution of freebies of any kind, undoubtedly, influences all people. It shakes the root of free and fair elections to a large degree.
- (ii) The fountainhead of the powers under which the Commission issues these orders is Article 324 of the Constitution which mandates the Commission to hold free and fair elections. The Election Commission, in order to ensure level playing field between the contesting parties and candidates in elections and also in order to see that the purity of the election process does not get vitiated, has in the past been issuing instructions under the Model Code of Conduct.
- (iii) The fact that generally political parties release their election manifesto before the announcement of election date, in that scenario, strictly speaking, the Election Commission does not have the authority to regulate any act which is done before the announcement of the date of election. Nevertheless, an exception can be made in this regard as the purpose of election manifesto is directly associated with the election process.

[Note: Pursuant to the Supreme Court's above order, the Election Commission framed guidelines, in consultation with political parties, and inserted them as Part VIII of the Model Code of Conduct by its letter No.437/6/Manifesto/2013 dated 19th February, 2014]

- (d) **Lily Thomas v. Union of India & Others [WP (C) No. 490 of 2005], Supreme Court:** These writ petitions were filed as Public Interest Litigations for mainly declaring sub-section (4) of Section 8 of the Representation of the People Act, 1951, giving special protection to sitting members of Parliament and State Legislature from immediate disqualification on conviction for offences under sub-sections (1), (2) or (3) of said Section 8 until three months from the date of conviction 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 off by the Court and ultra vires the Constitution being in contravention of the provisions of Articles 101 and 190 of the Constitution. Petitioners contended that persons to be elected as members of Parliament or a State Legislature stand on the same footing as sitting members of Parliament and State Legislature so far as disqualifications are concerned and sitting members of Parliament and State Legislature cannot enjoy special privilege of continuing as members even after conviction for offences under sub-Sections (1), (2) and (3) of Section 8 of the Act. The Parliament lacks legislative powers to enact sub-section (4) of Section 8 of the RP Act, 1951.

It was held by the Hon'ble Supreme Court that the provisions of Article 101(3)(a) and 190(1)(a) of the Constitution expressly prohibit Parliament to defer the date from which the disqualification is attracted in case of a sitting member of Parliament or State Legislature. The Parliament, therefore, exceeded its powers in enacting sub-section (4) of Section 8 of the Representation of the People Act, 1951 and accordingly declared sub-section (4) of Section-8 of the Act and ultra vires the Constitution. The Court held that

‘.....We also hold that the provisions of Article 101(3) (a) and 190(3)(a) of the Constitution expressly prohibit Parliament to defer the date from which the disqualification will come into effect in case of a sitting member of Parliament or a State Legislature. Parliament, therefore, has exceeded its powers conferred by the Constitution in enacting sub-section (4) of Section 8 of the Act and accordingly subsection (4) of Section 8 of the Act ultra vires the Constitution (para)

However, if any sitting member of Parliament or a State Legislature is convicted of any of the offences mentioned in sub-sections (1), (2) and (3) of Section 8 of the Act and by virtue of such conviction and/or sentence suffers the disqualifications mentioned in sub-sections (1), (2) and (3) of Section 8 of the Act after the pronouncement of this judgment, his membership of Parliament or the State Legislature, as the case may be, will not be saved by sub-section (4) of Section 8 of the Act which we have by this judgment declared ultra vires the Constitution notwithstanding that he files the appeal or revision against the conviction and/or sentence’.

- (e) **Resurgence India v. Election Commission of India & Another [WP (C) No. 121 of 2008], Supreme Court:** The writ petition was filed under Article 32 of the Constitution of India for issuance of appropriate writ/direction including writ of mandamus to effectuate meaningful implementation of the judgments rendered by the Supreme Court in *Union of India v. Association for Democratic Reforms and Another* (2002) 5 SCC 294 and *People's Union for Civil Liberties (PUCL) and Another v. Union of India & Anr.* (2003) 4 SCC 399,

and for that purpose to direct the respondents to make it compulsory for the Returning Officers to ensure that the affidavits filed by the contestants are complete in all respects and to reject the affidavits having blank particulars.

Pursuant to the Order of the Supreme Court in *Union of India v. Association for Democratic Reforms and Another* (Supra), the Election Commission, vide order dated 28th June, 2002, issued directions to the candidates to furnish a duly sworn affidavit to declare full and complete information relating to his/her criminal antecedents, if any, information regarding assets of the candidate as well as of his/her spouse and that of dependants, liability, if any, and educational qualification of the candidate, to enable electors to know the background of the candidates. It was also directed that non-furnishing of the affidavit by any candidate or furnishing of any wrong or incomplete information or suppression of any material information of substantial character, found by the Returning Officer after summary enquiry at the time of scrutiny of nomination papers, will result in the rejection of the nomination paper, apart from inviting penal consequences under the Indian Penal Code, 1860.

Subsequently, in *People's Union for Civil Liberties (PUCL) and Another v. Union of India & Anr.* (Supra), while reaffirming the aforementioned decision, the Apex Court, however, held that the direction to the Returning Officer to reject the nomination papers for furnishing wrong information or concealing material information and verification of assets and liabilities by means of a summary inquiry at the time of scrutiny of the nominations by the Returning Officer should not be enforced.

Accordingly, the Election Commission, issued revised order dated 27th March, 2003, inter alia, clarifying that its earlier order with regard to verification of assets and liabilities by means of summary inquiry and rejection of nomination papers on the ground of furnishing wrong information or suppression of material information shall not be enforceable.

