PROPOSED ELECTORAL REFORMS

भारत निर्वाचन आयोग
Election Commission of India

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Chief Election Commissioner of India

सत्यमेव जयते

FOREWORD

Electoral reforms have been engaging the attention of the Parliament, the Government, the Press and also the Commission for a long time. The Commission has been very regularly addressing the Government in the last six years on different subjects requiring reforms. Some measures were implemented in the past to remove glaring lacunae in the law. Based on the experiences in the just concluded general election to the 14th Lok Sabha and issues that have come up in the recent past, the Commission believes that further steps need to be taken quickly for amendment of certain provisions of law.

The electoral reform proposals have been divided into two parts. In the first part, we have set out certain urgent proposals for electoral reforms in areas that have not been taken up in the past by the Commission and which have arisen due to implementation of certain laws enacted or based on certain directions given by the Supreme Court and the High Courts. In the second part, the Commission has reiterated some of the pending proposals that remain unresolved and which, in no way, are less important than the proposals in the first part.

The Commission in my D.O. letter No. 3/ER/2004, dated 5th July, 2004 to the Prime Minister has urged the Government to give immediate consideration to these issues and, if possible, undertake necessary legislation so that the same can be made effective well before the next round of elections due in some states. A copy of this letter is reproduced in the following pages.

(T.S. KRISHNA MURTHY)

New Delhi.
Dated: July 30, 2004

D.O. No. 3/ER/2004
Dated: July 5, 2004

Dear Mr. Prime Minister,

Electoral reforms have been engaging the attention of the Parliament, the Government, the Press and also the Commission for a long time. Some measures were implemented in the past to remove glaring lacunae in the law. Our recent experience in the just concluded general elections to the 14th Lok Sabha, however, reaffirms our belief that further steps need to be taken in this regard quickly.

My predecessors have been very regularly addressing the Government in the last six years on different subjects requiring reform. Certain new issues obviously have come up based on the experiences gathered by us in the recent past.

I enclose two sets of notes on areas of immediate concern to us in the Commission requiring your urgent attention. In the first part, we have set out certain urgent proposals for electoral reforms in areas that have not been taken up in the past by the Commission and which have arisen due to implementation of certain laws enacted or based on certain directions given by the Supreme Court and the High Courts. In the second part, we reiterate some of the pending proposals that remain unresolved and which in no way are less important than the proposals in the first part.

I, on behalf of the Commission, would urge the Government to give immediate consideration to these issues and if possible, undertake necessary legislation so that the same can be made effective well before the next tranche of legislative assembly elections due in some states. The Commission will be happy to explain and discuss these ideas whenever necessary and also react to proposals, if any, which the Government may have.

Yours sincerely

(T. S. Krishna Murthy)

Dr. Manmohan Singh
Prime Minister of India
South Block
New Delhi

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PART-I

Proposals for Electoral Reforms

1. AFFIDAVITS TO BE FILED BY CANDIDATES ON CRIMINAL ANTECEDENTS, ASSETS, ETC.

(a) In terms of Section 33A of the Representation of the People Act, 1951, read with Rule 4A of Conduct of Election Rules, 1961, each candidate has to file an affidavit in Form 26 appended to the Conduct of Election Rules, 1961, giving information on the following:-

(i) Cases, if any, in which the candidate has been accused of any offence punishable with imprisonment for two years or more in a pending case in which charges have been framed by the court.

(ii) Cases of conviction for an offence other than any of the offences mentioned in Section 8 of the Representation of the People Act, 1951, and sentenced to imprisonment for one year or more.

In addition to the above affidavit, a candidate has to file another affidavit in the format prescribed by the Commission vide its order dated 27.3.2003, in pursuance of the Hon'ble Supreme Court's judgment dated 13.3.2003 in Civil Appeal No. 490 of 2002 (Peoples Union for Civil Liberties & Another Vs. Union of India). In this affidavit, the candidate has to give information relating to all pending cases in which cognizance has been taken by a Court, his assets and liabilities, and educational qualifications.

With the Supreme Court striking down Section 33B of the Representation of the People Act, 1951, the directions of the Court in its order dated 13.3.2003, have become the law of the land in terms of Article 141 of the Constitution and therefore, to facilitate the candidates in filing their nomination papers, the Commission is of the view that there should be only one form of affidavit containing all vital information as required under Section 33A of the Representation of the People Act, 1951, and the directions of the Supreme Court referred to above. Such a measure will certainly reduce the confusion that prevails about the two separate sets of affidavits now required to be filed.

The Commission, therefore, recommends that Form 26 may be amended so as to include in it all the items mentioned in the Format of affidavit prescribed by the Commission's order dated 27.3.2003. While doing this, it is also suggested that a further column may be added in the format about the annual declared income of the candidate for tax purpose and his profession.

