

CHAPTER 4

ELECTORAL PROCESSES AND POLITICAL PARTIES

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CHAPTER 4

ELECTORAL PROCESSES AND POLITICAL PARTIES¹

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A. *Electoral Processes*

Objectives of the Founding Fathers

1[1] See also the Consultation Papers on “Review of the Working of Political Parties specially in relation to Elections and Reform Options” and “Review of Election Law, Processes and Reform Options” released by the Commission in Volume II (Book 1).

4.1 The founding fathers of our Republic conceived of representative parliamentary democracy as the polity most suited to India's ethos, background and needs. They envisaged equal participation of all the adult citizens in the democratic process without any discrimination. Selection of representatives of the people through universal adult franchise and free and fair elections was for them an act of faith. Universal adult franchise was a bold and ambitious political experiment and a symbol of the abiding faith that the founders reposed in the great masses of the country and in their innate wisdom.

Provisions of the Constitution

4.2 To achieve these objectives, article 326 of the Constitution enfranchises for all the adult citizens (not less than 18 years of age) and empowers them to vote at the elections to the Lok Sabha and the State Assemblies. Article 324 vests the superintendence, direction and control of the preparation of electoral rolls and conduct of elections in an independent Election Commission. Under articles 243K and 243ZA elections to local bodies – Panchayats and Municipalities – are the responsibility of State Election Commissions.

Magnitude of the Task

4.3 A general election to Lok Sabha is a gigantic exercise. It has been said that holding general elections in India is equal to holding them for Europe, 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). To manage these polling booths about five million

election personnel and an additional two million security personnel have to be mobilized. Taking State and local elections into account, the figures become more staggering. Today, India is unique in having upwards of about 3.2 million (32 lakhs) directly elected representatives of the people spread over various tiers of governance.

Successes and Failures

4.4 During the last half-a-century, there have been thirteen general elections to Lok Sabha and a much larger number to various State Legislative Assemblies. We can take legitimate pride in that these have been successful and generally acknowledged to be free and fair. But, the experience has also brought to fore many distortions, some very serious, generating a deep concern in many quarters. There are constant references to the unhealthy role of money power, muscle power and mafia power and to criminalisation, corruption, communalism and casteism.

Identifying the Problem Areas

4.5 More specifically, the Commission has found that the main problem areas may be identified to be as follows:

- ❖ Increasing cost of elections leading to unethical, illegal and even mafia provided electoral funding, corruption, criminalisation and black money generation in various forms.
- ❖ 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 perceptions e.g. the constituents expect even members of the Union Parliament to attend to their purely local problems.
- ❖ 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 and 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.

- ❖ The question of defections and the Tenth Schedule.
- ❖ Inaccurate and flawed electoral rolls and voter identity leading to rigging and denial of voting rights to a large number of citizens.
- ❖ Booth capturing and fraudulent voting by rigging and impersonation.
- ❖ Use of raw muscle power in the form of intimidation of 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.
- ❖ Involvement of officials and local administration in subverting the electoral process.
- ❖ Engineered mistakes in counting of votes.
- ❖ Criminalisation of the electoral process – increasing number of contestants with serious criminal antecedents.
- ❖ Divisive and disruptive tendencies including the misuse of religion and caste in the process of political mobilization of group identities on non-ideological lines.
- ❖ An ineffective and slow judicial process of dealing with election petitions, rendering the whole process quite often meaningless.
- ❖ Fake and non-serious candidates who create major practical difficulties and are also used indirectly to subvert the electoral process.
- ❖ Incongruities in delimitation of constituencies resulting in poor representation.
- ❖ Problems of instability, hung legislative houses and their relation to the electoral laws and processes.
- ❖ 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.

Attempts at Reforms

4.6 The question of bringing about comprehensive changes in the election laws and electoral processes has been receiving the attention at various levels right from the time of the first general election. The most recent official exercises in this regard have been:

- (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) The Election Commission's comments on the recommendations of the above three and its own proposals based on experience of ground realities.

Suggested Reform Options

4.7.1 After a review of various reports, research papers by activist organizations and concerned citizens, newspaper analyses, and other literature available on the subject of elections, a comprehensive consultation paper alongwith a Questionnaire and a Bibliography was prepared and issued by the Commission for generating debate and eliciting public response. One of the radical reform suggestions was that of the Gandhian model of decentralization whereunder village is at the centre and power flows upwards from the grassroots to concentric circles of multi-tier governance. The model envisages direct elections at the Panchayat and Nagarpalika levels and indirect elections to the District, State and Union levels by all the lower tiers. The Commission carefully considered the strong presentations and representations made in support of the model but, as the consultation paper itself had anticipated and pointed out, in the present situation, the model is not feasible.

4.7.2 Some of the other suggestions for reform not found acceptable by the Commission on grounds of being either impracticable or unnecessary related to (i) negative voting, (ii) multi-member constituencies, (iii) recall, (iv) proportional representation, (v) list system, (vi) President's rule in the States during elections, (vii) putting a limit of two terms for any political position, (viii) prescribing literacy qualifications for legislators, (ix) direct election of the Chief Ministers in the States, etc.