Subsequently, the Commission, vide letter dated 02nd June, 2004 directed the Returning Officers that where any complaint regarding furnishing of false information by any candidate is submitted by anyone, supported by some documentary evidence, the concerned Returning Officer should initiate action to prosecute the candidate concerned by filing formal complaint before the appropriate authority. The Supreme Court held that right to know about the candidate is a universally recognised natural right flowing from the concept of democracy and is an integral part of Article 19(1)(a) of the Constitution. To effectuate the fundamental right of the citizens, the candidates are supposed to disclose their antecedents at the time of filing of nomination paper and for that purpose, the Returning Officer can very well compel a candidate to furnish the relevant information.

It accordingly held that in the affidavits filed by candidates along with their nomination paper, the candidates must fill up all columns therein and no column can be left blank. Therefore, at the time of filing of affidavit, RO has to check whether all columns of the affidavit filed with the nomination paper are filled up. If not, the RO shall give a reminder to the candidate to furnish information against blank columns and for that purpose one more column be incorporated in the standard Check List already prescribed by the Commission to ensure filing of all documents required to be filed by a candidate along with the nomination paper. In case no information is to be furnished against any item, appropriate remarks such as 'NIL' or 'Not Applicable' or 'Not Known' as may be applicable shall be indicated in such column by the candidate. No column can be left blank. If a candidate fails to fill the blanks even after reminder, the nomination paper will be liable to be rejected by the Returning Officer at the time of scrutiny of nomination papers.

It further clarified that even though filing of affidavit with blanks will attract the penal provisions of Section 125A(i) of the RP Act, however, as the nomination paper itself is rejected by the Returning Officer, it would not be necessary to prosecute the candidate again for the same act.

- (f) **People's Union for Civil Liberties & Another v. Union of India & Another [WP (C) No. 161 of 2004], Supreme Court:** This writ petition was filed before the Hon'ble Supreme Court under Article 32 of the Constitution of India challenging the constitutional validity of Rules 41(2) & (3) and 49-O of the Conduct of Elections Rules, 1961, to the extent these provisions violate the secrecy of voting required to be maintained as per Section 128 of the Representation of the People Act, 1951, and Rules 39 and 49-M of the 1961 Rules in the case of voter who decides not to cast his vote at an election for any of the contesting candidates in fray.

The Apex Court held that casting of 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 and any violation of the said right gives the aggrieved person the right to approach the Supreme Court under Article 32 of the Constitution. Right to vote as well as right not to vote have been statutorily recognised under Section 79(d) of the RP Act, 1951 and Rules 41 (2) & (3) of the CE Rules, 1961. The fundamental right under Article 19(1)(a) read with statutory electoral right granted under Section 79 (d) of the RP Act, 1951 is violated unreasonably if the right not to vote effectively is denied and secrecy is breached.

It was held that secrecy of ballot is a privilege granted in public interest to an individual. The Apex Court directed the Election Commission to provide '**None of the Above**' (**NOTA**) option on the EVM and ballot papers so that the electors who do not want to vote for any of the candidates can exercise their option in secrecy. It was also held that the provisions of Rules 41(2) and 49-O under which an elector not wishing to vote for any candidate had to inform the Presiding Officer about his decision, *ultra vires* Article 19(1)(a) of the Constitution and Section 128 of the Representation of the People Act, 1951.

- (g) **Subramaniam Swamy v. Election Commission of India [CA No. 9093 of 2013], Supreme Court:** The appellant filed writ petition before High Court of Delhi seeking writ of Mandamus directing Election Commission of India to incorporate a system of 'Paper trail/Paper Receipt' in the Electronic Voting Machines (EVM) as a convincing proof that the EVM has rightly registered the vote cast by a voter in favour of a particular candidate. The petition was dismissed by the High Court. Hence, other writ petition under Article 32 also prayed for writ of Mandamus directing the respondents to effect the necessary modifications in the EVMs so as to allow the voters to verify their respective votes and attach printers to EVMs with a facility to print the running record of the votes. The petitioner also prayed for a direction to frame guidelines and to effect necessary amendments in the Conduct of Elections Rules, 1961.

The stand of the Election Commission was that the apprehension that EVMs could be tampered with, is baseless as the technology employed is such that it cannot be manipulated in any manner. There has been no instance of tampering with EVMs by anyone since its introduction. However, to make the voting procedure more transparent the Commission has been in the process of exploring the possibility of incorporating a viable Voter Verifiable Paper Audit Trail (VVPAT) system with EVMs. Ultimately, the design of VVPAT system was finalised on 19th January, 2013 and the relevant rules of the Conduct of Elections Rules, 1961 were modified to enable use of VVPAT with EVMs and Notified in the Gazette of India on 14th August, 2013.

The Commission thereafter decided to use the VVPAT system for the first time in the byelection from 51-Noksen (ST) Assembly Constituency in the State of Nagaland. In order to ascertain the efficacy of the newly introduced VVPAT system the Commission decided on its own to manually count paper slips of VVPAT besides electronic count of EVM. No discrepancy was found between both the electronic and paper count. The report was placed before the Court.

The Supreme Court observed that it is necessary to set up EVMs with VVPAT system because vote is nothing but an act of expression which has immense importance in democratic system. It permitted the ECI to introduce the system in gradual stages in the coming general elections and directed the Government of India to provide required financial assistance for procurement of required number of units of VVPAT for conduct of general elections all over India.

The Appeal and the Writ Petition were disposed with the above directions.