(b) It has been the experience in the past few elections that in some cases, the candidates leave some of the columns blank, and there have been cases where the candidates are alleged to have given grossly undervalued information, mainly about their assets. Section 125A provides for punishment of imprisonment for a term upto six months or with fine or with both, for furnishing wrong information or concealing any information in Form 26. **The Commission is of the view that to protect the right to information of the electors as per the spirit of the judgment dated 13.3.2003 of the Supreme Court referred to above, the punishment here should be made more stringent by providing for imprisonment of a minimum term of two years and doing away with the alternative clause for fine. Conviction for offences under Section 125 A should further be made part of Section 8(1)(i) of the Representation of People Act, 1951, dealing with disqualification or conviction for certain offences. Such a provision will reduce instances of candidates wilfully concealing information or furnishing wrong information.**

2. NEED TO INCREASE THE SECURITY DEPOSIT OF CANDIDATES

Under Section 34 of the Representation of the People Act, 1951, each candidate for election to the House of the People is required to deposit an amount of Rs.10,000/- as security deposit. For State Assembly elections and elections to the Council of States and Legislative Councils, the security deposit is Rs.5,000/-.

The amount of security deposit was last revised in 1996, raising the earlier amount of Rs. 500/- for Lok Sabha elections and Rs.250/- for Assembly elections to the current levels. The revision was made primarily to discourage non-serious candidates from jumping to the electoral arena. There were instances in the past where hundreds of candidates filed nominations from some constituencies with the intention of upsetting the election process there. The revision in the security deposit in 1996 had the desired result in the Lok Sabha elections in 1998 and 1999, as there was a substantial decline in the number of candidates in these elections and in the assembly elections during this period. The average number of candidates at the Lok Sabha elections of 1998 was nine.

At the recently held general election to the House of the People and Legislative Assemblies, the number of contesting candidates showed an increasing trend again. A large number of such candidates are non serious candidates and they predictably end up polling negligible number of votes. Too many candidates in the election fray puts unnecessary and avoidable stress on the management of elections and increases expenditure on account of security, maintenance of law and order, and requires extra number of balloting units of voting machines, etc. **Prior to the recent elections, the Commission had made a proposal for increasing the security deposit to Rs. 20,000/- in the case of election to the House of the People and Rs.10,000/- for Legislative Assembly election. For candidates belonging to Scheduled Castes and Scheduled Tribes, the deposit amount would be half the respective amounts. However, there has been no response from the government to this proposal.**

The Commission is also of the view that aforesaid Section 34 should be suitably amended so as to empower the Commission to prescribe the security deposit before every general election to the House of the People. Resorting to amendment of the Act will not be feasible before every general election.

3. CRIMINALISATION OF POLITICS

This is an issue being raised by the Commission from 1998 onwards. Disqualification for criminal offences is provided for in Section 8 of the Representation of the People Act, 1951. As per that Section, a person is disqualified from contesting election only on conviction by the Court of Law. There have been several instances of persons charged with serious and heinous crimes like murder, rape, dacoity, etc. contesting election, pending their trial, and even getting elected in a large number of cases. This leads to a very undesirable and embarrassing situation of law breakers becoming law makers and moving around under police protection.

The Commission had proposed that the law should be amended to provide that any person who is accused of an offence punishable by imprisonment for five years or more should be disqualified from contesting election even when trial is pending, provided charges have been framed against him by the competent court. The Commission reiterates that such a step would go a long way in cleansing the political establishment from the influence of criminal elements and protecting the sanctity of the Legislative Houses. The counter view to this proposal is based on the doctrine that a person is presumed to be innocent until he is proved guilty. **The Commission is of the view that keeping a person, who is accused of serious criminal charges and where the Court is *prima facie* satisfied about his involvement in the crime and consequently framed charges, out of electoral arena would be a reasonable restriction in greater public interests. There cannot be any grievance on this. However, as a precaution against motivated cases by the ruling party, it may be provided that only those cases which were filed prior to six months before an election alone would lead to disqualification as proposed. It is also suggested that persons found guilty by a Commission of Enquiry should also stand disqualified from contesting elections.** *[The provisions in the Jammu & Kashmir Representation of the People Act are relevant in this regard]*

In the midst of the recent general elections, the Patna High Court had passed an order that persons behind bars cannot contest elections. On the basis of an application moved by the Election Commission, this order was stayed by the Supreme Court with the observation that the High Court could not have passed the order during the course of the election process. However, the SLP (No. 9204-05/2004- ECI Vs. Jan Chowkidar (Peoples Watch) & Ors.) is pending before the Supreme Court for final disposal.

The Commission endorses that the law should be amended as proposed above.

4. RESTRICTION ON THE NUMBER OF SEATS FROM WHICH ONE MAY CONTEST

As per the law as it stands at present [Sub-Section (7) of Section 33 of the Representation of the People Act, 1951], a person can contest a general election or a group of bye-elections or biennial elections from a maximum of two constituencies.

There have been several cases where a person contests election from two constituencies, and wins from both. In such a situation he vacates the seat in one of the two constituencies. The consequence is that a bye-election would be required from one constituency involving avoidable labour and expenditure on the conduct of that bye-election.

The Commission is of the view that the law should be amended to provide that a person cannot contest from more than one constituency at a time.