4.7.3 The Commission reached the conclusion that while some far reaching reforms in the electoral processes were necessary, no major constitutional amendment was called for. The necessary correctives could be achieved by ordinary legislation modifying the existing laws or, in many cases, merely by

subordinate legislation and executive action. The Commission is happy to note that some of the suggestions mentioned in the consultation papers released by it are already under implementation.

Electoral Rolls and Voter ID

4.8.1 The electoral process begins with the preparation of electoral rolls. If the rolls are incomplete or defective, the whole electoral process is vitiated. Any serious attempt at electoral reform, therefore, must first tackle the question of faulty electoral rolls. At present, the Election Commission (EC) is responsible for preparing the electoral rolls for assembly and parliamentary constituencies. The State Election Commissions are responsible for electoral rolls for local body elections. In some States, the EC and State Election Commissions (SECs) have agreed to coordinate the preparation of electoral rolls.

4.8.2 Given the technology today, an automated and well designed online system broken down to district level can be created without much hassle. The database would be centrally computerized by the EC and each voter/ adult citizen would have a unique bar-coded ID number. This ID number would be for life and in the long run the best bet against any impersonation. In course of time, possession of such an ID card should be made mandatory for all elections. It might even be possible to have hand held devices which would eliminate any invalid card automatically. This would improve public access to this, now hard to get, information and serve the objective of contributing to cleaning up the electoral process and curbing impersonation and rigging. Also, it would add to creating widespread trust in the fairness of our electoral process thereby providing it a high degree of institutional legitimacy.

4.8.3 **The Commission recommends a foolproof method of preparing the electoral roll right at the Panchayat level constituency of a voter and supplementing it by a foolproof voter ID card which may in fact also serve as a multi-purpose citizenship card for all adults. A single exercise should be enough for preparing common electoral rolls and ID cards. The task could be entrusted to a qualified professional agency under the supervision of the EC and in coordination with the SECs. The rolls should be updated constantly and periodically posted on the web site of the Election Commission and CD ROMs should be available to all political parties or anyone interested. Prior to elections, these rolls should be printed and publicly displayed at the post offices in each constituency, as well as at the panchayats or relevant constituency HQs. These**

should be allowed to be inspected on payment of a nominal fee by anyone. Facilities should also be provided to the members of the public at the post offices for submitting their applications for modification of the electoral rolls.

Electronic Voting Machines (EVMs)

4.9 EVMs have been used successfully in limited areas in sensitive constituencies and in 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 all 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. Wherever these EVMs have been used in urban and in rural areas, there have been no complaints of large scale rigging. 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 announcement of the winning candidates.

The Commission recommends the introduction of EVMs in all constituencies all over the country for all elections as rapidly as possible.

Booth Capturing and Rigging

4.10 On the question of booth capturing, rigging and intimidation of 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.

The Commission recommends: (i) Under section 58A of the Representation of the People Act, 1951, the Election Commission should be authorised to take a decision regarding booth capturing on the report of the returning officers, observers or citizen groups. Also, the Commission should be empowered to countermand the election and order a fresh election or to declare the earlier poll to be void and order a re-poll in the entire constituency; (ii) EC should consider the use of tamper-proof video and other electronic surveillance at sensitive polling stations/ constituencies.

Caste and Communal Hatred

4.11 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.

The Commission recommends that any election campaigning on the basis of caste or religion and any attempt to spread caste and communal hatred during elections should be punishable with mandatory imprisonment. If such acts are done at the instance of the candidate or by his election agents, these would be punishable with disqualification.

Criminalisation

4.12.1 The entry of criminals in politics is a matter of great concern. The 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 Central Bureau of Investigation (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 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."

4.12.2 There were grave incongruities in the existing provisions of sub-sections (1), (2) and (3) of Section 8 of the Representation of the People Act, 1951 (RPA 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 while not able to vote, being free to contest elections even while serving the last four years of his sentence in prison.

The Commission recommends that the Representation of the People Act be amended to provide that any person charged with any offence punishable with imprisonment for a maximum term of five years or more, should be disqualified for being chosen as, or for being, a member of Parliament or Legislature of a State on the expiry of a period of one year from the date the charges were framed against him by the court in that offence and unless cleared during that one year period, he shall continue to remain so disqualified till the conclusion of the trial for that offence. In case a person is convicted of any offence by a court of law and sentenced to imprisonment for six months or more the bar should apply during the period under which the convicted person is undergoing the sentence and for a further period of six years after the completion of the period of the sentence. If any candidate violates this provision, he should be disqualified. Also, if a party puts up such a candidate with knowledge of his antecedents, it should be derecognised and deregistered.

4.12.3 Any person convicted for any heinous crime like murder, rape, smuggling, dacoity, etc. should be permanently debarred from contesting for any political office.

