

**NATIONAL COMMISSION TO REVIEW THE
WORKING OF THE CONSTITUTION**

**A
Consultation Paper^{*}
on**

*REVIEW OF ELECTION LAW, PROCESSES
AND REFORM OPTIONS*

* The views expressed and the suggestions contained in this paper are intended for the sole purpose of generating public debate and eliciting public response.

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ABSTRACT AND PROLOGUE

A general election in India is a gigantic exercise. It is equal to holding polls in Europe, the United States, Canada and Australia all put together. General elections to Lok Sabha and State Legislative Assemblies in India are held under the supervision, direction and control of a constitutional body - the Election Commission of India. Elections to local bodies – Panchayats and Nagarpalikas – are the responsibility of State Election Commissioners.

Nearly fifty years of experience has brought to fore many distortions, some very serious, that have crept into the conduct of India's elections generating a deep concern in most quarters. There are constant references to 3 MPs, viz. money power, muscle power and mafia power and to 4Cs, viz. criminalisation, corruption, communalism, and casteism. Also, majority of our representatives are elected by a minority of votes cast thereby making their representative credentials doubtful. The result is that the legitimacy of our political process gets seriously compromised.

After a review of various reports, research papers by activist organisations and concerned citizens, newspaper reports and analyses, and other literature available on the subject of elections, this paper attempts to create a discussion and consultation agenda.

The paper emphasizes that the basics of an electoral system i.e., the preparation and maintenance of electoral rolls and a foolproof voter ID needs the highest and resolute attention which by itself has the potential to help take care of some of the serious problems such as impersonation and rigging. Also, it addresses the divisive nature of our electoral campaigns and criminalisation of the process and attempts to find ways that would help contain these.

The paper raises the fundamental question of the high cost of elections and legitimate sources of funding political activity and election campaigns. In this connection the need for drastically bringing down the costs and the Gandhian model of decentralization and a bottom-up instead of the present top down approach are also mentioned.

It is felt that it would be necessary to impart effective political education in democracy and for democracy and in citizenship responsibilities so that the right kind of representatives are elected and kept fully accountable to the people. For, in the ultimate analysis, the objective of all electoral laws and processes is to provide to the nation truly representative legislators of good quality who in turn can give us a good and development oriented governance and a citizen friendly administration.

The paper reflects on some of the more important electoral reform options and treats them in a way that should help the readers form their own informed views. The purpose basically is to generate a national debate and elicit reactions and not to advocate any particular course of action or reform agenda.

Summary of the suggestions made and options offered in the paper is given at the end.

PART I

1. Introduction

1.1 Basic to democratic polity is the concept of sovereign powers vesting in the “people”. In modern democracies, the people govern themselves through their elected representatives. In a parliamentary system, the executive comes out of the legislature and remains part of it and responsible to it. The election of members to the houses of legislatures is conducted through an institutionalised electoral process. This electoral process therefore, no matter how it is designed and conducted, forms the foundation of a parliamentary democracy. Elections are critical to the maintenance and development of democratic tradition because at one level, these are influenced by the political culture in which they operate, but at another, they also generate strong influences that can improve or distort this political culture.

1.2 As a representative parliamentary democracy, India has a well-established system of direct and indirect elections to man its institutions. This may be described briefly as follows:

1. *Direct Elections:*

- a. Of the two Houses of Parliament, the Lok-Sabha is directly elected from defined single member territorial constituencies under universal adult suffrage (above 18 years) and on the basis of first-past the post system (FPTP). Similarly, adult voters directly elect all State Legislative Assemblies from territorial constituencies within their respective States.

2. *Indirect Elections:*

- (a) The constitutional Head of the State, the President of India, is indirectly elected by an electoral college. Other indirect elections elect the Vice-President, the Rajya-Sabha and the Legislative Councils at State level.

3. *Elections to Local Bodies:*

- (a) Elections to the Panchayat Raj Institutions (PRIs) that have been made mandatory by the 73rd and 74th Amendments to the Constitution are governed by the constitutional provisions of Part IX and Part IX A (articles 243 to 243 ZG) and State laws on PRIs.

All of these elections, except item 3 above, are under the supervision, direction and control of an independent constitutional body called the Election Commission of India (article 324). Elections under item 3 are under the supervision and control of the State Election Commissioners (article 243 K & 243 ZA).

1.3 Since the commencement of the Constitution on 26 January 1950, there have been thirteen general elections to the Lok Sabha and many more to State Assemblies.

2. Electoral laws

2.1 India has a comprehensive structure of laws to administer and conduct its elections. The formal legal framework for all these elections rests on certain provisions of the Constitution, the Representation of the People Act 1950, the Representation of the People Act 1951, the Presidential and Vice-Presidential Elections Act 1952, the Delimitation Act 1972, and the various rules and regulations framed and orders issued under these statutes. In addition, certain provisions of the Indian Penal Code and a few other acts are relied upon to provide for punishment as well as disqualification of candidates and members of the various Houses.

2.2 The more important provisions in the Constitution relating to elections are:

Articles 54-58, 62, 66-68 and 71 which prescribe the terms of office and manner of electing the President and the Vice-President.^{1[1]}

Articles 80-83 lay down the composition and duration of the Rajya-Sabha^{2[2]} and the Lok Sabha.

^{1[1]} The President is elected for a five-year term by an electoral college consisting of the elected members of both Houses of Parliament and the State Legislative Assemblies through a structured system of weighted votes. The election is held in accordance with the system of proportional representation by means of the single transferable vote by secret ballot. The Vice President is also elected for a five-year term, by an electoral college consisting of the members of both Houses of Parliament.

Article 84 prescribes the minimum qualification for a member of Parliament in terms of citizenship and age.^{3[3]}

Article 101 states that no person can be a member of both Houses of the Parliament or of the Parliament and a State legislature.

Article 102 lays down disqualifications for membership of Parliament.^{4[4]}

Articles 168-173 and 190-192 contain similar provisions for the Constitution, composition, duration and qualifications and disqualifications for membership of State legislatures.

Article 324 provides for the appointment of the Election Commission and its functions.^{5[5]}

Article 326 provides that elections to the House of the People and to the Legislative Assemblies of the States shall be on the basis of adult suffrage i.e., citizens of minimum 18 years of age (this was reduced from 21 years by a constitutional amendment w.e.f. 18th March, 1989).

Article 329 lays down a bar to interference by courts in electoral matters inasmuch as any law relating to delimitation of constituencies or allotment of seats cannot be questioned in a court of

2[2] The Lok-Sabha is to consist of no more than 530 members chosen by direct election from territorial constituencies in the various States and no more than 20 members to represent Union territories. The number of members from each State is based on the population of the State concerned. Between States the ratio of member to population, as far as practicable, should be the same. (This is not true currently as all inter-state delimitation has been frozen till 2025). From each State, the members of Rajya-Sabha – the Council of States – are elected by members of its legislative assembly in accordance with the system of proportional representation by means of a single transferable vote. The Rajya Sabha consists of not more than 230 members from various states and another 12 nominated by the President from the fields of literature, science, arts and social service.

3[3] Must be a citizen of India and not less than 30 years of age for Rajya Sabha and 25 years for Lok-Sabha.

4[4] A member is disqualified for: (a) holding any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder; (b) being of unsound mind and so declared by a competent court; (c) being an undischarged insolvent; (d) being not a citizen of India or having voluntarily acquired citizenship of a foreign state or being under any acknowledgement of allegiance or adherence to a foreign state; or (e) if so disqualified by or under any law made by the Parliament.

5[5] The superintendence, direction and control of elections is vested in the Election Commission. It inter alia covers the responsibility for preparing electoral rolls. The appointment of Chief Election Commissioner and such number of other Election Commissioners as determined by the President is made by the President subject to the provisions of any law made in that respect by the Parliament. The Chief Election Commissioner cannot be removed except in the same manner as a judge of Supreme Court.

law and no election to a House of the Legislature can be called in question except by an election petition.

2.3 The Representation of the People Act 1950 and Representation of the People Act 1951 between them provide for the allocation of seats, delimitation of constituencies, preparation of electoral rolls and conduct of elections. The important provisions of the former relevant to this consultation paper are:

Sections 13A – 13CC which deal with the electoral organisation at the State and district level.^{6[6]}

Sections 14-25 provide for the preparation of electoral rolls for each constituency under the supervision, direction and control of the Election Commission and cover the qualifications and disqualifications for registration of an elector and other conditions applicable to the preparation and revision of the electoral rolls.

Section 32 deals with punishment in case of breach of official duty in connection with the preparation of electoral rolls.^{7[7]}

2.4 Similarly, the relevant provisions of the Representation of the People Act 1951 (R.P.A.) are:

Sections 3-6 which deal with qualification of candidates for Parliament as well as State Legislative Assemblies and Legislative Councils.

Section 7-11 dealing with disqualification of candidates on grounds of their being convicted for certain offences under the Indian Penal Code or some other Acts of Parliament, electoral offences like impersonation, bribery as well as on grounds of corrupt practices and for failure to lodge account of election expenses.^{8[8]}

^{6[6]} There is a Chief Electoral Officer for each State, a district Election Officer for each district, Electoral Registration Officers and Assistant Electoral Registration Officers for preparation and revision of electoral rolls. All of them are deemed to be on deputation to the Election Commission.

^{7[7]} Breach of duty in this connection is punishable with imprisonment for a term which shall not be less than three months but which may extend to two years and with fine. In addition, under section 31, any person guilty of making a false declaration in this respect is punishable with imprisonment for a term which may extend to one year or with fine or both.

^{8[8]} Some of the offences under I.P.C. are: a) promoting enmity between different groups on grounds of religion, race, place of birth, residence, language etc., and for doing acts prejudicial to maintenance of harmony (section 153A); (b) offence of bribery which means that if a bribe is offered by anyone with the object of inducing others to vote or refrain from voting (section

Sections 19-25 provide details of the administrative machinery for conducting elections.

Section 29A deals with the registration of political parties.

Section 58A empowers the Election Commission for suspension of a poll or for countermanding of elections.^{9[9]}

Section 77 lays down that an accurate account of all expenditure by the candidate and his election agent is kept but explanation (1) excludes expenditure made by his political party or any others from such account.^{10[10]}

Section 79-122 lay down the procedure for dealing with electoral disputes and disposal of election petitions.^{11[11]}

171E) or offence of undue influence or impersonation at an election which means that if undue influence in the form of direct or indirect threats is attempted toward influencing the election or a voter impersonates another to cast a false vote (section 171F); (c) offence relating to rape (sections/subsections 376 to 376D); (d) offence of cruelty towards a woman by husband or relative of the husband (section 498A); (e) 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 (subsection 2 or 3 of section 505).

In addition, the following offences also invited disqualification for six years from the date of conviction: (a) preaching untouchability (Protection of Civil Rights Act, 1955); (b) being a member of an association declared unlawful (Unlawful Activities (Prevention) Act, 1987); (c) offences under the Foreign Exchange Regulations Act, 1973, the Narcotics Drugs and Psychotropic Substances Act, 1985; section 3 or section 4 of the Terrorist and Disruptive Activities (Prevention) Act, 1987; section 7 of the Religious Institutions (Prevention of Misuse) Act, 1988; (d) offences under the R.P.A. 1951 such as promoting enmity or hatred between classes in connection with elections (Section 125); removal of ballot papers from polling stations (section 135), fraudulently defacing or fraudulently destroying any nomination paper (clause (a) of sub-section (2) of section 136) Places of Worship (Special Provisions) Act, 1991 and, Prevention of insults to National Honour Act 1971.

^{9[9]} Under section 58A R.P.A. 1951, the Election Commission is empowered to adjourn a poll or countermand the election on grounds of booth capturing. The procedure is that the returning officer reports the matter to the Election Commission. Upon receipt of such a report and then taking all material circumstances into account, Election Commission may either have a repoll at that polling station or if many polling stations are involved in the constituency, countermand the election in that constituency leading to a totally new election there. Booth capturing is defined in section 135A of R.P.A. 1951 and applies to the intimidation or prevention of voters, seizure of polling stations as well as of the counting stations and use of force to allow only their supporters to vote.

^{10[10]} Currently these are fixed at Rs. 15 lakhs for Parliamentary and Rs. 6 lakhs for an assembly constituency. This applies to most constituencies with a few exceptions.

Sections 123-136 specify in detail corrupt practices and electoral offences and punishments prescribed for the same.^{12[12]}

2.5 The Indian Penal Code, 1860 is used to categorise certain actions in connection with elections as punishable offences. There are two sets of disqualifications envisaged. The first is a disqualification for six years from the date of conviction for certain offences.^{13[13]} The second set of disqualification, when convicted for certain other listed offences, is also for a period of six years but not from the date of conviction. It is for a period of six years from the date of the release of the person from such conviction.^{14[14]} In addition, any persons convicted of any offence and sentenced to imprisonment for

^{11[11]} Under R.P.A. 1951, elections can only be questioned through election petitions. The court having jurisdiction is the High Court and the Act states that the High Courts will try election petitions expeditiously and endeavour to conclude the trial within six months from the date of petition.

^{12[12]}^{12[12]}^{12[12]} There is a long list of offences here mostly inviting imprisonment and those which are cognizable are listed herein: a) *Disturbances at election meetings*: This is a cognizable offence and is punishable by imprisonment up to six months or a fine or both; b) *No canvassing in or near polling stations*: If anyone is caught canvassing within a distance of 100 metres of a polling station, this is punishable with fine which may extend to Rs.250 and this offence is cognizable; c) *Penalty for disorderly conduct or misconduct in or near polling stations*: Here if anyone is removed from a polling station but reenters the area the offence becomes cognizable. It is punishable with up to three months imprisonment or fine or both; d) *Breaches of official duty in connection with elections*: If an official, district election officers, returning officers, presiding officers, polling officers or any other staff assigned official election duty acts in omission of his duties this is a cognizable offence, punishable by a fine of up to five hundred rupees; e) *Prohibition of going armed to a polling station*: This is again a cognizable offence and it is punishable with imprisonment up to two years or a fine or both; f) *Removal of ballot papers from polling station*: This too is a cognizable offence and punishable with an imprisonment up to one year or a fine or both; g) *Offence of Booth Capturing*: This has also been made a cognizable offence and is punishable with a imprisonment of one year extending up to three years. But if this offence is made by a government servant, the punishment is minimum three years extending to five years; h) Other electoral offences such as fraudulently defacing or fraudulently destroying any nomination paper or fraudulent defacing, destruction or removal of any list, notice or other document affixed by or under the authority of returning officer or fraudulently defacing or fraudulently destroying any ballot paper or the official mark on any ballot paper or any declaration of identity or official envelop used in connection with voting by postal ballot etc, if committed by an election official become cognizable and are punishable with imprisonment which may extend to two years.

^{13[13]} As listed in footnote 8.

^{14[14]} These include a) any law providing for the prevention of hoarding or profiteering; b) law relating to the adulteration of Food or Drugs; c) provisions of the Dowry Prohibition Act, 1961

not less than two years also attract a six year disqualification from the date of release from such conviction. However, the Act (section 8(4)) provides that if this conviction is against an MP or an MLA in any State, the disqualification shall not take effect for three months or if within this period there is an appeal, then till the appeal is disposed of by the court.

2.6 As for the Delimitation Act 1972, the duty of the Delimitation Commission was to readjust on the basis of the 1971 census figures the allocation of seats between different States in the House of the People and the division of each State into territorial constituencies. According to the Act, the Delimitation Commission was made up of three members two of whom, appointed by the Union government, should be or should have been judges of the Supreme Court or of a High Court and the Chief Election Commissioner was to be an *ex officio* member. However, the Constitution Amendment Act, 1976 placed an embargo on fresh delimitation – both inter-state and intra-state till publication of census figures taken after the year 2000. There have been no revisions of constituencies because of this embargo which is now sought to be extended further.