The Commission will also add that in case the legislature is of the view that the provision facilitating contesting from two constituencies as existing at present is to be retained, then there should be an express provision in the law requiring a person who contests and wins election from two seats, resulting in a bye-election from one of the two constituencies, to deposit in the government account an appropriate amount of money being the expenditure for holding the bye-election. The amount could be Rs.5,00,000/- for State Assembly and Council election and Rs.10,00,000/- for election to the House of the People.

5. EXIT POLLS AND OPINION POLLS

Various agencies conduct poll surveys prior to the poll on the likely voting pattern and publish and disseminate the results of such surveys through different media. Similarly, on the date of poll, actual result of the election is sought to be predicted on the basis of information collected from the voters. Results of such surveys, called 'Exit Poll', are published and disseminated after the poll is over. In the case of an election, where poll is taken on a single day, there cannot be any serious objection in publishing the results of Exit Polls after the close of poll. However, in many general elections, poll has to be staggered over different dates mainly for law and order and security related reasons. In such cases, publishing the result of opinion poll on the earlier phases, will have the potential to influence the voting pattern in the subsequent phases. Similarly, the opinion polls, which are conducted during the run-up to the poll, are also likely to influence the minds of the electors. The Commission has been of the view that there should be some restriction or regulation on the publishing / dissemination of the results of opinion polls and exit polls. The Commission had issued some guidelines in this regard in 1998. This was challenged in petitions before Courts and subsequently on the observation of the Hon'ble Supreme Court that the Commission did not have the power to enforce the guidelines, the same were withdrawn by the Commission.

In the context of the recent general elections, the Commission had convened a meeting of political parties on the 6th April, 2004, to discuss the issue of Opinion Polls and Exit Polls. The meeting was attended by representatives of all the six national parties and eighteen out of the forty five State parties. The unanimous view of all the participating members was that conducting the Opinion Polls and publishing results thereof, should not be allowed from the day of issue of statutory notification calling the election and till the completion of the poll. It was suggested that in a multi-phased election where poll is taken on different dates, such prohibition in the conducting and publishing the result of Opinion Polls should be for the entire period starting from the date of notification of the 1st phase of election and until the completion of the poll in the last phase. On the subject of Exit Polls, all the political parties were of the view that in a multi-phased election, result of Exit Polls should not be allowed to be published until the completion of the poll in the last phase.

After obtaining the views of the political parties, the Commission had, on the same day (6.4.2004), recommended to the Law Ministry that there should be a specific provision in the Representation of the People Act, 1951, prohibiting publishing and disseminating the result of Exit Polls and Opinion Polls during the period mentioned in the above paragraph. The Law Ministry obtained the opinion of the Attorney General of India, who opined that prohibiting the publication of Opinion Polls and

Exit Polls would be a breach of Article 19 (1) of the Constitution of India. He suggested that certain guidelines could be laid down to provide that while disseminating results of poll surveys, the agency concerned should provide the public with sufficient information regarding the name of political party / organization which commissioned the survey, the identity of the organization conducting the survey and the methodology employed, the sample chosen and the margin of error, etc., and that it is open to the Commission in exercise of its plenary powers under Article 324 to issue directions requiring the media to comply with the guidelines.

The Commission reiterates its view that there should be some restriction on publishing the results of Opinion Polls and Exit Polls. Such a restriction would only be in the wider interests of free and fair elections. Regarding the argument about the right to freedom of information sought to be linked to the dissemination of results of Opinion and Exit Polls, it has to be noted that the past experience shows that in many cases, the result of elections have been vastly different from the results predicted on the basis of the exit polls. Thus, the information claimed to be disseminated turned out to be disinformation in many cases.

The Commission recommends that there should be a restriction on publishing the results of such poll surveys for a specified period during the election process. In many of the western democracies, there exist such restrictions for various periods.

(A Writ Petition (Civil) No.207 of 2004 – Shri D.K. Thakur Vs. Union of India & Others seeking prohibition on Exit Polls / Opinion Polls is pending before the Hon'ble Supreme Court)

6. PROHIBITION OF SURROGATE ADVERTISEMENTS IN PRINT MEDIA

Under Section 127A (1) of the Representation of the People Act, 1951, no person shall print or publish, or cause to be printed or published, any election pamphlet or poster which does not bear on its face the names and addresses of the printer and the publisher thereof. Sub-Section (3) of the said section defines 'printing' as any process for multiplying copies of a document, other than copying it by hand.

It has been observed that surrogate advertisements appear in print media, especially newspapers, for and against particular political parties and candidates during election period. As per Section 77(1) of the Representation of the People Act, 1951, expenditure involved in such advertisements in connection with the election of any candidate has to be added to the account of election expenses of the candidate, required to be maintained under that Section. Further, Section 171H of IPC prohibits incurring of expenditure on, *inter alia*, advertisement, circular or publication, for the purpose of promoting or procuring the election of a candidate, without authority from the candidate. The surrogate advertisements defeat the purposes of the aforesaid provisions of law.

The Commission has continuously been making efforts to regulate such advertisements by urging all Newspaper establishments, to follow the requirements of Section 127A of the Representation of the People Act, 1951, in the matter of advertisements related to elections. One Newspaper firm has taken the stand that Sections 77 and 127A of the Representation of the People Act, 1951, or Section 171H of IPC are not applicable to Newspapers.