- (h) **Ashok Shankarrao Chavan v. Dr.Madhavrao Kinhalkar & Others [CA Nos. 5044, 5045 & 5078 of 2014], Supreme Court:** The main issue in the case was whether the Election Commission has been empowered under Section 10A of the R.P. Act, 1951 to hold an enquiry to ascertain the correctness or otherwise of the account of election expenses incurred by a returned candidate as maintained under Sections 77(1) and (2) and lodged with the District Election Officer (DEO) under Section 78 of the 1951 Act for the purposes of deciding the question of disqualification under Section 10A of the 1951 Act, either at the instance of any candidate who also contested in the said election or by any other person or based on any other information received by the Commission through some reliable sources, especially after a decision is rendered by the High Court in the Election Petition preferred by one of the contesting candidates under Section 80 of the 1951 Act.

Ultimately, the Supreme Court dismissed the SLP filed by Shri Ashok Chavan vide its order dated 5th May, 2014 and gave its seal of approval to the decision of the Election Commission as upheld by the High Court to the effect that Section 10A clothes the Election Commission with the requisite power and authority to enquire into the allegations relating to failure to submit the accounts of election expenses in the manner prescribed and as required by or under the Act, is perfectly justified and declined to interfere with the same.

The Apex Court observed that an order of disqualification under Section 10A of the 1951 Act in respect of an elected candidate by the Election Commission does not amount to setting aside the election of the candidate. It emphasised that the scope of an Election Petition to be tried by a High Court and scope of an order of disqualification to be passed under Section 10A are different and one does not conflict with the other. The enquiry to be held under Section 10A is not to examine any allegation of corrupt practice falling under Section 123(6) of the Act. The only area of examination is with regard to correctness of account of election expenses maintained as per the provisions of sub-sections (1) and (2) of Section 77 of the 1951-Act. It did not agree with the contention that once the Election Petition has been rejected for want of particulars, a complaint under Section 10A cannot be pursued.

It was held that the power to hold an enquiry before passing an order of disqualification under Section 10A has been invested with the Election Commission. As per the provisions of sub-rule (5) and (6) of Rule 89 along with Section 10A, the Commission

has to necessarily issue a show cause notice, consider whether the account lodged was in the manner as required by or under the Act and only thereafter, pass an order of either disqualification or otherwise.

It was further held that the enquiry under Section 10A would be more or less of a civil nature and, therefore, the principles of preponderance of probabilities alone would apply and that even after the order of disqualification, if any, is passed under Section 10A, after following the requirement of issuance of show cause notice, receipt of reply, etc., there is a further remedy available to the contesting candidate under Section 11 by which the aggrieved candidate can demonstrate before the Election Commission as to how the order of disqualification cannot stand and that it has to be varied. Further, the Constitutional remedy under Articles 32 and 226 is always available to question the correctness of any order that may be passed by the Commission under Sections 10A and 11 of the Act.

The Court held that the maintenance of account of the election expenses is not an empty formality and that the Court cannot turn a blind eye and state that Section 77(1) and (3), as well as 78 of the Act would be relevant only for the purpose of ascertaining the corrupt practices under Section 123(6) of the Act. In fact, it was held that ascertainment of the requirement under Section 77(3) of the Act, viz. the expenses incurred, should not exceed the limit prescribed and that it should be for both the purpose of an enquiry under Section 10A of the Act, as well as in the event where candidates exceed the limit through corrupt practices for the purpose of invalidating the election. Therefore, the requirement under Section 77(3) of the Act has got twin objectives to be fulfilled. Carrying on from this, the Court condemned 'paid news'.

- (i) **Kisan Shankar Kathore v. Arun Dattatray Sawant & Others [CA No. 4261 of 2007], Supreme Court:** The Appellant, Shri Kisan Shankar Kathore, was elected from 56-Ambernath Assembly Constituency, Maharashtra at the general election to the Maharashtra Legislative Assembly held in October, 2004. An election petition under Section 100(1)(d) (i) and (iv) of the RP Act, 1951 was filed before the Hon'ble High Court of Judicature at Bombay by Shri Arun Dattatray Sawant, who was a voter of the said assembly constituency, on the ground that in the nomination paper the Appellant had suppressed information about his dues payable to the Government, assets of his spouse and assets of a partnership firm of which he was a partner. It was contended that the appellant's nomination had been improperly accepted by the Returning Officer (RO) and the election was void due to non-compliance of the provisions of the Constitution of India, the Representation of the People Act, 1951 as well as Rules and Orders framed under the Act.

The Hon'ble Bombay High Court allowed the election petition and set aside the election of the appellant by treating non-disclosure of certain information about assets and liabilities in the affidavit, filed with the nomination paper, as material defect that amounted to non-compliance of the order passed by the Election Commission under Article 324 of the Constitution of India, which is founded on the law declared by the Apex Court under Article 141 of the Constitution of India, within the meaning of Section 100(1)(d)(iv) of the Representation of the People Act, 1951. The nomination form of the Appellant was thus improperly accepted by the Returning Officer and the election result was also materially affected because of non-disclosure of vital information to the electorate.

Aggrieved by the Order of the High Court, the present appeal was filed before the Supreme Court. The Appellant's contention was that the nature of information given in the nomination form ought to have been treated as substantial compliance.

