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## GS Paper-II : Elections and RoPA

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## Contents

Model Questions for Mains .....	3
Important Observations for Prelims .....	6
Parliamentary Supremacy .....	6
Voting Age and 61st Amendment .....	6
Basic Unit of Voting .....	6
Original court for Election Petition .....	6
Only single member constituencies .....	6
Meaning of General Elections .....	6
Bye-Election .....	6
Mid-Term Polls .....	7
Power of delimitation of Constituencies .....	7
National Party Definition .....	7
Declaration of Assets by Elected Candidates .....	7
The Election Ink .....	7
Implications of NOTA on Voting Results .....	7
Submission of Election Expenditure Accounts to Election Commission .....	7
Notable Facts About Electoral Trusts .....	8
Constitutional and Legal Basis of Right to Vote .....	8
Electronic Voting Machines .....	8
Constitutional Provisions: Election Commission of India .....	9
Appointment of Election Commissioners .....	10
Independence of ECI .....	10
Other functions of Election Commission .....	11
Preparation of Electoral rolls .....	11
Recognition of political parties and allotment of symbols .....	11
Scrutiny of the nomination papers: .....	11
Monitoring of Election Expenses .....	11
Key Provisions Representations of Peoples Acts .....	11
Important Notes from Representation of the People Acts, 1950 .....	11
Salient Notes from Representation of People's Act 1951 .....	12
Voter Qualification .....	12
Disqualification matters .....	13
Provisions related to political parties .....	13
National Party versus State Parties .....	13
Right to Vote .....	14
Various Election Offenses .....	14
Other salient provisions .....	14
Various Amendments of Representation of Peoples Acts .....	15



1956 Amendment .....	15
1966 Amendment .....	15
1988 Amendment .....	16
1996 Amendment .....	16
Amendment of 2002 .....	16
Amendment of 2010 .....	16
2013 Amendment .....	17
Jan Chowkidar and Lily Thomas Case .....	17
Lily Thomas vs. Union of India 2004 Case .....	18
SVEEP Programme .....	20
Various Components of SVEEP .....	20
NOTA .....	20
Implications .....	21
NOTA versus Right to Reject .....	21
Election Expenditures .....	22
The Expenditure Limit .....	23
Lok Sabha Constituencies .....	23
Assembly Constituencies .....	23
Election Expenditure Monitoring System .....	23
Electoral Trust Scheme .....	24
What is the idea behind an Electoral Trust? .....	25
Definition of Electoral Trust .....	25
Who can contribute to electoral trusts? .....	25
Who shall not contribute to Electoral Trust? .....	26
Appraisal of the Electoral Trusts .....	26
Delimitation and Delimitation Commission .....	26
Purpose of Delimitation .....	27
First Delimitation Commission .....	27
Ban on Delimitation .....	27
Delimitation and 84th Amendment Act 2002 .....	27
Delimitation Act 2002 .....	28
Current Position of Delimitation .....	28
Electoral Reforms: Various Committees .....	28
Tarkunde / J.P. Committee (1975) .....	29
Goswami committee (1990) .....	29
Indrajit Gupta committee on state funding of elections (1998) .....	29
Key Electoral Reforms in India .....	30
Election Finance reforms .....	32
Existing regulations .....	32
Limits on Expenditure .....	32
Disclosure of Expenditure .....	33



Limits on Contribution .....	33
Disclosure of Contribution .....	33
Public Funding of Election Campaigns .....	33
Penalties .....	33
Need for election finance reform .....	34
ECI's Transparency Guidelines .....	34
On election expenses by parties .....	35
On election expenses by unrecognised parties .....	35
On giving money to candidates .....	35
On accounts and audit .....	35
Criticisms and loopholes .....	35
Suggestions and way forward .....	36
State Funding Of Elections .....	38
Indrajit Gupta Committee on State Funding of Elections (1998) .....	39
Law Commission Report on Reform of the Electoral Laws (1999) .....	39
National Commission to Review the Working of the Constitution (2001) .....	39
Second Administrative Reforms Commission (2008) .....	39
Law Commission of India Report on Electoral Reforms (2015) .....	39
Experience of State Funding in other countries .....	40
Key Issues and Arguments .....	40
Elections Laws Amendment Bill 2016 .....	41
Merits and Demerits of Direct and Indirect Elections .....	41
Merits of direct elections in India .....	42
Demerits of direct elections .....	42
Indirect elections .....	42
Merits of Indirect elections .....	43
Demerits of Indirect elections .....	43
Determinants of Voting Behavior in India .....	43
Caste .....	43
Ideology of the political parties .....	43
Personality of the Candidates and their orientation .....	44
Age and gender of the candidates .....	44
Religion and Language .....	44
Sub-Nationalism .....	44
Money power .....	44
Effect of Illiteracy .....	45
Recent changes in the determinants of voting behaviour .....	45
Universal Adult Suffrage: Evolution and Comparison .....	45
Article 326 .....	45
Evolution .....	46
World context .....	46



Age of voting across the world .....	46
Inner Party Democracy In India .....	47
History of attempts to reform .....	47
Laws related to Inner party democracy: .....	48
First Past the Post Versus Proportional Representation .....	48
First Past the Post .....	48
Merits of FPTP system .....	49
Demerits of FPTP .....	49
Analysis of FPTP System .....	50
Proportional Representation (PR) .....	50
Key Variants of PR .....	50
PR System in India .....	50
Analysis of Proportional Representation .....	51
Conclusion .....	51
Anti-defection Law .....	52
Historical Background .....	52
52nd Amendment Act .....	52
Exceptions .....	53
91st Amendment Act, 2003 .....	53
Summary of Provisions Regarding Tenth Schedule .....	53
Various Supreme Court Judgments on Anti-defection Law .....	54
Kihota Hollohon vs. Zachilhu and Others (1993) .....	54
Ravi S Naik v. Union of India (1994) .....	55
G. Vishwanathan v. Speaker, Tamil Nadu Legislative Assembly (1996) .....	55
Critical Analysis of Anti-defection law .....	55
What reforms are needed in Anti-defection law? .....	55
Whip .....	56
Whip in India .....	56
Whip in US .....	56
Whip in UK .....	56
Analysis: Whip in India and its implications .....	56
Regulatory Framework on Political Parties .....	57
Issue of Bringing Political Parties under RTI .....	58
Arguments of Political parties .....	58
Arguments of CIC .....	58
Analysis .....	58
Election Freebies .....	59
S.Subramaniam Balaji v. Government of Tamil Nadu .....	59
Arguments furthered by political parties .....	59
Arguments furthered by the Election Commission .....	59
Model Code of Conduct for the Guidance of Political Parties and Candidates .....	60



Alternatives to freebies .....	60
Paid News .....	61
Why Paid news is on rise? .....	61
Recommendations of the Parliamentary Committee on Paid News .....	61
Press Council of India Recommendations .....	62
Efforts done by Election Commission .....	62
Opinion Polls .....	64
ECI guidelines .....	64
Issues and challenges .....	64
Effects on the purity of the electoral process .....	64
Potential of opinion polls to influence voters .....	64
Independence of polling agencies .....	65
Issue of robustness in findings .....	65
Suggestions and way forward .....	65
Issue of Compulsory Voting .....	65
Attempts in the past to make voting compulsory: .....	65
Voting pattern of 2014 Lok Sabha elections .....	66
Arguments in favour of compulsory voting: .....	66
Arguments against making voting compulsory .....	66
Attempts of state governments to make voting compulsory .....	67
Gujarat Local Authorities Laws (Amendment) Act, 2009 .....	67
Karnataka Panchayat Raj Amendment Act, 2015: .....	68
Setback .....	68
Stand of Election Commission on compulsory voting .....	68
Compulsory voting in other countries .....	69
Right To Recall .....	69
Arguments for Right to recall .....	69
Arguments against RTR .....	70
Restriction on Number Of Seats Of Contest .....	70
Suggestion .....	71
Voting rights of Overseas Electors and Migrants .....	71
Amendment of RoPA .....	71
Current procedure for enrolment for overseas electors .....	71
Existing Provisions for voting by overseas electors .....	71
Problems with the existing system .....	72
Vinod Zutshi Panel .....	72
Implications: .....	73
Voting Rights Of Defense Personnel .....	73
Implications .....	73
Opinion .....	73



## Model Questions for Mains

1. "The Representation of Peoples Acts have been amended for several times, often witnessing a progressive improvement in the election process and sometimes reflecting the tussle between the executive and judiciary." Discuss Critically.
2. "Only an elector can be a representative. If a person is not qualified to vote, he cannot represent the people." Discuss this provision of the RoPA in the light of recent issues.
3. "NOTA is not right to reject; but will let the disillusioned voters be heard." Critically examine the statement while differentiating NOTA from Right to Reject.
4. What are the elements included in and excluded from Election Expenditure in India? While elucidating related provisions of RoPA, 1951, discuss the salient features of Election Expenditure Monetary System.
5. "Election funding for political parties has always been a topic of discussion and there have been demands from various quarters to make the process more transparent." In this context, critically discuss the eligibility, scope and role being played by Electoral Trusts towards ever going electoral reforms in the country.
6. How are electoral constituencies delimited for Parliamentary elections in India? Elucidate various methods of the same.
7. Identify and discuss the major electoral reforms implemented in the Indian Political System.
8. What are the major issues concerned with the Election finance reforms in India. Critically discuss in the light of Election Commission of India's Guidelines on Transparency and Accountability in Party Funds and Election Expenditure.
9. While keeping on foci the Law Commission of India report of March 2015, critically discuss the key suggestions towards election finance reforms in India.
10. What are the issues and constraints in the State Funding of Elections in India? Do you think that India should make efforts towards complete state funding of Elections? Examine the pros and cons of the same.
11. Critically examine various traditional and contemporary determinants of voting behaviour in India.
12. What do you understand by Internal democracy or Inner Party Democracy? Are there any laws to enforce inner party democracy?
13. While framing the Constitution, various systems of proportional representation were considered, but First Past the Post (FPTP) system was eventually adopted. What are the implications of this decision? Do you think that MLAs and MPs should be elected by



Proportional Representation? Argue.

14. How the 1967 elections are a watershed moment in Indian elections? What were the short term and long term implications of these elections on political history of India.
15. Discuss various conditions of disqualifications of elected and nominated MLA and MPs in India. To what extent these qualifications impinge upon the fundamental rights of the elected members? Discuss keeping Supreme Court judgements in view.
16. What are the key various provisions regarding anti-defection law that have been challenged in judiciary? Discuss in the light of judicial observations upon the same.
17. There is no doubt that 52nd and 91st amendments have fixed defection problem to a great extent, yet the law needs urgent reforms. What are such reforms needed in Anti-defection law? Discuss.
18. Critically analyze the “Whip” system used by the political parties in India and its various implications.
19. Critically discuss the regulatory framework around political parties in India in the light of various provisions of Representation of Peoples Acts.
20. The move to place political parties under Right to Information Act has drawn up sharp protests from all major parties. Critically examine various arguments given for and against this move.
21. Every political party promises freebies to the voters in its election manifestos. What laws govern such practices? Do you believe that giving freebies is correct in the context of a healthy democracy? Suggest alternatives to freebies.
22. “Tackling menace of Paid news seems impossible in current environment, yet the efforts made by ECI in its limited capacity are worth praises.” Discuss Critically.
23. Opinion Polls can change the mandate to a great extent. While keeping in focus the ECI guidelines, discuss Issues and challenges towards regulation of opinion polls.
24. “Making voting compulsory in response to declining voter turnout in elections have been debated for many years.” While keeping in focus the recent efforts of various states in India towards making voting compulsory in local elections, discuss the pros and cons of the same for state / national elections.
25. “Electoral right includes the right to vote or refrain from voting at an election” Discuss critically while stating your stand on compulsory voting.
26. “Few states in India have made provisions for right to recall of elected presidents {of local bodies} for non-performance.” Discuss making your stand on such provisions.





27. Critically examine the current procedure for exercising voting right in India by NRIs, internal migrants and defense personnel. What are problems in the same and what amendments would you suggest in RoPA for the same.

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## Important Observations for Prelims

### Parliamentary Supremacy

Article 327 vests in **parliament** the supreme power to make laws relating to elections- at central as well as state levels. However, Article 328 gives the *states also certain limited* powers of legislation with respect to elections to the Legislative Assemblies. The sole idea to give these limited powers to states was to avert the fear from the mind of minorities in the states of being discriminated against by the majority.

### Voting Age and 61st Amendment

Article 326 of the Constitution had originally granted electoral franchise to every Indian citizen who has attained 21 years of age and who has not been declared a bankrupt, criminal, insane or a non-resident. In 1988 the **61<sup>st</sup> amendment** was passed by parliament whereby voting age has been reduced to 18 years.

### Basic Unit of Voting

*Single-member territorial constituency* has been declared the **basic unit of voting** and all national and state elections are held on this basis.

### Original court for Election Petition

The electoral system permits poll petitions for resolving election feuds. The high court is declared as the original court and the Supreme Court has the appellate jurisdiction. Poll petitions can be filed for the violation of electoral procedure, the ineligibility of the candidate, communal and monetary traps laid down to affect public opinion and the misuse of the official machinery.

### Only single member constituencies

India has ONLY single member constituencies. There used to be double member constituencies initially but these are abolished now. There are some reserved constituencies. They are also single member constituents.

### Meaning of General Elections

First general election in India on the basis of adult franchise was held in 1952. This was a simultaneous election both for the Lok Sabha and all legislative assemblies. Second general election held in 1957 was also a simultaneous election. Thereafter, elections to some of the state assemblies could not be held along with election to the Lok Sabha. The meaning of the General Election was initially the combined elections of the Lok Sabha and legislative assemblies. In 1971, elections to the parliament were de-linked from elections to the state assemblies. Today, this term is used for Lok Sabha elections only.

### Bye-Election

Bye-election is held to choose a member of the Lok Sabha or that of state legislature “to replace a previous member who has resigned suddenly or died. At times certain seats may fall vacant because



the members have become seats falling vacant in this manner are also filled through bye-elections. A member elected in a bye-election holds membership only for the unexpired term of the house.

### Mid-Term Polls

The Lok Sabha or the state assembly may be dissolved before its term is over. The election is that case is mid-term election. This is also called a General Election.

### Power of delimitation of Constituencies

In India, Delimitation Commission has right to determine constituencies in general. However, there are a few exceptions where Election Commission has been given this right. These are as follows:

- States of Sikkim and Arunachal Pradesh
- ST areas of Meghalaya, Mizoram, Nagaland and Tripura

### National Party Definition

The National Party is defined as per the constitutional protocol as:

1. The party securing at least 6% of the valid votes (this means total votes polled) in favor of more than 4 states in Lok Sabha and Assembly Elections.
2. It has to win at least 4 seats in the Lok Sabha in one or more states
3. 2% of seats in Lok Sabha are elected from at least 3 different states.