The Commission is of the view that there should be clear provision to deal with cases of surrogate advertisements in print media. For this purpose, Section 127A of the Representation of the People Act, 1951 may be suitably amended, adding a new sub-Section (2A) to the effect that in the case of any advertisements / election matter for or against any political party or candidate in print media, during the election period, the name and address of the publisher should be given along with the matter / advertisement. Sub-section (4) should also be suitably amended to include in its ambit the new proposed sub-section.

7. NEGATIVE / NEUTRAL VOTING

The Commission has received proposals from a very large number of individuals and organizations that there should be a provision enabling a voter to reject all the candidates in the constituency if he does not find them suitable. In the voting using the conventional ballot paper and ballot boxes, an elector can drop the ballot paper without marking his vote against any of the candidates, if he chooses so. However, in the voting using the Electronic Voting Machines, such a facility is not available to the voter. Although, Rule 49 O of the Conduct of Election Rules, 1961 provides that an elector may refuse to vote after he has been identified and necessary entries made in the Register of Electors and the marked copy of the electoral roll, the secrecy of voting is not protected here inasmuch as the polling officials and the polling agents in the polling station get to know about the decision of such a voter.

The Commission recommends that the law should be amended to specifically provide for negative / neutral voting. For this purpose, Rules 22 and 49B of the Conduct of Election Rules, 1961 may be suitably amended adding a proviso that in the ballot paper and the particulars on the ballot unit, in the column relating to names of candidates, after the entry relating to the last candidate, there shall be a column *"None of the above"*, to enable a voter to reject all the candidates, if he chooses so. Such a proposal was earlier made by the Commission in 2001 (vide letter dated 10.12.2001).

(A petition by the People's Union for Civil Liberties seeking such a provision filed at the time of the recent general elections is pending before the Hon'ble Supreme Court)

8. APPOINTMENT OF APPELLATE AUTHORITY IN DISTRICTS AGAINST ORDERS OF ELECTORAL REGISTRATION OFFICERS

As per Section 24 of the Representation of the People Act, 1950, the Chief Electoral Officer of the State is the appellate authority in relation to any order of the Electoral Registration Officer under Section 22 or 23 of that Act. As approaching the Chief Electoral Officer, whose office is in the State headquarters will be difficult and inconvenient to the intending appellants in many cases, **the Commission had recommended in 1998 that Section 24 of the Representation of the People Act, 1950 should be amended to provide for an appeal against the order of the Electoral Registration Officer to the District Election Officer in the district itself.**

9. COMPULSORY MAINTENANCE OF ACCOUNTS BY POLITICAL PARTIES AND AUDIT THEREOF BY AGENCIES SPECIFIED BY THE ELECTION COMMISSION

The Commission considers that the political parties have a responsibility to maintain proper accounts of their income and expenditure and get them audited by agencies specified by the Commission annually. While making this proposal in 1998, the Commission had mentioned that there was strong need for transparency in the matter of collection of funds by the political parties and also about the manner in which those funds are expended by them. Although in an amendment made last year, vide the Election and Other Related Laws (Amendment) Act, 2003, a provision has been made regarding preparation of a report of contributions received by political parties in excess of Rs.20,000/-, this is not sufficient for ensuring transparency and accountability in the financial management of political parties. **Therefore, the political parties must be required to publish their accounts (at least abridged version) annually for information and scrutiny of the general public and all concerned, for which purpose the maintenance of such accounts and their auditing to ensure their accuracy is a pre-requisite. The Commission reiterates these proposals with the modification that the auditing may be done by any firm of auditors approved by the Comptroller and Auditor General.**

The audited accounts should be available for information of the public.

10. GOVERNMENT SPONSORED ADVERTISEMENTS

(a) It has been seen that on the eve of election, the Central and various State Governments embark on advertisement spree in the guise of providing information to the public. The expenditure on such advertisements is obviously incurred from the public exchequer. It is common knowledge that the advertisements are released with an eye on the elections, to influence the electors. In *the Model Code of Conduct for the Guidance of Political Parties and Candidates*, there is a clause [item VII(iv)] which prohibits issue of advertisement at the cost of public exchequer during election period, for the prospects of the party in power. The Model Code of Conduct comes into operation only from the date on which the Commission announces an election. The advertisements released prior to the announcement of elections, as is the practice usually resorted to, cannot be prohibited under the Model Code.

Apart from the fact that public money is spent for partisan interests of the party in power in such advertisements, this practice is also contrary to the spirit of free and fair election, as the party in power gets an undue advantage over other parties and candidates. **The Commission proposes that where any general election is due on the expiration of the term of the House, advertisements of achievements of the governments, either Central or State, in any manner, should be prohibited for a period of six months prior to the date of expiry of the term of the House and in case of premature dissolution, the date of dissolution of the House. Here, advertisements / dissemination of information on poverty alleviation and health related schemes could be exempted from the purview of such a ban.**

(b) There is also the practice of putting up banners and hoardings in public places, depicting achievements of governments. This should be banned, if possible. Otherwise, there should be specific provisions that name or symbol of any political party or photograph of any of the leaders of the party should not appear on such hoardings/banners.