4.12.4 Criminal cases against politicians pending before Courts either for trial or in appeal must be disposed off speedily, if necessary, by appointing Special Courts.

4.12.5 A potential candidate against whom the police have framed charges may take the matter to the Special Court. This court should be obliged to enquire into and take a decision in a strictly time bound manner. Basically, this court may

decide whether there is indeed a *prima facie* case justifying the framing of charges.

4.12.6 The Special Courts should be constituted at the level of High Courts and their decisions should be appealable to the Supreme Court only (in similar way as the decisions of the National Environment Tribunal). The Special Courts should decide the cases within a period of six months. For deciding the cases, these Courts should take evidence through Commissioners.

4.12.7 As per the provisions contained in sub-section (4) of section 8 of the Representation of the People Act, 1951, the disqualification referred to in sub-sections (1) and (2) of that section shall not take effect for a period of three months from the date of conviction if the person convicted is a member of Parliament or the Legislature of a State. However, if within the said three months an appeal or application for revision is brought in respect of the conviction or sentence, the disqualification will not operate until that appeal or application is disposed of by the court.

The Commission feels that the benefit of this provision should be available only for the continuance in office by a sitting Member of Parliament or a State Legislature. The Commission recommends that the aforesaid provision should suitably be amended providing that this benefit shall not be available for the purpose of his contesting fresh elections.

4.12.8 The Commission feels that the proposed provision laying down that a person charged with an offence punishable with imprisonment which may extend to five years or more should be disqualified from contesting elections after the expiry of a period of one year from the date the charges were framed in a court of law should equally be applicable to sitting members of Parliament and State Legislatures as to any other such person.

Corrupt Practices and Election Petitions

4.13.1 Section 8A of the Representation of the People Act, 1951 (RPA) 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 Commission recommends that in matters of disqualification on grounds of corrupt practices, the President should determine the period of disqualification under Section 8A on the direct opinion of the EC and avoid the delay currently experienced. This can be done by resorting to the position prevailing before the 1975 amendment to RPA, 1951.

4.13.2 Election petitions at present are considered by the High Court. The High Court is expected to give judgement on all election petitions within 6 months, but in actual practice, it takes much longer and often the petitions remain pending for years and in the meantime even the full term of the House expires. (For data on disposal of Election Petitions, see Consultation Paper, Table under para 15.2) In the opinion of many activists and eminent persons, all election-related petitions should be heard by a separate judicial set up and these petitions should be decided within a time bound period within 6 to 12 weeks by dedicated benches of special courts.

The Commission recommends that the election petitions also be decided by special courts proposed above. In the alternative, special election benches may be constituted in the High Courts and earmarked exclusively for the disposal of election petitions and election disputes.

High Cost of Elections and Abuse of Money Power

4.14.1 One of the most critical problems in the matter of electoral reforms is the hard reality that for contesting an election one needs large amounts of money. The limits of expenditure prescribed are meaningless and almost never adhered to. As a result, it becomes difficult for the good and the honest to enter legislatures. It also creates a high degree of compulsion for corruption in the political arena. This has progressively polluted the entire system. Corruption, because it erodes performance, becomes one of the leading reasons for non-performance and compromised governance in the country.

The sources of some of the election funds are believed to be unaccounted criminal money in return for protection, unaccounted funds from business groups who expect a high return on this investment, kickbacks or commissions on contracts etc. No matter how we look at it, citizens are directly affected 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. Electoral compulsions for funds become the foundation of the whole super structure of corruption.

4.14.2 The present provisions of law 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. In view of the increasing cost of the election campaigns, it is desirable that the **existing ceiling on election expenses for the various legislative bodies be suitably raised to a reasonable level reflecting the increasing costs**. However, this ceiling should be fixed by the Election Commission from time to time and should include all the expenses by the candidate as well as by his political party or his friends and his well-wishers and any other expenses incurred in any political activity on behalf of the candidate by an individual or a corporate entity. Such a provision should be the part of a legislation regulating political funding in India. The Commission recommends that **Explanation 1 to section 77(1) of the Representation of the People Act, 1951 should be deleted.**

4.14.3 Transparency in the context of election means both the sources of finance as well as their utilization as are listed out in an audited statement. If the candidates are required to list the sources of their income, this can be checked back by the income tax authorities.

The Commission recommends that the political parties as well as individual candidates be made subject to a proper statutory audit of the amounts they spend. These accounts should be monitored through a system of checking and cross-checking through the income-tax returns filed by the candidates, parties and their well-wishers. At the end of the election each candidate should submit an audited statement of expenses under specific heads.

The EC should devise specific formats for filing such statements so that fudging of accounts becomes difficult. Also, the audit should not only be mandatory but it should be enforced by the Election Commission. Any violation or misreporting should be dealt with strongly.

4.14.4 The Commission recommends that every candidate at the time of election must declare his assets and liabilities along with those of his close relatives. Every holder of a political position must declare his assets and liabilities along with those of his close relations annually. Law should define the term 'close relatives'.