2.7 With regard to the administrative machinery required for the elections, each State has a Chief Electoral Officer (CEO) under the supervision, direction and control of the Election Commission. These CEOs in turn have District Election Officers in each district. The Election Commission may nominate an observer to watch the conduct of elections in a constituency or a group of constituencies. For every constituency, for every election to fill a seat or seats in the Rajya Sabha, and for every election by the members of the Legislative Assembly of a State to fill a seat or seats in the Legislative Council of the State, the Election Commission, in consultation with the Government of the State, designates or nominates a returning officer who is an officer of Government or of a local authority. The Election Commission may also appoint assistant returning officers and subject them to the control of the returning officer. Conducting the election is the duty of the returning officer. In addition, the Election Commission requisitions from the State government staff for appointing as presiding officers at polling stations and polling officers to assist these presiding officers. In fact, the staff deployed for elections not only consists of employees of Central Government and the State Governments but also of local authorities, autonomous bodies, Government Companies, etc. All these staff including the returning officer are deemed to be on deputation to 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 are during that period, subject to the control, superintendence and discipline of the Election Commission.

3. The Magnitude of the Electoral Exercise

3.1 A general election in India is a gigantic exercise. It has been said that holding general elections in India is equal to holding polls in Europe, the United States, Canada and Australia all put together. Statistically, the number of voters in India is in excess of 600 million (60 crores). The number of polling booths all over the country adds up to about 900,000 (9 lakhs), making an average of 667 voters for each booth. However, the population is not so uniformly spread over unequal territorial constituencies and usually a polling booth caters to no more than 1200 voters even in highly populated metropolitan areas. Five persons are needed for each polling booth making a total of 4.5 to 5 million election personnel to be mobilized and administered. These polling personnel are drawn from the Central and State governments

or any provisions of the Commission of Sati (Prevention) Act, 1987. Persons sentenced to imprisonment of not less than six months under any of these invite disqualification.

and other bodies. In addition to this about 2 million security personnel need to be used to maintain law and order on polling day. These basic figures give some idea about the enormity of the exercise to elect some 545 members of parliament. Once you take state and local elections into account the figures become truly staggering. India has upwards of about 3.2 million (32 lakhs) directly elected peoples' representatives spread over various tiers of governance.

4. Our Experience with Elections

4.1 Our fifty years of experience with successive elections at various levels has highlighted that generally people are able to deliver electoral verdicts in a democratic way. But this general statement hides substantial irregularities at the micro level. In fact, our experience with elections has also brought out to fore many distortions, some very serious, that have crept in either due to loopholes in the electoral laws or due to the incapacity of the system to punish deviant and in many ways unacceptable behaviour. There have been constant references to 3 MPs – money power, muscle power and mafia power – and to 4 Cs – criminalization, communalism, corruption, and casteism. Basically all of this has vitiated the political atmosphere in the country and even compromised the legitimacy of the political process.

4.2 In recent years, in full recognition of the problems that the malformation of our electoral system has created, there have been many exercises aimed at reforming it. In the last ten years, there have been at least three major formal exercises by the government addressed to electoral reforms. These are:

1. The Goswami Committee on Electoral Reforms (1990)
2. The Indrajit Gupta Committee on State Funding of Elections (1998)
3. The Law Commission's report on Reform of the Electoral Laws (1999).
4. In addition, the Election commission has also documented its own thoughts based on the recommendations of these three organizations as well as based on their own experience of ground realities.

A resolution on electoral reforms was unanimously passed by the Lok-Sabha. This was moved by L K Advani and based itself to an extent on the Goswami Committee's recommendations.

4.3 There have also been many voluntary organizations and activists who have written extensively on the need for electoral reforms. And, there are a significant number of articles by many eminent citizens and columnists in newspapers and journals creating a sizeable literature on the subject. (See Select Bibliography) The suggestions made in this literature run into several hundreds and range from the very basic to the very radical. The Commission proposes to tabulate the suggestions received from public.

5. The Problems

5.1 In all of the above reports and literature, the main problems that have been generally recognized and debated are as follows:

1. Increasingly money hungry elections leading to unethical, illegal and even mafia provided electoral funding. The terribly high cost of elections in turn, has led to increased corruption, criminalisation and black money generation in various forms.
2. With the constituents/electors being the same for all directly elected representatives from the lowest Panchayat level to the Lok Sabha level, there are competing role expectations and conflict of perception e.g. the constituents expect even members of the Union Parliament to attend to their purely local problems.
3. With the electorate having no role in the selection of candidates and with majority of candidates being elected by minority of votes under the first-past-the-post system, the representative character of the representatives itself becomes doubtful or so to say their representational legitimacy is seriously eroded. In many cases, more votes are cast against the winning candidates than for them. One of the significant probable causes may be the mismatch between the majoritarian or first-past-the-post system and the multiplicity of parties and large number of independents.
4. The question of defections and the Tenth Schedule.
5. Inaccurate and flawed electoral rolls and voter ID leading to rigging and denial of voting right to a large number of citizens.
6. Problems in the conduct of elections:
 - a. Booth capturing and fraudulent voting by rigging and impersonation.
 - b. Flagrant use of raw muscle power in the form of intimidating voters either to vote against their will or not to vote at all, thus taking away the right of free voting from large sections of society and distorting the result thereby.
 - c. Involvement of officials and local administration in subverting the electoral process
 - d. Engineered mistakes in counting of votes
7. Criminalisation of the electoral process - increasing number of contestants with serious criminal antecedents.
8. Divisive and disruptive tendencies including the misuse of religion and caste in the process of political mobilization of group identities on non-ideological lines.
9. An ineffective and slow process of dealing with election petitions, rendering the whole process meaningless.
10. Fake and non-serious candidates who create major practical difficulties and are also used to indirectly subvert the electoral process.
11. Incongruities in delimitation of constituencies resulting in poor representation.
12. Problems of instability, hung legislative houses and their relation to the electoral laws and processes.
13. Last but not the least, loss of systemic legitimacy due to decay in the standards of political morality and decline in the spirit of service and sacrifice in public life.

5.2 Elections in parts of the country have become synonymous with intimidation of voters specially poorer sections, rigging, booth capturing, violence against and even killing of candidates and political workers, connivance of officials at the polling stations and at times a complete hijacking of the polling process by unruly and criminal elements. Unfortunately, over a period of time local police forces have also allegedly become involved in the above by becoming partisan and by being guided by local loyalties, caste considerations, as well as by being easily bribed for connivance. What is disturbing are the sporadic

allegations of even the central forces acting in a partisan way in some places. Reports of above irregularities in the conduct of elections have become so commonplace that these are not news anymore. Many suggestions have been made to address these issues and most relate to implementing our existing rules and laws effectively. But experience has shown that laws in a low accountability society like India are known more for violation than for any degree of compliance.

6. The Suggested Reform Options

6.1 The suggestions for reform can generally be placed into three broad categories. The first category attempts to tackle the problems within the boundaries of the current electoral system. The second category goes a bit further and takes a stand that the present electoral system itself needs to be modified. (*The emphasis is on modification or reform and not on altering the basic framework of the system*). Both of these categories have to be dealt with together because there is considerable overlapping between the two and we have to view reform suggestions as an integrated package and not piecemeal.

6.2 There is a third approach which seeks to strike at the root of the problem which is that of the terrible high costs of elections and the question of finding legitimate funds for the purpose. The suggestion is to cut down the costs drastically by following the Gandhian principles of decentralization of power down to the grassroots levels and building multitiars of Government from below in a bottom-up instead of the present topdown approach. It is stated by those advocating this approach that the only way to conduct a meaningful electoral exercise in this country is to have direct elections only at local levels with the upper tiers filled by representatives indirectly elected by an electoral college consisting of the representatives manning the lower tiers.

A true democracy as advocated by Gandhi ensures that local, state and national representatives are accountable to the people for local, State and national matters respectively through effective transparency. Such one-to-one accountability may promote responsible politics and attract patriotic and competent professionals and social workers to politics. Our present system based on diffused accountability breeds corruption and attracts self-seekers to politics. For this breed, interests of national development, welfare of the people and needs of god governance take lower priorities, if any.

The elected representative is too far removed from the people as there are an average of one million voters for each Lok-Sabha constituency spread over a large geographical area. To influence the choice of such a large and geographically dispersed number of voters, social action on the part of the candidate is totally inadequate. And, this creates space and scope for using both money and muscle power. It is no surprise therefore that the candidates have to spend huge amounts of money at the time of campaigning to "purchase" the votes of these distant voters. And this is done mostly through a host of intermediary brokers who become the link in this transaction. These huge election expenses breed huge corruption. This also means that the electors are in no position to hold the candidate accountable nor does the candidate consider himself accountable to these people.

6.3 Based on the Indian ethos, Gandhi had advocated a low-expense election system linked with watchdog councils and separate elected chief executives at each local level. He proposed a highly democratic and, what is more important, a highly accountable system. More thought out and more in keeping with the evolution of political culture in our country, many scholars have in recent years adapted these thoughts in their work and advocated a system of direct elections only at the grassroots of the Indian democracy. They propose that without in anyway interfering with the basic structure or features of the Constitution and while fully continuing the parliamentary system, some reforms be brought in the electoral system. Direct elections should be held on the basis of adult franchise at the level of Panchayats and other local bodies. Panchayats and other local bodies could elect the zila parishads and they could together elect the State legislature. These three could elect the Parliament and in the last analysis the four of these could elect the President. The Prime Minister and the Chief Ministers could be elected by the Parliament and the State Legislatures concerned. The President, the Prime Minister and the Chief Ministers in order to be elected should each necessarily secure no less that 50%+1 of the votes cast. Once elected, the Prime Minister or a Chief Minister should be removable only by a constructive vote of no-confidence.

The fact that the directly elected representatives are all at the grassroots level where they are in contact with their electors on a daily basis, would mean that their accountability to the people will always be high. Corruption will not get the kind of boost and inducement that it gets presently because of an unaccountable remote representative doing what he pleases.

6.4 The representatives elected at the grassroots level will also have to win on a 50%+1 vote principle so that their appeal is more universal than parochial. They would then be truly legitimate representatives of their people. In the alternative, at the lowest tier double-member or multiple member constituencies could be considered. Local elections do not entail heavy costs. The cost to political parties of indirect State and national elections will be low. Since the national and State governments will handle only higher-level infrastructure and coordination, indirect elections backed by party primaries will facilitate emergence of the best leadership. The ills in the present "first-past-the-post" system will be eliminated because local governments will handle all social issues and State and national governments shall be accountable to local governments as advocated by Gandhi who will have elected them. This will nurture culture, education and values and gradually eliminate social discords. Also, this election process, it is claimed, has the greatest potential to bring public service spirited and sacrifice oriented people to the fore.

6.5 There are strong arguments in favour of this Gandhian model and it would be worthwhile that this option is studied deeply and debated widely.* Part II, however, discusses some reform options that may be possible and found necessary within the four walls of the existing system of elections.

* Those oppose to this approach, however feel that it may become easier to purchase/terrorise electors if their number is small and that it would be debatable if the cost of elections would increase or decrease on adoption of the proposed model of elections. They would like it to be examined if increased importance of local elections and small number of electors in the proposed system would lead to high cost of local elections; increased incidents of violence in local elections; and increased incidents of bribery, coercion, intimidation, winning the votes on sectorial considerations of caste, religion, etc. Thus, much can be argued on either side.

PART II

7. Electoral Rolls and Voter ID

7.1 The beginning of the electoral system is the preparation of electoral rolls. It is, by now, a well-established reality that electoral rolls in India have large-scale errors in them. The Goswami Committee on Electoral Reforms also formally acknowledged it and stated rather tactfully that there *were acts of "omissions and commissions" on the part of officials in addition to the flaws in the system itself*. An indirect way of stating that the system was being subverted.

The Dinesh Goswami Committee recommended a more stringent punishment for breach of official duty in connection with preparation of electoral rolls (see para 1.3, chapter 4, 'Electoral Rolls' of the Report of the Dinesh Goswami Committee). The said recommendation made by Dinesh Goswami Committee has since been implemented with the enactment of Representation of People's (Amendment) Act, 1996.

Activist organizations like for example the Hyderabad based Lok Satta have conducted sample household surveys and found an incredible 40% to 50% errors in urban electoral rolls. According to them, even a casual glance at electoral rolls in urban areas shows the obvious discrepancies and inaccuracies. Taking advantage of these defects, political parties and influential persons manage large-scale registration of bogus voters, or large-scale deletion of names of "unfriendly" voters. It is quite possible that in the rural areas there may be fewer errors, but informal estimates by most observers put these errors at 15% to 20%. These are all educated guesses and the real position is not known. What is known, however, is that there are serious irregularities and a large number of electorate is disenfranchised partly by default and partly by impersonation that is made easy by the current flawed electoral rolls. Given that large swings in seats that are won are caused by small swings in voting percentages, and again given that the margins of victory are generally narrow, the need to have accurate electoral rolls becomes all the more critical. This apart, electoral rolls are very close to people and the irregularities in them are exposed very quickly at the grassroots level. There have been cases of entire sections of villages disenfranchised leading to immense cynicism. Therefore, the legitimacy of the whole electoral process is compromised because of faulty electoral rolls.

7.2 It is easy to see that any serious attempt at electoral reform in India must tackle the question of faulty electoral rolls at the very outset. If this is set right, at least some of the other problems will thin out. Why are the electoral rolls everywhere full of inaccuracies? Some of it may be the result of inefficiency and a flawed system but certainly, as pointed out by the Goswami Committee, some of it is also the result of purposeful tampering which may happen due to partisan attitude of the local officials who may have their own local affinities and/or may be bought over by vested interests. The many rules and laws to punish erring officials in this respect have been totally ineffective. Recognising this, the Goswami Committee had recommended that more stringent punishment should be provided for breach of official

duty in this regard. While commending the 1996 Amendment to RPA we need to recognize that punishment is not a substitute for systemic corrections.

Basically we should have a reasonably fool proof method of preparing the electoral roll right at the lowest constituency of a voter and we should supplement this further by creating a foolproof voter ID. And both should be related to each other. The benefits of this exercise at the bottom level of our democracy would be immediate in the sense that it would serve the objective of contributing to cleaning up the electoral process and curbing impersonation and rigging. In the long run, it would create widespread belief in the fairness of our electoral process thereby providing it a high degree of institutional legitimacy. We would do well to remember that significant political change happens at the lower levels first and only then spreads to higher levels.

7.3 The Goswami Committee had suggested that Post offices should be made the focal point of *preparation* and maintenance of electoral rolls as well as keeping of electoral rolls up to date and the upkeep of records. This may or may not be the solution particularly because in this case the responsibility is diffused over different organisations, which usually makes it nobody's responsibility. If there is non-compliance, there is no way of pinning it on any one organisation because there will always be insurmountable problems of coordination and there will be no way of taking any stringent action against anyone. The work will automatically stabilize at a low level of efficiency. Also, post offices today do not enjoy the credibility that they did earlier. Their efficiency stands seriously eroded.

7.4 In today's technological age we should not be talking about a generally antiquated post office structure of the country, where government servants work to their own notions of efficiency. Given the technology today, it is not a difficult task to create a good scheme of things, systemically sound, for the preparation and maintenance of electoral rolls and voter ID cards. The Election Commission says it is alive to these problems and in May 2000 it has issued instructions for a new voter ID card numbering system with a unique code for each of the 4072 assembly constituencies of the country. Some of what is suggested below may be already at least partially in the action pipeline by the Election Commission. To take the scheme of things a few logical steps forward, it is felt that the effort should not limit itself to Assembly constituencies and through them to Parliament constituencies only.