11. POLITICAL ADVERTISEMENTS ON TELEVISION AND CABLE NETWORK

The issue of advertisements on television and cable networks, led to a lot of confusion during the recent general election. The Cable Television Network (Regulation) Rules, 1994, prohibit advertisements of political nature. This issue was raised before the Andhra Pradesh High Court, which suspended the operation of Rule 7 (3) of the Cable Television Network (Regulation) Rules, 1994, relating to prohibition of advertisements of political nature. The matter went to the Supreme Court and the Apex Court, by its order dated 13.4.2004, modified the High Court's order and directed the Commission to monitor the advertisements on television and cable networks during the recent general elections. For future elections, the issue needs to be settled. **The Government may consider amending the relevant provisions of the Cable Television Network (Regulation) Rules, 1994 to provide for suitable advertisement code and monitoring mechanism.**

12. COMPOSITION OF ELECTION COMMISSION AND CONSTITUTIONAL PROTECTION OF ALL MEMBERS OF THE COMMISSION AND INDEPENDENT SECRETARIAT FOR THE COMMISSION

Election Commission of India is an independent constitutional body created by the Constitution of India vide Article 324. Clause (I) of Article 324 has vested the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President of India in the Election Commission.

Under Clause (2) of Article 324, the Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from to time fix and the appointment of the Chief Election Commissioner and Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President.

The President has, by Order dated 1.10.1993 under Clause (2) of Article 324, fixed the number of Election Commissioners as two until further orders.

Although the Constitution permits the President to fix the number of Election Commissioners at any number without any limit, it is felt that in the interest of smooth and effective functioning of the Election Commission, the number of Election Commissioners should not be unduly large and should remain as two as presently fixed, in addition to the Chief Election Commissioner. The three-member body is very effective in dealing with the complex situations that arise in the course of superintending, directing and controlling the electoral process, and allows for quick responses to developments in the field that arise from time to time and require immediate solution. Increasing the size of this body beyond the existing three-member body would, in the considered opinion of the Commission, hamper the expeditious manner in which it has necessarily to act for conducting the elections peacefully and in a free and fair manner.

In order to ensure the independence of the Election Commission and to keep it insulated from external pulls and pressures, Clause (5) of Article 324 of the Constitution, *inter alia*, provides that the Chief Election Commissioner shall not be removed from his office except in like manner and on like grounds as a Judge of the Supreme Court. However, that Clause (5) of Article 324 does not provide similar protection to the Election Commissioners and it merely says that they cannot be removed from office except on the recommendation of the Chief Election Commissioner. The provision, in the opinion of the Election Commission, is inadequate and requires an amendment to provide the very same protection and safeguard in the matter of removability of Election Commissioners from office as is available to the Chief Election Commissioner.

The independence of the Election Commission upon which the Constitution makers laid so much stress in the Constitution would be further strengthened if the Secretariat of the Election Commission consisting of officers and staff at various levels is also insulated from the interference of the Executive in the matter of their appointments, promotions, etc., and all such functions are exclusively vested in the Election Commission on the lines of the Secretariats of the Lok Sabha, and Rajya Sabha, Registries of the Supreme Court and High Courts, etc. **Independent Secretariat is vital to the functioning of the Election Commission as an independent constitutional authority. In fact, the provision of independent Secretariat to the Election Commission has already been accepted in principle by the Goswami Committee on Electoral Reforms and the Government had, in the Constitution (Seventieth Amendment) Bill, 1990, made a provision also to that effect. That Bill was, however, withdrawn in 1993 as the Government proposed to bring in a more comprehensive Bill.**

13. EXPENSES OF ELECTION COMMISSION TO BE TREATED AS "CHARGED"

The Commission had sent a proposal that the expenditure of the Commission should be charged on the Consolidated Fund of India. The Government had moved in the 10th Lok Sabha "The Election Commission (Charging of Expenses on the Consolidated Fund of India) Bill, 1994" with the objective of providing for the salaries, allowances and pension payable to the Chief Election Commissioner and other Election Commissioners and the administrative expenses including salaries, allowances and pension of the staff of the Election Commission to be expenditure charged upon the Consolidated Fund of India. Similar provisions already exist in respect of the Supreme Court, Comptroller & Auditor General and the Union Public Service Commission, which are, like the Election Commission, independent constitutional bodies. **To secure its independent functioning the Commission is of the opinion that the Bill, which lapsed with the dissolution of the 10th Lok Sabha in 1996, needs reconsideration.**

14. BAN ON TRANSFERS OF ELECTION OFFICERS ON THE EVE OF ELECTIONS

The Commission had recommended in 1998 that Section 13 CC of the Representation of the People Act, 1950, and Section 28A of the Representation of the People Act, 1951 should be amended to provide that no transfer shall be made, without the concurrence of the Commission, of any officer referred to therein, as soon as a general election/bye-election becomes due in any Parliamentary or Assembly Constituencies. Such transfers, often made on grounds other than administrative exigencies, disrupt the arrangements then underway for conducting smooth and peaceful elections. The Commission reiterates these recommendations. It is suggested that in the case of a general election either to the House of the People or to State Legislative Assembly, the ban may come into operation for the period of six months prior to the date of expiry of the term of the House concerned and in case of premature dissolution, the date of dissolution of the House.