4.14.5 In order to ensure that State funding of elections is not abused and misused, it is necessary to put in place an effective mechanism for audit of party funds and their combined funds. It is further necessary that Explanation 1 to section 77(1) of the Representation of the People Act, 1951 is deleted and a full foolproof mechanism to curb violations on the limits of election expenses is created.

The Commission recommends that any system of State funding of elections bears a close nexus to the regulation of working of political parties by law and to the creation of a foolproof mechanism under law with a view to implementing the financial limits strictly. Therefore, proposals for State funding should be deferred till these regulatory mechanisms are firmly in position.

4.14.6 All candidates should be required under law to declare their assets and liabilities by an affidavit and the details so given by them should be made public. Further, as a follow up action, the particulars of the assets and liabilities so given should be audited by a special authority created specifically under law for the purpose. Again, the legislators should be required under law for the purpose. Again, the legislators should be required under law to submit their returns about their liabilities every year and a final statement in this regard at the end of their term of office.

Reducing the Cost of Elections

4.15.1 There should be a systematic attempt under law to reduce election expenditure. Modes of electioneering which create public nuisance, namely, wall writings, campaign through loudspeakers, holding rallies on the roads and parks, creating traffic jams, etc. can very conveniently be curbed by making necessary provisions under law or the rules framed under the parent legislation. Ferrying people on automobiles to the polling booths can very conveniently be curbed by making necessary provisions in law. There does exist some legal mechanism in these areas and what is needed is better enforcement of the provisions so made.

4.15.2 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, should be banned and strong penalty provided for violation of expenditure ceiling. A suitable law should be enacted providing penalties against damaging or desecrating public or private property by candidates, political parties or the agents, through painting of slogans or erecting cut-outs and hoarding or putting banners and buntins. The law should also provide for special courts to ensure strict compliance of the aforesaid provisions of law, should any dispute arise in respect of the alleged violations of provisions of law by any candidate, political party or his agents and well-wishers.

4.15.3. With a view to reducing election costs and strain on human and other resources, State and Parliamentary level elections, to the extent possible, should be held at the same time.

4.15.4 Campaign period should be reduced considerably.

4.15.5 Candidates should not be allowed to contest election simultaneously for the same office from more than one constituency.

4.15.6 The election code of conduct which should come into operation as soon as the elections are announced should be given the sanctity of law and its violation should attract penal action.

Question of Representational Legitimacy

4.16.1 Winning by minority vote: 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. 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. In extreme cases, some candidates have won even on the basis of 13% of the votes polled. (For relevant data, see Tables in Annexures to the Consultation Paper on the subject).

4.16.2 In a pluralistic society such as ours, some political parties have found it advantageous to develop a vested interest in progressively appealing to narrower and narrowing 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. 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 of a casteless and classless society ever coming true.

4.16.3 It is strange that most people of the constituency do not vote for the particular candidate who becomes their representative. Whose representatives are such candidates when a majority of voters did not want them? The seriousness of this issue has generated suggestions from many quarters focussed primarily on some possibilities.

4.16.4 It has been suggested from several quarters that this principle of representativeness will be fulfilled if the elected representatives win on the basis of 50% plus one vote. If, in the first round, no body gets over 50% of the votes polled, then according to this view, there should be a run-off contest held the very next day or soon thereafter between the top two candidates so that one of them will necessarily win on the basis of 50% plus one votes polled. Several representations from various organizations favoured this option to achieve the objective of better representative democracy. The Chief Election Commissioner is reported to have confirmed that the task of run-off elections can be managed. Actually, the run-off vote is analogous to a re-

poll. There is no revision of electoral rolls, no fresh nominations, no fresh campaigning or the like. The Commission is of the view that there are substantial advantages of following the policy of 50% plus one vote. On the one hand, it resolves the problem of inadequate representation. On the other, it also makes it in the self-interest of various political parties themselves to widen their appeal to a wider electorate. It can help push political rhetoric in a direction of mobilizing language might take on comparative ‘universal’ tone as opposed to ‘sectoral’ tones of the present day. With the need to be more broad-based in their appeal, issues that have to do with good governance rather than with cleavages and narrow identities might start to surface in the country.

4.16.5 Despite the suggested merits of this system, the Commission refrains from making a positive recommendation for its acceptance straightaway, as the Commission cannot put out of consideration certain apprehensions expressed by several sections, particularly, in regard to the implications of a repoll. The pros and cons of the proposal need and merit a closer and more careful evaluation.

4.16.6 In the circumstances, the Commission while recognizing the beneficial potential of this system for a more representative democracy, recommends that the Government and the Election Commission of India should examine this issue of prescribing a minimum of 50% plus one vote for election in all its aspects, consult various political parties, and other interests that might consider themselves affected by this change and evaluate the acceptability and benefits of this system. The Commission recommends a careful and full examination of this issue by the Government and the Election Commission of India.

Delimitation of Constituencies

4.17 Since 1971, the number of seats in the Lok-Sabha allocated to different States has been frozen. No fresh Delimitation Commission has been formed.