Similarly, a state party should have secured 6% of valid votes in a state and win one out of every 30 assembly seats in the state, and 1 out of every 25 Lok Sabha seats in the state.

### Declaration of Assets by Elected Candidates

An elected candidate needs to submit the declaration of his assets and liabilities within 90 days from taking oath.

### The Election Ink

Indelible ink which is applied to fingers of voters during elections to prevent double voting contains **Silver nitrate** ( $\text{AgNO}_3$ ), which make it stain the skin, very difficult to wash off. The ink has been produced by Mysore Paints and Varnish Limited (MPVL). When the indelible ink is applied to skin, the Silver Nitrate present in it reacts with the salt present on skin to form silver Chloride, which clings to skin and is not soluble in cold or hot water, alcohol, bleach, nail polish remover etc. The ink automatically disappears when old skin cells die and are replaced with new cells.

### Implications of NOTA on Voting Results

The NOTA does not affect the election results even if the NOTA votes exceed 50% of the total votes cast, because winner will be selected on the basis of rest of votes on the basis of first past the post system.

### Submission of Election Expenditure Accounts to Election Commission

All Political parties sponsoring candidates for the elections are required to maintain day to day accounts for all election campaign expenses and submit the accounts to the Commission within 90



days of Lok Sabha Elections and 75 days of Assembly Elections.

### Notable Facts About Electoral Trusts

An approved electoral trust can receive voluntary contributions and distribute the same to the political parties. Thus, the work of the trust is only two fold. Receive it and donate it to political parties. No other work or business is allowed. One trust cannot donate to other.

- Come under the Electoral Trusts Scheme, 2013
- Non-profit company established for orderly receipt of donations to political parties.
- Should be a registered company for the purpose of Companies Act. Further, once its application to work as trust is applicable, it needs to be registered under Section 29A of the Representation of People Act, 1951.
- Such companies should be registered only on or after 1 April 2012. Its name should end with electoral trust.
- Its objective is not to earn profit but the sole objective is to distribute the contributions received by it to the registered political party
- Each electoral trust has to have a permanent account number.
- **Who can donate?**  
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- Individual citizens, HUF, Association of persons.
- **Who cannot donate?**
- Non-citizens, foreigners and other electoral trusts.

### Constitutional and Legal Basis of Right to Vote

The Constitution and the Representation of People's Act, 1951 provides the right to vote for all individuals, who are above the age of 18 and has their name mentioned in the electoral rolls, subject to the condition that they do not attract any of the disqualifications mentioned in the Act. This is a voluntary and non discriminatory system of voting.

Article 326 of the Constitution guarantees every citizen above the age of 18, the right to vote.

Section 62 of the Representation of Peoples Act (RoPA), 1951 provides that every person whose name is in the electoral roll of that constituency will be entitled to vote.

## Electronic Voting Machines

- These machines were first used in Parur Assembly Election in Kerala in 1982. They are being used in part from 1999 elections and in total since 2004 elections.
- They have reduced the time used in election procedure and eliminated the possibility of invalid and doubtful votes in the earlier ballot and box system, which were root causes of many election petitions.



- Absence of electricity is not a problem because they work on alkaline batteries.
- Manufactured by Bharat Electronics Limited and Electronics Corporation of India Limited.
- Each EVM has two interlinked units viz. **ballot unit** (used by voter uses to exercise his / her vote) and **control unit** (used by the polling officials).
- Normally less than 1400 votes are assigned to a polling station. An EVM can record a maximum of 3840 votes which exceeds this number.
- Elections can be conducted through EVMs when the maximum number of candidates does not exceed 64. If the number of candidates exceeds 64, then there is no option than to use the conventional method of ballot papers.
- As per election commission, EVMs are secure and temper-proof and to make process further secure, the ECI used EVM randomization so that nobody comes to know beforehand to which constituency/ polling station a specific EVM will be used.
- Now a days, a Voter-verified paper audit trail (VVPAT) also known as verified paper record (VPR) is used as a verification system for voting machines that allows voters to verify whether or not their vote was cast correctly, to detect possible fraud or malfunction, and to provide a means to audit the stored electronic results.
- In the 2014 Lok Sabha Elections, some questions were raised about the efficiency of the process of electoral rolls revision and updating. However, there have been robust steps taken by the ECI to ensure the integrity and accuracy of electoral rolls from year to year and election to election.
- Bhutan used the Indian EVMs for the whole country during their last elections. These machines were also used by Nepal for some of their constituencies during the last general elections in the country.

### Constitutional Provisions: Election Commission of India

For the conduct of free and fair elections an **independent Election Commission** has been provided for in **Article 324**. Constitution of India has provided a separate chapter for elections and has not left the elections to jurisdiction of the executive and legislative departments of the government. This is mainly because the makers of the constitution had been very serious to safeguard this political right as an integral part of the constitution itself. Election commission of India is a permanent body entrusted for the following matters:

- Election of President
- Election of Vice-President
- Election of Lok Sabha as well as Rajya Sabha



- Elections to State Legislatures as well as Legislative Councils
- Reservation of Seats in Lok Sabha and State Legislatures
- Qualifications of the MPs and MLAs
- Determination of population for purposes of election

The powers of the election Commission are as follows

- Superintendence, direction and control of all the elections mentioned above
- **Power of appointing election tribunals** for the decisions of doubts and disputes in connection with the elections.

### Appointment of Election Commissioners

India has a three member election commission. These all are appointed by the President for a term which is fixed by the President. However, conditions of service and tenure of office of the chief election commissioner and other election commissioner are determined by an act of parliament titled The Chief Election Commissioner and Other Election Commissioners (Conditions of Service) Act, 1991. This act has fixed the following:

- The chief election commissioner or an election commissioner shall **hold office for a term of 6 years or age of 65 years, whichever is earlier.** www.gktoday.in/upsc/ias-general-studies
- The chief election commissioner and other commissioners are paid a salary equal to the salary of a judge of the Supreme Court. On retirement they are entitled to a pension payable to a judge of the Supreme Court.
- All business of the election commission shall, as far as possible, be transacted unanimously. If the chief election commissioner and other election commissioners differ in opinion on any matter, such matter shall be decided according to the opinion of the majority.

### Independence of ECI

The constitution of India has ensured that the commission shall act as an independent body. Independence is secured by some of these provisions:

- The chief election commissioner shall not be removed from office except in like manner and on like grounds as a judge of the Supreme Court. A judge of supreme court can be removed only by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehavior or incapacity.
- The other election commissioners cannot be removed from office without recommendation



of the CEC.

- Their conditions of service shall not be varied to their disadvantage after their appointment.
- It is the duty of the president or the governor of a state to make available to the commission , when so requested, such staff as may be necessary for the conduct of its functions.

### Other functions of Election Commission

#### Preparation of Electoral rolls

One of the most important functions of the election commission is to prepare for identification the up-to-date list of all the persons who are entitle for voting at the poll.

#### Recognition of political parties and allotment of symbols

Election commission gives recognition of parties and allotment of symbols via the authority vested in it via the Representation of The People (Amendment) Act, 195. Section 29A of this act provides for registration of the political parties with the commission, of associations and bodies of individual citizens of India as political parties for purpose of recognized political party has been classified either as a national party or a state party under paragraph 7 of the elections symbol order, 1968.

#### Scrutiny of the nomination papers:

The election Commission of India examines the nomination papers of the candidates. These papers are accepted if found in order, but rejected otherwise. This duty is performed by the returning officer who notifies to all the contesting candidates the date, time and place for the formal scrutiny of nomination papers.

#### Monitoring of Election Expenses

Scrutinizing the accounts of election expenses submitted by contestants in elections. In India every contesting candidate is required to maintain and file the accounts of his election expenses within a prescribed period after publication of the result of his election.

## Key Provisions Representations of Peoples Acts

Parliament of India had enacted two acts viz. Representations of Peoples Acts (RoPA), 1950 and RoPA, 1951 to provide a detailed framework around free and fair elections in the country. The 1950 law makes provisions for allocation of seats in Lok Sabha and Legislative Assemblies, Delimitation of Constituencies, Qualifications of voters, Manner of filling the seats of Rajya Sabha by Union Territory representatives etc. The 1951 Law makes provisions for conduct of elections to Parliament and state legislatures, Qualifications and disqualifications, various offences, various doubts and disputes etc.

### Important Notes from Representation of the People Acts, 1950

- All seats in Lok Sabha to be filled by **direct election**. One seat for every constituency and one person for one seat.



- In all states and UTs *except Sikkim and Arunachal Pradesh*, the extent of a constituency is to be determined by the **Delimitation Commission** made under Delimitation Act 1972. For Sikkim, the extent of assembly to be defined by Delimitation of Parliamentary and Assembly Constituencies Order, 1976, and Representation of the People (Amendment) Act, 1980. Election commission conferred the power to keep Delimitation Order up-to-date.
- Election Commission has been also conferred the power to determine the constituencies to be reserved for Scheduled Tribes in the states of Meghalaya, Mizoram, Nagaland and Tripura.
- President of India conferred the power to amend orders delimiting constituencies, only after consulting the Election Commission.
- Each state to have a Chief electoral officer nominated or designated by Election Commission in consultation with the state government. The Election Commission will also appoint district level election commissioners in consultation with the state government.
- Each constituency has to have an electoral roll. No person to be registered in electoral rolls of more than one constituency. No Person to be registered more than once in any constituency. A person shall be disqualified for registration in an electoral roll if he is either not a citizen of India or is of unsound mind or is disqualified from voting. https://www.gktoday.in/ias-general-studies
- The electoral roll for each constituency has to be prepared in the prescribed manner. Any person whose name is not included in the electoral roll of a constituency may apply to the electoral registration officer for the inclusion of his name in that roll.
- Power to make rules under this act conferred to Central Government, which can exercise this power in consultation with Election Commission. The Civil Courts have also been barred to question the legality of any action of electoral registration officer regarding revision of such electoral roll.

### Salient Notes from Representation of People's Act 1951

#### Voter Qualification

- Only an elector can be a representative. If a person is not qualified to vote, he cannot represent the people in parliament {both Lok Sabha and Rajya Sabha}.
- In case of Lok Sabha, if the seat is reserved for SC, a non-SC voter cannot be elected to that seat; if the seat is reserved for ST, a non-ST voter cannot be elected to that seat. He must be from these categories however; he may be a voter registered from any other constituency within India. However, in case of autonomous districts of Assam, Sikkim, ST seat for Lakshadweep, the elector should be enrolled as a voter in the same constituency.
- The same criteria are followed in legislative assembly of state, barring that the elector should





be an eligible voter in the same state.

### Disqualification matters

- If a person is convicted under a punishable offence related to promoting enmity, bribery, undue influence or personation at an election, rape, cruelty towards a woman, creating or promoting enmity, hatred or ill-will between classes, promoting religious acrimony, practice of untouchability, import and export of prohibited goods, any other unlawful activities, FEMA, laws related to Narcotics, terrorism acts, offences related to religious places and religious practices, offences related to insulting the National Insignia, Constitution of India, offence related to practice of Sati and so on... will be disqualified if sent to jail for **at least 2 years**. This disqualification is for six year after the person is released from jail.
- The other grounds for disqualification are as follows:
  - If found guilty of corrupt practices
  - Dismissed for corruption
  - Disqualified for a contract entered into with government related matters
  - A person remains disqualified as long as he managing agent, manager or secretary of any government company or corporation
  - If fails to lodge expense accounts of elections

### Provisions related to political parties

- Every association or body which calls itself a political party shall have to apply to Election Commission of India for registration. The election commission will register that party after considering all the particulars, relevant factors and after hearing the representatives of the party.
- The Election Commission's decision regarding registration will be final.
- If a political party changes its name or address, it shall communicate the election commission as soon as it does so.
- A registered political party may accept any voluntary contribution by any person or company within India other than a government company. Political parties are not allowed to seek and receive contribution from a foreign source.
- Each political party has to prepare the report related to contribution more than ` 20,000 from persons and companies in year and submit it to the Election Commission.

### National Party versus State Parties

Structurally, a party is recognized as state political party if it has secured at least 6% of the total votes given in the state in the general or assembly elections and also the party has been able to grab at least 3% of total seats or a total of 3 seats in the state legislative assemblies.



It becomes a national party if it manages to get minimum of 6% of the valid votes cast for assembly or general elections from within a total electorate of 4 or more states. In addition to this, the party seeking national status must also win at least 2% (11 out of 543 seats) seats in Lok Sabha from at least three different states OR a total of 4 seats in Lok Sabha from any number of state(s).

Functionally, the national party usually seeks a majority in Lok Sabha to become able to influence national politics and therefore it raises issues of national and international interest. Whereas the Regional party advocates the interest of the state it represents and greater autonomy from central government. At the present moment we have a total of 6 national parties namely: INC, BJP, BSP, CPI, CPI-M and NCP. Whereas the number of regional parties is well above 700.

### Right to Vote

Any person who is duly enrolled on a electoral roll and is not disqualified to vote, shall have right to vote. One person can vote at one constituency only and only for one time in a particular election. If a person votes in more than one constituency, all his votes will be deemed void in all constituencies. If a person is jailed / lawful detention at the time he shall not be eligible for voting. However, if a person is in preventive custody, he can vote.

### Various Election Offenses

Following are considered to be the election offenses in India. Each of them follows some kind of punishment as per the law of the land.

- Promoting enmity
- Public meetings within prior 48 hours of polling.
- Creating disturbance
- Restriction on the printing of pamphlets, posters etc.
- Officers acting for a candidate
- Canvassing in or near polling stations.
- Illegal hiring or procuring of conveyance
- Breach of official duty
- Removal of ballot papers
- Booth capturing.
- No liquor sale within 48 hours prior to the polling to the conclusion of polling.

### Other salient provisions

- Every elected candidate shall submit the declaration of his assets and liabilities within 90 days from taking oath.
- Every contesting candidate is required to maintain account of election expenses.
- Election petitions are to be heard in High Court and appeal to Supreme Court. High court has



to conclude such petition within six months from the date of petition. High Court will intimate its decision to Election Commission and Speaker / Chairman. Appeal to Supreme Court can be made within 30 days.