15. ALL OFFICIALS APPOINTED IN CONNECTION WITH CONDUCT OF ELECTIONS TO BE INCLUDED IN CLAUSE (7) OF SECTION 123

As per clause (7) of Section 123 of the Representation of the People Act, 1951, obtaining or procuring the assistance of specific categories of officials mentioned in that clause, for the furtherance of the prospects of a candidate's election, is a corrupt practice. The categories of officials mentioned in the clause are as follows:

a) gazetted officers

b) stipendiary judges and magistrates

c) members of the armed forces of the Union

d) members of the police forces

e) excise officers

f) revenue officers other than village revenue officers known as lambardars, malguzars, patels, deshmukhs or by any other name, whose duty is to collect land revenue and who are remunerated by a share of, or commission on, the amount of land revenue collected by them but who do not discharge any police functions, and

g) such other class of persons in the service of the government as may be prescribed.

In the general election to the House of the People in 1999, there was a case where a candidate cast his vote in a polling station where his name was not registered, with the permission of the Presiding Officer concerned. The issue was raised in an election petition before the Madras High Court, and the High Court observed in its judgment that although the candidate was guilty of corrupt practice, the election could not be set aside for the technical reason that the Presiding Officer in that polling station did not belong to any of the categories of officials mentioned under clause (7) of Section 123. The High Court had also expressed the hope that the anomaly in the law would be removed.

The Commission had then recommended that clause (7) of Section 123 of the Representation of the People Act, 1951, should be amended by including all officials appointed in connection with the conduct of elections in the category of officials mentioned in the said clause. The Commission reiterates these proposals so that similar situations do not pose any technical difficulty in future elections.

PART-II

Pending Proposals

1. ANTI-DEFECTION LAW

(Proposal made in Chief Election Commissioner's letter dated 15th July, 1998, addressed to the Law Minister and reiterated in letter dated 22nd November, 1999 addressed to the Prime Minister)

All questions of post-election disqualification of a sitting member of Parliament or of a State Legislature are decided by the President or, as the case may be, the Governor of the State concerned, on the opinion of the Election Commission, except the question of his disqualification under the provisions of the Tenth Schedule to the Constitution of India. The latter question alone is referred to, and decided by, the Speaker/Chairman of the House concerned [Articles 103 and 192 of the Constitution]. All political parties are aware of some of the decisions of the Hon'ble Speakers, leading to controversies and further litigations in courts of law. Some suggestions have been made in certain quarters, even by a former Speaker of Lok Sabha, that the questions of disqualification of members on the ground of defection should also be decided by the President and Governors, on the opinion of the Election Commission of India, which is now a three-member Constitutional body.

The Commission sees substance in the above suggestion that the legal issues of disqualifications under the Tenth Schedule should also be left to the President and the Governors of the States concerned, as in the case of all other post-election disqualifications of sitting MPs, MLAs and MLCs, under Articles 103 and 192 of the Constitution. As in the other cases of the disqualifications under the said Articles 103 and 192, in the case of disqualifications under the Tenth Schedule also, the President or the Governor may act on the opinion given by the Election Commission. The three-member Commission gives its opinion to the President/Governors in the matters of post-election disqualification after giving full opportunity to the parties concerned.

If decisions relating to anti-defection matters are rendered by the President or the Governor, on the opinion of the Commission, the same would receive more respect and acceptability from the common people.

The Commission would like to make it clear that it is not making the above proposal on its own so as to extend its jurisdiction, but is merely clarifying that it would not shirk its responsibility of tendering opinion to the President/Governors in such matters, if such a duty is cast upon it.

2. USE OF COMMON ELECTORAL ROLLS AT ELECTIONS CONDUCTED BY THE ELECTION COMMISSION AND THE STATE ELECTION COMMISSIONS

(Proposal made in Chief Election Commissioner's letter dated 22nd November, 1999 addressed to the Prime Minister)

Superintendence, direction and control of the preparation and revision of electoral rolls for elections to the House of the People and the State Legislative Assemblies is the function entrusted to the Election Commission by Article 324(1) of the Constitution. Likewise, superintendence, direction and control of the preparation and revision of electoral rolls for elections to the Local Bodies has been entrusted to the State Election Commissioners by Articles 243K and 243ZA of the Constitution, as inserted by the Constitution (73rd and 74th Amendments) Acts, 1992.

