



Standing Committee Report Summary

Electoral Reforms - Code of Conduct for Political Parties and Anti Defection Law

- The Standing Committee on Law and Justice submitted its report on “Electoral Reforms-Code of Conduct for Political Parties and Anti Defection Law” on August 26, 2013. Key observations and recommendations of the Committee were:
- **Election expenditure ceiling limit:** There is a ceiling limit of election expenditure for candidates in different states for Parliament/Assembly seats. The actual expenditure on elections has been more than the ceiling fixed by the ECI and it is alleged that candidates have been concealing election expenditure. The Committee recommended that election expenditure needs to be substantially enhanced and periodically reviewed.
- **Statutory backing to Model Code of Conduct:** It is expedient to give statutory backing to the Model Code of Conduct leaving no vacuum for the Election Commission of India (ECI) to exercise its residuary power to enforce the Model Code of Conduct.
- **Power to derecognise political parties:** The power of the ECI to derecognise political parties on account of violation of the Model Code of Conduct may be incorporated in the Representation of People Act, 1951.
- **Interference of the judiciary in the working of House related to anti-defection law:** The anti-defection law (Tenth Schedule of the Constitution) states that the Speaker/Chairman of the legislature is the final authority to decide on the disqualification of a legislator, and that this decision is not subject to judicial review. However, in 1993, the Supreme Court ruled that such a provision would be contrary to the basic structure of the Constitution. It struck down this

provision and stated that the decision of the Speaker/Chairman regarding disqualification is subject to judicial review by the High Courts and the Supreme Court.ⁱ

The Supreme Court has in a recent case held that any person interested in the matter of disqualification of a legislator would be entitled to bring to the notice of Speaker/Chairman that a legislator had incurred disqualification under the Tenth Schedule.ⁱⁱ As per the rules framed by the Speaker/Chairman this is not available to any outsider other than a member of that House.

The Committee observed that the interference of the judiciary into the domain and power of Speaker/Chairman on the issue of disqualification of Members of that House has impinged upon the power of the Presiding Officer. It affects the supremacy of the legislature and violates the long standing theory of separation of powers. The Committee was of the view that the government should get these judgements of the Supreme Court reviewed.

- **Appeal from rejection of nomination papers:** Currently, the decision of the Returning Officer in the case of rejection of nomination papers of the candidate is final. This can only be challenged in the High Court, as an election petition, after the election results are declared. Due to judicial delay, by the time the appeal is disposed off, the political prospects of contesting candidates is adversely affected. Fast Track Courts may be setup to dispose of election disputes under the Representation of People Act, 1951, within a period of twelve months.

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ⁱ Kihoto Hollohon vs. Zachillhu, AIR 1993 SC 412.

ⁱⁱ Speaker Legislative Assembly Vs. Utkal Keshari Parida, AIR 2013 SC 1181.