7.5 In this scheme of things, it is most essential that there is a coordinated effort at preparing accurate electoral rolls beginning at the lowest constituency that a voter belongs to. If this is done well, everything else will fall into place. At the moment the EC is responsible for preparing the electoral rolls for assembly and parliamentary constituencies. The State Election Commissioners are responsible for electoral rolls for local body elections. In some States, the EC and State Election Commissioners have agreed to coordinate the preparation of electoral rolls. This is as it should be. There should be no duplication of effort and a single exercise should be enough for preparing electoral rolls covering the lowest to the highest constituency that a voter belongs to. This makes perfect administrative sense. The task could be handled by the E.C. or by the SECs or by the two in coordination. This means that at the level of gram panchayat (or the relevant local level), a voter must have his/her name properly placed on the electoral roll. This would automatically identify the voter to be a part of the electoral roll of the assembly constituency, which contains this particular panchayat. Likewise, the voter would be automatically identified on the electoral roll of a particular Lok Sabha constituency, in which both his assembly constituency and panchayat are included. In addition the identity of the voter could easily be linked to his polling station.

7.6 The electoral rolls should be updated constantly and not just at election time. Every 1st of April, the electoral roll as of previous 31st December should be made available. This information should be posted on the web site of the Election Commission and CD ROMs should be available to all political parties or anyone interested, at a reasonable price. In any case, the cost of this will only be a fraction of a printed list. (It is understood that this has been already initiated by the EC). Prior to elections these rolls should be printed and publicly displayed at the post offices in each constituency, as well as at the panchayats or relevant constituency HQs. This would improve public access to this information which today, even though theoretically available, is very hard to get in practice. As corrections take place, the rolls would be updated through addendums on the web and therefore be available straightaway to interested parties. At the time of elections it is these latest rolls that will be made available at polling stations. We may use the help of post offices covering various polling stations in preparation of these rolls as well as to display and make available to general public these rolls at election time, but the responsibility for accurate execution will remain with the EC/SEC.

7.7 Electoral rolls are intrinsically linked to the question of Voter ID. Election Commission is said to have taken action to help in issuing of proper voter ID cards in various States and these are reportedly at varying stages of completion in most States at the moment. The pity is that these have been issued to an old design that does not create a unique ID number for each voter. The new cards to be issued now will incorporate the constituency code as designed by the EC but as mentioned earlier this is an assembly constituency upward exercise only. It appears from the records at the EC that about 2/3rd of the voters in the entire country have already been issued the old voter ID cards. Haryana with a reported 88% and Bihar with a reported 37% are at the head and the tail of the table of performance of all States in this regard. The exercise for identification of voters is said to have worked well in the last elections in Haryana where some identification document was made mandatory for voting. Most, though not all, voters brought their voter ID cards.

7.8 The Goswami Committee had recommended a scheme of a multi purpose photo identity card in coordination with other ministries and government departments so that the possession of this card would become compulsory for all adult citizens. In their view, this citizenship card could be used as an ID for many benefits that are provided by government agencies. For example the issuance of a ration card, a passport, driving licence, any agricultural inputs that are distributed either free or at a subsidized rate, telephones for individuals, applications for a government or even private sector jobs, admission of wards to schools or colleges, for opening bank accounts, for transfer of one's property and many such things. In other words, the possession of this identity card would be in the citizen's own interest and therefore he/she would make sure that this was applied for in the proper format. Because the present voter ID card, in various stages of preparation in different States, is not a multipurpose card, whatever number of cards have been issued, further issue of the same should be put on a hold until these are redesigned in the fashion outlined below. After all the remaining cards are issued, the older ones should also be replaced over a period of time.

7.9 This ID card apart from all necessary personal details should list one visible identification mark. This is necessary as with age the photo can look very different after a while. If it is an old photograph then sometimes the likeness is missing. Also a visible identification mark is difficult to reproduce even if the photograph is fraudulently changed on the card. For an electorate of about 600 million on an all-India basis, an automated and well-designed online system, broken down to district level, can be created without much hassle. As already stated, the basic work in this direction has been done by the EC, so the

learning curve is already favourable. It just needs to be extended to the lowest level constituency. PRIs and local post offices should be involved to help with the creation and distribution of these IDs, but only to help not to control. When the ID is right at the Panchayat level, it will be by design, right for each higher constituency.

7.10 But, of course, if the card is multipurpose and required compulsorily, the implementation of this suggestion would also make it obligatory for the government to create an agency that would do this job in a citizen friendly way. The idea here is not to create one more agency, which can extort money from the hapless citizen just to issue him/her the ID card. This is a real possibility if we have to go by our experience of the last few decades, which indicates that even for a ration card a citizen, particularly from lower economic classes, must pay money. It is better to recognize it at the outset and work our way around it.

This job may be carried out by a professional agency/ies appointed by the Election Commission. There should be a pre-qualified consultancy company appointed to draw up specifications in consultation with the EC. This pre-qualified consultant would also oversee that the contracted companies do their job efficiently. When private agencies are doing this job and persons responsible can be held accountable for not doing it accurately, the results will contain only a tiny percent of acceptable human errors. The database containing these electoral rolls would be centrally computerized by the EC (this is already being done) and each Voter would have a unique bar-coded ID number. The card would also have a number/code that would indicate the holder's base constituency *e.g.*, the panchayat level or the relevant local constituency, leading to the next higher level of constituencies till the parliamentary constituency. Any change of address would automatically change everything else except his unique ID Number. This ID number would be for life and in the long run the best bet against any impersonation. The consultancy organization and through it the EC would maintain a database of all polling stations with their respective association to the relevant constituency *i.e.*, Panchayat, Nagar-Palika, Municipal Corporation, Assembly or Parliament. With technology available today this can be easily done. There is enough expertise available within the Election Commission, if we go by their web site, to guide this exercise. In any case India is in the forefront of information technology and this is an easy job. The first time exercise may be a large one but subsequently it will fall into a routine.

7.11 Like in the USA, the penalty for false declaration for this purpose, or any tampering with the card or impersonation based on a stolen or fraudulently prepared card should be heavy with a prompt mandatory prison sentence and a heavy fine. The law should take this into account. If it is a multipurpose card, it may even be feasible to charge a small amount for its issuance, say Rs. 10 in urban areas and Rs. 5 in rural areas. This would make it partly self-financing and would add personal value leading to voters taking more care of it rather than keep applying for duplicates.

7.12 The benefits of a ID card designed in a technology-friendly way are immeasurable because in future it might even be possible to have hand held devices at each polling station, beginning with sensitive constituencies straightaway, which would eliminate any invalid card automatically. This would include any and all fraudulent duplicates because the ID card numbers will never match. There is already a high degree of urbanization in India and in all likelihood it will accelerate. All changes of constituencies for adults, moving from rural to urban areas or from one place to another as economic opportunities change within regions, will become easy with every citizen having an ID with a unique number.

7.13 An extension of the arguments above is that all elections should be under an integrated institutional electoral machinery. The local level elections have been made the responsibility of State Election Commissioners. And, different States have different rules of the game. This may need to be reviewed because in reality the local elections are a lot more important for cultivating our grassroots democracy. If democracy is subverted at the local level, it is subverted all the way up. We also need to remember that it is the local elections that really can make a difference to people's lives. The fear of going to polling stations with an independent mind and free spirit must be eradicated first of all at this local level. Only then can we remove it for other far removed elections.

7.14 The impact of proper electoral rolls and voter ID together with Electronic Voting Machines (EVMs) will be first felt at the local level and will help create a level playing ground for State and national elections. It will send a message through the system that the country takes all electoral exercises seriously, which are by definition designed to give people voice.

8. Electronic Voting Machines

8.1 Introduction of Electronic Voting Machines in all constituencies to counter the possibilities of booth capturing may deserve consideration. In case of the sensitive constituencies particularly, this could be done straightaway. It is suggested that as a matter of policy, the use of EVMs should be increased at as rapid a rate as possible. The movement in this direction has already started as a result of the EC's initiative and EVMs are already being used successfully in limited constituencies and all bye-elections. Any doubts about this technology were amply removed during the deliberations of the Goswami Committee. Not only were the EVMs satisfactorily demonstrated to all politician members, several electronic experts of the Government of India also testified that the machines could be used at our elections without any misgivings. The advantages of EVMs in preventing large-scale rigging are quite apparent as the machine locks up and will permit only one hit every so many seconds. Currently this has been set at five seconds but it can easily be changed if so required making the process of even keying in a few bogus votes rather time-consuming at each polling station. This by itself would prevent rigging on a large-scale due to time constraints. This is borne out by ground level experience wherever these EVMs have been used in urban and in rural areas. This also makes counting easy and non-contestable and theoretically the results could be available within a very short time if the system wanted to make prompt announcements of the winning candidates.

9. Booth Capturing and Rigging

9.1 On the questions of booth capturing, rigging and intimidation of the voters, the proposals of the Goswami Committee to the effect that EC should be empowered to take more stringent action should be accepted and implemented in full.

Vide Representation of People (Amendment) Act, 1996, in addition to returning officers, observers appointed by the Election Commission of India have also been empowered to send report to the Election Commission in respect of booth capturing, etc., and the Election Commission authorized to issue appropriate directions for countermanding the elections or order repelling in certain polling stations where booth capturing has taken place, on the basis of such reports (see Section 20B of R.P. Act, 1951).

Other proposals of the Committee included the following:

(i) Under section 58A of the Act, the Election Commission should not only be empowered to countermand the election and order a fresh election as now provided under the law, but also should be empowered to declare the earlier poll to be void and order only a re-poll in the entire constituency, instead of a re-election there, depending on the nature and seriousness of each case.

(ii) Election Commission may also be empowered to initiate investigations of booth capturing and other violations of the electoral law through the Central or State police investigating agency and/or by the establishment of special courts and/or by appointment of public prosecutors.

To further discourage booth capturing/the EC might consider having some form of tamper-proof video cameras or surveillance equipment as a deterrent in sensitive areas. But, if this is done, the punishment to offenders should be swift and heavy.

10. President's Rule during Elections

10.1 Chief Election Commissioner Shri Gill has for sometime been suggesting that in order to free the electoral processes from the partisan influence of political parties in power and the misuse by them of official machinery in the States, President's rule should be promulgated over all the States for the duration of elections, say for about two months. Shri Gill perhaps has the Bangladesh experience in view. The analogy however is phoney. (1) There is no provision for President's rule over India. (2) President's rule over the States would in effect mean removal of the elected Government of the majority party in the State and in its place rule by the Government or the party or parties in power at the Union level acting through Governors. (3) Nominated Governors acting at the behest of the Government in Delhi are not likely to be more impartial or above board. Before any such proposals can even be considered it may be necessary to review the procedure and criteria for appointment of Governors. (4) Absolute power in any hands is bad. The proposals of the Chief Election Commissioner, pushed to their logical conclusions, might imply that – with the President's rule imposed during the elections all over the country – the primacy of the powers of the Chief Election Commissioner, though technically confined to election process, might tend towards its own ascendancy in the governing process. These possible consequences might have to be contemplated before any such proposal is accepted. However, to the extent of making the power of

superintendence of the Chief Election Commissioner effective to ensure the purity of the electoral process, appropriate alternative proposals need to be examined.

11. Communal and Caste Hatred

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11.1 Campaigns which are crafted to create or exacerbate tensions between communities and/or to incite feelings of hatred on the basis of caste, community, religion, race, or language attract disqualification at present but effective implementation of laws is lacking. This deserves the highest degree of attention and in addition these offences should be punishable with mandatory imprisonment for three years instead of discretionary as currently provided under section 125 of Representation of the People Act, 1951. This should be within the powers of special courts for election petitions proposed later in this paper. However, if the suggestion to only have winning candidates on the basis of 50%+1 vote also made elsewhere in this paper is accepted, candidates and political parties would have to broaden their appeal and in their own self-interest their agenda and rhetoric will change.

12. Use of Muscle Power

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12.1 To curb muscle power, it is important that fire-arms are not allowed to be carried on polling days anywhere in the vicinity of the polling stations. Not only the present law in this respect which makes it a cognizable offence needs to be effectively implemented, but imprisonment in this case should be made mandatory and stiff. The Election Commission should increase the number of observers in sensitive constituencies and take rapid action on their request under Section 20B of the RPA as amended in 1996.

13. Criminalisation of the electoral process

13.1 "A candidate contesting in Bihar has 174 criminal cases against him and he is on the most wanted list not only in Bihar but in Delhi, Mumbai and Uttar Pradesh. Yet flouting all rules and regulations he is openly campaigning" "a sitting MLA is now contesting as an independent while he is still serving a life term in jail. He was convicted in a kidnapping case but an appeal has been entered in the high court." (*Times of India*, 11.2.2000).

The above is just one of the many "no longer shocking" quotations from a newspaper with regard to well-known criminals contesting elections with impunity. Due to reasons that need not be listed here, politics and therefore elections in India have progressively attracted criminal elements. During the election period, particularly in the states of Bihar and U.P., newspapers are usually full of information about the number of criminals in the field sponsored by every party. It is a disgrace for the country that several hardened criminals who may have many cases of murder, rape and dacoity against them are actually occupying the seats in the highest representative forums of this country namely the State assemblies and the Lok Sabha.

13.2 Vohra Committee appointed by the Government had stated in strong terms that the nexus between crime syndicates and political personalities was very deep. According to the CBI report to the Vohra Committee: "all over India, crime syndicates have become a law unto themselves." "Even in the smaller towns and rural areas, muscle-men have become the order of the day. Hired assassins have become part of these organizations. The nexus between the criminal gangs, police, bureaucracy and politicians has come out clearly in various parts of the country. The existing criminal justice system, which was essentially designed to deal with the individual offences/crimes, is unable to deal with the activities of the Mafia; the provisions of law in regard to economic offences are weak; there are insurmountable legal difficulties in attaching/confiscation of the property acquired through Mafia activities". The committee quoted other agencies to state that the Mafia network is "virtually running a parallel government, pushing the State apparatus into irrelevance." The report also says "in certain States like Bihar, Haryana and Uttar Pradesh, these gangs enjoy the patronage of local politicians cutting across party lines and the protection of the functionaries. Some political leaders become the leaders of these gangs/armed *senas* and over the years get themselves elected to local bodies, State assemblies and national parliament. Resultantly, such elements have acquired considerable political clout seriously jeopardizing the smooth functioning of the administration and the safety of life and property of the common man causing a sense of despair and alienation among people."

13.3 The visible presence of many criminals is in fact a very large factor in the loss of legitimacy for politicians as a whole. This is also extremely dangerous for the country because apart from distorting the political culture of the country, criminal elements progressively get to influence leadership and governance. The spectacular success of some criminals in politics invites emulation. The signal to the society by such a process is that it is acceptable to muscle your way through everything because in the last analysis the system rewards you. A petty *dada* soon becomes a respectable and feared representative of the people. And many become ministers with power to distribute spoils and parade themselves as rulers. It is a surefire recipe for long-term disaster.

13.4 Although the exact numbers of criminals in political positions are not known, the EC at one time was reported to have stated that the number of candidates with criminal records who contested Lok Sabha 1998 elections was around 1500 out of a total of 13952. They were under prosecution for crimes like murder, dacoity, rape, theft and extortion. As many as 820 of these 1500, came from Bihar and U.P. If the objective of this public statement was to even moderately influence political parties to stay away from criminals, the EC failed because parties simply shrugged off this information and continued to induct criminals. Of course, the *raison d'être* being that it was these criminals who the parties thought could win the election for them.

13.5 From the side of the administration there has been a half-hearted attempt to stop these criminals because of the fact that all political parties use these criminals in their attempt to ensure themselves a certain number of seats in the State Legislative Assemblies as well as in the Lok Sabha. But this issue really needs to be tackled head-on. The Law Commission suggests unambiguously that if charges relating to certain crimes have been framed by a competent court against a person then this particular person should not be permitted to contest elections. This suggestion may pose problems of misuse but it needs to be considered, may be with some modifications.

13.6 There is a school of thought that fears that such a regulation might be used against innocent candidates who are perceived to be a threat to those in power. Also, fears are expressed that such regulations might be used against dalits and members of other socially backward and poor communities or against political workers participating in movements and agitations. Given India's record of corruption, it is conceivable that false framing of charges may happen. Therefore, a suggestion of having special electoral courts set up by the Election Commission for pronouncing summary decisions in regard to eligibility may be considered. If there is a candidate against whom charges have been framed by the police and he wishes to contest an election, he may take the matter to this special electoral court. The decision need have no bearing on the actual case, which as we know might go on for years. This may help to keep habitual and hardened criminals away. But, the suggestion merits further discussion from a judicial point of view.