The Commission recommends that intra-State delimitation exercise may be undertaken by the Election Commission for Lok Sabha and assembly constituencies and the Scheduled Castes and Non-Scheduled Area Scheduled Tribe seats should be rotated. The Delimitation Body should, however, reflect the plural composition of society.

Defections

4.18.1 The question of defections has now haunted the Indian polity for over three decades. This was sought to be eliminated by the Tenth Schedule but all that has happened is that while individual defections have become rare, *en bloc* defections are permitted, promoted and amply rewarded. Despite the 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 as laid down in the Tenth Schedule came into force than ever earlier. 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 pole 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 at the highest levels. Defectors usually are rewarded with political positions and other such perquisites so openly that it really makes a mockery of our democracy.

4.18.2 The Commission recommends that the provisions of the Tenth Schedule of the Constitution should be amended specifically to provide that all persons defecting - whether individually or in groups - from the party or the alliance of parties, on whose ticket they had been elected, must resign from their parliamentary or assembly seats and must contest fresh elections. In other words, they should lose their membership and the protection under the provision of split, etc. should be scrapped. The defectors should also be debarred to hold any public office of a minister or any other remunerative political post for at least the duration of the remaining term of the existing legislature or until, the next fresh elections whichever is earlier. The vote cast by a defector to topple a government should be treated as invalid. The Commission further recommends that the power to decide on questions as to disqualification on ground of defection should vest in the Election Commission instead of in the Chairman or Speaker of the House concerned.

Oversized Council of Ministers

4.19. The practice of having oversized Council of Ministers must be prohibited by law. A ceiling on the number of Ministers in any State or the Union government be fixed at the maximum of 10% of the total strength of the popular house of the legislature. In this connection, reference is also invited to clause 4 of article 239AA of the Constitution, which limits the size of the Council of the Ministers to not more than 10% of the total number of members in the Legislative Assembly of the National Capital Territory of Delhi.

Also, the practice of creating a number of political offices with the position, perks and privileges of a minister should also be discouraged and at all events their number should be limited to 2 per cent of the total strength of the lower house.

Problems of Instability

4.20.1 The last few decades have seen a great deal of political instability in India. During ten years, there were seven governments at the Union level. Being minority governments, these were 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. 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.

4.20.2 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 sometimes might have taken a back seat. The consequences are 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.

4.20.3 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 and involve waste of resources. This was carried to ridiculous limits when a Lok Sabha constituency in Andhra Pradesh (Nalgonda, in 1996) had 480 contestants. Similarly there have been assembly constituencies reaching over 1000 candidates.

The Commission recommends that independent candidates be discouraged and only those who have a track record of having won any local election or who are nominated by at least twenty elected members of Panchayats, Municipalities or other local bodies spread out in majority of electoral districts in their constituency should be allowed to contest for Assembly or Parliament.

4.20.4 In order to check the proliferation of the number of independent candidates and the malpractices that enter into the election process because of the influx of the independent candidates, **the existing security deposits in respect of independent candidates may be doubled. Further, it should be doubled progressively every year for those independents who fail to win and still keep contesting elections. If any independent candidate has failed to get at least five percent of the total number of votes cast in his constituency, he/she should not be allowed to contest as independent candidate for the same office again at least for 6 years.**

4.20.5 **An independent candidate who loses election three times consecutively for the same office as such candidate should be permanently debarred from contesting election to that office.**

4.20.6 **The minimum number of valid votes polled should be increased to 25% from the current 16.67% as a condition for the deposit not being forfeited. This would further reduce the number of non-serious candidates.**

4.20.7 **In the considered view of the Commission, 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.**

The eligibility of non-Indian born citizens to hold high offices

4.21. It was suggested that the highest offices in the realm such as President, Vice-President, Prime Minister and Chief Justice of India should be open only to natural born citizens of India or those whose parents or grandparents were citizens of India. The matter was discussed at more than one sittings of the Commission. The Commission found that the said suggestion was not without force. At the same time, the other point of view put forward was that denial of the said high offices solely on account of the fact that the person was not a natural born citizen of India or his parents or grand-parents were not citizens of India, might deprive some citizens from occupying these high offices even if they were otherwise worthy and acceptable. The opinion in the Commission was equally divided. **The Commission recommends that this issue be examined in depth through a political process after a national dialogue.**

Appointment of the Election Commissioners and State Election Commissioners

4.22 The Commission recommends that the Chief Election Commissioner and the other Election Commissioners should be appointed on the recommendation of a body consisting of the Prime Minister, Leader of the Opposition in the Lok Sabha, Leader of the Opposition in the Rajya Sabha, the Speaker of the Lok Sabha and the Deputy Chairman of the Rajya Sabha. Similar procedure should be adopted in the case of appointment of State Election Commissioners.