- The Corrupt practices which can lead to cancelling of an election include bribery, undue influence, promotion of enmity, hiring of vehicles to and from polling stations.
- In case of any enquiry, the election commission is conferred the **powers of a Civil Court** for summoning and enforcing the attendance of any person or any evidence. The election has power to regulate its own procedure.
- For election related works, the following are to be made available to election commission viz. every local authority, university, Government Company, any other institution undertaking under the control of state or central government.
- A candidate contesting election to Lok Sabha has to make a deposit of Rs.25,000/- as security, whereas, for all other elections, the amount of security deposit is Rs.12,500/-. Candidates belonging to scheduled caste and scheduled tribe get a concession of 50% in respect of the amounts of security deposit mentioned above. (Section 34).

### Various Amendments of Representation of Peoples Acts

The Representation of Peoples Acts have been amended for several times, often witnessing a progressive improvement in the election process and sometimes reflecting the tussle between the executive and judiciary. The notable changes made in various amendments are as follows:

#### 1956 Amendment

In the 1956 amendment, it was made sure that if a person, who is elected before the 1956 amendment, failed to lodge a return of election expenses, will not disqualify on this ground. The idea was to give safety to those who got elected before the enactment of the act because the retrospective disclosure of such expenses would only irreparably open a Pandora's Box. Similarly, if a person who has been disqualified on account of illegal practice or corrupt practice before enactment of this act would also remain safe.

#### 1966 Amendment

The original act had provisions of **Election Tribunals** for hearing election petitions. In 1962, after the third general election, the Election Commission had in its report recommended the abolition of **election tribunals** and suggested that the high court should hear the election petitions. Thus, via the 1966 amendment of the act, the Election Tribunals were abolished and election petitions were transferred to the High Courts, whose decisions could be challenged in Supreme Court. At present, only the disputes related to election of President and Vice-President are directly heard by the



Supreme Court.

### 1988 Amendment

Two notable changes made in the 1988 act were related to adjournment of poll or countermanding of elections on ground of **booth capturing** and **Voting Machines**.

### 1996 Amendment

The important changes made in the 1996 amendment of the 1950 and 1951 acts were as follows:

- Addition of offences of insulting the national flag, and constitution of India
- Addition of offence of preventing the singing of national anthem of India.
- Power of election commission to nominate a government official as **Observer** to watch conduct of elections in a constituency or several constituencies. The Observer was given power to direct the returning officer to stop the counting of votes at any time before the declaration of the result or not to declare the result if in the opinion of the Observer booth capturing has taken place at a large number of polling stations.
- Once the Observer directs the returning officer to do so, he shall submit a report to the election commission.

This amendment made provisions that the names of the candidates appear on the ballot paper in **alphabetical order** so that voter can easily identify him or her.

### Amendment of 2002

Via this amendment, a new section 33A (**Right to Information**) was inserted in the 1951 act. This amendment protects the right of voters to know the antecedents of the candidates. Each contesting candidate is now required to provide the information regarding the conviction of offences or accused of any offence if any to the returning officer while filing the nomination, along with an affidavit.

Via this act, the provisions related to the declaration of assets and liabilities were also included. It also made provisions for penalty for filing false affidavits.

Amendment of 2008

Via this amendment, the exit polls and publishing the results of exit polls prior to start and completion of all phases of polls was banned. This amendment put more restrictions on government officials in election duty.

### Amendment of 2010

The **Representation of People's** (Amendment) Act 2010 makes provision for voting rights to non-resident Indians. It provides that every citizen of India whose name is not included in the electoral roll and who has not acquired the citizenship of any other country and who is absenting from his place of ordinary residence in India owing to his conditions such as employment, education, shall be entitled to have his name registered in the electoral roll in the constituency in which his place of



residence is mentioned in his passport. Prior to this amendment, the NRIs were barred under Section 19 of the Representation of the People's Act, 1950, if they remained outside India for six months for whatever reasons.

The act does not give right to contest elections to NRIs. It also does not give right to vote in absentia. NRIs are required to be physically present in their respective constituencies at the time of elections. However it is another matter that this does not offer a practical solution to the manner of affecting the voting rights of NRIs.

### 2013 Amendment

In July 2013, Supreme Court had ruled that a person, who is in jail or in police custody, cannot contest elections to legislative bodies. The RPA, 1951 states that any contestant to an election to legislative bodies has to be an "elector", i.e., his name should be on the electoral roll and he is not subject to any of the disqualifications mentioned in Section 16 of the Representation of People Act, 1950. Among other things, that section disqualifies anyone from being on the electoral roll if he is disqualified from voting under the provisions of any law relating to corrupt practices and other offences in relation to elections. Another provision in the RPA, 1951 says that anyone in prison or on the lawful custody of the police (other than preventive detention) is not entitled to vote.

The Supreme Court concluded that a person in jail or police custody is not entitled to vote, and therefore, is not an elector, and thus, cannot contest elections.

To obviate this judgement, the UPA Government hurriedly passed the Representation of the People (Amendment and Validation) Bill, 2013, which brought two key changes:

Firstly, even if a person is prohibited from voting due to being in police custody or in jail, as long as his name is entered on the electoral roll he shall not cease to be an elector. This implies that he can file nomination for an election.

Secondly, definition of "disqualified" in the Act has been amended. Prior to this act, the definition of disqualified means disqualified for either being chosen as or being a MP or MLA. The amendment adds a ground to the definition that the disqualification has to be due to conviction for certain specified offences and can be on no other ground. Conviction for only these certain offences would result in the person's name being removed from the electoral roll and he would cease to be an elector.

### Jan Chowkidar and Lily Thomas Case

The Jan Chowkidar (People's watch) is a Patna based NGO. Its plea in Supreme Court had created a lots of political drama back in 2013. The plea was around the Sections 62 of the RoPA 1951. Section 62 of the act said that:

*Only an elector can be a representative. If a person is not qualified to vote, he cannot represent the people.*



Section 62 implies that if a person is jailed or in lawful detention at the time of elections, he shall *not be eligible for voting*. However, if a person is in preventive custody, he can vote.

The question of Jan Chowkidar was that – If only an elector can be representative, then how those who lose being an elector on account of their jail or custody, can contest the elections?

In 2004, the Patna High Court had that when a person in custody is disqualified from voting he or she must be disqualified from contesting in elections too. Here is what HC noted:

*A right to vote is a statutory right, the Law gives it, the Law takes it away. Persons convicted of crime are kept away from elections to the Legislature, whether to State Legislature or Parliament and all other public elections. The Court has no hesitation in interpreting the Constitution and the Laws framed under it, read together, that persons in the lawful custody of the Police also will not be voters, in which case, they will neither be electors. The Law temporarily takes away the power of such persons to go anywhere near the election scene. To vote is a statutory right. It is [a] privilege to vote, which privilege may be taken away. In that case, the elector would not be qualified, even if his name is on the electoral rolls"*

The HC verdict was challenged by Chief Election Commissioner in the Supreme Court. The two member bench of Supreme Court dismissed this appeal and upheld the decision of the Patna High Court. Supreme Court also said that by virtue of these acts, a person who has no right to vote by virtue of the provisions of Section 62 (5) of the Representation of the People Act 1951 is not an elector and is therefore not qualified to contest the election to the House of the People or the Legislative Assembly of a State."

### **Lily Thomas vs. Union of India 2004 Case**

The Representation of Peoples Act provides that- if a person is convicted under a punishable offence related to so and so crimes; he will be disqualified if sent to jail for at least 2 years.

This provision is in Section 8 of the 1951 act. However, section 8(4) of the same act says that if the person is an **MP or MLA** on the time of conviction; and this MP or MLA appeals within the three months of conviction date for revision of such conviction will not get disqualified. This can be illustrated by an example:

Suppose a Neta X is an MP who is today convicted by a session's court and sent for jail for 4 years. Now According to section 8, this person should **disqualify** from the membership of parliament.

However, Netaji approaches to high court and appeals against the decision of the session court within 90 days from today. Now, dramatically, section 8(4) if the same act would become his savior and "preserve" his membership.

This savior section of the convicted politicians was challenged in court in **the Lily Thomas v. Union of India** case. In the verdict on this case, what Supreme Court did was that it simply nullified this section and declared that this is unconstitutional and void.



The Supreme Court verdict used some wisdom from article 102(1)(e) and 191(1)(e) of the constitution.

Article 102(1)(e) of the Constitution says that the Parliament can make a law providing for circumstances whereby a MP shall stand disqualified from the membership of either house of the Parliament. Article 191(1)(e) says the same thing about MLAs. This implies that although constitution empowers the parliament to make law to “**decide on disqualification**” of the members, it does not give competence to parliament to “**preserve and protect**” the membership of those who have been convicted for some crimes.

The advocate who argued for the petitioners (Fali Nariman) argued that constitution does not empower the parliament to make a law that actually protects and preserves the membership of a sitting MP or MLA even after conviction in a criminal case. The basis of this argument is that if the Parliament is not expressly allowed by the Constitution to pass laws on a given subject, it cannot pass a law on that subject.

The advocates for the Union of India argued on the following basis:

Parliament is **constitutionally competent** to declare **under whatever circumstances** a MP or MLA will stand disqualified. This competency also includes in itself to temporarily postpone the effect of such disqualification.

The legislative competence of the parliament does not comes from article 102(1)(e) and 191(1)(e) but from article 246 read with entry 97 of Union List of the 7th schedule which says that parliament is empowered to make laws on **residuary subjects**. Simply, it means that if a given subject is not mentioned in any of the three lists in Schedule 7, then, for the purposes of determining ‘legislative competence’ (i.e. who is competent to pass a law on the subject) it will automatically fall into Union List.

Thus, we see that the Government’s advocates tried to establish that this matter is a residual matter and falls in the ambit of the Union List. **Supreme Court did not buy this idea.**

The above two judgments were lethal weapons for the membership of many prominent netas whose conviction was nearby. The first thing government did after these verdicts was to consult the matter with Attorney General of India, who advised them to file a review petition in the Supreme Court. Without waiting for the judgment on review petition, almost entire political line joined hands and immediately, the **Representation of the People (Amendment and Validation) Bill, 2013** was introduced in the Rajya Sabha in last week of the August 2013. Rajya sabha passed it with the speed of light. In first week of September, the bill was passed by Lok Sabha also. *It was about to become an act that government behaved like an old man in hurry and sought the back door entry of Representation of the*



*People (Amendment and Validation) ordinance 2013.* What the government wanted to is that:

- To nullify the Supreme Court judgment and assert parliamentary supremacy (over judiciary).
- Even if a person is prohibited from voting due to being in police custody or in jail, as long as his name is entered on the electoral roll he shall not cease to be an elector.
- Change the definition of being “disqualified”. According to the new definition, the disqualification has to be on certain specified offences and can be on no other ground.

However, when a press conference of UPA was being held, Rahul Gandhi publicly berated the government’s controversial ordinance to shield convicted politicians, in a dramatic intervention. Subsequently, UPA dropped the idea of that ordinance.

### **SVEEP Programme**

Systematic Voter’s Education and Electoral Participation (SVEEP) was launched by Election Commission of India to inform, educate, motivate and facilitate voters and in turn make Indian democracy more participative and meaningful. In SVEEP, *every aspect of the election process is simulated* to ensure enhanced voters’ participation in the polling. This programme has been successful in increasing voter registration and high voter turnout with greater participation from youth and women. This programme was started in 2014 from Bihar. The Election Commission has created a SVEEP wing to plant and implement the interventions. For successful implementation, ECI has collaborated with:

- Government, public, civil society groups, media and NGOs.
- Educational institutions, youth organizations such as NYKS, NSS, NCC etc.

#### **Various Components of SVEEP**

- Voters’ Behaviour Survey
- Formulation of State and District level SVEEP plans
- Personnel for State level
- State and District level core groups
- Collaboration with Government departments
- Collaboration with CSOs, Media and organisations
- National Voters Day
- Identification of National and State Icons

In 2011, Election Commission of India launched the National Voters Day to be celebrated on 25 January every year as a part of the SVEEP Programme.

### **NOTA**

While deciding on a demand for providing negative voting, the Supreme Court, on September 27,





2013 had made a judgement thereby directing the Election Commission to provide the NOTA (None of the Above) option on ballot papers and EVMs. In this judgement, the Supreme Court had given the following two important pronouncements:

- Recognition of the right to a negative vote (even though it will not affect the result) as a part of freedom of expression, as envisaged in Article 21
- Direction to Election Commission to introduce NOTA on the EVM (and ballot paper) to ensure voter secrecy (earlier it used to be a register)
- India has become the 12th country to introduce NOTA or a similar option in its electoral proceedings. Other countries which provide this option are: France, Belgium, Greece, Brazil, and Bangladesh.

### Implications

- The NOTA option is **not new**; it was there before this judgement also. However, earlier, the option was as per rule **49-O of Conduct of Election Rules**, whereby the voters were required to register their option of NOTA in a register. This would compromise the secrecy of the candidates.
- By implementing the NOTA button on EVMs, the right to vote and right to not to vote have been kept at same pedestal, while maintaining secrecy.
- NOT will be electronically counted. But it will not affect the election results even if the NOTA votes exceed 50% of the total votes cast, because winner will be selected on the basis of rest of votes on the basis of first past the post system.
- NOTA is thus, basically **a symbolic step towards electoral reforms** to strengthen the democratic set up of India.
- In the judgment, Supreme Court also commented on the dubious quality of the candidates and need for candidates with ethical and moral values. The Court also commented on voter apathy. Voter apathy towards election is not a good sign for democracy. Responsible citizens are expected to come to the polling booth. One of the major reasons of growing voter apathy is the increased criminalization of the politics and rampant use of money power.

### NOTA versus Right to Reject

NOTA is not right to reject; but will let the disillusioned voters be heard. There was a demand from some sections of the society for a “right to reject” whereby voters are given right to reject the candidates with criminal and otherwise tainted background. The demand was such that if more than 50% voters reject all candidates, there should be a forced re-election of that particular seat. It is not possible because of many practical reasons such as:



- If a list of candidates on the ballot is rejected by the voters, will all of them stand disqualified? The innocent and clear record candidates may suffer along with those who have tainted backgrounds.
- If all of them are not disqualified, then how to define, who would disqualify and who will not?
- If some of them are disqualified then for how long they would remain disqualified?
- If there is a re-election and the voters find that the new candidates are even worse than the previous ones and then again reject all of them; then will there be again a re-election. How long such re-elections would be conducted? Won't this lead to election fatigue?
- Conducting re-elections again and again for a particular constituency consume too much resources and time.
- The Model Code of Conduct remains in force from the time the dates of election are announced by EC till elections are over. All major government decisions such as transfers, budget related etc. are put on hold in such period. If there are recurrent elections at a particular place, it will affect the works of the government.
- Frequent re-elections would lead to voter's apathy; the turn-out will reduce in successive re-elections.
- As of now, we don't have a right to reject. Before India heads for such right, the above questions need to be solved first. Democracy is not just about exercising the right to vote; it is also about voting responsibly.

