

Legislative Brief

The Representation of the People (Second Amendment) Bill, 2008

The Bill was introduced in the Rajya Sabha on October 24, 2008 and was referred to the Standing Committee on Personnel, Public Grievances, Law and Justice (Chairperson: Shri E.M. Sudarsana Natchiappan).

The Standing Committee is scheduled to submit its report within three months.

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Highlights of the Bill

- ◆ The Bill seeks to amend the Representation of the People Act, 1950 and the Representation of the People Act, 1951.
- ◆ The Bill bans conducting exit polls and publishing these results from the time the polls start until all phases of the election are completed.
- ◆ Candidates are prohibited from seeking assistance from government employees to further their candidacy. The Bill extends this restriction to other persons who are engaged in the conduct of elections.
- ◆ Currently, appeals regarding names on the electoral rolls are submitted to the state chief electoral officer. The Bill allows appeals to be filed with the district magistrate or additional district magistrate.
- ◆ If the High Court finds a person guilty of corrupt practices, its order is sent to the President for a decision on disqualification. The Bill requires this communication to be sent within three months.
- ◆ The Bill reverses the Delimitation Commission's order that reduced the seats reserved for Scheduled Tribes in Mizoram's Assembly from 39 to 38.

Key Issues and Analysis

- ◆ Previous attempts by the Election Commission to restrict the publication of opinion and exit polls have been overturned by the Supreme Court. In 2004, the Attorney General of India opined that prohibiting the publication of opinion and exit polls would be a breach of Article 19(1).
- ◆ Several other democracies restrict the publication of exit polls during the election period. However, they do not ban the conduct of exit polls.
- ◆ In cases where general elections for several state assemblies are held together, it is unclear whether each state would be required to follow exit poll restrictions until elections have been completed for all other states.
- ◆ Designating the district magistrate rather than the district election officer as the appellate body for petitions related to electoral rolls may affect the independence of the election process.
- ◆ Several recommendations of the Election Commission related to campaigning and criminalization of politics have not been addressed.
- ◆ The Bill does not explain the reasons for reversing the order of the Delimitation Commission for reservations in Mizoram.

PART A: HIGHLIGHTS OF THE BILL¹

Context

The Election Commission of India (ECI) has observed that opinion and exit polls have the potential to “influence the electors when they are in the mental process of making up of their minds to vote or not to vote for a certain political party or a candidate.”² In 1999, the ECI’s order to restrict the publication of opinion and exit poll results was overturned by the Supreme Court, which stated that the ECI did not have such authority. In 2004, the ECI proposed similar guidelines and recommended that the Representation of the People Act, 1951 be amended.³

The Representation of the People Act, 1950 and the Representation of the People Act, 1951 detail election procedures, rules for candidate selection and conduct, and the allocation of seats for constituencies. The Representation of the People (Second Amendment) Bill, 2008 seeks to amend these two Acts.

Key Features

Exit Polls

- The Bill authorises the Election Commission to notify a period during which the conduct of exit polls and publicity of the results are prohibited. For general elections, the period may begin when polls open and end half an hour after the polls close in all states and Union Territories. During bye-elections, the ban extends from the start of polls until half an hour after the closing of all polls.
- Anyone who contravenes this provision shall be punished with imprisonment of up to two years, a fine, or both. If the offence has been committed by a company, its officers shall be held liable and punished accordingly.

Appeals Process

- Currently, appeals regarding inclusion or correction of names on the electoral rolls may be submitted to the chief electoral officer of the state. The Bill designates district magistrates or additional district magistrates as the appellate body. Further appeals lie with the state chief electoral officer.

Corrupt Practices & Disqualification

- The 1951 Act prohibits a candidate from seeking assistance from specified categories of government employees such as gazetted officers, judges, etc to further his candidacy. The Bill adds an additional category of those persons employed in a local authority, university, government company, or institution, who are appointed by the ECI in connection with the conduct of elections. The Bill extends this prohibition to apply to all persons in these categories, regardless of whether they are employed by the government.
- Currently, if the High Court finds a person guilty of corrupt practices, its order is sent by the Secretary of the State Assembly or Lok Sabha General Secretary to the President for a decision on disqualification. The Bill requires this communication to be sent within three months of the court’s order.