Candidates owing Government Dues

4.23 It is recommended that all candidates should be required to clear government dues before their candidatures are accepted. This pertains to payment of taxes and bills and unauthorised occupation of accommodation and availing of telephones and other government facilities to which they are no longer entitled. The fact that matters regarding Government dues in respect of the candidate are pending before a Court of Law should be no excuse.

Office of Profit

4.24.1 Article 102 (1)(a) of the Constitution, *inter alia*, provides that a person shall be disqualified for being chosen as, and for being, a member of either House of Parliament if he holds 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. There are similar provisions in relation to State Legislatures in article 191 (1)(a). Thus the Parliament or a State Assembly, as the case may be, can provide by law certain offices not to be offices of profit. However, the Constitution nowhere provides as to what offices shall be deemed to be offices of profit. This has led to great amount of uncertainty and avoidable disputes.

4.24.2 The Commission received suggestions to the effect that the Constitution may be suitably amended with a view to provide necessary power in the Election Commission to identify/provide from time to time the offices which shall be deemed to be offices of profit under the Government of India or the Government of any State.

4.24.3 In order to obviate the uncertainty, the Commission recommends that by suitable amendment in the Constitution, the Election Commission may be empowered to identify and declare the various offices under the Government of India or of a State to be offices of profit for the purposes of being chosen, and for being, a member of the appropriate legislature.

B. Political Parties

Background and Objectives

4.25 Political parties are an essential concomitant of elections in a representative parliamentary democracy. The quintessential precondition for the success of the Westminster model is a political system of two major parties based on ideological and programmatic orientation. The origin and growth of political parties in India can be traced to the days of her struggle for freedom. The overriding passion with the fighters for India's freedom and the founding fathers of her Constitution was to build a united nation and an integrated society while retaining its rich diversity and pluralism. They expected that an ideologically oriented healthy party system would soon evolve in independent India and that it would contribute to societal integration, nation building and strengthening the edifice of democracy. Unfortunately, this did not happen. The source of many of our troubles during the post independence period has been our failure to evolve a healthy party system based on a just and widely acceptable political-economic national agenda.

Constitution and Law in relation to Political Parties

4.26.1 Although political parties were not mentioned in the Constitution until the fifty-second constitutional amendment of 1985, the existence of some well-organised political parties was presumed as these were already functioning. The Constitution only guaranteed freedom of association as a fundamental right. Section 29A of the Representation of the People Act, 1951 provides for registration with the Election Commission of associations and bodies of individual citizens of India as political parties. The Tenth Schedule to the Constitution which was added by the Constitution (52nd Amendment) Act, 1985 mentions political parties only for the specific purpose of considering disqualification of a person for membership of either House of Parliament or of the Legislative Assembly or Legislative Council of a State on the ground of defection from his political party. With that exception, even today, there is no law governing the formation, registration, functioning or regulation of political parties.

4.26.2 The Election Commission accords recognition to political parties as national or state parties in accordance with the norms laid down in the Election Symbols (Reservation and Allotment) Order, 1968. This is for the very limited purpose of allocation of symbols. The number of parties recognised as national parties has been varying from 14 to 4 owing to continuous review of the status based on their performance at the polls.

The Present Scenario

4.27.1 The evolution of party system after independence is a picture of transformation from one-party dominant system to a complex of multi-party system in which strong trends of fragmentation, factionalism and regionalism coupled with the desire to form

alliances for seeking a share in power are increasingly occurring. This trend culminated in 'hung' Houses after last few general elections. Another significant development affecting the party system is the emergence of coalition politics.

4.27.2 In recent years, there has been sharp increase in political mobilization of the electorate on the basis of social cleavages based on ascriptive identities, in particular of religion and caste. Casteism, communalism and personality domination have been the main planks around which the fragmentation of political parties has taken place. Political parties have invariably exploited these sentiments for gaining support of the voters. These developments have necessitated a need for a review of the working of the political parties and their role and performance in the scheme of Indian polity and Constitution.

Studies and Reports

4.28 The Commission had the opportunity to examine the suggestions made by a number of academic and research institutions, political observers and analysts, scholars, journalists and academicians and Committees and Commissions appointed by the Government of India. These included the studies conducted by Centre for Policy Research (Lok Raj Baral on Party Reforms, 2000), V.M. Tarakunde Committee (1974-75), Dinesh Goswami Committee Report (1990), Justice V.R. Krishna Iyer Committee (1994) and 170th Report on "Reform of the Electoral Laws" (1999) of the Law Commission. The Consultation Paper²

1[1] on "Review of the Working of Political Parties specially in relation to Elections and Reform Options" makes a brief survey of the various issues and the recommendations discussed in these studies and in the large number of representations and memoranda received by the Commission from eminent persons, political parties, institutions and the general public.

Identifying the Problem Areas

4.29 Having regard to the prevailing political scenario in the country and the hard fact that no electoral reforms can be effective without reforms in the political party system, the Commission identified the following as some of the areas of immediate concern:-

2[1] See Volume II (Book 1) of the Report.