### Election Expenditures

Without money, multi-party democracy cannot function. But there are certain risks of money power such as:

- Money creates uneven playing field and lack of fair competition
- Certain sections / parties face disadvantage and political exclusion
- Money Power results in tainted governance and undermining of rule of law

Influence of money in Indian elections is not a new phenomenon. This was reported even during the Nehru era which is called golden era of Indian democracy. But in those times, influence of money was much limited in comparison to modern times. According to a February 2014 study carried out by Centre for Media Studies, the 2014 General Elections in India were estimated to incur an expenditure of Rs. 30,000 crore by Government, political parties and candidates, making it by far the most expensive electoral exercise in Indian history. If true, these figures would rival the USD 7 billion (approximately Rs. 42,000 crore) spent by candidates and parties in the 2012 US presidential



elections.

**What is NOT election expenditure?**

Section 77 of the RoPA, 51 says that the expenditure incurred by leaders of a political party on account of travel by air or by any other means of transport for propagating programme of the political party is not considered to be the election expenditure. Further, any expenditure which is done for service of the Government and discharge of official duty is also not considered to be election expenditure.

**The Expenditure Limit**

The section 77 of RoPA 1951 mandates that every candidate at an election needs to keep a separate and correct account of all poll expenditures between the date on which he was nominated to date on which results are declared. Thus, legislation mandates for maintenance of records, but there is no such statutorily defined limit on poll expenditures. However, we have a ceiling on election expenses fixed by the Government of India. As per the current norms, the maximum limit of election expenses per candidate is as follows:

**Lok Sabha Constituencies**

- 70 Lakh for all States except Arunachal Pradesh, Goa and Sikkim.
- 54 Lakh for Arunachal Pradesh, Goa and Sikkim = 54.00 Lakhs
- 70 Lakh for NCT of Delhi
- 54 Lakh for other Union Territories.

**Assembly Constituencies**

- 28 Lakh for bigger states and NCT of Delhi
- 20 Lakh for smaller states and UTs.

These ceilings are fixed by the Union Government by order and NOT by election commission. Election commission however recommends the same to the government. The objective of these provisions is to encourage candidates to declare their poll expenses truthfully in the interest of greater transparency.

All Political parties sponsoring candidates for the elections are required to maintain day to day accounts for all election campaign expenses and submit the accounts to the Commission within 90 days of Lok Sabha Elections and 75 days of Assembly Elections.

**Election Expenditure Monitoring System**

The ECI has launched a robust Election Expenditure Monetary System mechanism to curb the influence of money power in elections. It was first implemented in 2010 in Bihar and subsequently taken to other states till recently in the General Elections. Some notable features of this mechanism



include:

- Separate bank account by each contesting candidate for incurring all poll expenditures and incurring expenditure via cheques / DDs only.
- A complaint-monitoring cell in each district with 24X7 toll free number
- Flying Squads, Quick Response Teams, Static Surveillance Teams headed by Executive Magistrates to track illegal cash transaction or any distribution liquor or any items for bribing/ inducement of the voters.
- All airports in the State, major railway stations, hotels, farm houses, 'hawala' agents, financial brokers, cash couriers, pawn brokers and other suspicious agencies/persons engaged in movement of cash are to be kept under close surveillance by the Income Tax Department and necessary action to be taken as per the provisions of the Income Tax Act.
- Monitoring of suspicious cash withdrawal from any bank account during election process.
- Expenditure Observers are appointed for each district with senior officers from Income Tax Department, Customs & Central Excise Department and other finance & accounts services from outside the State to oversee the election expenditure by the candidates during election.
- Assistant Expenditure Observers are appointed for each constituency, to assist the Expenditure Observers.
- Shadow Observation Register is maintained in each constituency for each candidate to record major expenses observed during the election.
- Video Surveillance Team is constituted with camera persons and Govt. officials in each team to videograph major election campaign expenses.
- Accounting Team is constituted in each constituency to maintain Shadow Observation Register and the folder of evidence.
- Media Certification and Media Expenditure Monitoring Committee (MCMC) constituted to monitor both print and electronic media including cable network, social media etc. for election advertisement and suspected Paid News.
- Campaign for ethical voting.

The above measures have gone a long way in curbing pernicious effect of money power during the General Elections held in the last four years. But, there is still a lot of distance to be covered in this regard to eliminate the deep seated malady.

### Electoral Trust Scheme

In recent times, many of India's biggest industrial houses have taken advantage of a new law to set up electoral trusts, hoping to make wavelets of their own by giving money to their favourite political



parties. The legal framework for these trusts was introduced in January 2013, ostensibly with the idea of bringing transparency to the way campaigns are funded. For the first time, in this election private firms can donate money to political parties without any restriction—in exchange for disclosing what they have donated. Here is a brief information about electoral trusts.

### What is the idea behind an Electoral Trust?

Election funding for political parties has always been a topic of discussion and there have been demands from various quarters to make the process more transparent. The Finance Act of 2009 had set provisions for Electoral Trusts under the Income Tax Act 1961. Section 13B of the Act provides that the companies and entities looking to provide funding to political parties can set up *non-profit companies*, which mandatorily contain 'Electoral Trust' in their names. Any voluntary contributions received by an Electoral Trust shall not be included in the total income of the previous year of such Electoral Trust, if such Electoral Trust donates at least 95 percent of that money to registered political parties. This simply implies that tax benefits are available on funds given to political outfits through electoral trusts. The objective to bring transparency in the political funding and poll funding.

#### Salient Features / Prerequisites of Electoral Trusts

- 1 Formation on or after 01.04.2012.
- 2 The name shall include the phrase 'electoral trust'.
- 3 Essentially Non-profit.
- 4 Sole object of the electoral trust is to distribute the contributions received by it to political parties registered under Section 29A of Representation of People Act, 1951
- 5 Each electoral trust shall have a permanent account number.
- 6 Governed by Companies Act 1956 and now 2013
- 7 Need to contribute 95 per cent of total funds collected to political parties

### Definition of Electoral Trust

An Electoral Trust is a *non-profit company* established for orderly receipt of the voluntary contributions from any person (or company) for distributing the same to the respective political parties, registered under Section 29A of the Representation of People Act, 1951.

Such a company is registered under Companies Act comes under the purview of CBDT for tax matters.

### Who can contribute to electoral trusts?

The electoral trust may receive voluntary contributions from –

- An individual who is a citizen of India



- a company which is registered in India and
- a firm or Hindu undivided family or an Association of persons or a body of individuals, resident in India.

### Who shall not contribute to Electoral Trust?

The electoral trust shall not accept contributions-

- From an individual who is not a citizen of India or
- from any foreign entity whether incorporated or not and
- from any other electoral trust which has been registered as a company under section 25 of the Companies Act, 1956 and approved as an electoral trust under the Electoral Trusts Scheme, 2013.

### Appraisal of the Electoral Trusts

An approved electoral trust can receive voluntary contributions and distribute the same to the political parties. Thus, the work of the trust is only two fold. Receive it and donate it to political parties. No other work or business is allowed. One trust cannot donate to other. The electoral Trusts Scheme is relatively new scheme and is part of the ever going electoral reforms in the country. The scheme brings in more transparency in the funds provided by corporate entities to the political parties for their election-related expenses.

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This scheme has been welcomed by companies and corporate mainly due to its simplicity and tax benefits. Currently, there are more than 15 electoral trusts in India and this count must have become larger with the conclusion of the General Elections. The major groups which have registered their electoral trusts include Mahindra group, Anil Ambani-led Reliance Group, Anil Agarwal-led Vedanta Group, Sunil Mittal-led Bharti Group and Kolkata-based K K Birla Group etc.

### Delimitation and Delimitation Commission

Delimitation means the drawing of boundaries. The boundaries may be domestic, national and International, but the most general use of this term is in context with electoral boundaries. Article 82 (Readjustment after each census) makes provision for delimitation of the electoral boundaries. It is the process of *allocation of number of Seats and their demarcation into territories*.

Under Article 82, the Parliament by law enacts a Delimitation Act after every census. After coming into force commencement of the Act, the Central Government constitutes a **Delimitation Commission**. This Delimitation Commission demarcates the boundaries of the Parliamentary Constituencies as per provisions of the Delimitation Act.

Delimitation commissions have been set up four times in the past viz. 1952, 1963, 1973 and 2002 under Delimitation Commission acts of 1952, 1962, 1972 and 2002.



### Purpose of Delimitation

In India, the main basis for allocation of seats to various States in the Lok Sabha is **Population** of the state. The division of each state into the territorial constituencies is to be readjusted after the completion of a census so that the **Population-Seat ratio is maintained** within the state and throughout the Union. So the purpose is the Rationalization of the structure and composition of the electoral constituencies, on the principle of “**One vote and one value**”.

### First Delimitation Commission

When the constitution came in existence, it had fixed the number of Seats to Lok Sabha as **not more than 500**. For the First General Elections for Lok Sabha as well as legislative Assemblies for 1951-52, the Election Commission had divided the entire country into viable territorial divisions of parliamentary / assembly Constituencies. However, after that this task was given to the Independent Delimitation Commission. Accordingly, separate delimitation commissions were set up in 1952 (basis of 1951 census), 1962 (basis of 1961 census), 1972 (basis of 1971 census).

### Ban on Delimitation

The 42nd Amendment Act 1976 had put a ban on any further delimitation of the Constituencies till the **year 2000**. So after the 42nd amendment act 1976, the total number of seats in Lok Sabha and Rajya Sabha has remained the same. This ban was imposed mostly on the account of the fear that a few states to get more seats in the Lok Sabha on the basis of a **large population may not take much interest in the family planning**. So, indirectly this was done so that states may not be biased towards the family planning measures.

### Delimitation and 84th Amendment Act 2002

The 84<sup>th</sup> Amendment Act 2002 extended the freeze till the year 2026. This was based upon the calculations of the population planners that by 2026 India will be able to stabilize the population.

So next allocation of seats would be carried out on the basis of the Census after 2026 and the number of seats will not change by then. By enacting the 84th amendment Act, 2002, it was also decided to undertake readjustment and rationalization of territorial constituencies in the States, without altering the number of seats allotted to each State in the House of the People and Legislative Assemblies of the States, including the Scheduled Castes and the Scheduled Tribes constituencies, on the basis of the population ascertained at the census for the year 1991, so as to remove the imbalance caused due to uneven growth of population/electorate in different constituencies. So 84th amendment Act did two things:

- Freeze the fresh delimitation till 2026
- Allowed to readjust the seats.



The year 1991 was later altered to 2001 by 87<sup>th</sup> amendment act 2003.

### Delimitation Act 2002

In pursuant with the 84<sup>th</sup> Amendment Act 2002, the Delimitation Act 2002 was passed. Under this act Delimitation Commission was constituted in July 2002. The Chairman of this commission was Justice Kuldeep Singh. Justice Kuldeep Singh was a retired Judge of the Supreme Court of India. The Ex-officio members of this Commission were an election commissioner of India and state election commissioners. So this commission started working on the basis of 1991 census data. But later in 2003, the word “1991” in the article 82 of the constitution was removed and replaced by 2001. This means that the work done till then by the commission became obsolete. The commission later restarted the work as it was now entrusted with the task of readjusting all parliamentary and assembly constituencies in the country in **all the states of India, except the state of Jammu and Kashmir**, on the basis of population ascertained in 2001 Census.

Later, The Guwahati High court stayed the delimitation exercise in respect of the Arunachal Pradesh, Assam, Nagaland, Manipur (5 states) on the basis of the disputes in the census Figures. In Manipur the work of delimitation was later resumed after Supreme Court stayed on the order of the Guwahati High Court.

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### Current Position of Delimitation

In the 2009 general elections, 499 out of the total 543 Parliamentary constituencies were newly delimited constituencies. This affected the National Capital Region of Delhi, the Union Territory of Puducherry and all the states except Arunachal Pradesh, Assam, Jammu & Kashmir, Jharkhand, Manipur and Nagaland. Many instances, a constituency with the same name may reflect a significantly different population demographic as well as a slightly altered geographical region.

## Electoral Reforms: Various Committees

India's electoral system was largely free from any major flaw till the fourth general elections (1967). The distortions in its working appeared, for the first time, in the fifth general elections (1971) and these got multiplied in the successive elections, especially in those held in the eighties and thereafter. Many a time, the Election Commission expressed its concern and anxiety for removing obstacles in the way of free and fair polls. It had made a number of recommendations and repeatedly reminded the government the necessity of changing the existing laws to check the electoral malpractices.

Some of the key classic committees towards electoral reforms in the country include: *Tarkunde Committee Report* (1975), *Goswami Committee Report* (1990), Election Commission's recommendations (1998), *Indrajit Gupta Committee Report* (1998). Here is a summary of these reports:





### Tarkunde / J.P. Committee (1975)

Jayprakash Narayan on behalf of the Citizens For Democracy had appointed a committee to study and report on scheme for electoral reforms in 1974. The members of the committee were V.M. Tarkunde, M.R. Masai, etc. and it is known as J.P. Committee or Tarkunde committee. The important recommendations of the Tarkunde Committee are as follows:

- The election commission should be a three member body.
- The minimum age of voting should be 18 years.
- The TV and radio should be placed under the control of autonomous statutory corporation.
- A voter's council should be formed in as many constituencies as possible which can help in free and fair election.

### Goswami committee (1990)

In accordance with the Janata Dal's election commitment, the national front govt. announced in the Lok Sabha on May 4, 1990. The major recommendations were as follows:

- Time limit for bye-elections.
- Increase in deposits from independents.
- A check on advertisements on new papers and strengthening of the election commission.
- A series of legislative measures should be set up to eradicate booth-capturing rigging and intimidating.
- The committee also called for amendment of the anti-defection law to restrict disqualification.

### Indrajit Gupta committee on state funding of elections (1998)

Indrajit Gupta was the chairman of the all-party parliamentary committee on state funding of elections. The 8-member committee that set up by the all-party conference in may, 1998, submitted its report in January, 1999 with the following recommendations:

- State funding should be in kind, that is, **no financial support** is to be given to parties and also, part of the financial burden of the parties should be initially borne by the state.
- A Rs. 600 crore contribution from the center and an equal amount by the states, annually, towards an election corpus fund for the purpose.
- Only EC- recognized political parties should be given the state support in terms of printing material and facilities; electronic media time; vehicles and fuel etc.
- Political parties should compulsorily submit their annual accounts to the income tax department, showing their receipts and expenditure failing which the party or the candidate foregoes the state support.
- Complete account of the election expenditure should be filled by the parties to the EC.



- All donations above Rs. 10,000 by the parties should be in the form of cheque/draft and the names of the donors should be disclosed in the accounts.
- Ban on donations by government companies for political purposes will continue, but whether other companies can donate or not is to be determined by the parliament.