13.7 In 1997, The EC issued an order that candidates for election to State Assemblies and Parliament need to submit an affidavit about their convictions in cases covered by Section 8 of the Representation of the People Act 1951. The EC held that even if the trial court had convicted the candidate, this was enough to attract disqualification. But there are other issues. The Election Commission wrote a letter to the Prime Minister in September 1997 that there were grave incongruities in the existing provisions of sub-sections (1), (2) and (3) of the said Section 8 of the Representation of the People Act, 1951, illustrating the case of a rapist, convicted and sentenced to ten years imprisonment, being disqualified only for six years under sub-section (1) and being free to contest elections, even while in prison serving the last four years of his sentence. The Commission had suggested that the law may be simplified by amending said Section 8 to provide that whoever is convicted of any offence by a Court of law and sentenced to imprisonment for six months or more should be debarred from contesting elections, for a period totalling the sentence imposed plus an additional six years. This suggestion has been supported by several other organisations and concerned citizens and therefore merits full consideration.

13.8 Currently, if a member of any House is convicted, there is no action for three months and if the case goes for an appeal within this time, then no action is taken till the appeal is disposed off. This may not be very justified. If an elected representative gets convicted on charges related to specific crimes, he should be required to withdraw until he is cleared. It is also worth considering that when political parties are seen to abet criminalization by fielding criminals, there should be some provisions to enable action against them including their derecognition.

14. Election expenditure – the money power

14.1 This is one of the most critical problems facing the Indian electoral system. As against the limits prescribed by our electoral laws, the campaign expenditure by candidates is in the range of about twenty to thirty times the said limits. As a result contesting elections is becoming a very costly affair, which keeps many good candidates out and it also creates a high degree of compulsion for corruption in the political arena. This has progressively polluted our entire system. Corruption, because it erodes performance, becomes one of the leading reasons for non-performance and compromised governance in the country.

14.2 The sources of some of the election funds are believed to be unaccounted criminal money in return for protection, unaccounted funds from business groups who expect a high return on this

investment, kickbacks or commissions on contracts etc. No matter how we look at it, citizens are directly affected by it because apart from compromised governance, the huge money spent on elections pushes up the cost of everything in the country. It also leads to unbridled corruption and the consequences of wide spread corruption are even more serious than many imagine. When people find progressively that they are trapped in a corrupt environment of no hope, this will provide a possible burning ground that can ignite given a spark. Electoral compulsions for funds are really the foundation of this whole super structure of corruption.

14.3 In the ultimate analysis, the reality seems to be that political parties and serious contenders have a single point agenda “to win” and then to remain in power. Everything else, whether issues of good governance or even long term national interest, come second. Once we accept this, we realize that political parties as well as candidates will take all those actions that contribute to this objective. Both political parties and political candidates, in order to win, will do all they can and all that the system will permit them to do. Political parties and candidates have found that by spending money on intermediaries to buy votes, by distributing liquor and other goodies, by directly bribing officials, and by patronizing, through the spending of money, most rowdies and “goondas” of the locality, their chances to win become better. This is what has become the norm therefore. They do this, however, because the system, directly or indirectly, permits them to collect a far greater sum of money if they win the election. Therefore, the money spent on elections is like a mandatory investment. In the eventual analysis, costs can only be controlled if we control the way in which politicians can generate money through corrupt means once they are in power. If this is not entirely possible within the current scenario, then whatever rules and regulations we bring about can only have a limited influence toward achievement of this objective.

14.4 The question is how do we go about reducing the role that money can play? The answer to this one is not easy. The fact is that political parties need tons of funds for political activity, which includes campaigning for elections. Political parties should have legitimate sources of these funds. If they don't have these funds legitimately and then if (and this is the critical part) **the system permits them to do so**, they will find illegitimate funds. This is what has been happening in India and with illegitimate funding the spending has also been comparatively limitless. One party started it but others soon caught on. However, it is also true that if the system did not permit the kind of spending that is happening, the various candidates would have found their equilibrium at a much lower level.

14.5 Various attempts have been made in the past to regulate this expense; as well as various suggestions keep coming through in this regard. The primary suggestions are two-fold: first set relates to fixing “more reasonable limits” for campaign expenditure. The argument is that election campaigning costs money. It is best for us to recognize this and estimate what would be reasonable costs taking everything into account – the need for public meetings, handouts, election workers, agents, posters, vehicles, staff movement, loudspeakers and microphones and communications etc. If, the argument goes, we fix “reasonable” limits for all of this, then the candidates would not have to spend more than these amounts that are permitted. There would be no need for illegal spending. This suggestion has been made by all - the Goswami Committee, the Indrajit Gupta Committee, the Law Commission as well as a number of other organisations. In fact, the limits have been raised to Rs.15,00,000 for most Lok Sabha (compared to Rs.4,50,000 before) and Rs.6,00,000 (compared to 1,50,000 before) for most assembly constituencies. These limits also may need to be continuously under review by the Election Commission and perhaps be linked to the cost of living index. But, the basic question will always arise that if a Lok Sabha election costs upwards of a crore then how does fixing the limit at 15 lakhs help? And in any case where is even this 15 lakhs going to come from? That means there must be an active plan to reduce the cost of election to this magical figure of 15 lakhs. But clearly an approach such as this has to be also

backed up by a strong deterrent against overstepping the limits sanctioned. On this there is not much action.

14.6 The other problem is that the present rules have a significant loophole in the shape of explanation 1 to section 77(1) of the Representation of the People Act 1951, under which the amounts spent by persons other than the candidate and his agent themselves, are not counted in his election expenses. This means that all extra expenditure, even when known and proven, can be shown to have been incurred by the party or by any friends and it remains outside of the enforceable limits. Even the Supreme Court has commented that this needed to be changed. However, this remains as it was. This anomaly should be immediately removed. For, in any case the returns of election expenses filed now are almost invariably false and there is hardly any way the prescribed limits can be really enforced even though the Supreme Court has laid on the candidate the onus to prove that the extra expenditure was not from his funds.

The second set of suggestions is that political parties as well as individual candidates should be subject to a proper audit of the amounts they receive and spend. At the end of the election each candidate should submit an audited statement of receipts and expenses, head-wise. Any violation or misreporting should be dealt with strongly. These two suggestions have also received agreement from most activists and non-governmental organisations. Most persons recommend that these be implemented.

14.7 The Indrajit Gupta Committee on State Funding of Elections portrays a third set of suggestions. According to them, there should be at least a partial though non-cash state funding of elections. Theoretically, at least, it means that the candidates and parties have to spend less for campaigning with the state taking care of some aspects. Whatever levels of permissible expenditure we may fix, unless we have a) a reasonably foolproof method of enforcing these and b) to take action when these are violated, these exercises may turn out to be meaningless. At the current moment we do not seem to have any foolproof mechanism. Also for obvious reasons, the political will to enforce this appears to be missing. Regarding partial state funding, till such time that there is an effective systemic acceptance of full audit of party funds including a full audit of campaign funds, deletion of explanation 1 to section 77(1) of the Representation of People Act 1951, a foolproof mechanism to deter expenditure violations, and until the government is convinced that these improvements have been institutionalised and are no longer being breached, the question of state funding should not even arise. The Law Commission in their report have voiced similar sentiments. To quote them, "We are, therefore, of the opinion that the proposals relating to state funding contained in the Indrajit Gupta Committee Report should be implemented only after or simultaneously with the implementation of the provisions contained in this report relating to political parties viz., deletion of Explanation 1 to Section 77, maintenance of accounts and their submission etc., and the provisions governing the functioning of political parties contained in chapters I and II of Part IV and chapter I of Part III. The funding even if partial, should never be resorted to unless the other provisions mentioned aforesaid are implemented lest the very idea may prove counter-productive and may defeat the very object underlying the idea of state funding of elections." If any state funding is permitted without the above it simply means an additional burden on the state exchequer and the taxpayers. And, for no particular public or systemic benefit whatsoever. Political parties and candidates will happily accept this additional bounty and still continue to spend whatever else they perceive is required by the competitive ground realities in order to win elections. If they get elected, they find ways to repay it many times over.

14.8 Another view on state funding is that a national election fund should be created out of the consolidated fund of India in order to specifically subsidize election expenses and more generally to support legitimate political activity. The suggestion is to pay at the rate of Rs. 5 or 10 for each vote polled by a political party in any constituency provided they have polled at least 2 % of the votes cast. It should be compulsory to get audited for the use of this fund and to spend at least half of this amount on election campaign. Parties which do not hold internal elections to its highest decision making body should be ineligible for this fund. The legitimacy of any such suggestion may be extremely doubtful. In any case the necessary control mechanisms simply do not exist.

14.9 Sensibly enough, an indirect way of state funding has in fact already been put into practice in the form of giving recognized political parties far greater time, free of any charge, on equitable basis on State owned television to use for their election campaigning at the time of general elections. But this does not seem to have helped in reducing any campaign expenditure.

14.10 The situation can be helped only by bringing transparency in this whole exercise. Transparency fights corruption and deviant behaviour. We strongly feel that we need to create more and more transparency in the receipt and spending of election expenses. It is a bit odd that while we do talk about the expenditure statement from the candidate, we do not ask for the source of this money.

14.11 The Goswami Committee, for reasons that appear more political than economic, recommended that there should be a ban on any corporate or company donations to political parties or political candidates. The only purpose a recommendation or rule of this kind serves is that it drives contributions underground. Political parties need money and this money is going to be generated one way or another. If through our misguided rules and regulations we block legal and more transparent sources of funding, we can be totally sure that illegal and non-transparent channels will immediately open up and substitute for the legal ones. There may be no justification to ban corporate contributions including contributions from trade unions and professional associations. In fact, these should be permitted within the limits that already exist. The effort should be to make them transparent. Thus, all donations and contributions should be allowed legally, subject to overall limits, as was the case prior to 1985. In fact corporate donations should be encouraged by making them tax exempt within certain limits so that maximum funds become visible. For example, tax exemptions should be limited to say 25,000 for individuals and 10,00,000 for companies provided that the contributions are made to party funds and not to individuals. In the case of corporate contributions, the Board of Directors may approve up to say 1,00,000 and anything over this amount may be approved by the shareholders. Political funding should be separate head in the accounts and annual report of the company. This will ensure transparency. The tax loss to the state should be treated as partial state funding of the electoral process. The more we push contributions above ground into public eye, the better control we will have in the end. There may be a clear rule that all political party accounts, much like the accounts of a public company, should be published yearly with complete disclosure under pre-determined account heads. Failure to do so should invite action including de-recognition. Also it may be made obligatory for campaign expense accounts – both receipts and expenses - of all candidates being made public in their constituencies. In addition, a full audit should not only be mandatory but it should be enforced by Election Commission by appointing a council of at least two auditors say for 10 constituencies each. The funding issue is quite universal and almost everywhere including U.K. and U.S.A. the debate on this has focused on a high level of transparency as the only long term effective instrument. It is felt that only transparency can create a strong public opinion or a possibility of public censure and as a result have a moderating influence on excessive or devious political sources or application of funds.

14.12 Transparency means that both, the means of finance as well as where these have been spent are listed out in an audited statement. If we can make the politicians list the sources of their revenue, this can be a damper because each contribution that they show can be checked back by the income tax authorities. In the first instance there will be much resistance to this idea both from the politicians and also from the business. What if they have contributed to the wrong party? The opponent who wins might make their life miserable. But over a period of time, this may settle down and the long-term effect may be beneficial. Also instead of looking at creating more rules and regulations for monitoring electoral expenses, there should be a serious attempt at reducing election expenses and this can be done by perhaps changing the ground rules for electoral campaigns – partly by encouraging the use of electronic and digital technology to campaign at state cost and simultaneously by totally and effectively banning other overt and wasteful *tamashaas* of campaigning including the use of auto-traffic to ferry people to election rallies of any kind. The maximum money is spent by parties to ensure attendance for their so-called popular rallies. It should be possible to stop this by common agreement between the political parties/candidates or by law. This apart, the Law Commission and many others have suggested that some reasonable restrictions should be placed on the following:

1. Wall writings
2. Display of cut-outs, hoardings and banners
3. Hoisting of flags (except at party officers, public meetings and other specified places)
4. Use of more than a specified number of vehicles for election campaign and for processions
5. Announcements or publicity by more than a specified number of moving vehicles
6. Holding of public meetings beyond the specified hours
7. Display of posters at places, other than those specified by the district/electoral authorities.

14.13 It is said that strong penalties are already provided for violations of expenditure ceilings under the RPA, 1951 and that most of the above points are generally covered by the model code of conduct and instructions of E.C. and can be implemented as the EC deems fit. As long these are the same for all candidates, the ground realities will adjust to them. But, the costs of elections can only come down if the people so elected are unable to make money out of their positions. This would require reform in other and more critical areas.

14.14 All the suggestions relating to rules and regulations for controlling political funding may come to naught unless we have an effective mechanism for imposing these rules and an effective ability to hand over deterrent punishment even leading to complete disqualification in case of transgression. Regrettably, our experience of fifty years has taught us that rules and regulations are known more for violation than for compliance. Finally, suggestions for reducing the cost of elections, for state funding etc. cannot be considered without first considering reforms in the system and structure of political parties, reduction in the number of parties, role of independents etc.

(Please see the consultation paper on Political Parties)

15. Disqualification on ground of corrupt practices – election petitions

15.1 The Representation of the People's Act 1951, Section 8A, provides for disqualification on ground of corrupt practices. The current practice is that once the High Court hands out the judgement on an election petition holding the candidate guilty of corrupt practices, the case goes to the Secretary of the concerned State Legislature or the Secretary General Lok Sabha or Rajya Sabha, as the case may be. It is then forwarded to the President who in turn forwards it to the EC. Only then does the EC get jurisdiction to tender its opinion to the President based on which the disqualification order is issued. The EC has suggested that the President should determine the period of disqualification on the direct opinion of the EC and avoid the delay currently experienced. This can be done by resorting to the position before the 1975 amendment to RPA, 1951.

15.2 The High Court is expected to give the judgement on all election petitions within 6 months, which in itself is quite a long time. In actual practice, there is quite some delay from the High Court in delivering of these judgements. Out of a total of 81 election petitions pertaining to the 1998 State Assemblies elections, 61 (75%) are still pending. In the opinion of many activists and eminent persons, all election related petitions should be heard by a separate judicial set up as suggested in the previous section, and these petitions should be decided within a time bound period by dedicated benches of those special electoral courts. If so, much of the present in-built delays will be taken care of. At the moment election petitions can remain pending for years together. There are many cases where the petition is not decided within the term of the house after which it has lost most of its significance apart from having subverted the rules and law in this regard. For example, there were 49 petitions relating to 1996 Lok Sabha. Of these 13 (27%) are still pending four years later. Of the 52 petitions relating to Lok Sabha 1998, 13 (25%) are pending as on date. For the Lok Sabha 1999, out of 64 petitions, 62 (97%) are still pending and 100% of all State Assembly petitions of 1999 are pending, indicating that in about one year hardly anything has moved. Other data relating both to Lok Sabha and State Assemblies is provided in the table below:

DATA ON ELECTION PETITIONS PENDING

Sr. no.	Election held	No. of election petitions filed	No. of election petitions pending	Percent pending
1	Lok-Sabha 1999	64	62	96.88%
2	Lok-Sabha 1998	49	13	26.53%
3	Lok-Sabha 1996	52	13	25.00%
4	Lok-Sabha 1991	86	15	17.44%
	State Assemblies 2000			
5	Bihar 2000	12	12	100.00%
	State Assemblies 1999			
6	Andhra Pradesh	25	25	100.00%
7	Karnataka	26	26	100.00%
8	Maharashtra	32	32	100.00%
9	Arunachal Pradesh	2	2	100.00%
	State Assemblies 1998			
10	Madhya Pradesh	42	32	76.19%
11	Rajasthan	11	11	100.00%
12	Delhi	4	4	100.00%
13	Meghalaya	2	2	100.00%
14	Himachal Pradesh	10	5	50.00%
15	Gujarat	12	7	58.33%
	State Assemblies 1996			
16	Assam	11	4	36.36%
17	Haryana	20	5	25.00%
18	Kerala	17	11	64.71%
19	Tamilnadu	8	6	75.00%
20	Pondicherry	3	3	100.00%
21	West Bengal	22	17	77.27%

Source: Election Commission records

16. The Question Of Representation And Winning On Minority Vote

16.1 The multiplicity of political parties, combined with our Westminster based first-past-the-post system results in a majority of legislators and parliamentarians getting elected on a minority vote. In other words, they usually win by obtaining less than 50% of the votes cast *i.e.* with more votes cast against them than in their favour. There are States where 85% to 90% of the legislators have won on a minority vote (*i.e.*, by having obtained less than 50% of the votes cast). In many cases candidates have won by getting less than 20% of the total votes cast in their constituency. To quote a few examples: in Uttar Pradesh, over the last three assembly elections an average of only 11% legislators won on a majority

vote. In other words, almost 90% legislators won on a minority vote. The same proportion for Bihar is 18% and 82%; for Madhya Pradesh it is 40% and 60%; for Assam 29% and 71% and for Karnataka 31% and 69%. Only Tamilnadu displays a different characteristic where a large proportion of legislators have won on a majority vote –1991 - 90%, 1985 - 83%.