The Hon'ble Supreme Court of India agreeing with the aforesaid findings of the Bombay High Court, held that the election of the returned candidate would be void when a Court finds at a later stage during the trial of an election petition, that there was a case of misinformation or suppressing of material information in the affidavit filed with the nomination paper by treating it as a case of improper acceptance of the nomination paper by the RO, holding that when the information is given by a candidate in the affidavit filed along with the nomination paper and objections are raised thereto questioning the correctness of the information or alleging that there is non-disclosure of certain important information, it may not be possible for the returning officer at that time to conduct a detailed examination. Summary enquiry may not suffice. Present case is itself an example which loudly demonstrates this. At the same time, it would not be possible for the Returning Officer to reject the nomination for want of verification about the allegations made by the objector. In such a case, when ultimately it is proved that it was a case of non-disclosure and either the affidavit was false or it did not contain complete information leading to suppression, it can be held at that stage that the nomination was improperly accepted. Learned senior counsel appearing for the Election Commission, rightly argued that such an enquiry can be only at a later stage and the appropriate stage would be in an election petition as in the instant case, when the election is challenged. The grounds stated in Section 36(2) are those which can be examined there and then and on that basis the Returning Officer would be in a position to reject the nomination. Likewise, where the blanks are left in an affidavit, nomination can be rejected there and then. In other cases where detailed enquiry is needed, it would depend upon the outcome thereof, in an election petition, as to whether the nomination was properly accepted or it was a case of improper acceptance. Once it is found that it was a case of improper acceptance, as there was misinformation or suppression of material information, one can state that question of rejection in such a case was only deferred to a later date. When the Court gives such a finding, which would have resulted in rejection, the effect would be same, namely, such a candidate was not entitled to contest and the election is void. Otherwise, it would be an anomalous situation that even when criminal proceedings under Section 125A of the Act can be initiated and the selected candidate is criminally prosecuted and convicted, but the result of his election cannot be questioned. This cannot be countenanced.

The Hon'ble Supreme Court dismissed the appeal being devoid of any merit.

- (j) **Election Commission of India v. Bajrang Bahadur Singh & Others [SLP (C) No. 8850 of 2015], Supreme Court:** The Petitioner in the transferred case filed a writ petition before the Allahabad High Court on 13th March, 2015 challenging the legality of the Order passed by the Governor on 29th January, 2015 under Article 192(1) of the Constitution declaring the petitioner disqualified from continuing to be a member of the Uttar Pradesh Legislative Assembly on the ground that he had entered into a contract with the Government after having been elected as a Member of the Assembly on 6th March, 2012 and executed the contract thereby incurring disqualification contemplated under Article 191 (1) (e) read with Section 9A of the Representation of the People Act, 1951.

The Secretariat of the Uttar Pradesh Legislative Assembly issued a notification on 17th February, 2015 declaring the seat held by the Petitioner from the 315-Pharenda assembly constituency as vacant. The Election Commission thereafter announced the schedule for filling up the casual vacancy by issuing a press Note on 10th March, 2015 and issued the notification under Section 150(1) of the 1951 Act to notify the byelection from 315-Pharenda assembly constituency as per schedule announced by it.

The High Court of Allahabad passed an interim order on 20th March, 2015 and stayed the process of the byelection from 315-Pharenda assembly constituency that had already been notified by the Commission.

The Election Commission filed this SLP before the Supreme Court being aggrieved by the impugned interim order issued by the Allahabad High Court to stay the process of byelection in view of the constitutional bar to interference by Courts in electoral matters under Article 329 (b) of the Constitution.

The main contention of the petitioner in the writ petition before the Allahabad High Court was that disqualifications prescribed under Sections 8,9, 10A of the RP Act, 1951 run for a statutorily fixed time frame and for any disqualification under Section 9A of the RP Act, 1951 the period of disqualification is co-terminus with subsistence of the contract. The moment the contract ceases to subsist the disqualification also ceases to exist. The language of Article 191(1) also does not specify whether such disqualification is attracted subsequent to the election.

The Supreme Court held that though the period of disqualification prescribed under Section 9A for subsisting contract with the appropriate government for supply of goods to, or for the execution of any works undertaken by that government and under Section 10 for holding an office under Government Company is co-terminus with the currency of the disqualifying event, in the case of a sitting Member of Parliament or State Legislature the seat held by that Member falls vacant forthwith by operation of law as enunciated under sub-clause (3) of Article 190 of the Constitution. The Court thus rejected the submission of the petitioner and dismissed the transferred writ petition filed before the Allahabad High Court.

The Court further clarified that a person incurring disqualification under Sections 9A and 10 of the 1951 Act is not debarred from contesting any election, including a byelection arising as a direct consequence of his vacating the seat if the event of disqualification ceases to subsist by the relevant date.

On the question of jurisdiction of the High Court to intercept in the election process already set in motion by issuance of notification in view of the prohibition contained in Article 329(b) of the Constitution, the Supreme Court held that the interim order granted by the Allahabad High Court was justified as the primary challenge in the writ petition filed before the High Court was not to challenge the electoral process but the decision of the Governor disqualifying the petitioner that resulted in the vacancy for which a byelection was notified by the Election Commission. The interference in the process of byelection by the High Court under Article 226 arose out of an absolute necessity.

The Supreme Court observed that the extraordinary situation arose apparently due to conflicting constitutional obligations of High Court to adjudicate on any legality of Governor's decision under Article 192 and Election Commission's obligation to conduct byelection within a period of six months from the date of occurrence of the vacancy under Section 150 of the RP Act, 1951.

By this judgment the Apex Court laid down that the Order of the Governor under Article 192 (though said to be final) can be called in question on limited grounds as explained by the Supreme Court in the cases of *Kihoto Hollahan* [1992 Supp (2) SCC 651] and *Mahachandra Prasad Singh* [(2004) 8 SCC 747]. The Supreme Court also prescribed the period of limitation for initiating proceedings before the High Courts against a decision

of the Governor under Article 192 on the question of disqualification of a sitting member as eight (8) weeks from the date of the decision of the Governor and final disposal by the High Court within a period of eight weeks from the date of initiation without fail. The Apex Court further directed that such petitions should be heard by a Division Bench of the High Court comprising at least two judges and the Chief Justices of the High Courts have been directed to make appropriate arrangements for compliance within the limitation period.