The election commission has produced a comprehensive set of proposals regarding electoral reforms and implemented many of the recommendations of the above committees.

### Key Electoral Reforms in India

The notable electoral reforms made in India so far include the following:

#### **Election staff is deemed to be on deputation to Election Commission**

The election staff is now deemed to be on deputation of election commission for the duration of elections. In this period, all such staff personnel are under control, superintendence and discipline of the election commission. Towards this purpose, the RoPA was amended in 1988 and a new section {Section 13CC} was included in the same.

#### **More proposers needed in Upper House Elections**

Number of electors who are required to sign as proposers in nomination papers for elections to Rajya Sabha and state legislative councils has been increased to ten per cent of the electors of the constituency or ten such electors, whichever is less, to prevent frivolous candidates.

#### **RoPA amended to facilitate EVM**

The representation of the peoples act, 1951, was amended to facilitate use of electronic voting machine in elections.

#### **ECI given teeth to tackle booth capturing**

Section 58A has been inserted in the representation of the peoples act, 1951 by providing for adjournment of poll or countermanding of elections because of booth capturing. Booth capturing has been defined in section 135 A of the representation of the peoples act, 1951. Election commission on such report may either declare the poll at the particular polling station as void and appoint a date for fresh poll or countermand election in that constituency.

#### **Insult to national honor may lead to disqualification**

Any conviction under section 2 (offence of insulting the Indian national flag or the constitution of India) or section 3 (offence of preventing singing of national anthem) of the prevention of insults to national honour act, 1971 shall hereafter entail disqualification for contesting elections to parliament and state legislatures for a period of six years from the date of such conviction

#### **Increase in security deposits and number of proposers**

The amount of security deposit which a candidate at an election to the house of the people or a state legislative assembly has to make has been enhanced as a measure to check the multiplicity of non-serious candidates.



In the case of an election to the house of the people, the amount of security deposit has been increased from Rs. 500 to Rs. 10,000 for the general candidate and from Rs. 250 to Rs. 5,000 for a candidate who is a member of a scheduled caste or scheduled tribe.

In the case of elections to a state legislative assembly, the candidates will have to make a deposit of Rs. 5,000 if they are general candidates and Rs. 2,500 if they belong to a scheduled caste or scheduled tribe instead of Rs. 250 and Rs. 125 respectively as was being previously deposited by them.

A defeated candidate who fails to secure more than one-sixth of the valid votes polled in the constituency will lose his security deposit.

### **Number of Proposers increased for Presidential Elections**

Under the Presidential and Vice-Presidential Elections (Amendment) Ordinance, 1997, the number of proposers and seconders for presidential candidates have been increased to 50 each (as against the earlier 10), and the security deposit to Rs 15,000 (earlier deposit Rs 2500).

For the vice-presidential candidates the number of proposers and seconders and amount of the security deposit has been increased to 20 each and Rs 15,000 respectively.

Further, both proposers and seconders must be members of the Electoral College comprising elected members from the state assemblies and Parliament. The Election Commission had been expressing concern that many non-serious candidates were entering the fray in every election.

A candidate in a parliamentary or assembly constituency should be subscribed by 10 electors of the constituency as propers, if the candidate has not been set up by a recognized national or state party.

### **Restriction on contesting election from more than two constituencies**

A candidate is not eligible to contest election from *more than two* parliamentary or assembly constituencies at general election. Restrictions will apply for biennial-elections and bye-elections to the council of states and state legislative councils also.

### **Provisions on Death of candidate**

No election is countermanded on the death of a contesting candidate. However, If the deceased candidate was from a recognized national or state party, the party concerned will be given an option to nominate another candidate within seven days of the issue of a notice to that effect to the party concerned by the election commission.

### **Taking arms to or near to Polling station is Cognizable Offense**

Going armed with any kind of arms as defined in Arms Act 1959 within the neighbourhood of a polling station is now a cognizable offence punishable with imprisonment up to two years or with fine or with both.

### **Holidays on Polling Day**

All registered electors who are employed in any business, trade industrial undertaking or any other establishment shall be entitled to a paid holiday on the day of poll. Even the daily wagers will receive



their wages for that day.

**Prohibition on sale of liquor etc.**

No liquor or other intoxicants shall be sold off, given or distributed at any shop, eating place, hotel or any other place, whether public or private, within a polling area during the period of 48 hours ending with the hour fixed for the conclusion of poll.

**Model Code of Conduct**

THE Election Commission of India is regarded as guardian of free and fair elections. In every election, the EC issues a Model Code of Conduct for political parties and candidates to conduct elections in a free and fair manner. The Commission circulated its first Code at the time of the fifth general elections, held in 1971. Since then, the Code has been revised from time to time. The Code of Conduct lays down guidelines as to how political parties and candidates should conduct themselves during elections.

A provision was made under the Code that from the time the elections are announced by the Commission, Ministers and other authorities cannot announce any financial grant, lay foundation stones of projects of schemes of any kind, make promises of construction of roads, carry out any appointments in government and public undertakings which may have the effect of influencing the voters in favour of the ruling party.

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MCC has no statutory backing and many of its provisions are not legally enforceable.

However, public opinion is the moral sanction for its enforcement and hence, the Model Code of Conduct has evolved to be a Moral Code of Conduct. The Commission has been effectively using the MCC as a tool to ensure honest, free and fair elections in India.

## **Election Finance reforms**

Major issues concerned with the Election finance reforms include – Limits on political contributions and party and candidate expenditure; disclosure norms and requirements; and State funding of elections. These issues are governed by RoPA, the Conduct of Election Rules, 1961; Companies Act, 2013; Income Tax Act, 1961; Foreign Contribution (Regulation) Act etc.

**Existing regulations****Limits on Expenditure**

- Between Rs. 54-70 lakhs for Parliamentary constituencies and Rs. 20-28 lakhs for Assembly constituencies
- Includes party and supporter spending towards a candidate's campaign
- Excludes expenditure incurred by "leaders of a political party" for travel for propagating the party's programme
- Excludes expenditure by parties or their supporters incurred for generally propagating the



party's program as long as no specific candidate is mentioned.

### Disclosure of Expenditure

- True copy of account of election expenses of *every contesting candidate* to be lodged with the District Election Commissioner within *thirty days* of election of returned candidate. Returned candidate is one who has been declared elected by the returning officer.

### Limits on Contribution

- As of now there are *no limits on individual* contributions
- No limits on political party accepting contribution
- Corporate contributions to political parties are allowed as long as the company (non-government) is three years old; its aggregate contribution in every financial year is below 7.5% of its average net profits during the three immediately preceding financial years; and it is authorized by a Board of Directors' resolution
- Corporate contributions to parties or electoral trusts entitled to deduction from total income
- Ban on foreign contribution to candidates or political parties.

Section 29B of the RoPA makes it very clear that there is no limit on political parties accepting contributions from individuals or corporations, so long as the donor is *not a government company*, or the donation is *not a foreign contribution* (since it is prohibited under Section 3 of the Foreign Contribution (Regulation) Act, 2010). A significant source of political donations is through *corporate funding*, which is explicitly permitted under Section 182(1) of the Companies Act of 2013, dealing with prohibitions and restrictions regarding political contributions to political parties.

### Disclosure of Contribution

- *By party*: Report detailing all contributions above Rs. 20,000 received from any person or company to be submitted in each financial year to the Election Commission
- *By company*: Profit and Loss account with detail of the total amount contributed and the name of the party to which contribution made in every financial year

### Public Funding of Election Campaigns

- No direct State subsidy
- Partial in *kind subsidy* in the form of free allocated air time on state owned electronic media since 1996 to parties based on their past performance
- Free supply of copies of electoral rolls and identity slips of electors to candidates

### Penalties

Penalties are of both civil and criminal in nature and affect:

- *The candidate*: disqualification from being a voter or standing in elections if convicted of corrupt practices or failure to lodge election expenses



- *The party*: loses IT exemptions
- *Company*: Fines and imprisonment

### Need for election finance reform

It is a well established fact that money plays a crucial role in politics. ECI, Guidelines on Transparency and Accountability in Party Funds and Election Expenditure recognizes the need for finance reform by stating:

*“concerns have been expressed in various quarters that money power is disturbing the level playing field and vitiating the purity of elections.”*

The Supreme Court also has emphasized the influence of money power in its various judgments such as *KanwarLal Gupta v Amar Nath Chawla*, 1975 and *Ashok Shankarrao Chavan v Madhavrao Kinhalakar*, 2014.

It is an undeniable fact that financial superiority translates into *electoral advantage*, and hence richer candidates and parties have a greater chance of winning elections.

Money, often from *illegitimate sources*, is used to buy muscle power, weapons, or to unduly influence voters through liquor, cash, and gifts. 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 favor or high return on this investment.

Of the candidates of Lok Sabha 2014 elections:

- 27% (2208 candidates) of all the candidates were “crorepati candidates,” and the average asset of each of the 8163 candidates was Rs. 3.16 crores.
- The percentage of crorepati candidates increased from 16% in 2009 Lok Sabha elections.

There is widespread prevalence of black money, bribery, and corruption which in turn helps candidates fund their campaigns. 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.

- Lobbying gives undue importance to big donors and certain interest groups at the expense of the ordinary citizen and violates what the Supreme Court terms, “*the right of equal participation* [of each citizen in the polity]” as pronounced in the *KanwarLal Gupta v Amar Nath Chawla*, 1975
- *Institutional corruption*: Instead of direct exchange of money or favours, candidates alter their views and convictions in a way that attracts most funding. This change of perception leads to an erosion of public trust, which in turn affects the quality of democratic engagement.

### ECI's Transparency Guidelines



The ECI issued transparency guidelines *under Article 324* of the Constitution on October 2014 after consultation with all the recognized political parties, and including the following:

### **On election expenses by parties**

The payment of any election expenditure over Rs. 20,000 should be made by the political parties via cheque or draft, and not by cash, unless there are no banking facilities or the payment is made to a party functionary in lieu of salary or reimbursement.

### **On election expenses by unrecognised parties**

Although not required by law to submit their election expenditures to the ECI, unrecognised parties are required under these guideless to file their expenditure statements with the Chief Electoral Officer of the State in which the party headquarters are located.

### **On giving money to candidates**

Although there is no cap on expenditure by political parties for propagating their program, parties are required to adhere to the cap prescribed in section 77(3), RPA and Rule 90, Election Rules while providing “financial assistance” to candidates in their election campaigns. These amounts should be paid only by a crossed account payee cheque or draft or bank transfer, and not by cash.

### **On accounts and audit**

All parties are required to maintain books of accounts (section 13A, IT Act) based on the guidance note issued by the Institute of Chartered Accountants of India to enable the calculation of their party income. These books need to be audited and certified by qualified, practicing Chartered Accountants, and are to be submitted annually to the ECI.

Although there are legal provisions limiting election expenditure for candidates and governing the disclosure of contributions by companies to political parties, the same is *not properly regulated*, either due to loopholes in the law, or improper enforcement.

### **Criticisms and loopholes**

- Despite the *Election and Other Related Laws (Amendment) Act 2003*, the subject of regulation under *Section 77 of the RoPA* only covers individual “candidates”, and not on political parties.
- Clever accounting can allow parties to attribute large amounts of expenditure to their “leaders” and hence, avail of the exception under Section 77. For instance, the ECI states that when leaders of a political party travel to and from their constituency to other constituencies as star campaigners, the expenditure on their travel would fall within the exempted category.
- The scope of Section 77(1) is very narrow and applies only from the date of nomination to the date of declaration and thus any expenditure incurred in the remaining period is exempt from any limit or regulation.
- Regarding political contribution, the Rs. 20,000 disclosure limit can be easily evaded by



writing multiple cheques below Rs. 20,000 each, or giving the money in cash. Nor is the profit-linked contribution limit of 7.5% a significant restriction for large companies.

- The authorization of corporate contribution requires a resolution to be passed to such effect at the meeting of the Board of Directors under Section 182(1) of the Companies Act, 2013. The empowerment of a small group to decide how to use the funds of a company for political purposes, instead of involving the vast numbers of shareholders (being the actual owners of the company) has also been widely criticized.
- Disclosure norms need to be strengthened. The ECI's transparency guidelines do not have statutory authority and there is no legal consequence for non-compliance. Moreover, in many cases such as compliance with section 29C of the RPA (regulating political party disclosure) the only penalty for noncompliance is losing the income tax exemption. This is not a significant enough deterrent to parties.

### Suggestions and way forward

They key notable suggestions towards election finance reforms are as follows:

- Extending the period in which ECI's regulation on election expenditure applies on candidates.
- Amendment of the Companies Act so that their contribution to political parties are authorized in Annual General Meetings rather than by Board of Directors.
- Extending the scope of disclosure obligations of individual candidates.
- Political parties should compulsorily maintain and submit annual audited accounts. There should be additional Disclosure provisions governing political parties.
- The period for disqualification of a candidate for a failure to lodge an account of election expenses should be extended.
- The Regulation of Electoral Trusts should be given statutory backing by amending RoPA.
- Efforts towards state funding of elections.

The above suggestions are input from *Law Commission of India* report of March 2015 on electoral reforms. Below excerpts from the same report explain each of the above suggestions:

#### **Extending the period in which ECI's regulation on election expenditure applies on candidates.**

Currently, the Section 77 of the RoPA, regulating the election expenses incurred or authorized by candidates extends from the date of nomination to the date of declaration of results. This period should be extended so that it applies from date of notification of the elections to the date of declaration of results.

#### **Amendment of the Companies Act**

The Companies Act should be amended to require the passing of the resolution authorizing the contribution from the company's funds to a political party at the company's Annual General Meeting





(AGM) instead of its Board of Directors.

### **Extending the scope of disclosure obligations of individual candidates.**

The existing disclosure obligations of individual candidates are limited to maintaining an account of electoral expenses under sections 77 and 78, RPA. This is sought to be amended by inserting a new section to require candidates to maintain an account and disclose the particulars of

- any individual contribution received by them from any person or company, not being a Government company and
- any contribution by the political party from the date of notification of elections.

Further, a new provision should be inserted requiring the district election officer to make publicly available, on his website for public inspection on payment of prescribed fee, the expenditure reports submitted by every contesting candidate under section 78.

### **Mandatory maintenance of audited accounts by Political parties**

Political parties should be required to maintain and submit annual accounts, duly audited by a qualified and practicing chartered accountant from a panel of such accountants maintained for the purpose by the Comptroller and Auditor General, to the ECI every financial year. These accounts will fully and clearly disclose all the amounts received by the party and the expenditure incurred by it. The ECI will then upload these accounts online or keep them on file for public inspection on payment of fee.