The preparation and revision of electoral rolls for Parliamentary and Assembly Constituencies are governed by the provisions of the R.P. Act, 1950 made by Parliament, whereas, the preparation and revision of rolls for local bodies elections are regulated by the State laws of the State concerned. Most of the State laws provide that the electoral rolls prepared by the Election Commission for Parliamentary and Assembly elections should be the basis for the preparation and revision of rolls for local bodies elections. Whereas, in some of the States, it is further provided that the Parliamentary and Assembly rolls will be adopted *in toto* for local bodies elections, in other States, the Parliamentary and Assembly rolls are to be adopted only as the draft rolls for local body elections and they are subjected to further modifications by way of inclusions and deletions. In some of the cases, even the qualifying dates for the Parliamentary/ Assembly rolls and local body rolls are different. This not only creates confusion among the electors because their names may be present in one roll but absent in the other, or *vice versa*, but also results in duplication of effort and expenditure.

In almost all the cases, the same machinery at the field level is entrusted the job of preparing and revising rolls for both types of elections. The electoral rolls for Parliamentary and Assembly Constituencies are prepared and revised under the strict superintendence, direction and control of the Election Commission, with due care and caution and by incurring considerable expenditure. It will be a huge national saving, if there are common rolls for all elections, and the Parliamentary and Assembly rolls are used for local bodies elections also, by being adopted and rearranged, by the method of 'Cut and Paste' according to the wards or polling areas of the local bodies.

This will not pose any problems to the electoral machinery in the field as it is the same at the ground level. This may need some minor amendments to the local laws of the States concerned, but will sub-serve great national interest of economy in government expenditure on elections. It may be important to note that in order to reduce such expenditure, many of the common items of polling materials like, ballot boxes, are already being used for all elections to Parliament, State Legislatures and Local Bodies.

3. SIMPLIFICATION OF PROCEDURE FOR DISQUALIFICATION OF A PERSON FOUND GUILTY OF CORRUPT PRACTICE

(Proposal made in Chief Election Commissioner's letter dated 15th July, 1998, addressed to the Law Minister and reiterated in letter dated 22nd November, 1999 addressed to the Prime Minister)

The current procedure for disqualification of a person found guilty of corrupt practice is that after a High Court pronounces its judgment in an election petition, finding a person guilty of corrupt practice, the case of every such person goes to the President of India under Section 8A (1), through the concerned State Legislature Secretary or the Secretary General of Lok Sabha or Rajya Sabha, as the case may be. Thereafter, from the President it comes under Section 8A (3) to the Election Commission, where a judicial hearing is given to the affected party and the period of disqualification is judged by the Commission and its opinion in this regard communicated to the President, who thereafter decides the period of disqualification according to such opinion.

Since the elements that go into what can be construed as a corrupt practice under the Act are numerous in number and keeping in mind the political reality in the country, it may not be correct to have a uniform automatic disqualification for six years for all those found guilty of corrupt practices, as is being advocated in certain quarters. Therefore, the existing system whereby there is flexibility in the quantum of punishment to be meted out to a candidate found guilty of corrupt practice, having regard to the nature and gravity of the corrupt practice committed, should continue. Because, what is termed as a corrupt practice under the laws relating to elections varies from acts that are extremely objectionable, to those of a small technical infringement. For example, a candidate using a cycle-rickshaw or a three-wheeler or his own car for providing conveyance to a handful of voters commits, technically speaking, the same corrupt practice as does a candidate who hires fleet of cars, trucks and trolleys to ferry large crowds of voters to and from polling stations. Both these candidates cannot, and should not, be put on par in the matter of quantum of punishment. The Election Commission, which is a multi-member body, is in close touch with the polity and is aware of the political reality that exists in the country. Therefore, the Election Commission is in the best position to decide, on the gravity of the corrupt practice and the period of disqualification that it should attract. It may again be mentioned here that Election Commission arrives at those findings after giving a judicial hearing to the person convicted of corrupt practice.

What is required to be done is to ensure that a decision on such questions of disqualification be rendered expeditiously, as the period of disqualification in such cases cannot exceed six years from the date of order of the High Court/Supreme Court. Under the existing provisions of Section 8A of the Representation of the People Act, 1951, the case of a person found guilty of corrupt

practice by an order under Section 99 of the Act, is to be submitted to the President of India by the authority specified by the Central Government. The Government of India, by its notification dated 25.5.1976, has specified the Secretary General of the House of the People or the Council of States, in relation to an election to the House of the People or the Council of States, as the case may be, and the Secretary of the State Legislative Assembly or the Legislative Council, as the case may be, in relation to an election to the State Legislature concerned, as the authority to submit cases of disqualification to the President of India. Needless to add here, often, for very obvious reasons, there is inordinate delay in the reference to emanate from the Secretaries of the Houses concerned. In one case, such reference was made by the Secretary of the House concerned after nearly five years, and in another, after more than two years. The procedure could be simplified considerably and the required objective ensured if the Secretary to the Election Commission of India is specified as the authority under Sub-Section (1) of Section 8A to submit cases of disqualification under that Section to the President. This could be done by issuing a simple amendment to the notification dated 25.5.1976 of the Ministry of Law and Justice issued under that section.