At the national level, the proportion of MPs who have won on a minority vote is over 67% at an average for the last three Lok Sabha elections. Three years data for Lok Sabha and for some States is appended. It has taken into account at least three recent elections for a number of sample States which give a fairly representative picture on an all-India basis. This means that at an average, at the very least, two-thirds of our legislators all over India win on the basis of a minority vote.

16.2 In the first place, in a hugely divergent society such as ours, this has created a vested interest for political parties to progressively appeal to narrower loyalties. Clearly, if a candidate can win on less than one-third share of the votes polled, he does not need to generate a wider appeal. In the long-term, this has even more serious consequences for India, as the existing cleavages will only deepen thus dividing the society further. We have certainly seen it on the communal and caste fronts. By making caste and community a factor in political power play, we have made the divide even wider and deeper in the Indian society and made it nearly impossible for Babasaheb Dr. Ambedkar's vision and wish of a casteless and classless society ever coming true.

Secondly, given that we have territorial constituencies from which voters elect a representative, it is strange that most people of the constituency do not vote for a particular candidate yet it is he who becomes their representative. A question can arise: whose representatives are such candidates when a majority of voters did not want them?

16.3 The seriousness of this issue has generated suggestions from many quarters focused primarily on two possibilities. The first follows the list system somewhat along the lines of the German Bundestag whereby recognized political parties, in addition to winning seats on the FPTP system, get a further number of seats based on the number of votes polled by them. In the second approach many eminent persons have suggested that we should only have representatives who win on the basis of 50%+1 vote. If, in the first round, nobody gets over 50%, then there should be a run-off contest between the top two candidates so that one of them will win on the basis of over 50% of the votes polled. To save on the cost and trouble of a run-off, another suggestion made is that of each voter being asked to give an alternative vote so that in case of no one getting 50+ votes in the first count, the alternative votes get counted. With EVMs and technology available now counting of alternative votes need cause no delay or other problem.

16.4 One major change proposed by the Law Commission was the "list system" in addition to the "first-past-the-post-system" being followed presently. The objective was to generate better representation by providing seats to recognized political parties in proportion to the votes obtained by them. It was suggested that the number of MPs in Lok Sabha should be increased by 25% and this additional number of MPs should be made up of candidates pre-nominated by political parties and the number should be in

accordance with their share of the votes polled. They suggested that the strength of the Lok Sabha should be increased to 688, with about 138 candidates nominated on the basis of a list to be provided by various political parties. The Law Commission suggested that political parties that secured less than 5% of the valid votes cast in the Parliament or Legislative Assembly elections would not be entitled to any seat, based on their list system, in that legislature. It was also suggested that while bigger States would constitute a territorial unit for this purpose, the smaller States should either be clubbed with a bigger State or they should all be clubbed together for forming a territorial unit for elections to the Lok Sabha. Another variant of this suggestion was that voters be asked to vote on two ballot papers. One for the candidates and the other for one of the political parties. The votes polled by political parties would be considered for selecting the candidates on pre-nominated lists.

16.5 In whatever manner perceived, such suggestions of the Law Commission may be open to serious objection both on grounds of principle and practicability. Adoption of the partial list system would create two very unhealthy long-term trends in a multi-faceted society like India. In the first place, it would create even more difficulties in providing a stable government. Proportional representation is famous for creating non-majority legislatures where coalitions are a rule rather than an exception. This has serious implications for governance in India, as already borne out by our experience of the past few years. Because each coalition partner wields negative influence, the government may have to ignore even flagrant abuse of political positions by coalition partners. The idea of the "List System" runs against the grain of attempting to provide stability in the government because with many parties present with small but sometimes determining numbers it potentially enhances horse-trading to create artificial majorities for forming and maintaining governments. Weak governance results. Also, the suggestion would create two classes of members of Parliament in Lok Sabha – those elected directly by the people and those coming through party lists.

16.6 There is an interesting recent quote from Sir Peter Lloyd, MP from a House of Commons debate on proportional representation (2 June 1998), "When I visited the Netherlands earlier this year...some of our Dutch hosts said that they had heard that the UK was changing to PR. They could not understand why we might want to abandon a system that, in their view, had produced great governmental stability. They obviously admired the clarity and the personal involvement of the single member constituency system, which they do not have." He went on to say that "the additional member system, which produces two classes of members of Parliament, one with a constituency link and the other with none, is presumably favoured by the party hierarchy." There may be a message here for India.

16.7 Secondly and even more important, elections should be used to unite our very divided society, which is progressively getting more divided because individual players are constantly mobilizing support based on narrow loyalties. The idea of any form of proportional representation will aid in the divisive tendencies, as it will now pay the politician to appeal to a small group if he feels that he has a good chance of getting their vote en-bloc. The moment political parties are given the opportunity to have representatives in the Lok Sabha or the State assemblies based only on the number of votes that they obtain, it takes away the incentive to make their electoral appeal broader. Also, the parties which can have the resources to put up a large number of candidates even in areas where they do not hope to win, will have a distinct advantage under any scheme of additional seats through list system. It will then pay the political party to address itself to narrow interests because that may be the only safe way for it to ensure itself a few seats in the house. It should never be enough in such a diverse society as India to maximize support among a narrow grouping and then rely on being needed as a part of a coalition government. On the contrary a party must appeal broadly across the electorate. The Law Commission recognized this and stated that this could aid and enhance caste-based politics, yet it made a slightly toned down recommendation that instead of having 50% seats on the basis of list system, let us have

25%. The smaller percentage, however, does not take away from the negative influence that this policy is likely to create.

16.8 Proportional representation of this kind assumes a well educated and aware electorate and a type of matured political behaviour from both the electorate and the elected representatives and can only work for good governance if there are very strong conventions of behaviour that cannot be transgressed at all. India is really very far from it at the moment. This therefore, can only be left for posterity to decide when the time comes, if ever.

16.9 Several eminent persons, including the distinguished former President Shri R Venkataraman have therefore opposed this suggestion. They have however proposed that the option of electing only candidates with over 50% of the votes cast in their favour is a far better way to achieve the same objective of better representation. Here, each legislator is elected on a majority vote and can therefore be said to be a representative of a majority from his constituency. The Law Commission, who evaluated this suggestion in their report albeit with the inclusion of a “negative vote” did comment in their report that this was an excellent suggestion but they felt that there might be insurmountable practical difficulties with implementing it because of the run-off election that will happen at least in 2/3rd of the cases at present. The Election Commission however, does not feel so. The Chief Election Commissioner, has stated that he had himself made this suggestion of 50%+1 vote on a number of occasions and he confirmed that the daunting task of run-off elections can be managed by the Election Commission. Actually, the run-off vote is like a re-poll in certain constituencies. There is no revision of electoral rolls, no fresh nominations, no fresh campaigning or the like. It is the same polling booth with the same administration and therefore it should not be complicated.

16.10 A serious effort at implementing this suggestion should be possible. There are two substantial advantages of following the policy of 50%+1 vote. On the one hand, it resolves the problem of representation. On the other, it also makes it in the self-interest of various political parties to widen their appeal to the electorate. It can help push political rhetoric in a direction that the mobilizing language might take on comparative “universal” tones as opposed to “sectoral” tones of the present day. Currently the possibility of winning on a minority of votes polled has encouraged parties to function on caste, communal or other sectoral bases. When such parties get into positions of power, they also follow a sectoral agenda. With the need to be more broad based in their appeal, issues that have to do with governance rather than with cleavages and narrow identities might start to surface in the vocabulary of the politicians. On this count alone it may be considered worth pursuing.

16.11 Of course, the EC would have to find a practical way of handling the run-off election without permitting any distortions. With EVMs we can easily plan on a two-day election all over the country. The second day may be for run-offs. This means that at the end of the day, through the use of computer technology, the constituency will know whether someone has won by getting over 50% or that it is a run-off. If it is the latter the announcement would mention the names of the two candidates. The final results can be announced with all others. No doubt, there will be initial problems in this, but with 50 years of experience with us, we are in a much better position today than we were ever before, to find a way to implement this as well as to anticipate what intended and unintended consequences might follow this policy. The positive aspect of this will follow if all goes as planned. But what if it does not? Let us, therefore, attempt to look at the possible unintended results of this policy.

16.12 The main question might be that once a run-off is decided leaving only two candidates in the field, would it not lead to even more attempts at rigging and/or violence because now it would be a matter of do or die for each of these two candidates? Given our experience with elections and the political culture in which these have operated, yes, this may be possible. If not muscle power, it is also conceivable that yet bigger amount of money might change hands to get intermediaries to bring block votes to the polling station. This is also may be a possible scenario. It is also possible that for the run-off election the voter turn out will be lower due partly to election fatigue and mainly to the fact that one of the candidates may use muscle power to keep unfriendly voters away.

16.13 If the suggestion of holding election on two consecutive days is accepted (the second day being for run-offs), there will simply not be time enough to generate fresh violence or to indulge in other malpractices like horse trading and using money power to buy votes. As for voter turn out, battle lines being more sharply drawn between only two contestants, it is equally likely that the turn out may be better. But, the administration at least when the policy is first introduced, would of course have to be prepared to make special arrangements at sensitive constituencies.

16.14 If the two-day election plan is difficult or not acceptable, there should in any case not be a long gap between the main election and the run-off election. No further campaigning should be permitted. The less the time available between the two polls, the less are the chances for the candidates to create hurdles in the way of the system. Secondly, and more importantly, any electoral offence in the run-off should carry a higher penalty for the candidate than the original election. The possibility of disqualification and perhaps a mandatory hefty imprisonment and a hefty fine, should loom large on the horizon for both the finalists.

16.15 We would do well to remember that if implemented properly, this suggestion has the potential of forcing political parties and candidates to think of strategies to obtain over 50% votes in the first election itself. This will discourage the non-serious candidates and fringe players from jumping in the fray and it will encourage making of pre-election agreements between parties and if viewed together with the suggestions on defection, this should lead to moderation and stability. The proposal of run-off elections may push up the cost of elections marginally only. The mobilization is one time and when EVMs are used, there are no ballot papers to print either. Also, while on the first occasion, there may be many run offs, with each successive election the number may be reduced to only a few.

17. Compulsory Voting

17.1 Some scholars and concerned citizens have suggested that voting should be made a citizenship obligation. Voting is compulsory in countries like Australia, Argentina, Belgium, Bolivia, Brazil, Chile, Costa Rica, Cyprus, Ecuador, El Salvador, Finland, Greece, Guatemala, Guinea, Honduras, North Korea, Luxembourg, Madagascar, Mexico, Morocco, Panama, Paraguay, Peru, Phillipines, Singapore, Turkey, Uruguay, Venezuela and others. Interestingly, in Egypt, voting is compulsory for men only. There may be some very strong arguments in favour of making voting compulsory in India for all men and women.

But, in our situation, there may be several management and legal enforceability problems and difficult questions of penalty for not voting. Perhaps, we could think along the lines of providing some incentives to help increase the electoral turnout, particularly of sections that are now not voting. For example, we could consider a tax deductible expense of say Rs. 2500. Or this could be linked to the schemes of tax rebate on total amount of tax payable by the person subject to some pre-determined limits. Or for non tax-payers other small incentives or token benefits in the matter of rations, speed of granting certain licenses, passports, etc. could be considered. The revenue lost as a result could be treated as partial state funding of the electoral process. Such policies might help push electoral turnout up. An additional counterfoil in the voting paper could be given to the voter as his certificate of voting. It is felt these suggestions for increasing popular participation in the democratic exercise of elections are certainly worth debating.

17.2 Arguably, the above would help to bring more voters out to the polling booths. The process of voting would meanwhile be simplified by the introduction of EVMs and in the long run it would be possible to have, particularly for sensitive constituencies, mobile polling stations with EVMs that can reach the voter rather than the voter reaching them.

18. Negative Voting

18.1 Some eminent persons like the Vice-President Shri Krishna Kant have been suggesting for many years now that the voters should have a choice to say 'no' to all the candidates on the voting paper if they find all of them to be undesirable. This can be done by adding a column in the voting paper saying 'none of the above'. The Law Commission has also advocated provision of such a negative vote. The proposal has to be accompanied by a provision that if a certain specified percentage of votes cast is that of negative votes then the election would be void.

With different parties putting up candidates only on grounds of their winning ability, the result sometimes is that all the prominent candidates in a constituency are known criminals or undesirable characters. In this context, the suggestion of a negative or 'none of the above' vote does make lot of sense intellectually and as a matter of principle. It may however not at all be a practicable proposition for several reasons: (1) The proposal is negative in character. (2) Maximum effort and money of every candidate has to be devoted to getting the voters to the polling booth to vote for him. Thus, as it is, those who come only to vote for someone. It may be unrealistic to expect a reasonable percentage of voters to come simply to say that they do not wish to vote for any of the candidates. (3) It may require a massive and costly movement to motivate people to stand in queues to cast negative votes. Also, if such a movement can be mounted, those doing it can as well do the more positive thing of putting up a candidate they consider desirable. (4) Where some candidates win with 20, 15 or even less percentage of votes cast, it would not be easy to decide what percentage in the negative vote category should suffice to invalidate the election. (5) It would hardly be easy for the largely illiterate Indian electorate to understand the concept of negative vote.

19. Defections and The Tenth Schedule

19.1 The question of defections has now haunted the Indian polity for over three decades. Between the fourth and the fifth general elections in 1967 and 1972, from among the 4000 odd members of the Lok Sabha and the Legislative Assemblies in the States and the Union Territories, there were nearly 2000 cases of defection and counter-defection. By the end of March, 1971 approximately 50% of the legislators had changed their party affiliations and several of them did it more than once – some of them as many as five times. One MLA was found to have defected five times to be a minister for only five days. Defections were always rewarded thereby establishing the fact that these “floor crossings” were engineered and bought. This was sought to be eliminated by the Tenth Schedule but all that has happened that while individual defections have become rare, *en bloc* defections are permitted, promoted and are amply rewarded. Therefore, despite Tenth Schedule, or because of it, countless defections have taken place without incurring any disqualification. In fact, on an average more defections per year took place after the Anti-defection Law (10th Schedule) came into force than ever earlier.

19.2 What has been even more disconcerting is that some of the Speakers have tended to act in a partisan manner and without a proper appreciation – deliberate or otherwise – of the provisions of the Tenth Schedule. Almost everyone dealing with this subject agrees that defections flout people’s mandate and cannot and should not be permitted, neither singly nor in a group. The fact is that most candidates get elected on the basis of the party that has given them a ticket. Defections allow these candidates to theoretically go to the polar opposite of this party, which is not the basis on which people elected them. Simply because there is no accountability vis-à-vis the people, such a practice continues unabated. Defections encourage corruption of the highest level. Defectors usually are gifted with political positions and other such perquisites so openly that it really makes a mockery of our democracy.