Disclosure provisions governing political parties should require all parties to:

- mandatorily disclose all contributions in excess of Rs. 20,000;
- include aggregate contributions from a single donor amounting to Rs. 20,000 within its scope;
- disclose the names, addresses and PAN card numbers of these donors along with the amount of each donation above Rs. 20,000;
- disclose such particulars even for contributions less than Rs. 20,000 if such contributions exceed Rs. 20 crore or 20 % of the party's total contributions, whichever is less. Consequential amendments will need to be made to the Election Rules and the IT Act.

A new section to be inserted in the RPA requiring the ECI to make publicly available, on its website or on file for public inspection on payment of prescribed fee, all the contribution reports submitted by all political parties under section 29D.

ECI's transparency guidelines prescribing, first, a "statement of election expenditure" to be filed with it, by every party contesting an election within 75 days of the Assembly elections and 90 days of the General elections election; and second, expenses incurred by political parties to be usually in the form of cheque or draft, unless banking facilities are not easily available or the payment is made to a



party functionary in lieu of salary or reimbursement, should be given a statutory basis.

Express penalties, apart from losing tax benefits, should be imposed on political parties for the non-compliance with the disclosure provisions of the RPA. This should include a daily fine for non-compliance, with the possibility of de-registration if the default continues beyond 90 days. Further, ECI may levy a fine if it finds any particulars in the party's statements as having been falsified.

A new section should be inserted penalizing parties for accepting contributions from impermissible donors, by levying a penalty.

**The period for disqualification of a candidate for a failure to lodge an account of election expenses should be extended.**

The disqualification of a candidate for a failure to lodge an account of election expenses and contributions reports under section 77 and proposed 77A should be extended from the current three period up to a five year period, so that a defaulting candidate may be ineligible to contest at least the next elections.

### **Regulation of Electoral Trusts**

RoPA should be amended dealing with the "Regulation of Electoral Trusts", and detailing provisions pertaining to their entitlement to accept contributions, disclosure obligations, and penal provisions (apart from losing income tax exemptions) in line with the changes already made to the IT Act and the ECI guidelines on "Electoral Trust Companies" of 2013.

### **Partial State Funding of Elections**

A system of complete state funding of elections or matching grants may not be feasible, given the current conditions of the country. Instead, the existing system of indirect in-kind subsidies, with section 78B of the RPA being possibly amended in the future to expand these subsidies.

## **State Funding Of Elections**

State funding of elections has been suggested in the past in response to the high cost of elections and as a measure against corruption in the electoral process. Many of the government panels on electoral reforms have expressed their ideas on the issue, however, complete state funding of elections is impossible.

Before we look into the issue, let's have a look at various reports and suggestions. The key reports on state funding of elections are as follows:

*Indrajit Gupta Committee on State Funding of Elections (1998)*

- *Law Commission Report on Reform of the Electoral Laws (1999)*
- *National Commission to Review the Working of the Constitution (2001)*
- *Second Administrative Reforms Commission (2008)*
- *Law Commission of India Report on Electoral Reforms (2015)*



### **Indrajit Gupta Committee on State Funding of Elections (1998)**

This committee endorsed *Partial state funding* of elections with some limitations given below.

- State funds should be given only to national and state parties allotted a symbol and not to independent candidates.
- In the short-term state funding should only be given in kind, in the form of certain facilities to the recognised political parties and their candidates.
- The state funding *depends upon the economic condition of the country*. At the time of report (1998) the economic situation of the country only suited partial and not full state funding of elections.
- Thus, as per this committee, only partial state funding was possible given the economic conditions of the country at that time.

The Indrajit Gupta Committee had envisaged a phased introduction of public funding, given the economic conditions of the country in 1998, beginning with in-kind state subsidies (and no cash) such as rent-free office space, free telephone facilities, electoral rolls' copies, loudspeakers, specified quantities of fuel, food packets, and airtime (both on state and private media). Gradually, the Committee envisioned a transition to full state funding, along with monetary provision via the creation of a central-governed Election Fund, whose funding would be provided by the Centre and the states together. However, the Committee excluded independent candidates from the benefits of state funding and required parties to submit audited accounts and tax returns to avail the benefits.

### **Law Commission Report on Reform of the Electoral Laws (1999)**

- Total state funding of elections is “desirable” so long as political parties are prohibited from taking funds from other sources.
- The Commission concurred with the Indrajit Gupta Committee’s stand on partial funding.
- Appropriate regulatory framework be put in place with regard to political parties (provisions ensuring internal democracy, internal structures and maintenance of accounts, their auditing and submission to Election Commission) before state funding of elections is attempted.

### **National Commission to Review the Working of the Constitution (2001)**

- Did not endorse state funding of elections but concurred with the 1999 Law Commission report that the appropriate framework for regulation of political parties would need to be implemented before state funding is considered.

### **Second Administrative Reforms Commission (2008)**

- Recommended partial state funding of elections for the purpose of reducing “illegitimate and unnecessary funding” of elections expenses.

### **Law Commission of India Report on Electoral Reforms (2015)**



In its report submitted in March 2015, the Law Commission did not consider a system of complete state funding of elections or matching grants to be feasible, given the current conditions of the country. Instead, it supported the existing system of indirect in-kind subsidies, with section 78B of the RPA being possibly amended in the future to expand these subsidies.

### Experience of State Funding in other countries

The long standing democracies of Germany, Austria, France, Denmark, Israel, Norway, Netherlands, Italy, Canada, USA (for Presidential elections), Japan, Spain, Australia and South Korea had introduced and operated systems of comprehensive or partial State funding of Elections over the past three decades. The experience over a period of time in some of the countries like Italy, Finland, Spain, Austria and Israel *did not show that the public funding had reduced the election expenditure of political parties*. The principal point against the State subvention to political parties was that a *political party was a free association of citizens for political purposes and it should be able to demonstrate its independent viability including its financial viability*.

### Key Issues and Arguments

#### Complete State Funding is not feasible

State Funding of elections depends on economic condition of the country. Currently, India's economy does not suit to state complete funding.

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#### Which may be more successful? Total or Partial state funding?

Most of the committees have suggested that India should go for partial state funding. However, State funding may succeed only when it is total and not partial, because there is no guarantee that even after it was introduced, rich parties and candidates would not pump black money into campaigns to boost their chances of victory. Partial funding leaves scope for the party to use its funds for campaigns of individual candidates would fail to prevent the use of black money.

#### Is state funding panacea?

No. The State funding may not be the solution to the problems faced in the electoral process and it is necessary to adopt other measures, irrespective of whether State funding is provided or not.

#### Which is better – Cash or Kind in state funding?

State funding in cash is not a good idea. However, as Tarkunde committee suggested earlier, certain facilities be made available to every constituency at government expense like giving printed cards with the registered number of voters and the polling booths where they may cast their vote, making available school rooms and halls for meetings, sending one communication to each voter free of postage and so on.

#### State Funding and Inner Party Democracy

State funding of elections makes little sense as long as inner-party democracy is missing in key political parties. A strong Lokpal has to be in place to ensure that corruption is reported and



redressed. This will instil fear among prospective candidates who will no longer see their election as a money-making opportunity.

### **Opinion: Should India Make efforts towards State Funding of Elections**

State funds should be utilized for the welfare and common good of the people and not for the *benefit of a few following political pursuits*. Without favorable economy and without key reforms in other areas such as decriminalization of politics; introduction of inner party democracy; electoral finance reform; transparency and audit mechanisms; and stricter implementation of anti-corruption laws, there is no point moving towards state funding of elections.

In the absence of such reforms, state funding would also result in increased capacity of the political parties to spend on election campaigns making the elections even more costly. It would even encourage the *mushrooming growth of parties* as such grants would be a great incentive for even non-serious and frivolous organizations to call themselves as political outfits.

From various experiences, it is clear that the State funding has neither cleaned the corruption, nor freed the political parties of their financial burden. With mounting expenditure on the Central and State Governments, State funding would be an additional financial burden on them.

## **Elections Laws Amendment Bill 2016**

In February 2016, Lok Sabha has passed the Election Laws (Amendment) Bill, 2016 as a follow up to the 100th amendment act of the constitution.

The historic land boundary agreement signed between India and Bangladesh had altered the geography and demography of the district of Cooch Behar in West Bengal. Under this agreement, 51 Bangladeshi enclaves (Chhitmahals) were added in the Indian Territory and 111 Indian enclaves in Bangladesh territory. Since the newly acquired area has become the part of Indian territory, it was necessary to make delimitation exercise within the limited constituency area of Cooch Behar before the ensuing 2016 West Bengal State Assembly elections. The proposed amendment will change section 9 of the Representation of the People Act, 1950 and section 11 of the Delimitation Act, 2002. These amendments will give voting rights to people who became Indian citizens following the exchange of enclaves between India and Bangladesh. Amendment of Delimitation Act, 2002 will enable Election Commission of India (ECI) to carry out limited delimitation of Assembly and Parliamentary Constituencies in the Cooch Behar District of West Bengal.

## **Merits and Demerits of Direct and Indirect Elections**

In direct elections, people directly vote for the candidates and elect their representatives. The following are examples of direct elections in which people over the age of 18 years participate by casting their votes:



- Lok Sabha elections, in which the Members of Parliament (MP) are elected.
- Elections to the state Legislative Assembly, in which the Members of Legislative Assemblies (MLAs) are elected.
- Elections to the local governing bodies, in which members of the local governing bodies like the municipal corporation or the panchayat is elected.

### Merits of direct elections in India

- As the voters elect their representatives directly, direct elections are considered to be a *more democratic* method of election.
- It *educates* people regarding the government activities and helps in choosing appropriate candidates. Also, it encourages people to play an active role in politics.
- It empowers people and make the rulers accountable for their actions.

### Demerits of direct elections

- Direct elections are very expensive. It incurs huge expenditure on the public exchequer. For example in the nine phased 2014 Lok Sabha elections, a whopping 30,000 crore was spent by the government, political parties and candidates. Out of which, the Election Commission alone spent 3,426 crores.  
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- Illiterate voters sometimes gets misguided by *false propaganda* and sometimes vote taking in to caste, religious and various other sectarian considerations. This may result in the election of undeserving candidates. There are also instances of Cash for vote
- Since conducting direct elections are a massive exercise, ensuring *free and fair elections* at all the polling booths may not be possible. There are some instances of booth capturing, violence, intimidation of election officials etc. which undermines the credentials of the election process.
- Role of money power in direct elections cannot be negated. There are instances of some political candidates influencing the voters through payments in the form of cash, goods, or services. Poor voters expect bribes from political candidates during election time. This in turn leads to wide scale corruption and malpractices. It is a well known fact that money power has the potential to swing at least some elections. These practices are a regular feature of elections in South India especially in the states of Tamil Nadu and Andhra Pradesh.
- Election campaigns sometimes results in violence, tension, law and order problems and affects the day to day life of people.

### Indirect elections

In Indirect elections voters elect their representatives who in turn elect their representatives to the formal offices like the President's office. Simply put, public do not cast their votes directly. Instead,



they put the responsibility on the hands of their representatives, whom they elected through direct elections. In India, election to elect members of both the Rajya Sabha and the state legislative councils and the elections to the offices of President and vice president are held through indirect elections.

### Merits of Indirect elections

- Indirect elections are less expensive.
- It is more suited to elections in large countries.

### Demerits of Indirect elections

- Since the number of voters are very small. There exists possibility of corruption, bribery, horse trading etc.
- It is less democratic because people do not have direct opportunity to elect, they instead do through their representatives. So, this may not reflect the true will of the people.

## Determinants of Voting Behavior in India

Voting behavior reflect the ways in which people tend to vote in public elections and why they vote in that particular way. It also reflects the voter's choices, preferences, ideologies, concerns, alternatives etc. Article 326 of the Indian Constitution grants universal adult suffrage to citizen who is above 18 years of age. The main determinants of voting in India are the following:

### Caste

Caste has deep roots in the Indian society. Caste occupies distinct position in moulding the voting behaviour in India and this happens in spite of the adoption of several provisions which prohibits discrimination on the basis of caste. The political parties in India formulate their policies and election strategies always keeping in mind the caste factor. Even the candidates are selected keeping the caste factor in mind. Election campaigns are made in such a way that it makes the voters to feel their respective caste identities. For instance, the slogans like *Jat Ka Tot Jat Ko* etc. are made to please the voters on to vote for the candidates belonging to their caste. The recent Jat stir and agitation of Patel community of Gujarat testifies how deep seated are the feelings of people towards their caste and their groupings on the basis of caste. However the issue based politics is gradually becoming a determinant of voting behaviour at least in the urban areas and among the educated citizens.

### Ideology of the political parties

The ideology and political agenda of political parties are kept in mind by the voters. People tend to vote to political parties which pledge to solve their issues and have agenda which falls in line with their own expectations and ideologies. People even decide to vote for a particular party without analyzing the ability of the candidate. The enthusiasm and competition among candidates to get party tickets for contesting shows the prominence of political parties in determining the voting





behavior in India.

### **Personality of the Candidates and their orientation**

In addition to the party, the strong and charismatic personality of the candidates and their orientation towards various issues and ideologies are also taken in to account by the voters. It is a well known fact that many independent candidates also win the elections by defeating candidates belonging to the major parties by their ability to gather people's support by displaying maturity and clarity of political views.

### **Age and gender of the candidates**

The voters tend to vote for comparatively mature candidates rather than very old and young candidates. The very old candidates are considered to be weak and inefficient and the young candidates are perceived to be immature. Voters also tend to have bias and often prefer to vote for men than women candidates. Many still hold the view that politics are not suitable for women.

### **Religion and Language**

The existence of some political parties whose political agenda is linked with a particular religion tends to attract voters of that religion. For example, political parties such as Akali Dal, Shiv Sena etc. have made religion as a determinant of voting behaviour. Some political parties also seek votes by playing the religious card to woo the members of religious communities. They also pay visits to the religious places and have meeting with the religious leaders to carry forward their agenda.

India is a multi-lingual state. Since people have emotional attachment with their languages, they easily get influenced whenever any issue concerned with their language and identity props up during elections. For example, people of Tamil Nadu empathize with Sri Lankan Tamils and therefore they tend to vote for the party which supports their cause.

### **Sub-Nationalism**

Sub-nationalism has also become a crucial factor in influencing the voting behaviour of the people. At times some ethnic and secessionist groups use pressure tactics to force the voters to vote in a particular way. Some regional political parties like Naga Nationalist Organization, Gorkha League, Jharkha party have used this tactic and determine the voting behavior of the concerned people.