- (k) **Election Commission of India v. Praful & Another [CA No. 178 of 2016], Supreme Court:** The appeal was filed by the Election Commission against impugned final judgment and Order dated 20th December, 2007 passed by the High Court of Bombay at Aurangabad in writ petition No. 6084 of 2007, whereby it struck down one of the clauses [Clause 5(f)] of the public Notice dated 01st October, 2007 issued under Rule 31(1) of the Registration of Electors Rules, 1960, by the Electoral Registration Officers of Nagpur, Pune and Aurangabad Division Graduates' constituencies, in the form devised by the Election Commission, inviting applications in prescribed statutory Form 18 appended to the Registration of Electors Rules, 1960, from electors eligible for inclusion of their names in the electoral roll of these Graduates' constituencies with reference to 1st November, 2007 as the qualifying date. In para 5(f) of that notice, it was stated that a mere reference to an entry in the earlier roll relating to the applicant shall not be taken into account for determining the eligibility for enrolment in the electoral rolls and the applicant will have to produce his degree or certificate, in original, for verification by the Designated Officer.

The High Court had struck down the above clause as being without any legal authority or sanction. It held that the relevant Act and Rules do not confer jurisdiction or power on the Election Commission to order for preparation of electoral rolls afresh every time an election is held to Graduates'/Teachers' constituencies. It directed the Commission not to ask for documents from the electors, already enrolled in the electoral rolls of Graduates'/Teachers' constituencies.

The Apex Court considered the question as to whether in matters of revision of the electoral roll for graduates'/teachers' constituencies a fresh roll is to be prepared or the existing roll is to be revised and published after inviting claims and objections. It held that the clear legislative intent of the provisions of Sections 21 and 22 of the Representation of the People Act 1950 and Rule 31 of the Registration of Electors Rules, 1960, in the context of revision of electoral roll for graduates' and teachers' constituencies, is that it shall be prepared afresh after every six years as per the procedure embodied in Rule 31 of the 1960 Rules.

It further held that the requirement of an eligible voter to submit fresh application in prescribed Form 18 in case of Graduates' constituency and in Form 19 in case of Teachers' constituencies every six years adequately takes care of the requirement spelt out by Section 22 of the 1950 Act that an eligible voter shall not be deleted from the electoral roll without an opportunity.

The Apex Court thus upheld the validity of Clause 5 (f) of the impugned notice as being in conformity with the requirements of sub-rule (4A) of rule 31 of 1960 Rules. Any contrary view taken would be erroneous.

The Appeal was allowed and the order of the High Court was set aside with the observation that the High Court had fallen into error in taking the contrary view.

9.10 Q & A REGARDING ELECTIONS AND ASSOCIATED PROCESSES

1. **What is the minimum age for becoming a candidate for Lok Sabha (House of People) or Vidhan Sabha (Legislative Assembly) election?**

Ans. Not less than 25 Years of age on the date of scrutiny of nomination papers. (As per : Article 84 (b) of Constitution of India and Article 173 (b) of the Constitution read with Sec. 36 (2) of the Representation of People Act, 1951.)

2. **Can anyone not registered as a voter in any constituency contest Election?**

Ans. No one has to be registered as a voter in the current electoral roll to contest election. (As per: Sec. 4 (d) and Section 5 (c) of Representation of People Act, 1951)

3. **A person is a member of schedule caste in a particular state. Can he contest election from any other State for Lok Sabha (House of People) from a seat reserved for scheduled castes?**

Ans. Yes. He can contest election from any other state from a seat reserved for scheduled caste. (As per : Sec. 4 of the Representation of People Act, 1951)

4. **A person is a member of schedule tribe in a particular state. Can he contest election from any other State for Lok Sabha (House of People) from a seat reserved for scheduled tribes?**

Ans. Yes. He can contest election from any other state from a seat reserved for scheduled tribes except Lakshadweep, other than those in autonomous Districts of Assam and excluding the tribal areas of Assam. (As per: Sec. 4 of the Representation of People Act, 1951)

5. **A person is an elector in a particular State. Can he contest election for a seat in the Vidhan Sabha (Legislative Assembly) of any other state?**

Ans. No. (As per: Sec. 5 of the Representation of People Act, 1951)

6. **A person is registered as a voter in a particular state but he is a member of schedule caste of other state. Can he contest election from a seat reserved for scheduled castes for Vidhan Sabha (Legislative Assembly) in which he is a voter?**

Ans. No. (As per: Sec. 5 of the Representation of People Act, 1951) (Similar case holds good for the Schedule Tribe also).

7. **A person is a member of scheduled caste or scheduled tribe community. Can he contest an election from a general constituency?**

Ans. Yes. (As per: Sec. 4 & 5 of the Representation of People Act, 1951)

8. **A person is convicted for some offence and is sentenced to imprisonment for 2 years. Can he contest elections?**

Ans. No. (As per: Section 8 (3) of Representation of People Act, 1951)

9. **Supposing such person is on bail, disposal of his appeal pending, can he contest the election?**

Ans. No. Even if a person is on bail, after the conviction and his appeal is pending for disposal, he is disqualified from contesting an election as per Supreme Court's decision. But if his conviction is also stayed, then he can contest.

10. Can a person confined in jail, vote in an election?

Ans. No. Such person cannot 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. (As per: Section 62(5) of the Representation of the People Act, 1951)

11. Is a person subjected to preventive detention under any law entitled to vote in an election?

Ans Yes. He is entitled to vote by postal ballot paper (As per: Proviso to Section 62(5) of the Representation of the People Act, 1951 and Rule 18 (a) (iv) of Conduct of Elections Rules 1961).