19.3 The rule should be clear and unambiguous. If a candidate has an insurmountable problem with his party he should resign and go back to the people for a fresh mandate. He cannot be permitted to use the old mandate to “live-in” with new partners on whose ticket he might even have forfeited his deposit. This is a negative power, used only for self and our legislators and parliamentarians can and should do without it. There should be no debate and no discretion for the Speaker or anyone else to interpret it. The disqualification for a defector should be automatic and immediate and his vote should be annulled. If votes are not annulled, the defectors may succeed in toppling or forming governments before they are disqualified.

In the same vein, just to ensure that the party machinery does not misuse this power either, what constitutes defection should be re-defined. At the moment any disagreement with the party organisation and a vote against party directive on *any issue* can subject a legislator to disqualification under the Tenth Schedule. This is not what should happen. The whip should only be applicable for any matter where the life of the government is in danger and not to all voting as at present under the Tenth Schedule. In other words except on voting concerning a finance bill, or confidence motion or no-confidence motion, whip should not apply from the point of view of anti-defection law. The question of defection will then only arise when a legislator actually changes allegiance or defies party directives on critical issues of affecting its life.

19.4 Some activists and scholars still accept the idea of a split. The argument is that in view of the lack of internal democracy in political parties splits should not be barred. This school of thought wants to introduce what in their view might be better regulations to monitor splits. But even here there is unanimity that defecting members should not be permitted any spoils of office. It is suggested that the members

who split from their parent party shall not be eligible for any ministerial or other position at least for a period of one or two years or until they get reelected. However, conceptually splits are wrong. Party members can always split if ideologically there is a big disagreement, or really for any other reason, but they must go back to the people for a fresh mandate if they are members of any legislature at that time. Permitting the concept of splits will ensure that some indiscreet politicians will find a way to work around the regulations. The Law Commission had also felt that when a person becomes a member of a political party, accepts its ticket and contests and succeeds on that ticket, he renders himself subject to the discipline of this party. Therefore, the concept of "splits" as provided in the Tenth Schedule should be done away with. Alternatively, there may be every case for our debating the repeal of the anti-defection law which has fulfilled no objective and served no purpose except to legalise and institutionalize group defections.

20. Delimitation of Constituencies

20.1 Since 1971, the number of seats in the Lok-Sabha allocated to different States was frozen upto the year 2000. No fresh delimitation commission has been formed. The Law Commission deliberated on this issue but was persuaded that a fresh delimitation exercise for Lok Sabha would place those States, particularly the Southern States, which had carried out a successful family planning programme and had curbed the rate of growth of population, at a considerable disadvantage compared to the others. Indeed it would appear to reward the States with poor population control by granting them a bigger representation in the parliament.

20.2 Of course, freezing the delimitation exercise goes against the grain of one-man one vote because the value of the vote becomes unequal. For example the average Lok Sabha constituency in Rajasthan in 1991 consisted of 1,060,540 voters compared to 769,046 of Goa and only 31,665 at the bottom of the table for Lakshwadweep. Within States the oft quoted example is that Outer Delhi Lok Sabha constituency has a number of over 29,00,000 voters whereas Chandni Chowk parliamentary constituency has only about 3,68,000 – about 13% of the former. Clearly the value of an individual vote in Outer Delhi is only about 1/8th of Chandni Chowk. There are many similar cases all over the country.

There is no general agreement on this issue. The opinion is divided so far as inter-State delimitation is concerned. Some have agreed that fresh delimitation between States should be frozen; others argue that this goes against the grain of our Constitution. In any case this exercise has already been frozen for another 10 or 25 years according to newspaper reports.

20.3 However, there is no difference of opinion on intra-State delimitation exercise. But even this has remained pending. The EC had at one time suggested that it was well qualified to do this and was also generally accepted to be a neutral and impartial body, but successive governments have not taken up this matter. At least within a State this anomaly should be removed and a decision taken to authorize the EC to come up with its proposals. The delimitation exercise is not only important for Lok Sabha constituencies but equally so for assembly constituencies. This could perhaps be done by the Election Commission in coordination with the State Election Commissioners in a visibly neutral fashion.

21. Problems of Instability, Hung Parliament and Assemblies and their relation to the electoral laws and processes.

21.1 The last few decades have seen a great deal of political instability in India. During the last ten years there have been seven governments at the Union level. Being minority governments, these have been unable to provide stable administration and stable policies. The reasons are not far to find. We adopted the Westminster model of FPTP system of elections but forgot that it works mainly in communion with a two party system or a limited number of parties. Even today there are only two major political parties in the UK. In our case, politicization at ground level coupled with a highly fragmented society, has given rise to a large number of political parties, each one existing not on a different ideology or economic programme, but on the basis of having nursed a narrow parochial, mostly caste or religion based, identity for itself and its band of followers. Even this support is usually earned not by doing some positive work for the concerned group but negatively by bad-mouthing and demeaning others and all the time pitting one group against the other. The political system and the politicization of caste and communal identities have proved to be very divisive of society and disruptive of the national ethos. It has become increasingly difficult to get a workable majority to form a government and make a success of coalition arrangements.

21.2 This has had very negative repercussions on the quality of governance because to cobble up a workable majority to form government, compromises had to be made and ideology or notions of quality of governance may sometimes have taken a back seat. The consequences are pretty severe. Law and order suffers because control mechanisms break down or become very loose. It becomes difficult to take strong measures to curb corruption and provide clean and quality governance. In the end, it is the citizen who is the victim of all the misgovernance.

21.3 There is a bi-polar spread on this issue and there have been many strong views on both sides. One insists that for a parliamentary democracy to work there must be a limit on political parties as well as on the number of independents that are allowed to contest elections. The other view challenges this on the pretext that a democracy like India, which has a huge cultural, religious and linguistic diversity, needs to articulate its differences through a share for most participants in the power structure. Therefore there should be no curtailment whatsoever. There are many other moderating views that work between the two extremes.

21.4 The Law Commission dealt with this issue in some detail and suggested rather radically that ideally the effort should be to have only one election every five years for Lok Sabha and all the legislative assemblies. Although the Commission clarified that it was not their intention to suggest a fixed five-year term for the government, the implication of their suggestion was clearly in that direction. The Law Commission also stated that in if a political party received less than 5% of the valid votes cast in the parliamentary or legislative assembly election, they should not be entitled to any seat and Independents should be barred from contesting elections. This would, the Commission thought, consolidate the presently fragmented vote and provide for possible stability.

21.5 Many activist organisations and eminent persons have disagreed with this suggestion but many have not only agreed but also gone a step further to suggest even other methods to reduce the number of parties or political alliances participating in the electoral process. One of the other suggestions is for actively pursuing the ideal of building a healthy two party system essential for the success of the parliamentary system. Former President, Shri R. Venkataraman and others have suggested that political parties that secure less than 10% of votes cast should be de-recognised by the EC. After the first such election the party that secures lowest number of votes in each subsequent general election should be de-recognised until the number of parties left is only two. The de-recognised parties would lose the right to get a common symbol for their candidates.

21.6 The argument about independent candidates to be discouraged if not altogether barred from elections is based on the fact that out of 1900 independent candidates who contested the general election in 1998, only 6 (0.65%) succeeded. 885 (47%) lost their deposits. Likewise out of the 10635 candidates, who contested the 1996 Lok-Sabha elections, only 9 (0.08%) won and 10,603 (99.7%) lost their deposits. It is also known that most of these so-called independent candidates are in fact dummy candidates or defectors from their parties on being denied party tickets. These candidates only vitiate the sanctity of the electoral process. This was carried to ridiculous limits when a Lok Sabha constituency in Andhra Pradesh (Nagonda 1996) had 480 contestants. The first three received 82% of votes and the balance 477 got 18% of votes. Similarly there have been assembly constituencies reaching over 1000 candidates. What a waste of resources and effort!

21.7 The more moderate suggestions on the question of independents contesting elections are that such candidates should be proposed by a certain minimum number of Panchayat Sarpanches or municipal councilors from their constituency. This would ensure that only persons who have some political standing in their constituency contest the election. In the alternative, some have proposed that only such independent candidates should be permitted to contest who have already a track record of having held some other elective political office, e.g., panchayat or zilla parishad or municipality or a cooperative etc. The suggestions need further debate and consideration.

21.8 One other set of suggestions centers around permitting only recognized "national parties" or qualifying pre-poll alliances to contest national elections to Lok Sabha. In their view this would, by prompting pre-poll alliances, automatically consolidate the vote and help in evolving some sort of federal parties or alliances providing more stable governments. Candidates who thus come to occupy seats in the national parliament will have a more national perspective on things as opposed to those who come on a purely local or regional platform.

21.9 Some suggestions are centered around reducing the number of recognized national parties or pre-poll alliances by changing the present criteria for their recognition. For example, at the moment a political party in order to be recognised as a national party needs to secure at least 6% votes in 4 States or have one MP elected for every 25 MPs from four States. It is proposed by some scholars and elder statesman like the former President Shri R. Venkataraman that this percentage should be increased to 10% of votes polled. It is also proposed by some that the number of States should be increased to half of the total States and Union territories. This would certainly trim down the list of national parties/alliances. A de-recognition would mean the loss of many benefits including a common symbol nationwide. Coupled with the suggestion that non-national parties should not be permitted to contest national elections, this would force many pre-poll alliances or growth of federal parties.

21.10 It has also been suggested that in a situation of so called 'hung' house, the best course would be to have the house elect its leader as it elects the Speaker. The leader so elected may be appointed the Prime or Chief Minister and his government should be removable only on a constructive vote of no-confidence. This really means that at the time of introducing the vote of no-confidence, a simultaneous vote of confidence has to be passed in favour of an alternative leadership, which will be sworn in if the vote goes through. In other words, there may be a change of leadership, or even a change of government but the country would not go back to polls, nor would there be time for horse-trading after the fall of a government to cobble up artificial majorities. The period of office for Lok Sabha and Assemblies should be reduced to 4 years. If India can have only one election every four years this would be a huge national saving apart from creating stability that at least gives a chance for better and development oriented governance. Some have suggested that if a vote of no confidence is proposed and is defeated in the House, a fresh vote of no-confidence should not be permitted for a period of time say a year or two. Most of these suggestions do not call for any amendment in the provisions of the Constitution and all that may be needed may be a simple legislative amendment or a modified rule of procedure.

Also, all the suggestions are permutations and combinations of the same set of proposals to achieve the objective of more stability in the system of governance as contradistinguished from the suggestions of some to provide fixed terms to the government or to the legislators. The latter cannot be considered legitimate. If a leadership is performing poorly and/or making grievous errors, deliberate or compulsive, in running of the nation, or even when it fails to provide the basics of governance, it cannot be allowed to continue for any fixed term.

21.11 Many of the above issues in the long run will be addressed if the proposal of winning on a majority 50%+1 vote is accepted. Many non-serious candidates and even fringe parties will go out of the electoral fray, as it will be impossible for them to contemplate a win. It will certainly push many of them into better formed and longer lasting political alliances in order to win.

22. Issues of Political Morality:

22.1 The decay in political morality is an issue that occupies centre-stage in India's political discourse but there are really no remedies and we appear to be on a downhill course with getting rich-quick anyhow and competitive consumerism having become the highest virtues. If the question is asked how can we reverse this trend, the answer would have to be that there are no magical formulas or laws and regulations for moral regeneration that can help in creating a better sense of higher values and a general political conscience. It can only be done by building and nursing strong conventions that politically and even more importantly, socially ostracize deviant behaviour.

22.2 One of the ways in which this may be attempted is by educating India's masses about their fundamental rights and duties, by driving home the message that political position holders are not "rulers" in the sense of the "mai-baap" of the colonial era or "maharajas of the feudal vintage". They are elected to positions of authority to serve the society's needs. Strong public opinion has to be created against

political corruption making sure that no one gets to enjoy the fruits of corrupt actions. Above all, we may need a renaissance of the old values of sacrifice and service in public life and politics based on some moral principles. This would need politicians who are not for power for its own sake or for promoting their own narrow self interests but who enter public life motivated by a mission and a desire to serve the people or ones fellow citizens. For this the government would have to keep on a constant communication with the populace at large. For whatever it is worth, immediate appointment of one or more ombudsmen or Lokpal may be suggested once again. To keep a tab on issues of public morality and ensure that transgressions are widely debated and the culprits brought to book, a beginning should be made to include some secular constitutional values and citizenship obligations in the curriculum of schools and colleges so that the next generations will grow up with this information and perhaps wisdom to form a formidable social force against the kind of decaying political morality of today.

23. Miscellaneous Suggestions:

23.1 Some other suggestions need mention. These may need to be considered. The feedback and views received may help in framing arguments and reaching some conclusions in regard to the following:

1. Debar all legislators from being appointed as chairpersons of various state undertakings, also debar them from any non-ministerial post other than chairmanship of legislative committees.
2. There must be a bar on ministries that are larger than 10% of the house. No other position with executive or financial powers to be considered for legislators. Also, the power to create Minister level or Cabinet rank posts should be strictly regulated.
3. There must be a limit of two terms for any political position. So one may be a member of the panchayat for two terms, of State assembly only for two terms even if non-contiguous and MP for two terms. This may reduce the number of life-time professional politicians who have no other sources of livelihood except political office.
4. The EC should be appointed by a neutral body consisting of the Prime Minister, the Vice President, the Speaker, the Leader of the Opposition and the Chief Justice of India. This would make his position totally impartial in the eyes of all political parties and factions. The EC should not be appointed to any other office after retirement.
5. An independent auditing authority should be appointed for auditing annual statements of accounts of all political parties and the audited accounts should be published for public scrutiny.
6. Rotation of seats should be done for SC seats and non-scheduled area ST seats.
7. There seems to be a general agreement on the need to have more women members. The question is whether political parties should be asked to put up women candidates for at least one-third of the seats they contest both for State and Parliament elections or one-third seats should be reserved for them by rotation. Another suggestion being made is that there may be a 30% increase in the number of seats in each house and these additional seats be filled by women party candidates on the basis of a list system.
8. The minimum number of valid votes polled should be increased to 25% in order not to forfeit the deposit. Also, the amount of deposit should be again increased substantially. These two steps would further reduce non-serious candidates.
9. All candidates should be required to clear all government dues e.g. huge I.T. arrears before their candidature is accepted. This pertains also to holding on the accommodation, telephones, and government facilities used while in power.
10. EC should have full disciplinary authority over the officials who are involved in election duty. It is said that at present there are too many complaints of compromised or partisan officials but EC is unable to take any stringent action. The question however is whether the Election Commission

could have the same disciplinary powers over all the officers and staff engaged on election duty as that of the appointing authority.

11. Create multi-member or double-member constituencies to eliminate or at least reduce narrow appeals based on religion or caste.
12. Hold State level and parliamentary level elections at the same time. This would reduce expenditure.
13. Every candidate to an elective office at the time of filing nomination and every holder of a political position annually must declare his assets and liabilities as also the assets and liabilities of his close family members.
14. For Legislative Councils, eliminate the Teachers' and Graduates' constituencies, which provide extra votes to some electors and have politicized educational institutions.
15. Subsequent to the 73rd and 74th amendments, ensure that criminalization does not engulf our PRIs and there must be a serious debate on the issue with a view to substantive reform.
16. For contesting elections to the Rajya Sabha, the requirement of a candidate being 'ordinarily resident' in the State should be interpreted to mean that he or she should be actually residing in that State.