### **Money power**

Voters are sometimes lured by political parties by offering cash for vote and providing services like digging wells, constructing tanks, roads, libraries etc. So, the people tend to vote to the political party which offers cash or service. Poor people also expect money from the candidates at the time of elections. They lack the wisdom of analyzing the outcomes of their action and vote if their immediate problems are addressed. Money power in elections is rampant in South India especially in the states of Andhra Pradesh and Tamil Nadu.





## **Effect of Illiteracy**

In rural and tribal areas and among the illiterate people, traditionalism exercises a firm hold on the people and their beliefs. As a result many voters do not individually take the voting decisions. They take voting decision after having discussions in the family or blindly follow what the head of the family says.

## **Recent changes in the determinants of voting behaviour**

Even though, the above traditional determinants continue to shape the voting behaviour of voters, there are some more determinants of contemporary relevance which plays a crucial role in determining the voting behavior. Today, the news and information which are available through traditional and social media also plays a critical role in influencing our voting decisions. News channels are full of heated debates that arouse emotions and throw more insight in to the issues, which in turn changes the perceptions of the voters. Also, social media plays a very important role in disseminating information among the masses. All the political parties already have started their full-fledged campaigns through social media platform especially to woo the youth and urban voters as opposed to the traditional way of election campaigning. This era belongs to the social media, but the main problem is that when masses are swayed by the sheer power of rhetoric and biased media reports which are indiscriminately circulated in social media, it sometimes has the potential to determine the fortunes of the electoral candidates.

## **Universal Adult Suffrage: Evolution and Comparison**

The right of the people to vote and elect their representatives is called franchise. Adult franchise means that the right to vote should be given to all adult citizens without the discrimination of caste, class, colour, religion or sex. It demands that the right to vote should be equally available among all. To deny any class of persons from exercising this right is to violate their right to equality. the system of adult franchise is the bedrock of a democratic system. People are called political sovereign because they possess the right to vote a government into power, or to vote a government out of power. Universal adult franchise enables all citizens to be involved in the governance of their state. They do so by electing their representatives who govern to serve and protect the interests of the people.

### **Article 326**

**Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage.**— The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; that is to say, every person who is a citizen of India and who is not less than eighteen years of age on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this



Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election.

### Evolution

- Paradoxically, our Constitution which provides for Universal adult suffrage was drafted by a Constituent Assembly that was composed of members elected by restricted franchise.
- The Motilal Nehru report of 1928 advocated unlimited adult franchise and equal rights for women.
- The resolution of the 1931 Karachi session of the Indian National Congress adopted a resolution on Fundamental Rights and Economic Policy which encapsulated the notion of universal adult franchise.
- India adopted the principle of universal adult franchise when the present Constitution was enacted in 1949 which as you know was implemented on January 26, 1950.

### World context

- The western countries, which are known for their long experience of some sort of representative system of governance, introduced adult franchise only in the wake of the First World War (1914 – 18), a war which was proclaimed to be fought by the Allied Powers (Great Britain, France and United States and the allies) to make the ‘world safe for democracy’.
- The ‘defeated’ Germany incorporated the principle of universal adult franchise in 1919, it took nine more years for Great Britain to Democracy at Work extend franchise to women in 1928. In 1918, Britain had granted franchise to limited number of women. It was decided that while all adult men, 21 years of age and above would have the right to vote, women only above the age of 30 years could possess the right to vote. This discrimination was removed only in 1928.
- France, the land that gave the popular slogans of Liberty, Equality and Fraternity, could introduce the right of universal adult franchise to its people only after the end of the Second World War i.e. 1945.
- Switzerland, the home of direct democracy denied the right to vote to women till 1973.
- India adopted the principle of universal adult franchise when the present Constitution was enacted in 1949 which as you know was implemented on January 26, 1950.

### Age of voting across the world

- The voting age varies from country to country.
- In Denmark and Japan, a person, man or woman, is entitled to vote after attaining the age of



25 years.

- In Norway, the age limit is 23, in Great Britain, the United States, Russia and Turkey it is 18.
- In Switzerland, it is 20 years.
- In our country, now the minimum age for exercising franchise is 18 years. The 61st Amendment Act lowered the voting age from 21 to 18 years.

## **Inner Party Democracy In India**

Democratic theory includes both procedural and substantive democracy. *Procedural democracy* can be said to refer to the practice of universal adult franchise, periodic elections, secret ballot. *Substantive democracy* can be said to refer to the internal democratic functioning of the parties, which purportedly represent the people.

Internal democracy includes provisions governing internal elections, candidate selection, secret ballots, and registration and deregistration of parties etc.

According to the NCRWC's *Report on Electoral Processes and Political Parties*: "no electoral reforms can be effective without reforms in the political party system" and it recognizes the following areas of immediate concern here:

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- Structural and organizational reforms – party organisations – 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.
- Party system and governance – Mechanisms to make parties viable instruments of good governance
- 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

## **History of attempts to reform**

- The 1999 Law Commission Report strongly recommended the introduction of a regulatory framework governing the internal structures and inner democracy of parties, financial transparency, and accountability before attempting state funding of elections.
- The ARC's 2008 Ethics and Governance report also underlined the importance of inner party democracy and it also noted that corruption is caused by over-centralisation since "the more remotely power is exercised from the people, the greater is the distance between authority and accountability".
- In 2011, a draft *Political Parties (Registration and Regulation of Affairs, etc.) Act, 2011* was prepared under the guidance of Justice Venkatachaliah and submitted to the Law Ministry. It envisages:



- creation of an Executive Committees for every political party, whose members would be elected by members of the local committees of the State units of the party, and who themselves would elect the office-bearers of the party from amongst themselves (without accepting any nominations).
- The Executive Committee was also empowered to elect candidates for contesting Parliamentary and State, having due regard to the recommendations made by the State and District units of the constituency.
- The Act further provided for all decisions of the Executive and local committees to be taken on the basis of a simple majority vote with secret ballots.

### Laws related to Inner party democracy:

- Currently, there is no express law for internal democratic regulation of political parties in India and the only governing law is provided by Section 29A of the RPA, which provides for registration of political parties.
- Unfortunately, there are no provisions do not regulate the internal functioning of already registered parties. Moreover, the ECI's power to require parties to hold regular internal elections for office bearers, and candidate selection is compromised in the absence of any penal provisions.
- The Supreme Court in *Indian National Congress v Institute of Social Welfare* made it clear that neither Section 29A of the RP Act, nor the provisions of the *Election Symbols (Reservation and Allotment) Order, 1968* empowered the ECI to de-register parties on the grounds of violating the Constitution or breaching the undertaking given to it at the time of registration.

Suitable amendments have to be made for introducing internal democracy and transparency within political parties as it is important to promote financial and electoral accountability, reduce corruption, and improve democratic functioning of the country as a whole.

## First Past the Post Versus Proportional Representation

Under First Past the Post (FPTP) system, a candidate who gets one vote more than other candidate (who comes second) is declared as winner. In proportional representation, number of seats won by a party or group of candidates is *proportionate to the number of votes received*.

### First Past the Post

In India, all key representatives except President, Vice President, Members of Rajya Sabha and Members of state legislative council are elected via FPTP system. In recent times, questions have been raised as in 2014 election, NDA won only 31% of the total votes cast and that, therefore, 69% of those who voted did not vote in favor. Due to this system, the groups of parties which managed to



get less than 50% of the total votes polled have managed to get more than 75% of the total seats in the parliament. The argument is that due to FPTP, certain groups of people will never get a share in the power structure.

### **Merits of FPTP system**

#### **Simplicity**

The most significant advantage of the FPTP system is its uncomplicated nature using single-member districts and candidate-centred voting. Moreover, the FPTP system allows voters to choose between people as well as parties, with voters having the opportunity to assess the performance of a candidate rather than having to accept a list of candidates presented by a party, as under the list system.

#### **Stability**

The FPTP system has been known for stability in the electoral system of India. The Supreme Court in *RC Poudyal v. Union of India (1994)* had categorized the FPTP system as possessing '*the merit of preponderance of decisiveness over representativeness*'. This implies that the FPTP system presents the advantage of producing a majority government at a general election by being decisive, simple and familiar to the electorate. This, at least in theory, assures stable terms for the party in power, with the requisite numbers in the House to ensure implementation of its policies.

In practice, India has seen both stable majority and unstable coalition governments under the FPTP system, indicating that it is not this factor alone that assures the stability of the electoral system in India.

#### **Other Merits**

FPTP system encourages political parties themselves to have more broad-based participation. Moreover, it ensures that there is a link between a constituency and its representative in the legislature, and incentivizes representatives to serve their constituents well.

#### **Demerits of FPTP**

The principal criticism leveled against the FPTP system is that it leads to the *exclusion of small or regional parties from the Parliament*. There is commonly a discrepancy in the vote share and seat share in results, where votes given to smaller parties are 'wasted' since they do not gain a voice in the legislature.

FPTP system, which boasts of the fact that it provides a majoritarian (and hence more democratic) government, is itself not able to adequately uphold majoritarianism in a multiparty system, since the winning candidate wins only about 20-30% of the votes. For example, the Indian National Congress won only about 49.10% of the total vote share in the 1984 General Elections to the Lok Sabha, but had a sweeping majority of 405 out of 515 seats in the House.

Smaller parties, when they have a broad base across constituencies, rather than a concentrated



following in a few constituencies, may fail to win even a single seat even if their vote share is significant.

### Analysis of FPTP System

FTPT is useful because it is simple to use and easy to understand. It provides clear-cut choice for voters between two main parties. It allows voters to choose between people rather than just between parties. Thus, voters can assess the performance of individual candidates rather than just having to accept a list of candidates presented by a party. It gives a chance for popular independent candidates to be elected. However, the issue is that the victorious party has most often not secured the majority of votes. It is possible for a party to win majority of the seats with just 20-26% of vote share; by the same token, a party may not get a simple majority even with 74% of vote share. There is, hence, a mismatch between the number of seats won and the percentage of vote secured by the party. Further criticisms of FPTP are as follows:

- Distortion of electoral process
- Excludes smaller parties from fair representation
- Encourages caste, religion, Ethnicity and regional politics.
- Exaggerates the phenomenon of 'regional fiefdoms'

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We note here that during the drafting of the Constitution, various systems of proportional representation were considered, but the FPTP system was eventually adopted to avoid fragmented legislatures and to facilitate the formation of stable governments.

### Proportional Representation (PR)

Proportional representation (PR) is a concept in which the number of seats won by a party or group of candidates is *proportionate to the number of votes received*.

#### Key Variants of PR

The system of proportional representation has many variants, out of which two systems are most popular viz. List system and System of single transferable vote.

#### List system

In the list system, political parties present lists of candidates in advance, who are awarded seats in proportion to their party's vote share, usually with some minimum prescribed thresholds.

#### Method of the single transferable vote

In this system, the voters make an electoral college and while voting, they rank candidates in order of preference. Their vote is allotted to their first preference, and if no one emerges with a majority, the least voted candidate is removed from consideration and the second choices of those who voted for him are taken into consideration. This process continues till a winner with a majority emerges.

#### PR System in India

India is not new to PR system; in our country, the following elections are held on the basis of



proportional representation:

- President
- Vice President
- Members of Rajya Sabha
- Members of state legislative council

### **Analysis of Proportional Representation**

Proportional representation undoubtedly falls second in competition with the FPTP system in terms of simplicity in voting, but it scores higher in terms of convenience during campaign. Candidates can simply focus pointed attention on defined groups to appeal to, and consequently, the problems of campaign financing do not feature as prominently in the process.

### **Proportional System and Stability**

Because parties are granted seats in accordance with their vote share, numerous parties get seats in the legislature in the proportional representation system, without any party gaining a majority. This detracts from the stability of the system. Coalition government becomes inevitable, with challenges to such governments also becoming frequent. This is also why the Constituent Assembly decided that proportional representation would not be suited to the Parliamentary form of government that our Constitution lays down.

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### **Proportional System and Representativeness**

Proportional representation, tries to ensure that the election results are as proportional as possible, by curbing the inconsistency between the share of seats and votes. It ensures that smaller parties get representation in the legislature, particularly when they have a broad base across constituencies. It also encourages new parties to emerge and more women and minorities to contest for political power.

Proportional representation ensures honesty in the election process both from the side of the candidate, who can choose their ideological commitments freely, and from that of the voter, who can vote freely.

### **Proportional System and Voter-Candidate Connect**

One potential drawback of this system is that the relationship between a voter and the candidate may dilute, for the candidate may now be seen as representing the party and not the constituency. The other way of looking at this is that a constituent could approach any representative of their choice in case of a grievance, which plays out as an advantage of this system.

### **Conclusion**

As the discussion above has demonstrated, both electoral systems come with their own merits and demerits – proportional representation theoretically being more representative, while the FPTP



system being more stable. It can be suggested from the experience of other countries to follow a hybrid pattern combining elements of both direct and indirect elections. This, in turn will necessitate an increase in the number of seats in the Lok Sabha, which raises concerns regarding its effective functioning.

## **Anti-defection Law**

Anti-Defection Law is contained in the Tenth Schedule of the Constitution, which was introduced by the 52<sup>nd</sup> Amendment in 1985 during tenure of Rajiv Gandhi. Earlier, 10th schedule was related to association of Sikkim with India. Once, Sikkim became full fledged state, this schedule was repealed via the 36th amendment act.

### **Definition of defection**

Defection is defined as “*to abandon a position or association, often to join an opposing group*” which essentially describes a situation when a member of a particular party abandons his loyalty towards that party and provide his support (in the form of his vote or otherwise) to another party.

### **Historical Background**

Originally, the Constitution of India carried no reference to political parties and their existence. Since multi-party democracy had not evolved in 1950s and early 1960s, the heat of defections and their implications were not felt. Things however, changed after the 1967 elections. The 1967 elections are thus called a watershed moment in India’s democracy.

### **What happened in 1967 elections?**

In 1967, some sixteen states had gone to polls. The Congress lost majority in them and was able to form government only in one state. This was the beginning of coalition era in India. This election also set off a large scale defections. Between 1967 to 1971, some 142 Mps and over 1900 MLAs migrated their political parties. Governments of many states, beginning from Haryana, collapsed. The defectors were awarded with plum ministries in the governments, including Chief Ministership in Haryana. In Haryana, one legislator “Gaya Lal” changed party for three times and thus, all defectors used to be called “Aaya Ram-Gaya Ram”.

However, the issue was not addressed immediately. It took further 17 years to pass the anti-defection law in 1985. The 52th amendment of the Constitution in 1985 inserted 10th schedule in the constitution with Provisions as to disqualification on ground of defection.