12. Can an overseas elector contest the election?

Ans. Yes. An overseas elector whose name has been enrolled in the electoral roll has the right to contest elections, subject to the fulfilment of other requirements of the law. One of the essential qualifications prescribed under the law is that the candidate should make and subscribe an oath or affirmation in the prescribed form, before a person authorised by the Commission on its behalf.

13. When does a candidate lose the deposit?

Ans. A defeated candidate who fails to secure more than one-sixth of the valid votes polled in the constituency will lose his security deposit. (As per: Section 158(4) of Representation of People Act. 1951.)

14. Can a person contest election to Lok Sabha (House of People)/Vidhan Sabha (Legislative Assembly) from as many constituencies as he likes?

Ans. No. A person cannot contest from more than two constituencies at a general election for Lok Sabha (House of People)/Vidhan Sabha (Legislative Assembly). (As per: Section 33 (7) of Representation of People Act, 1951)

15. Who allots the election symbols to contesting candidates?

Ans. Returning Officer. [As per: The Election Symbols (Reservation and Allotment) Order, 1968]

16. How reserved election symbol is allotted to candidate of a recognised National or State Party?

Ans. For allotment of reserve symbol, the candidate has to declare in his nomination form that he has been setup by the concerned recognised party and has to submit prescribed declaration in Form B from the authorised office bearer of the party to the effect that he has been setup by that party. The declaration in Form B should be duly signed by the office bearer of the Party whose specimen signatures have been communicated in Form A subject to condition that both the forms have been delivered to Chief Electoral Officer of the State and Returning Officer before 3 P.M on the last date of making nominations. [As per: Paras 8 and 13 the Election Symbols (Reservation and Allotment) Order, 1968.]

17. What are the duties of polling agents?

Ans. The main duty of polling agents is to see that interests of the candidates, who have appointed them, are safeguarded at the polling stations by helping the Presiding Officer to detect and prevent impersonation of voters by challenging persons whose identity

as real elector is doubtful and to see that EVM is properly secured/sealed before, during and after the close of poll and mock poll is conducted in their presence and poll proceedings conducted in accordance with the procedure laid down by the Election Commission.

18. Whether there is any restriction for plying of vehicles for electioneering purposes?

Ans. Yes, one can ply any number of vehicles (all mechanised/motorised vehicles including 2 wheelers) for the purpose but one has to seek prior approval of the Returning Officer for plying such vehicles and must display permit issued by Returning Officer in original (not photocopy) prominently on the wind screen of the vehicle. The permit must bear the number of the vehicle and name of the candidate in whose favour it is issued. The expenditure incurred on this will be booked against the person.

19. Whether there is any restriction for use of educational institutions including their grounds (whether Government-aided, Private or Government) for political campaigns and rallies?

Ans. Use of educational institutions including their grounds (whether Government-aided, Private or Government) for political campaigns and rallies are not allowed.

20. What is the deadline after which no public meetings and processions can be taken out?

Ans. Public meetings cannot be held after 10 PM and before 6.00 AM. Further, one cannot hold public meetings and processions during the period of 48 hours ending with the hour fixed for the conclusion of poll. Suppose, poll day is 12th June, 2009 (Friday) and hours of poll are from 8.00 A.M to 5.00 P.M., the public meetings and processions shall be closed at 5.00 P.M on the 10th June, 2009 (Wednesday). (As per: Sec. 126 of Representation of People Act, 1951).

21. Is there any restriction on the presence of political functionaries in a constituency after campaign period is over?

Ans. Yes After the closure of campaign period (starting from 48 Hrs. before closure of poll), presence of political functionaries etc. who have come from outside the constituency and who are not voters of the constituency should not continue to remain present in the constituency. Such functionaries should leave the constituency immediately after campaign period is over.

22. Is wearing of special accessories like cap, mask, scarf etc. permitted during the campaigning? (Modi's Face mask during the election campaign)

Ans. Yes, provided they are accounted for in the election expenses of the candidate concerned. However, supply and distribution of main apparels like saree, shirt, etc. by party/candidate is not permitted as it may amount to bribery of voters.

23. Is there any restriction on use of places of worship as forum for election propaganda

Ans. Yes. The provisions of Model Code of Conduct prohibit the use of places of worship as forum for election propaganda in any manner. The religious institutions

(prevention of Misuse) Act 1988 prohibits use of religious institutions or funds of religious institutions for the promotion or propagation of any political ideas or political activity or for benefit of any political party.

24. Is there any restriction of canvassing in or near polling station?

Ans. Yes. Canvassing for votes etc. within a distance of one hundred metres of polling station is prohibited on the day of poll. (As per: Section 130 of Representation of People Act, 1951)

25. Whether videography or photography is done inside the polling stations to monitor the poll proceedings by the election authority?

Ans. In deference to the suggestions of Supreme Court, contained in its judgment dated 11th January, 2005 in Civil Appeal No. 9228 of 2003 – (Janak Bingham v. Das Rai and other), the photography by the official videographer has been allowed to be carried inside the polling stations to photograph electors and cover poll proceedings without compromising the secrecy of voting in certain identified polling stations assessed as critical on various factors.

26. Is there any option for an elector not to vote for any of the candidates? What is meant by NOTA?

Ans. Yes. The electors who do not wish to vote for any of the candidate can exercise their right not to vote for any candidate without violation of the secrecy of their decision. A ballot panel with the words 'None of the Above: NOTA' will be available after the panel containing the name and particulars of the last candidate on the ballot paper, there shall be a panel below the said last panel for the benefit of those electors who may wish to exercise the option of not voting for any of the candidates in the fray.