SUMMARY*

PROBLEMS

1. With majority of representatives elected by a minority of votes cast, the representational legitimacy of the FPTP system of elections stands seriously eroded. There is mismatch between FPTP and the multi-party system. Hung houses make stable Government formation difficult.
2. With the constituents and electors for all directly elected representatives from the Panchayat to Parliament levels being the same, competing role expectations and perception conflicts result e.g. even a member of the Union Parliament is expected to attend to purely local problems in the village or town.
3. With large constituencies, multiplicity of parties and candidates, absence of ideology, politicization of caste and communal identities and building of vote banks, elections have become terribly expensive. Huge amounts of money are needed to contest any election. Legitimate sources are difficult to find. Corruption and black money are generated. Politics gets criminalized. Mafia gangs and others with money and muscle power assume importance.
4. Many malpractices and acts of violence, corruption, etc. have polluted the electoral processes. Misuse of the Government machinery and connivance of polling staff with miscreants are also not uncommon. With very faulty electoral rolls and rampant impersonation, booth capturing and rigging, large sections of people are in effect disenfranchised.

(Para 5)

THE GANDHIAN MODEL

* This summary is only for guidance and facility of reference. For purposes of study and deliberation, it is advisable to use the text in the relevant paras of the body of the consultation paper.

To strike at the root of most of the problems, one option suggested for consideration is that of the adoption of the Gandhian model of decentralization of power down to the grassroots people's level and a bottom-up instead of the present top-down approach with multi-member or double-member constituency-based direct elections being held to the primary tier of governance and all the upper tiers being filled up by representatives elected by electoral colleges of representatives manning the lower tiers.

The Prime Minister/Chief Minister may be elected by the House and be removable only by a constructive vote of no-confidence.

This would mean a low-expense electoral process with representatives being more representative of the people, more responsible to them and responsive to their needs and aspirations. This could ultimately lead to people, development and citizen-friendly, stable and good governance at every level.

(Paras 6.2 – 6.5)

OTHER REFORM OPTIONS AND SUGGESTIONS

Other reform options to tackle different problems broadly within the existing electoral system are summed up below:

Electoral Rolls and Identity Cards

1. Electoral roll should be updated at the lowest constituency level with a clear link to the higher constituency levels till the parliamentary constituency.
2. There should be a mechanism for constantly updating these rolls and during each 1st week of April the updated rolls as of 31st December of the previous year should be posted on the web.

3. Multipurpose voter ID cards or citizenship card should be designed with a bar coded unique voter ID number. Over an acceptable period of time these should become mandatory for all elections.

4. This job should be entrusted to a pre-qualified professional organisation and should include designing the implementation of the scheme in coordination with and under the EC. PRIs and local post offices to be involved in helping in its implementation.

5. The designing of Electoral Rolls and ID should be coordinated with a view to the future.

6. The responsibility for the electoral rolls and ID should rest with one integrated machinery under the EC/SECs.

(Para 7)

Electronic Voting Machines

7. Introduce Electronic Voting Machines in all constituencies as rapidly as possible. For all sensitive constituencies use them straightaway.

(Para 8)

Booth Capturing and Rigging

8. Reference section 58A of the Representation of the People Act 1951, give Election Commission the authority to take decision regarding booth capturing not only on the report of the returning officer but even otherwise if it is satisfied.

9. Again, under section 58A of the Act, the Election Commission should not only be empowered to countermand the election and order a fresh election as now provided under the law, but also should be empowered to declare the earlier poll to be void and order only a re-poll in the entire constituency, instead of a re-election there, depending on the nature and seriousness of each case.

10. Make booth capturing punishable with more stringent punishment and empower the Election Commission, to investigate booth capturing and other violations of the electoral law, through the Central or State police investigating agency; by the establishment of special electoral courts.

11. Consider use of tamper-proof video and other electronic surveillance at sensitive polling stations/constituencies.

(Para 9)

Caste and Communal Hatred

12. Any campaign on the basis of caste or religion and any attempt to spread caste and communal hatred during elections should be punished with immediate disqualification and mandatory imprisonment.

(Para 11)

President's Rule during Elections

13. CEC's suggestion to impose President's rule over all the States for the duration of elections may not be considered logical or feasible.

(Para 10)

Criminalisation

14. Once charges relating to certain crimes have been framed by a court against a person, he should not be permitted to contest elections unless cleared.

15. A potential candidate against whom charges have been framed by the police may take the matter to a special electoral court. This court would be obliged to enquire and take a decision in a strictly time bound manner. Basically, this court may decide whether there is indeed a *prima facie* case justifying the framing of charges. If yes, the person should not be allowed to contest.

16. Eliminate incongruities in the existing provisions of sub-sections (1), (2) and (3) of Section 8 of the Representation of the People Act, 1951, whereby a rapist convicted and sentenced to ten years imprisonment, may be disqualified only for six years under sub-section (1) and thus remain free to contest elections, even while in prison serving the last four years of his sentence. The law should provide that whoever is convicted of any offence by a Court of law and sentenced to imprisonment for six months or more should be debarred from contesting elections, for a period totalling the sentence imposed plus an additional six years.

17. Under Section 8(4), sitting members are not disqualified even when convicted until their appeal is decided. This should be deleted.

18. If an elected representative gets convicted on charges related to specific crimes, he should be required to withdraw from the legislature for six months and if within that period he fails to get an acquittal, he should be disqualified.

19. Political parties, when they are seen to be abetting criminalisation should face derecognition and other action.

(Para 13)

Disqualification on ground of corrupt practices – election petitions:

20. Amend current practice that once the High court hands out the judgement on an election petition holding the candidate guilty of corrupt practices, the case goes to the Secretary of the concerned State Legislature or the Secretary General Lok Sabha or Rajya Sabha, as the case may be. It is

then forwarded to the President who in turn forwards it to the EC. Only then does the EC get jurisdiction to tender its opinion to the President based on which the disqualification order is issued. Instead of this round about procedure a direct reference between the High Court, the Election Commission and the President should be created to cut unnecessary delay.

21. Create special electoral courts for deciding on election petitions. These should be decided in a time bound way within 6 to 12 weeks unlike the present where it can take years by which time they have lost their meaning.

(Para 15)

Election expenditure - the high cost of elections and abuse of unaccounted money power

22. The basic problem is that the present rules have a significant loophole in the shape of explanation 1 to section 77(1) of the Representation of the People Act 1951, under which the amounts spent by persons other than the candidate and his agent themselves, are not counted in his election expenses. This means that there can be never any violation of the expenditure limits. All extra expenditure, even when known and proven, can be shown to have been spent by the party or by any friends and it remains outside of the enforceable limits. This must be rectified and all expenditure made by or on behalf of the candidate must be included in his expenditure limit as provided under the rules.
23. Political parties as well as individual candidates should be subject to a proper statutory audit of the amounts they spend. At the end of the election each candidate should submit an audited statement of expenses, head-wise. The audit should not only be mandatory but it should be enforced by the Election Commission appointing a council of at least two auditors say for 10 constituencies each. Any violation or misreporting should be dealt with strongly.
24. Partial state funding of elections through time provided on national media for campaign activities of recognised parties may continue.

25. For other proposed state funding, it has to be linked to the political parties being regulated by law and to creating a foolproof mechanism to implement financial limits strictly and to deter expenditure violations.

26. Bring in transparency into all political funding.

27. Permit corporate donations within prescribed limits and keep them transparent.

28. Make all legal and transparent donations tax exempt and treat this tax loss to the state as its contribution to state funding of elections. For example, tax exemptions could be limited to say 25,000 for individuals and 10,00,000 for companies provided that the contributions are made to party funds and not to individuals. In the case of corporate contributions, the Board of Directors may approve up to say 1,00,000 and anything over this amount may be approved by the shareholders. Political funding should be separate head in the accounts and annual reports of the company. This will ensure transparency.

29. All political party accounts, much like the accounts of a public company, should be published yearly with complete disclosure under pre-determined account heads. The Election Commission should have these accounts audited.
30. Also make it obligatory for campaign expense accounts – both receipts and expenses - of all candidates to be made public in their constituencies.

31. There should be a serious attempt at reducing election expenses and this can be done by perhaps changing the ground rules for electoral campaigns – partly by encouraging the use of electronic and digital technology to campaign at state cost and simultaneously by totally and effectively banning other overt and wasteful *tamashaas* of campaigning

32. Place reasonable restrictions on the following:

Wall writings, Display of cut-outs hoardings and banners, Hoisting of flags (except at party offices, public meetings and other specified places), Use of more than a specified number of vehicles for election campaign and for processions, Announcements or publicity by more than a specified number of moving vehicles, Holding of public meetings beyond the specified hours, Display of posters at places, other than those specified by the district/electoral authorities., Strong penalty for violation of expenditure ceiling, During election times rallies only under covered roofs should be allowed. No outdoor public rallies should be permitted.

33. Create an effective mechanism to implement these rules and create an effective deterrence against violations.

(Paras 14)

The Question Of Representation And Winning On Minority Vote

34. Let candidates both at state level and parliamentary level win only on the basis of a majority vote meaning 50%+1 of the votes cast. This will create a majority representation and also push political parties and serious contenders to widen their appeal to their electorate.
35. For this let there be a run-off election if required between the top two candidates who get the highest and the second highest number of votes.
36. When using EVMs have election spread over two days and keep the second day for possible run-offs. This will save considerable resources.
37. If this is not possible have the shortest possible gap between the main election and the run-off. No further campaigning should be permitted.
38. Consider providing incentives to voters for casting their vote by providing of some simple facilities in order to push up the electoral turn out. Together with the 50%+1 vote scheme this will have a salutary effect on the campaigning rhetoric of the candidates and political parties because they will have to reach a higher number of voters now.
39. Electoral offences in the run-off elections should have a higher punishment prescribed.

(Para 16)

Compulsory Voting

While compulsory voting may not be feasible or advisable at present, a scheme of suitable incentives for increasing voter participation may be considered.

(Para 17)

Negative Voting

Sound on principle, the suggestion for a provision of negative voting may be found impracticable and unnecessary.

(Para 18)

Defections and The Tenth Schedule

40. Whether by an individual or a group, defections should not be permitted. If a legislator wishes to leave his party or vote against it he should vacate his seat. Let him/her contest on a fresh platform. The vote cast by a defector should also be invalidated. In the alternative, the 10th Schedule should be repealed.

41. As a corollary to this, the role of whip should be reduced. Whip should be allowed to be used only for those votes in the House which might threaten the life of the government.

42. Defectors should not eligible for any public office until re-election.

(Para 19)

Delimitation of Constituencies

43. Have intra-state delimitation exercise undertaken by the Election Commission to eliminate anomalies like the Chandni chowk Lok Sabha constituency being only 1/7th of the voter size of the Outer Delhi Lok Sabha constituency. The same should be done for assembly constituencies.

(Para 20)

Problems of Instability:

44. Independent candidates should be discouraged. Permit only those who have a track record of having won any local election.

45. Let only recognised national parties or pre-poll alliances contest elections to Lok Sabha.

46. It should be possible without any constitutional amendment to provide for the election of the Leader of the House (Lok Sabha /State Assembly) along with the election of the Speaker and in like manner under the Rules of Procedure. The person so elected may be appointed the Prime Minister/Chief Minister and the Government constituted by him may be removable only on a constructive vote of no-confidence.

(Para 21)

Issues of Public Morality

47. Educate India's masses about their fundamental rights and duties, by driving home the message that political position holders are not "rulers" in the sense of a "mai-baap" or a "maharaja" but are elected into positions of authority to administer and serve the society's needs. Create a strong public opinion against political corruption and by making sure that no one gets to enjoy the fruits of their corrupt actions.

(Para 22)

Miscellaneous

48. Debar all legislators from being appointed as chairpersons of various state undertakings, also debar them from any non-ministerial post other than chairmanship of legislative committees.

49. There must be a bar on ministries that are larger than 10% of the house. No other position of profit, executive authority or discretion should be available to legislators.

50. There must be a limit of two terms for any political position. So you may be a member of the panchayat for two terms, of state assembly only for two terms even if non-contiguous and MP for two terms.

51. Some policy should be devised to encourage public-spirited "professionals" to contest elections and give to the legislature the benefit of their expertise and experience for a term or two.
52. The EC should be unanimously appointed by a body consisting of the Prime Minister, the Leader of the Opposition, the Chief Justice of India and the Presiding Officers of Lok Sabha and Rajya Sabha. This should also be done for the State Election Commissioners.
53. The EC should not be appointed to any other office after retirement.
54. An independent auditing authority should be appointed for auditing annual statements of accounts of all political parties.
55. Rotation of seats should be done for SC seats and non-scheduled area ST seats.
56. There is every case for their being more women representatives. Political parties should be asked to put up women candidates for at least one-third of the seats they contest both for State and parliament elections or the same number of seats should be reserved for them by rotation.
57. The minimum number of valid votes polled should be increased to 25% from the current 16.67% as a condition for the deposit not being forfeited. Also the amount of deposit should be increased. These steps would further reduce non-serious candidates.
58. All candidates should be required to clear government dues before their candidature is accepted. This pertains specially to payment of taxes and bills and to holding on the accommodation, telephones, and government facilities used while in power.
59. Create multi-member or double-member constituencies to eliminate or at least reduce narrow appeals based on religion or caste.
60. Hold State level and parliamentary level elections at the same time. This would reduce election expenditure.

61. Every candidate at the time of election and every holder of a political position annually must declare his assets and liabilities along with those of his close relatives.

(Para 23)

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QUESTIONNAIRE

ON

REVIEW OF ELECTION LAW, PROCESSES

AND REFORM OPTIONS

1. The paper argues that the terribly high cost of elections lead to corruption, criminalization and black money economy. Do you agree?

Yes

No

2. Should the responsibilities for attending to constituency problems be clearly demarcated between representatives elected to local bodies, State Legislatures and Union Parliament?

Yes

No

3. Should the people (the electorate) have a role in the selection of candidates?

Yes

No

4. Do you agree that the present first-past-the-post system of election does not go well with large number of parties and many independents contesting elections?

Yes

No

5. One of the reform options suggested in the paper is that of the Gandhian model. Do you support decentralization of power to the grassroots level with a bottom-up in place of the present top-down approach, cutting down the cost of elections drastically by having direct elections at the local levels and in multi-tier governance each lower level electing the higher and the higher remaining responsible to the lower as argued in paras 6.2 – 6.5 of the paper?

Yes

No

6. The paper argues that accurate electoral rolls are critical to a free and fair election. Do you agree?

Yes

No

7. Do you agree that the current electoral rolls in India are significantly flawed?

Yes No

8. Do you agree that the electoral roll inaccuracies are partly a result of wilful tampering by the staff concerned?

Yes No

9. Do you think that accurate electoral rolls can help clean up the electoral process and curb impersonation and rigging?

Yes No

10. Do you think that accurate electoral rolls will lend greater legitimacy to the electoral process?

Yes No

11. Currently electoral rolls are prepared at the level of assembly constituency. Do you believe that the preparation of these rolls right at panchayat level or municipal ward level would achieve significantly better accuracy?

Yes No

12. The paper argues that the job of preparing electoral rolls should be given to a pre-qualified professional organisation instead of government staff deputed to Election Commission. This would be more efficient and increase accuracy. Do you agree?

Yes No

13. Should the Voter ID card be a multipurpose card, which can be used for other identity functions?

Yes No

14. Should the voter ID card be prepared with latest technology so that it will have a unique bar-coded ID number for each voter?

Yes No

15. As argued in the paper, should the voter ID card have information about a visible identification mark apart from the photograph?

Yes No

16. If a multipurpose card is made which would have benefits in many areas, is it alright to charge a small amount for it?

Yes No

17. Do you agree that voting should be made compulsory?

Yes No

18. Electoral rolls and voter ID if linked to each other can create a strong deterrent against impersonation. Do you agree?

Yes No

19. Should India introduce Electronic Voting Machines for all elections?

Yes No

20. In your opinion would a proper electoral roll and a proper voter ID help in curbing rigging, and other intimidation of voters?

Yes No

21. Should the Election Commission have the authority to take a decision about booth capturing without the report of the returning officer, if it is satisfied that there was booth capturing?