- ❖ Institutionalization of political parties - need for a comprehensive legislation to regulate party activities, criteria for registration as a national or State party - de-recognition of parties.
- ❖ Structural and organizational reforms - party organizations - National, State and local levels - inner party democracy - regular party elections, recruitment of party cadres, socialization, development and training, research, thinking and policy planning activities of the party.
- ❖ Problems of party funding - need for a legislation to regulate party funds - distribution and spending of party funds during non-election and election times.
- ❖ Maintenance of regular accounts by the political parties - auditing and publishing - making audited accounts available for open inspection.
- ❖ To what extent and in what way party system could be reformed so as to pave the way for the establishment of stable governments based on the concept of two party system or dual party alliance system.
- ❖ Steps to check criminalisation of political parties.
- ❖ Steps to curb the role of casteism and communalism.
- ❖ Steps to encourage gender participation in the political organizations.
- ❖ Party system and governance – Mechanisms to make parties viable instruments of good governance?

Law for Political Parties

4.30.1 The Commission recommends that there should be a comprehensive legislation [may be named **as the Political Parties (Registration and Regulation) Act], regulating the registration and functioning of political parties or alliances of parties in India.**

4.30.2 The proposed legislation should provide for compulsory registration for every political party or pre-poll alliance. It should lay down conditions for the constitution of a

political party or alliance and for registration, recognition and de-registration and derecognition.

4.30.3 The Commission recommends that every political party or alliance should, in its Memoranda of Association, Rules and Regulations provide for its doors being open to all citizens irrespective of any distinctions of caste, community or the like. It should swear allegiance to the provisions of the Constitution and to the sovereignty and integrity of the nation, regular elections at an interval of three years at its various levels of the party, reservation/representation of at least 30 percent of its organizational positions at various levels and the same percentage of party tickets for parliamentary and State legislature seats to women. Failure to do so should invite the penalty of the party losing recognition.

4.30.4 The law should make it compulsory for the parties to maintain accounts of the receipt of funds and expenditure in a systematic and regular way. The form of accounts of receipt and expenditure and declaration about the sources of funds may be prescribed by an independent body of Accounts & Audit experts, created under the proposed Act. **The accounts should also be compulsorily audited** by the same independent body, created under the legislation which should also prepare a report on the financial status of the political party which along with the audited accounts **should be open and available to public for study and inspection.**

4.30.5 The Commission recommends the enactment of an appropriate provision making it compulsory for the political parties requiring their candidates to declare their assets and liabilities at the time of filing their nomination before the returning officers for election to any office at any level of government.

4.30.6 The authority for registration, de-registration, recognition and derecognition of parties and for appointing the body of auditors should be the Election Commission whose decisions should be final subject to review by the Supreme Court on points of law.

Recognition of Parties

4.31.1 It is a desirable objective to promote progressive polarisation of political ideologies and to reduce less serious political activity. The process of recognition of political parties by the Election Commission is an important and effective tool in this task. While proliferation of smaller political parties add to political confusion, at the same time **the Commission is aware** that ‘political parties, with all their well-known human and structural shortcomings, are the only devices (that can) generate countervailing collective power on behalf of the many individually powerless against the relatively few who are individually – or organizationally – powerful’. The approach, therefore, needs to balance **considerations** of stability on the one hand and the need to reflect the aspirations of a plural society, on the other.

4.31.2 At present, for the allotment of an exclusive symbol, State Parties need 6% of the votes polled **plus** 2 members in the Legislative Assembly. The alternative criteria for recognition is at least 3% of the seats in the Lower House. At the national level such a recognition would require 6% of the votes polled in at least 4 States **plus** 4 members in the Lok Sabha, or alternatively at least 2% of membership of the Lok Sabha drawn from at least 3 States.

The Commission recommends that the Election Commission should progressively increase the threshold criterion for eligibility for recognition so that the proliferation of smaller political parties is discouraged. Only parties or a pre-poll alliance of political parties registered as national parties or alliances with the Election Commission be allotted a common symbol to contest elections for the Lok Sabha. State parties may be allotted symbols to contest elections for State Legislatures and the Council of States (Rajya Sabha).

Rules and Regulations

4.32 The rules and by-laws of the parties seeking registration should include provisions for:

- (a) a declaration of adherence to democratic values and norms of the Constitution in their inner party organizations,

- (b) a declaration to shun violence for political gains,
- (c) a declaration not to resort to casteism and communalism for political mobilisation, but to adhere to the principles of secularism in the achievement of their objectives,
- (d) a provision for party conventions to nominate and select candidates for political offices at the grass root and State levels,
- (e) a code of conduct (which each political party should evolve for itself),
- (f) some institutional mechanism for planning, thinking and research on crucial socio-economic issues facing the nation and educational cells for socializing their party cadres and preparing them for responsibilities of governance,
- (g) implementation of legal provisions regarding representation to women and weaker sections of society in party offices and in candidacy for elections to Houses of Legislatures.