27. Whether it is possible for an elector to know to which candidate he has cast his vote. What is meant by VVPAT?

Ans: Election commission has ordered that a printer with drop box of such design, as may be approved by the Election Commission may also be attached to a voting machine for printing a paper trail of vote, in such constituency or constituencies or parts thereof as the commission may direct. In respect of such polling booths where printer for paper trail with drop box is used by pressing the balloting button, the electors shall be able to view the printed paper slip showing the serial number, name and the symbol of the candidate for whom he cast his vote before such paper slip gets cut and drop in the drop box through the transparent window of the printer.

28. Who is responsible for the counting of votes and declaration of result of an election?

Ans. The Returning Officer (as per: Sections 64 and 66 of Representation of People Act, 1951)

29. How it is ensured that Control Unit of EVM has not been tampered with? (Recent allegations made by AAP)

Ans. Before votes recorded in the EVM are counted, the carrying case and control unit of EVM are placed on the counting table for the inspection and checking of seals thereon by the candidate or their agents present at the counting table. If control unit is found to have been tampered with, votes recorded in that machine are not counted and matter is reported to the Commission for further direction.

30. Can a candidate ask for a recount?

Ans. Yes. By a written application stating the grounds on which recount is asked for. Such application can be made to the Returning Officer, who prepares and signs Final Result Sheet (Form 20).

31. Is a candidate free to spend as much as he likes on his election?

Ans. No. A candidate is not free to spend as much as he likes on his election. The law prescribes that the total election expenditure shall not exceed the prescribed maximum limit for the constituency concerned. (As per: Rule 90 of the Conduct of Election Rules, 1961 and Section 123 (6) of Representation of People Act, 1951.)

32. Are the candidates required to file any account of election expenses?

Ans. Yes. Every candidate at an election to the House of the People or State Legislative Assembly is required to keep, either by himself or by his election agent, a separate and correct account of all expenditure in connection with the election incurred or authorised by him or his election agent between the date on which he has been nominated and the date of declaration of result, both dates inclusive. Every contesting candidate has to lodge a true copy of the said account within 30 days of result of the election. (As per: Sections 77 & 78 of the Representation of People Act, 1951). The account of election expenses shall be lodged by a contesting candidate with the District Election Officer of the district in which the constituency from which he contested lies. (As per : Section 78 of the Representation of People Act, 1951)

33. What is the penalty if a candidate does not file his account of election expenses?

Ans. If the Election Commission is satisfied that a person has failed to lodge an account of election expenses within the time and in the manner required by or under the Representation of People Act, 1951 and he has no good reason or justification for the failure, it has the power to disqualify him for a period of 3 years for being chosen as, and for being, a member of either House of Parliament or the Legislative Assembly or Legislative Council of a State. (As per: Section 10A of the Representation of People Act, 1951)

34. Whether the expenditure incurred for preparation of campaigning materials prior to the date of nomination be accounted for in the election expenditure.

Ans: Yes. The candidates, while maintaining their register of accounts of election expenditure, should also account for all expenditure including those incurred prior to the date of nomination for preparation of campaign materials etc. which are actually used during the post nomination period/in connection with the election.

35. Whether the expenditure incurred by a political party on advertisements be accounted for in the account of the candidates.

Ans. Yes. The expenditure incurred by a political party on advertisements, in connection with any election could be categorised into the following: (i) Expenditure on general party propaganda seeking support for the party and its candidates in general, but, without any reference to any particular candidate or any particular class/group of candidates (ii) Expenditure incurred by the party, in advertisements etc. directly seeking support and/or vote for any particular candidate or group of candidates. (iii) Expenditure incurred by the party which can be related to the expenditure for promoting the prospects of any particular candidate or group of candidates. In the case of any advertisement by political parties, whether

in print or electronic or any other media, falling in category (i) above, which is not related to the election of any particular candidate or a given group of candidates, the expenditure may be treated as expenditure of the political party on general party propaganda. In the cases of expenditure falling in categories (ii) and (iii) above, that is, cases where the expenditure is related to the election of a particular candidate or a group of candidates, the expenditure shall be treated as expenditure authorised by the candidates concerned and such expenditure shall be accounted for in the election expenses accounts of the candidates concerned. In those cases where the expenditure is incurred by the party for the benefit of a given group of candidates, the expenditure is to be apportioned equally among the candidates.

36. What is an Electronic Voting Machine? In what way its functioning is different from the conventional system of voting?

Ans. An Electronic Voting Machine consists of two Units – a Control Unit and a Balloting Unit – joined by a three-meter cable. The Control Unit remains with the Presiding Officer or a Polling Officer and the Ballot Unit is placed inside the voting compartment. Instead of issuing a ballot paper, the Polling Officer in charge of the Control Unit will press the Ballot Button. This will enable the voter to cast his vote by pressing the blue button on the Balloting Unit against the candidate and symbol of his choice.

37. What are the unique features of EVMs?

Ans. It is a simple machine that can be operated easily by both the polling personnel and the voters. It is sturdy enough to withstand rough handling and variable climatic conditions. Being a standalone machine without any network connectivity, nobody can interfere with its programming and manipulate the result.