Election Procedures

- The Bill increases the security deposit for candidates to Rs 25,000 from Rs 10,000 in Parliamentary elections and to Rs 10,000 from Rs 5,000 in state Assembly or Council elections. Candidates for SC and ST seats have to deposit half these amounts.

Mizoram

- Assembly constituencies were redrawn in 2008 based on the orders of the Delimitation Commission. The Commission reduced the seats reserved for Scheduled Tribes (STs) in Mizoram from 39 to 38 out of a total of 40 seats. This Bill reverses the number of reserved seats for STs back to 39.

PART B: KEY ISSUES AND ANALYSIS

Exit Polls

Clause 126A In the 1998 and 1999 elections, the ECI attempted to bar the publication of opinion and exit polls for a certain time period before the day of elections. It issued guidelines that restricted the results of opinion polls two days prior to the election until half an hour after the closing of polls in all states. While conducting exit polls was permitted, these results could not be published or disseminated beginning the day of elections until all polls had closed. A civil writ petition was filed in the Supreme Court (SC) stating that the ECI ban was a violation of Article 19(1) of the Constitution. The SC later ruled that under Article 324, the ECI had no power to impose such guidelines but did not address the issue of whether this was a constitutional violation.⁴ A writ petition filed in 2004 seeking the prohibition of exit and opinion polls is pending judgment in the Supreme Court.⁵

Constitutional Validity

Clause 126A The Bill seeks to ban the conduct and publication of exit polls during an election period. In 2004, the Attorney General of India opined that prohibiting the publication of opinion and exit polls would be a breach of Article 19(1).³ The ban on conducting exit polls may also be open to challenge under Article 19(1)(g) [right to practice any profession].

Multi-State Elections

Clause 126A In cases of general elections, the ban on exit polls begins the day of the poll until a half an hour after all polls close in each state. The Bill does not specify whether this condition applies to state general elections too. In cases where several states hold concurrent elections, it is unclear then whether each state would be required to follow exit poll restrictions until elections have been completed for all other states.

International Comparison

The Press Council of India has issued guidelines that request newspapers to refrain from publishing exit-poll surveys until the last day of the polls.⁶ Several countries have restrictions on publishing exit or opinion polls on the day of the election. However, they do not ban the conduct of exit polls.

Table 1: Exit Poll Restrictions in Other Countries

Country	Restrictions
Canada	Requires the publication of any election survey to include details of the survey. Prohibits publishing any new survey results on election date before the polls close.
France	Bans the publication of opinion polls on the day before the ballot and the day of the ballot. Requires individuals who publish opinion surveys to also release information on the data collection.
Italy	Allows the conduct of election polls but forbids publication and diffusion of these 15 days prior to election day; exceptions are allowed if the publication is released with an information note about the poll and it is recorded on a website.
United States	No restriction.
United Kingdom	Forbids publication of election day exit polls or any forecast before the polls are closed. Punishment includes fines up to level 5 on the standard scale or imprisonment up to six months.
South Africa	Prohibits any person from printing, publishing, or distributing the results of exit polls during the prescribed hours for an election.

Sources: Canada: The Canada Elections Act 2000, Section 326-328; France: Law No. 77-808 regarding the Publication and Distribution of Certain Opinion Polls, July 1977; Italy: The Freedom to Publish Opinion Poll, The Foundation for Information, 2003; South Africa: The Electoral Act, 1998, Section 109; The United Kingdom: The Representation of the People Act, 1983, Section 66A.

Appeals Process

Clause 2 Currently, appeals filed against an order of the electoral registration officer regarding inclusion or correction of names on the electoral roll must be submitted to the state chief electoral officer. The ECI noted that it is often difficult for appellants to file an appeal at the state headquarters. It recommended that these appeals should be filed with the district election officers (DEO). The Bill allows appeals to lie with the district magistrate (DM) or additional district magistrate (ADM). Further appeals lie with the state chief electoral officer. Designating the DM or ADM as the statutory appellate body rather than the DEO (as proposed by the ECI) may affect the independence of the election process.