4. SAME NUMBER OF PROPOSERS FOR ALL CONTESTING CANDIDATES - AMENDMENT OF SECTION 33 OF THE REPRESENTATION OF THE PEOPLE ACT, 1951

(Proposal made in Chief Election Commissioner's letter dated 22nd November, 1999 addressed to the Prime Minister)

As per the existing provisions of Section 33 (1) of the Representation of the People Act, 1951, as amended in August, 1996, the nomination of a candidate set up by a recognised political party should be subscribed by one elector as proposer, and, in the case of an independent candidate or a candidate set up by a registered unrecognised political party, it should be subscribed by ten electors as proposers.

This amended provision, instead of being helpful to recognised parties and their candidates, has resulted in great disadvantage to them. First of all, it has cut short, by at least three precious days, the time available to the parties for making the selection of their candidates. Previously, this process of selection could go on till the last date for the withdrawal of candidatures. But now, under the amended law, this process has to be completed by them well before the last date for making nominations, as the party authorisation in Forms A and B in respect of their sponsored candidates has now to reach the Returning Officers concerned, latest by 3.00 p.m. on the last date for making nominations. Further, the experience of the general elections held in 1998 and 1999 has shown that there were instances of misunderstanding of the amended provisions, leading to rejection of nomination of several candidates. Such cases mainly related to candidates of recognised State parties, contesting elections in States where such parties were not recognised. There were also instances where candidatures of substitute candidates set up by recognised National parties were rejected, as their nominations were not subscribed by 10 proposers, to enable them to continue in the process of election, till the last date for withdrawal of candidatures to enable the party to adopt them as their candidates in the event of the main candidate having withdrawn or wishing to withdraw from the contest.

In one case, the election of a returned candidate to the Himachal Pradesh Legislative Assembly has been recently set aside by the High Court and Supreme Court, for no fault of the returned candidate, as the Returning Officer failed to apply the provisions of the amended law properly and wrongly rejected the nominations of certain other candidates.

In order to restore the lost advantage to the parties and to prevent recurrence of the abovementioned incidents of rejection of nominations, it is proposed that the provisions of the said Section 33 (1) may be made uniform for all candidates and the number of proposers may be fixed as (10) ten in all cases. It will not cause any inconvenience to the recognised parties and, on the contrary will be greatly beneficial to them, as will be seen from the above.

5. MAKING OF FALSE DECLARATION IN CONNECTION WITH ELECTIONS TO BE AN OFFENCE

(Proposal made in Chief Election Commissioner's letter dated 15th July, 1998 addressed to the Law Minister)

Making of any false statement or declaration before the Election Commission, Chief Electoral Officer, District Election Officer, Presiding Officer or any authority appointed under the Representation of the People Act, 1951, in connection with any electoral matter, should be made an electoral offence under the said Act, on the lines of Section 31 of the Representation of the People Act, 1950 which makes any false declaration or statement in connection with the preparation/revision of electoral rolls or inclusion/exclusion of any name in/from the electoral roll an electoral offence.

6. RULE MAKING AUTHORITY TO BE VESTED IN ELECTION COMMISSION

(Proposal made in Chief Election Commissioner's letter dated 15th July, 1998 addressed to the Law Minister)

Rule making authority under the Representation of the People Act, 1950 and Representation of the People Act, 1951, should be conferred on the Election Commission, instead of on the Central Government, who should, however, be consulted by the Election Commission while framing any rule.

7. REGISTRATION AND DE-REGISTRATION OF POLITICAL PARTIES – STRENGTHENING OF EXISTING PROVISIONS

(Proposal made in Chief Election Commissioner's letter dated 15th July, 1998 addressed to the Law Minister)

Political parties are registered with the Commission under the provisions of Section 29A of the Representation of the People Act, 1951. The Section, as it stands, suffers from certain looseness by which just about any small group of persons, if they so desire, can be registered as a political party, by making a simple declaration under Section 29A(5). This has resulted in mushrooming and proliferation of a large number of non-serious parties, which causes a considerable systems load in the management of elections. By way of example, more than 650 parties are presently registered with the Election Commission, out of which only 150 or so contested in the general elections of 1998. The same trend was there in 1996 general elections as well as in 1991 general elections. Since the lay public is not aware as to how easy it is to get a political party registered with the Election Commission, probably, the motivation for the non-serious parties to get registered is to give some sort of a distorted aura of their status and standing in their localities, particularly in rural and mofussil areas. The Commission feels that election is a serious process and this tendency of small groups of individuals, who have no serious interest or desire to contest elections, should not easily be allowed to get the official stamp from the Commission as active political parties.

In addition to there not being sufficient conditions under Section 29A to deny registration to a political party, the Section also suffers from a serious infirmity that once registered, a political party would stay registered in perpetuity, even if, it does not contest any election over decades of its existence. This is because there is no specific provision to de-register a party. Similarly, certain political parties, which have served their purpose and have presently become defunct, which is normal in the functioning of a democracy, also stay on the rolls of the Commission as functioning political parties. It can readily be seen that the state of affairs is not a happy one. The Commission, therefore, suggests that under the existing Section 29A of the Representation of the People Act, 1951, another clause may be introduced authorising the Election Commission to issue necessary orders regulating registration and de-registration of political parties.