Needs for Stability

4.33.1 In a situation where no single political party or pre-poll alliance of parties succeeds in securing a clear majority in the Lok Sabha after elections, instead of involving the highest office of the President in the controversies of finding out who could command the confidence of the House, it would be best to leave it to the House itself to determine majority support to a leader. It would remove uncertainty and also obviate the need for the President asking his appointee as Prime Minister to seek a vote of confidence within certain number of days.

4.33.2 The Commission, therefore, recommends that in a situation where no single political party or pre-poll alliance of parties succeeds in securing a clear majority in the Lok Sabha after elections, the Rules of Procedure in Lok Sabha may provide for the election of the Leader of the House by the Lok Sabha along with the election of the Speaker and in the like manner. The Leader may then be appointed as the Prime Minister. The same procedure may be followed for the office of the Chief Minister in the State concerned.

4.33.3 The Commission further recommends an amendment in the Rules of Procedure for adoption of a system of constructive vote of no confidence. **For a motion of no-confidence to be brought out against a government at least 20% of the total number of members of the House should give notice. Also, the motion should be accompanied by a proposal of alternative Leader to be voted simultaneously.**

Scourge of Criminalisation

4.34 **The Commission recommends that the proposed law on political parties should provide that no political party should sponsor or provide ticket to a candidate for contesting elections if he was convicted by any court for any criminal offence or if the courts have framed criminal charges against him. The law should specifically provide that if any party violates this provision, the candidate involved should be liable to be disqualified and the party deregistered and derecognised forthwith.**

Funding Political Parties

4.35.1 The problem of political funding is a complex one and there are no panaceas. Political parties need hefty contributions from companies and from other less desirable sources. The greater the contribution, the greater the risk of dependence, corruption and lack of probity in public life. The demand for transparency must be conceived as a democratic value in itself, a tool designed to avoid any wrongful influences of money in politics. If laws are intended to be effective with regard to transparency, they should be general in nature and enforced with respect to everyone, and not just political parties or candidates, but also to the donors as well. Otherwise, alternate or indirect ways to evade control will be devised. In fact, while it is essential to strengthen regulation and the mechanisms and capabilities of supervision and controlling entities, all this only addresses part of the problem. Quite often, funding and commitments do not reach the parties, but rather go directly to the candidate and his/her inner circle of supporters. This is truer today in the context of the image and credibility crisis that party organisations have been undergoing, and the emergence of regional leaders due to the regionalisation process. This usually tends to make transactions between donors and beneficiaries become even more secretive. Hence, the senior leaders or party members may often not be aware of private contributions (many of them dubious in origin and in quite large sums). Consequently, any proposals for reforms concerning political funding should revolve, among other things, around the following four main objectives:

- (i) reducing the influence of money by diminishing its impact (by shortening campaigns, establishing ceilings on expenditure and limiting individual contributions);
- (ii) improving the use of money by investing it on more productive activities for the sake of democracy, and not just squandering it on propaganda and negative campaigns;
- (iii) stopping, or at least curtailing, as much as possible, current levels of influence peddling and political corruption; and
- (iv) strengthening public disclosure and transparency mechanisms with respect to both the origin and the use of funds.

4.35.2 At present, different Acts regulate the flow of funds to political parties both from internal as well as external sources. **The Commission recommends that a comprehensive legislation providing for regulation of contributions to the political parties and towards election expenses should be enacted by consolidating such laws. The new law should aim at bringing transparency into political funding. It should permit corporate donations within higher prescribed limits and keep them transparent. It should make all legal and transparent donations upto a specified limit 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 Rs.25,000 for individuals and Rs.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 Rs.10,00,000 and anything over this amount may be approved by the shareholders. Political funding should be a separate head in the accounts and annual reports of the company. This will ensure transparency. This will be in addition to the existing conditions laid down in the Companies Act, 1956 for making donations to political parties.

4.35.3 **The law should contain provisions for making both donors and donees of political funds accountable. The Government should encourage the corporate bodies and agencies to establish an electoral trust which should be able to finance political parties on an equitable basis at the time of elections.**

4.35.4 **Audited political party accounts like the accounts of a public limited company should be published yearly with full disclosures under predetermined account heads.**

Election Returns

4.36 The proposed law should provide for immediate de-recognition of the party and enforcement of penalties for filing false or incorrect election returns.

Educational Training and Developmental Activities

4.37 Political parties should in their rules and regulations provide for establishing some institutional mechanism for planning, thinking and research on crucial socio-economic issues facing the nation and educational cells for socializing their party cadres and preparing them for responsibilities of governance.

Leadership Conventions

4.38 Parties should seriously consider adopting the leadership convention system. This would have the advantage first, of making the leadership election process more open, democratic and federal. Second, the people will know in advance of the prospective Prime ministerial candidates. Third, it would introduce a nationally aggregative mechanism in major parties and curb the tendency of regionalisation and fragmentation. If the national convention is found too expensive, a series of staggered State conventions may be held by major parties with their respective slates of candidates (common for all the States in one party). This will go a long way in making parties aggregative and thus more functional in a parliamentary federal system of governance.