Mizoram

Clause 3 The Bill does not justify the reason for reversing the order of the Delimitation Commission regarding reservation of seats for STs in Mizoram.

Election Commission Recommendations

The Election Commission has proposed a series of electoral reforms to be addressed by the government. The table below summarises several of these key reforms and any subsequent action.

Table 2: ECI Election Reforms

	Proposed Election Reform	Action Taken
Candidate Requirements	Prohibit any person accused of an offence punishable by imprisonment for five years from standing for election.	No action
	Increase the security deposit for candidates to Rs 20,000 for Lok Sabha seats and Rs 10,000 for Legislative Assembly seats; half the amount for SC and ST seats.	This Bill increases the security deposit to Rs 25,000 (LS) and Rs 10,000 (Assembly) and half these amounts for SC and ST seats
	Candidates standing for election must file an affidavit with information on prior criminal charges, imprisonment for one year or more, and declare all assets, liabilities, and educational qualifications.	Implemented through a 2003 ECI order which followed judgements of the Supreme Court in 2002 & 2003.
Contesting Multiple Seats	Candidates cannot contest an election from more than one constituency; candidates who win multiple constituencies must bear the expenditure of Rs 10 lakhs for Lok Sabha and Rs 5 lakhs for Assembly & Council seats for holding a bye-election.	No action
Disqualification and Offences	Simplify and expedite procedure for disqualification of a person guilty of corrupt practices by permitting the Secretary of the Election Commission to submit cases to the President rather than the Secretary General of the Lok Sabha or the Council of States.	This Bill sets a time limit of three months in which cases must be sent to the President.
	Propose that any person seeking to further his candidacy through officials connected to the election process should constitute an offence.	This Bill includes this provision.
Campaign Accounts	Political parties should audit their accounts by government approved auditors and make these available to the general public.	No action
Advertisement	Require advertising on behalf of a political party or candidate by a surrogate to be accompanied by the name and details of the surrogate.	No action
	Government advertisements should be prohibited for six months prior to the date of dissolution or expiry of House term except for information on government schemes.	No action
Voting	Include 'none of the above' on the ballot paper for voters who do not wish to vote for any of the candidates listed on the ballot.	No action
Exit and Opinion Polls	Prohibit publishing and disseminating the result of exit and opinion polls during an election period.	This Bill prohibits the conduct and publication of exit polls during an election period.
Appellate Authority	Allow appeals against the order of the electoral registration officer to be submitted to the district election officer.	This Bill allows appeals to be given to the district and additional district magistrates.
Election Commission	Currently, the Chief Election Commissioner may be removed only in a manner similar to impeachment of a Supreme Court judge. Recommends the same protection be extended to other Election Commissioners.	No action
	Expenditures of the Commission should be 'charged' to the Consolidated Fund of India.	No action
	Transfers of election officers should not be made without the Commission's approval once general elections or bye-elections have been called; create a six month ban on transfers prior to the date of term expiry or dissolution of House.	No action
	Authority to make rules should rest with the Election Commission.	No action

Sources: Proposed Electoral Reforms, Election Commission of India, 2004; Order No. 3/ER/2003/JS-II, Election Commission of India.

Notes

1. This Brief has been developed on the basis of The Representation of the People (Second Amendment) Bill, 2008, which was introduced in Rajya Sabha on October 24, 2008 and referred to the Standing Committee on Personnel, Public Grievances, Law and Justice (Chairperson: Shri E. M. Sudarsana Natchiappan). The Standing Committee is scheduled to submit its report in three months.
2. Order ECI/MCS/09/01/20, Guidelines for Publication and Dissemination of Results of Opinion Polls/Exit Polls, Election Commission of India.
3. Electoral Reforms, Election Commission of India, 2004.
4. SC refuses ban on opinion, exit polls, The Tribune, September 15, 1999. See <http://www.tribuneindia.com/1999/99sep15/head.htm>.
5. Writ Petition (Civil) No. 207 of 2004, D.K. Thakur vs. Union of India.
6. Norms of Journalistic Conduct 2005, Press Council of India Guidelines, See <http://presscouncil.nic.in/norms.htm>.

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