38. What are the features of Control Unit?

Ans. The Control Unit is the main unit which stores all data and controls the functioning of EVM. The program which controls the functioning of the control unit is burnt into a microchip on a 'one time programmable basis'. Once burnt, it cannot be read, copied out or altered. The EVMs use dynamic coding to enhance security of data transmitted from ballot unit to control unit. The new EVMs have also got real-time clock and date-time stamping facility which enables them to record the exact time and date whenever key is pressed. After the voting is completed and the close button is pressed, the machine does not accept any data or record any vote. Through the press of 'total' button, the control unit can display the number of votes recorded till that time which can be cross checked with the register of voters in Form 17-A. The display system of the control unit shows the total number of votes polled in a polling station and the candidate-wise votes polled in the machine when the 'result' button is pressed by the counting staff in the presence of counting agents at the counting center. The control unit can also detect any physical tampering made with the connecting cable and indicate the same in the display unit.

39. What are the features of Balloting Unit?

Ans. It holds the ballot paper containing the names and symbols of candidates. When pressed, the candidate button on the ballot unit sends a signal to the control unit where this is recorded in a non-volatile memory which can store the poll data indefinitely even without a battery backup.

40. Can booth capturing be prevented by the use of EVMs?

Ans. By booth-capturing, if one means, taking away or damaging of ballot boxes or ballot papers, this evil cannot be prevented by the use of EVMs as EVMs can also be forcibly taken away or damaged by miscreants. But if one looks at booth capturing as a case of miscreants intimidating the polling personnel and stamping the ballot papers on the symbol and escaping in a matter of minutes, this can be prevented by the use of EVMs. The EVMs are programmed in such a way that the machines will record only five votes in a minute. As recording of votes has necessarily to be through Control Unit and Balloting Unit, whatever be the number of miscreants they can record vote only at the rate of 5 per minute. In the case of ballot papers, the miscreants can distribute all the 1000 odd ballot papers assigned to a polling station, among themselves, stamp them, stuff them into the ballot boxes within a few minutes and run away before the police reinforcements reach. In EVMs, in half-an-hour, the miscreants can record only a maximum of 150 votes by which time, chances are the police reinforcement would have arrived. Further, the presiding Officer or one of the Polling Officers can always press the 'close' button as soon as they see some intruders inside the polling station. It will not be possible to record any vote once the 'close' button is pressed and this will frustrate the efforts of the booth capturers.

41. What are the advantages in using EVMs?

Ans. The first and most important advantage is that the printing of millions of ballot paper scan be dispensed with, as only one ballot paper is required for fixing on the Balloting Unit at each polling station instead of one ballot paper for each individual elector. This results in huge savings by way of cost of paper, printing, transportation, storage and distribution. Second, counting is very quick and the result can be declared within 2 to 3 hours as compared to 30–40 hours, on an average, under the conventional system. Third, there are no invalid votes under the system of voting under EVMs. The importance of this will be better appreciated, if it was remembered that in the past in several cases, the number of invalid votes is more than the winning margin between the winning candidate and the second candidate, in a number of constituencies. To this extent, the choice of the electorate will be more correctly reflected when EVMs are used.

9.11 CONCLUSION

DEMOCRACY MUST, IN ESSENCE, MEAN THE ART AND SCIENCE OF MOBILISING THE ENTIRE PHYSICAL, ECONOMIC AND SPIRITUAL RESOURCES OF ALL THE VARIOUS SECTIONS OF THE PEOPLE, IN THE SERVICE OF THE COMMON GOOD OF ALL. - MAHATMA GANDHI

In a democratic country, the word 'election' symbolises the active and direct participation of the people of a nation to form a Government. It is universally accepted that for a democracy to work as one, its citizens elect their representatives and, in turn, rule themselves. The elections represent the general will of the people, as expressed in their votes. The voting population expresses its choice of candidate, political party and Government through exercising their franchise at regular intervals. The votes of the electors crystallise

into the mandate of the people. Elections are held in our country every five years (the only exception is the six-year term of the Jammu and Kashmir Legislative Assembly).

By exercising their franchise, voters express their changing expectations and convictions regarding the kind of government they want.

The voters are the main stakeholders in a democracy and they vote with the belief that the Government, as the main arbiter of the future of the country and its people, will provide every citizen the best possible policies to build a better country, a better community, and a better life.

They also believe that it will work in the most efficient way to further their economic and social welfare, alleviate poverty and reduce the gap between the rich and the poor, build infrastructure, and formulate and implement policies that will ultimately improve the quality of life of every citizen, reduce the existing differences between different sections of society to make the social order as egalitarian as possible, maintain law and order, and protect the legal rights and civil liberties of the citizens.

The legitimacy of the entire democratic system of governance depends on the efficacy and effective working of the electoral mechanism. If the verdict of the people, which forms the basis of the propriety and legitimacy of the political system, is vitiated by unethical methods, the faith of the people in the electoral system gets eroded and ultimately destroys the very foundations of democracy.

In elections, voting is a primary manifestation of democratic behaviour. It creates and preserves the authenticity and credibility of democracy.

An electorate of informed and politically and socially aware citizens, determined to exercise their right to vote wisely, are equipped to build the right environment for a free and fair elections.

Democracy and elections are inextricable. In the Indian context, the emphasis has always been on creating a social order in which the people, by casting their vote without any coercion or inducement, make decisions about their government.

Electoral integrity is concerned with open dialogue, debate and information-sharing among leaders and the public. This depends on public confidence in electoral and political processes. Inclusiveness, transparency and accountability are tenets fundamental to developing the confidence of the voters in the electoral process. The four main tenets of a fair election process are:

1. Universal suffrage
2. Periodicity of election (i.e., prefixed term of the Lok Sabha/Legislative Assembly)
3. Independent election management bodies (EMBs)
4. Free, fair and transparent electoral process

Thus, the Representation of People Acts help to achieve a fair, periodic, independent and transparent election process which is the hallmark of democracy.