Yes No

22. Should the punishment for booth capturing be made more stringent with mandatory imprisonment?

Yes No

23. Are the existing laws in regard to punishing violators of electoral laws being properly implemented?

Yes No

24. The present laws about punishing violators of electoral laws need to be more strictly implemented?

Yes No

25. The present laws about punishing violators of electoral laws are not strict enough and need to be even more stringent providing severe punishment

Yes No

26. Should there be video surveillance in sensitive constituencies and correspondingly a strict punishment for violators?

Yes No

27. The present law states that a person should be convicted for certain offences, only then can we disqualify him from contesting elections. Do you agree?

Yes No

28. Should anyone with a criminal record be permitted to contest elections even though a court may not have convicted him?

Yes No

29. If not, should a person against whom the court has framed charges not be allowed to contest elections?

Yes No

30. In case of charges framed only by the police should there be special electoral courts to decide whether the charges framed are serious and genuine enough to stop the person from contesting?

Yes No

31. Do you agree that all election related petitions should be heard by a separate judicial set up?

Yes No

32. Do you agree that all election related petitions should be decided in a strict time bound period of 6 to 12 weeks?

Yes No

33. Do you agree with the views of the Election Commission that whoever is convicted by a court of law and sentenced to imprisonment for six months or more should be debarred from contesting elections for the period of his sentence plus six years?

Yes No

34. Do you agree that the political parties that are seen to abet criminalisation should face action including derecognition.

Yes No

35. Election Commission has suggested that the procedure for disqualification based on corrupt practices should be streamlined so that a quick decision can be taken by the Election Commission without the matter going from the High Court to the House concerned and then to the President and through the President to the Election Commission. Do you agree?

Yes No

36. Should corporate donations and contributions to political parties remain banned as at present?

Yes No

37. Does the banning of corporate contributions really serve any purpose in actually curbing these contributions?

Yes No

38. Does curbing contributions in this way only drives contributions underground?

Yes No

39. Would making all contributions transparent help in regulating political funding?

Yes No

40. Do you think that political parties have a single point agenda to "win" elections and other moral issues, interests of the nation or welfare of the people take a back seat?

Yes No

41. Do you think that widespread corruption in electoral process compromises the legitimacy of the whole system?

Yes No

42. Should limits on campaign costs be more reasonable and regularly revised with reference to the cost of living index?

Yes No

43. Currently, money spent on a candidate's election campaign by his friends or supporters or his political party is not counted as expenditure in his account leading to a disregard for expenditure limits imposed on him. Should all expenses on a candidate including the expenditure made by his friends and supporters and his political party be counted as his election expense?

Yes No

44. Should there be partial state funding of elections?

Yes No

45. Should it be in kind or cash or both or none?

Cash Kind Both None

46. If yes, please indicate separately how far should state funding go.

47. It has been suggested that political parties should be subject to a regular statutory audit of their accounts. Do you agree?

Yes No

48. It has also been suggested that electoral candidates should be subject to a full audit of their campaign spending. Do you agree?

Yes No

49. It has been suggested that an election fund may be created and political parties paid Rs. 5 or Rs. 10 by the government for each vote they poll (provided they poll more than 2% votes) to meet election and other political activity expenses. Do you agree?

Yes No

50. Should corporate donations be tax-exempt to encourage transparent and open contributions?

Yes No

51. Should wasteful political rallies and *tamashas* be banned and electronic campaigns promoted instead even if it means state help?

Yes No

52. Should there be a stricter control on election campaign expenses being made by the candidates?

Yes No

53. In light of the fact that regulations and laws have not helped much in this direction, what other means can be adopted to reduce this expenditure? Please attach your suggestions on a separate sheet.

54. Some have suggested that in addition to the directly elected candidates, there should be a further 25% MPs elected on a list system in proportion to the votes polled by various political parties? It is suggested that this would lead to better representation. Do you agree?

Yes No

55. Do you think such a proportional representation would lead to more stable or more unstable governments?

Stable Unstable

56. Do you think that having the possibility to nominate candidates through the list system, political parties will pick up best candidates (better) or it will mean, more intrigue and politicking and corruption (worse) in such lists?

Better Worse

57. It has been suggested that in view of most candidates winning on a minority vote candidates appeal to narrow loyalties and this divides the society further. Do you agree?

Yes No

58. To counter this it is suggested that a candidate should win only when he gets more than 50% votes in the constituency even if a run-off poll is required. Do you agree?

Yes No

59. Do you think that there should be some incentive in matters of rations, tax exemptions, etc. for voters to come forward and vote in large numbers?

Yes No

60. It is suggested that defections whether by individuals or in groups should not be permitted. Any one defecting or leaving his original political party on whose ticket he won the election should be disqualified and should lose his seat in the parliament/state assembly. Do you agree?

Yes No

61. Some suggest that there should be no exemption from disqualification on the ground of party split. Do you agree?

Yes No

62. Due to population changes many constituencies within States have become imbalanced in the sense that one has very high numbers of voters while other may have very few, and both elect one representative each. This should be rectified so that the value of vote in each constituency within the state is more uniform. Do you agree?

Yes No

63. Should this be done regularly by the Election Commission as a matter of course from election to election or should there be a delimitation exercise by the government separately?

By EC regularly By Delimitation Commission

64. It has been suggested, in view of proliferation of political parties, that only those national or federal parties or pre-poll alliances which get a certain percentage of votes cast (say 10%) in half the States should be recognized as All India parties and allowed to contest for seats in Lok Sabha. Do you agree?

Yes No

65. It is also suggested that most of the independents are fake, frivolous or put up candidates and therefore should be barred from contesting. Do you agree?

Yes No

66. Others suggest that instead of barring independents altogether, only allow those who may have won a lower tier election before, for example, a panchayat, municipal, or even a recognised cooperative election. Do you agree?

Yes No

67. It is suggested that for parliamentary democracy to succeed, we should have a system of two major parties or two major pre-poll alliances. Do you agree?

Yes No

68. To resolve the problem of Government formation in case of a hung house or of no party or alliance being in a position to form a stable government, it is suggested that the House should elect its Leader along with the election of the Speaker. Do you agree?

Yes No

69. In order to impart further stability to the system, it is suggested that no-confidence motion should not be permitted unless it simultaneously proposes a new leader of the House. Do you agree?

Yes No

70. It is also suggested that if a no-confidence motion is defeated then a fresh one should not be permitted for at least one year. Do you agree?

Yes No

71. It is suggested by some that legislators should be debarred from non-ministerial posts like Chairmanship of Public Undertakings. In other words, those who are not ministers will be only legislators and will not have any other office except that of Chairmen of legislative committees in their respective Houses. Do you agree?

Yes No

72. There must be a bar on ministries larger than 10% of the strength of the House.

Yes No

73. Some people feel that whole-time professional politicians with no means of earning their livelihood except in political offices have corrupted the system. Do you agree?

Yes

No

74. If so, should there be a limit of two terms for any elected political position?

Yes

No

75. A neutral body consisting of the Prime Minister, the Leader of the Opposition, the Chief Justice of India and presiding officers of Lok Sabha and Rajya Sabha should appoint the EC. Do you agree?

Yes

No

76. EC should not be appointed to any other office after retirement.

Yes

No

77. An independent auditing authority should be appointed for auditing annual statements of accounts of all political parties.

Yes

No

78. Rotation of seats should be done for SC seats and non-scheduled area ST seats.

Yes

No

79. Political parties should be asked to put up women candidates for at least one-third of the seats they contest both for State and Parliament elections or there should be reservation of the same number by rotation.

Reservation

Nomination by Parties

80. The minimum number of valid votes polled should be increased to 25% from the current 16.67% as a condition for not forfeiting the deposit. The deposit should also be increased. These steps would further reduce non-serious candidates.

Yes No

81. All candidates should be required to clear all government dues, taxes etc., before their candidature is accepted. This may cover handing over the accommodation, telephones, and government facilities used while in power. Do you agree?

Yes No

82. Every candidate at the time of filing the nomination and every holder of a political position annually must declare the assets and liabilities of himself and his close family members.

Yes No

83. India has never tried to educate its masses in their duties under democracy. The fundamental rights and fundamental duties must be included in all curriculums so that over a period of time the new generation will know what their rights are and what is expected of them. The manipulating politician may not be able to manipulate this new generation then. This would play a significant role in cleansing of the political arena. Should this be done?

Yes No

84. Create multi-member or double member constituencies to eliminate or at least reduce narrow appeals based on religion or caste.

Yes No

85. Hold state level and Parliamentary level elections at the same time. This would reduce election expenditure. Do you agree?

Yes No

86. Should elections to Lok Sabha and Legislative Assemblies of States be

held simultaneously?

Yes

No

87. For contesting elections to Rajya Sabha (Council of States) should it not be an essential pre-condition that the candidate is an actual resident of the State.

Yes

No

15[1] The President is elected for a five-year term by an electoral college consisting of the elected members of both Houses of Parliament and the State Legislative Assemblies through a structured system of weighted votes. The election is held in accordance with the system of proportional representation by means of the single transferable vote by secret ballot. The Vice President is also elected for a five-year term, by an electoral college consisting of the members of both Houses of Parliament.

16[2] The Lok-Sabha is to consist of no more than 530 members chosen by direct election from territorial constituencies in the various States and no more than 20 members to represent Union territories. The number of members from each State is based on the population of the State concerned. Between States the ratio of member to population, as far as practicable, should be the same. (This is not true currently as all inter-state delimitation has been frozen till 2025). From each State, the members of Rajya-Sabha – the Council of States – are elected by members of its legislative assembly in accordance with the system of proportional representation by means of a single transferable vote. The Rajya Sabha consists of not more than 230 members from various states and another 12 nominated by the President from the fields of literature, science, arts and social service.

17[3] Must be a citizen of India and not less than 30 years of age for Rajya Sabha and 25 years for Lok-Sabha.

18[4] A member is disqualified for: (a) holding any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder; (b) being of unsound mind and so declared by a competent court; (c) being an undischarged insolvent; (d) being not a citizen of India or having voluntarily acquired citizenship of a foreign state or being under any acknowledgement of allegiance or adherence to a foreign state; or (e) if so disqualified by or under any law made by the Parliament.

19[5] The superintendence, direction and control of elections is vested in the Election Commission. It inter alia covers the responsibility for preparing electoral rolls. The appointment of Chief Election Commissioner and such number of other Election Commissioners as determined by the President is made by the President subject to the provisions of any law made in that respect by the Parliament. The Chief Election Commissioner cannot be removed except in the same manner as a judge of Supreme Court.

20[6] There is a Chief Electoral Officer for each State, a district Election Officer for each district, Electoral Registration Officers and Assistant Electoral Registration Officers for preparation and revision of electoral rolls. All of them are deemed to be on deputation to the Election Commission.

21[7] Breach of duty in this connection is punishable with imprisonment for a term which shall not be less than three months but which may extend to two years and with fine. In addition, under section 31, any person guilty of making a false declaration in this respect is punishable with imprisonment for a term which may extend to one year or with fine or both.

22[8] Some of the offences under I.P.C. are: a) promoting enmity between different groups on grounds of religion, race, place of birth, residence, language etc., and for doing acts prejudicial to maintenance of harmony (section 153A); (b) offence of bribery which means that if a bribe is offered by anyone with the object of inducing others to vote or refrain from voting (section 171E) or offence of undue influence or impersonation at an election which means that if undue influence in the form of direct or indirect threats is attempted toward influencing the election or a voter impersonates another to cast a false vote (section 171F); (c) offence relating to rape (sections/subsections 376 to 376D); (d) offence of cruelty towards a woman by husband or relative of the husband (section 498A); (e) 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 (subsection 2 or 3 of section 505).

In addition, the following offences also invited disqualification for six years from the date of conviction: (a) preaching untouchability (Protection of Civil Rights Act, 1955); (b) being a member of an association declared unlawful (Unlawful Activities (Prevention) Act, 1987); (c) offences under the Foreign Exchange Regulations Act, 1973, the Narcotics Drugs and Psychotropic Substances Act, 1985; section 3 or section 4 of the Terrorist and Disruptive Activities (Prevention) Act, 1987; section 7 of the Religious Institutions (Prevention of Misuse) Act, 1988; (d) offences under the R.P.A. 1951 such as promoting enmity or hatred between classes in connection with elections (Section 125); removal of ballot papers from polling stations (section 135), fraudulently defacing or fraudulently destroying any nomination paper (clause (a) of sub-section (2) of section 136) Places of Worship (Special Provisions) Act, 1991 and, Prevention of insults to National Honour Act 1971.

23[9] Under section 58A R.P.A. 1951, the Election Commission is empowered to adjourn a poll or countermand the election on grounds of booth capturing. The procedure is that the returning officer reports the matter to the Election Commission. Upon receipt of such a report and then taking all material circumstances into account, Election Commission may either have a repoll at that polling station or if many polling stations are involved in the constituency, countermand the election in that constituency leading to a totally new election there. Booth capturing is defined in section 135A of R.P.A. 1951 and applies to the intimidation or prevention of voters, seizure of polling stations as well as of the counting stations and use of force to allow only their supporters to vote.

24[10] Currently these are fixed at Rs. 15 lakhs for Parliamentary and Rs. 6 lakhs for an assembly constituency. This applies to most constituencies with a few exceptions.

25[11] Under R.P.A. 1951, elections can only be questioned through election petitions. The court having jurisdiction is the High Court and the Act states that the High Courts will try election petitions expeditiously and endeavour to conclude the trial within six months from the date of petition.

26[12]1[12]1[12] There is a long list of offences here mostly inviting imprisonment and those which are cognizable are listed herein: a) *Disturbances at election meetings*: This is a cognizable offence and is punishable by imprisonment up to six months or a fine or both; b) *No canvassing in or near polling stations*: If anyone is caught canvassing within a distance of 100 metres of a polling station, this is punishable with fine which may extend to Rs.250 and this offence is cognizable; c) *Penalty for disorderly conduct or misconduct in or near polling stations*: Here if anyone is removed from a polling station but reenters the area the offence becomes cognizable. It is punishable with up to three months imprisonment or fine or both; d) *Breaches of official duty*

in connection with elections: If an official, district election officers, returning officers, presiding officers, polling officers or any other staff assigned official election duty acts in omission of his duties this is a cognizable offence, punishable by a fine of up to five hundred rupees; e) *Prohibition of going armed to a polling station:* This is again a cognizable offence and it is punishable with imprisonment up to two years or a fine or both; f) *Removal of ballot papers from polling station:* This too is a cognizable offence and punishable with an imprisonment up to one year or a fine or both; g) *Offence of Booth Capturing:* This has also been made a cognizable offence and is punishable with a imprisonment of one year extending up to three years. But if this offence is made by a government servant, the punishment is minimum three years extending to five years; h) Other electoral offences such as fraudulently defacing or fraudulently destroying any nomination paper or fraudulent defacing, destruction or removal of any list, notice or other document affixed by or under the authority of returning officer or fraudulently defacing or fraudulently destroying any ballot paper or the official mark on any ballot paper or any declaration of identity or official envelop used in connection with voting by postal ballot etc, if committed by an election official become cognizable and are punishable with imprisonment which may extend to two years.

27[13] As listed in footnote 8.

28[14] These include a) any law providing for the prevention of hoarding or profiteering; b) law relating to the adulteration of Food or Drugs; c) provisions of the Dowry Prohibition Act, 1961 or any provisions of the Commission of Sati (Prevention) Act, 1987. Persons sentenced to imprisonment of not less than six months under any of these invite disqualification.

* Those oppose to this approach, however feel that it may become easier to purchase/terrorise electors if their number is small and that it would be debatable if the cost of elections would increase or decrease on adoption of the proposed model of elections. They would like it to be examined if increased importance of local elections and small number of electors in the proposed system would lead to high cost of local elections; increased incidents of violence in local elections; and increased incidents of bribery, coercion, intimidation, winning the votes on sectorial considerations of caste, religion, etc. Thus, much can be argued on either side.

* This summary is only for guidance and facility of reference. For purposes of study and deliberation, it is advisable to use the text in the relevant paras of the body of the consultation paper.