### **52nd Amendment Act**

In this amendment, articles 101, 102, 190 and 191 were changed. It laid down the process by which legislators may be disqualified on grounds of defection. As per this process, a member of parliament or state legislature can be disqualified on the following grounds:





### Members of a Political Party

- When voluntarily resigned from his party or disobeyed the directives of the party leadership on a vote.
- When does not vote / abstains as per party's whip. However, if the member has taken prior permission, or is condoned by the party within 15 days from such voting or abstention, the member shall not be disqualified.

### Independent Members

If a member has been elected as "Independent", he / she would be disqualified if joined a political party.

### Nominated Members

Nominated members who were not members of a party could choose to join a party within six months; after that period, they were treated as a party member or independent member.

### Exceptions

- If a person is elected as speaker or chairman then he could resign from his party, and rejoin the party if he demitted that post. No disqualification in this case.
- A party could be merged into another if *at least one-thirds of its party legislators voted for the merger*. The law initially permitted splitting of parties, but that has now been made two-third.

As soon as this law was passed, it was met with severe oppositions on logic that it impinged on right to free speech of legislators. A PIL was filed in the Supreme Court in the form of famous *Kihoto Hollohon vs Zachillhu and Others (1992)*. This PIL had challenged the constitutional validity of the law. But SC upheld the constitutional validity of 10th schedule. Court also decided that the law does not violate any rights of free speech or basic structure of the parliamentary democracy.

However, Supreme Court also made some observations on Section 2(1) (b) of the Tenth schedule. Section 2(1) (b) reads that a member shall be disqualified if he votes or abstains from voting contrary to any direction issued by the political party. The judgement highlighted the need to limit disqualifications to votes *crucial to the existence of the government* and to matters *integral to the electoral programme of the party*, so as not to 'unduly impinge' on the freedom of speech of members.

### 91st Amendment Act, 2003

Earlier, a 'defection' by **one-third** of the elected members of a political party was considered a 'merger'. The *91st Constitutional Amendment Act, 2003*, changed this. So now at least **two-thirds** of the members of a party have to be in favor of a "merger" for it to have validity in the eyes of the law. The 91st Amendment also makes it mandatory for all those switching political sides – whether singly or in groups – to resign their legislative membership. They now have to seek re-election if they defect.

### Summary of Provisions Regarding Tenth Schedule



### Conditions of Disqualification

- If a member of a house belonging to a political party:
  - Voluntarily gives up the membership of his political party, or
  - Votes, or does not vote in the legislature, contrary to the directions of his political party.
- However, if the member has taken prior permission, or is condoned by the party within 15 days from such voting or abstention, the member shall not be disqualified.
- If an independent candidate joins a political party after the election.
- If a nominated member joins a party six months after he becomes a member of the legislature.

### Power to Disqualify

- The Chairman or the Speaker of the House takes the decision to disqualify a member.
- If a complaint is received with respect to the defection of the Chairman or Speaker, a member of the House elected by that House shall take the decision.

### Exceptions – Merger

A person shall not be disqualified if his original political party merges with another, and:

- He and other members of the old political party become members of the new political party, or
- He and other members do not accept the merger and opt to function as a separate group.

This exception shall operate only if not less than **two-thirds** of the members of party in the House have agreed to the merger.

### Court's Intervention

All proceedings in relation to any question on disqualification of a member of a House under this Schedule are deemed to be proceedings in Parliament or in the Legislature of a state. No court has any jurisdiction. This was subsequently struck down by the Supreme Court. Currently, the anti-defection law comes under the judicial review of courts.

### Various Supreme Court Judgments on Anti-defection Law

Beginning with *Kihoto Hollohon vs Zachillhu And Others (1992)* case, various provisions regarding anti-defection law have been challenged in the Supreme Court. The Key issues and Supreme Court observations are listed below:

#### Kihota Hollohon vs. Zachilhu and Others (1993)

- **Issue:** If the 10th schedule curtails the freedom of speech and expression and subvert the democratic rights of the elected members in parliament and state legislatures.
- **SC Judgement:** The 10th schedule neither impinges upon the freedom of speech and expression nor subverts the democratic rights of elected members. The 10th schedule is constitutionally valid.



- **Issue:** Is granting finality to the decision of the Speaker/ Chairman is valid.
- **SC Judgement:** This provision is valid however, High Courts and the Supreme Court can exercise judicial review under the Constitution. But the Judicial review should not cover any stage prior to the making of a decision by the Speakers/ Chairmen.

### **Ravi S Naik v. Union of India (1994)**

- **Issue:** If only resignation constitutes “voluntarily giving up” membership of a political party.
- **SC Judgement:** There is a wider meaning of the words “voluntarily giving up membership”. The inference can be drawn from the conduct of the members also.

### **G. Vishwanathan v. Speaker, Tamil Nadu Legislative Assembly (1996)**

- **Issue:** If a member is expelled from old party and he joins another party after being expelled, will it be considered as having voluntarily given up his membership?
- **SC Judgement:** Once a member is expelled, he is treated as unattached member in the house but he continues to be a member of the old party as per the Tenth Schedule. If he joins a new party after being expelled, he can be said to have voluntarily given up membership of his old party.

### **Critical Analysis of Anti-defection law**

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The anti-defection law has enabled the political parties to have stronger grip on their members which many times has resulted into preventing them to vote for the lure of money of ministerial birth. It also provides stability to the government by preventing shifts of party allegiance and ensures that candidates elected with party support and on the basis of party manifestoes remain loyal to the party. However, it is also resulted into its unintended outcome i.e. the curtailing to a certain extent the role of the MP or member of state legislature. It is culminated into absence of constructive debates on critical policy issues. The whip has become all the more powerful and has to be followed in all circumstances.

### **What reforms are needed in Anti-defection law?**

Following are the key reforms needed in anti-defection law.

- The decision making power of speaker / chairman needs review
- The phrase “voluntarily giving up membership” is too vague and needs comprehensive revision.
- Political parties should limit issuance of whips to instances only when the government is in danger

The Election Commission had recommended that the decisions under the Tenth Schedule should be made by the President/ Governor on the binding advice of the Election Commission. A constitutional amendment vesting the power to decide matters relating to disqualification on the



ground of defection with the President/Governor acting on the advice of the Election Commission would actually help in preserving the integrity of the Speaker's office.

## Whip

Whip is an official appointed to maintain discipline among, secure attendance of, and give necessary information to, members of his party. The other functions are as follows:

- Serve as channel of communication between party and its members
- Gauge the opinion of the members and communicate it to party leaders.

There are three types of whip viz. one-line, two-line or three-line, depending on the number of times the text is underlined, reflecting the urgency and importance of the whip.

### Whip in India

In India, the party whip directs the party members to stick to the party's stand on certain issues and directs them to vote as per the direction of senior party members. Whip cannot be used in all cases. For example, Political parties cannot issue any direction or whip to members to vote or not in Presidential poll. The implication of a not to follow a Whip on Member's part is to risk losing their seat in Parliament on account of defection.

Issuing whips is an age-old practice in several mature democracies and their functions are almost same in all of them.

### Whip in US

In United States, Whip gauges the number of legislators against or in support of a bill and to the extent possible; persuade them to vote according to the party line on the issue.

### Whip in UK

In United Kingdom, violation of a three-line whip is taken seriously. Many a times, it can result in expulsion of the member from the party. However, unlike India, it does not amount to defection in UK. A member expelled from the party can continue in Parliament as an independent until the party admits the member back into the party. (280 words)

### Analysis: Whip in India and its implications

In India, the concept of the whip was inherited from colonial British rule. Every major political party appoints a whip responsible for the party's discipline and behaviour on the floor of the house. Due to the 10<sup>th</sup> schedule or anti-defection law, a member can potentially result in the MP losing his seat in Parliament if he votes against the party whip. It is observed that many a times, a whip curbs the free individual will of a party member and they are not able to exercise their own judgement and articulate their own opinion. Thus, there is a need to build a political consensus in the country so that enough room can be given for political and policy expression for an individual member. One example is "Free Vote" system of United Kingdom, whereby political parties allow the members to



vote as they wish on certain issues.

The fear of losing seat in the house due to anti-defection law, the whip system reduces the MPs to a mere headcount on the floor of the House. It effectively leads to a tendency to develop “forced consensus” on certain issues and bills.

Thus, what is needed is that whip should be some important bills where the survival of the government is in question and not on every ordinary bill.

## **Regulatory Framework on Political Parties**

In the constitution, the only reference to political parties is found in the 10th schedule (disqualification). Framing and administering the rules for political parties comes under EC. EC has the ultimate power to register or deny the registration of any association of people as a political party or assign it status of a national party.

RoPA 1951 makes it mandatory for any association of the individuals calling itself a political party to make application to EC for registration as a political party within 30 days following the date of its formation. The Election Commission's decision in this matter is final.

Regarding the accountability, functioning, funding and expenditure RoPA has certain provisions which empower the EC for handling these. Via the section 29C of RoPA, all registered political parties are required to submit an annual report to the ECI on all contributions in excess of Rs 20,000, without which no political party is eligible for any tax relief provided to political parties under the RPA. EC can ask for all information regarding their funding and expenditure even as a requirement to register an association of people as political party.

However, the issue is that despite EC having overarching powers, there are almost no provisions with respect to penalties on defaulters.

Section 29A of RoPA makes EC a quasi-judicial body with reference to such matters. Due to this, once a political party is registered, the EC has no powers to review the registrations for having violated the undertaking given at the time of registration. EC can cancel the registration of a political party only on the grounds of a registration via fraudulent means or declared unlawful by court / government or if the party itself says that it has ceased to exist.

In conclusion EC has symbolic powers regarding the registration and de-registration of the parties. Regarding reforms, the M.N. Venkatachaliah committee had recommended for a separate legislation to regulate political parties. This recommendation along with some other reports of law commission led to creation of the draft Political Parties (Registration and Regulation of Affairs, etc) Bill, 2011. This bill was prepared by Centre for Standards in Public Life (CSPL). It was never introduced in any house, but its provisions can help you to make good points in your answer. These are as follows:



- It made legally binding provisions of maintenance and reporting of funds in excess of Rs. 20000.
- It set strict norms for observance of internal democracy, it gave power to registrar of the political parties to direct special audit of accounts and there were provisions of fine, imprisonment and withdrawal of registration on non-compliance.

### Issue of Bringing Political Parties under RTI

In June 2013, CIC via an order had declared the political parties as *public authorities* and brought them under the RTI Act. It also asked them to appoint appellate bodies to answer RTI queries. Under Section 2(h) of the RTI Act, a public authority is defined as any 'non-governmental organization substantially financed, directly or indirectly, by funds provided by the appropriate government'.

The move to place political parties under Right to Information Act had drawn up sharp protests from all major parties. The issue is still under debate and political parties still don't come under RTI.

#### Arguments of Political parties

The move has attracted sharp protests from all major parties on account of one argument – that the political parties are not public authorities. Further, they also opine that Bringing Political Parties under RTI would hamper their internal working and political rivals may misuse the law thus adversely affecting functioning of the political parties.

#### Arguments of CIC

On the other hand, argument of the CIC is that political parties are public authorities as they receive financial aid including land from the government. Further, the political parties get total exemption under Section 13A of the Income-Tax Act for all their income and get free air time on All India Radio and Doordarshan during elections. These aspects make them public authorities, bringing them under RTI.

#### Analysis

Placing political parties under the RTI Act will open politics to public scrutiny, regulate political party funding and clean up our electoral ecosystem. Transparency will also discourage transactions of ambiguous nature, for example, Congress's reported Rs 90-crore loan to a non-profit company, Young Indian, owned by Congress President Sonia Gandhi and Vice President Rahul Gandhi. In this way, the move seems very affirmative and effective which would ensure transparency and accountability in the governance system. But, it has also a potential which would create instability and Political parties use it against each other to create logjam. This fear was expressed in the move of the legislators when during the previous Lok Sabha, the government tried to overturn the CIC and SC order by resorting to amend the law itself, when UPA-II introduced the infamous Right to Information Amendment Bill, 2013, to specifically exclude political parties from RTI requests. With



extremely low level of credibility that politicians as a class have in India, it furthers the belief that political parties have much to hide.

## **Election Freebies**

In India, the culture of promising freebies in election manifesto has been spreading extensively. The ethicality and legality of such promises has been the subject of debate for a while now. This issue was brought to the forefront when the issue was tackled by the Supreme Court.

### **S.Subramaniam Balaji v. Government of Tamil Nadu**

In the above case, the Court delved into the legality of promising freebies in election manifestos. The Court opined that freebies shook the 'root of free and fair elections to a large degree.' However, the distribution of colour TVs, laptops, mixer-grinders etc. by the government in accordance with the laws currently prevalent in the country cannot be ruled as being against 'public purpose'. The Supreme Court ruled that promises made in an election manifesto cannot be construed as a 'corrupt practice' under section 123 of the Representation of the People Act, 1951. And since no legislation governs election manifestos, it directed the EC to frame appropriate guidelines.

### **Arguments furthered by political parties**

Distribution of freebies in any form is not prohibited by any law in force in India. The Courts have already held that handing out of freebies is not a corrupt practice. In fact, since the goal of our constitution-makers was to build a welfare state, it is the responsibility of political parties to further that cause. Generally, political parties, especially the national parties, release their election manifestos before the Election Commission announces the date of elections. The Election Commission's guidelines kick in only after the dates have been announced, and in this instance the Election Commission will have no authority to monitor the promises made in the Election Manifesto.

When political parties promise certain freebies, the intention is not for these promises to act as bribes or as a means of exercising undue influence on voters. It is just a statement to the people highlighting how if brought to power, that party will serve its voters. Thus, framing of manifestos is the right of political parties, and must not be interfered with.

### **Arguments furthered by the Election Commission**

Article 324 of the Constitution gives the Election Commission powers to issue any orders that may be required to enable it to hold free and fair elections. Hence, there is no limitation on its power to monitor political parties' activities. Also, the Supreme Court specifically directed the Election Commission to frame guidelines with regard to freebies, hence, there is an underlying assumption that the EC does have the authority to monitor promises made in manifestos. An exception favouring the EC is warranted in the specific instance of election manifestos because they are





associated with the election process, and have no value on a standalone basis. Also, it is the EC's responsibility to ensure a level playing field for all parties and candidates, and also ensure that the voters are not taken for a ride. Hence, it is the EC's responsibility to look into election manifestos.

### **Model Code of Conduct for the Guidance of Political Parties and Candidates**

The Election Commission in Chapter VIII of its Model Code of Conduct titled 'Guidelines on Election Manifestos', has enumerated the rules that political parties must follow while making poll-time promises in their election manifestos. The guidelines are as follows:-

- The Election Manifesto shall not contain any promises that go against the ideals and principles enshrined in the Constitution
- India was envisioned as a welfare state under the Directive Principles of State Policy in the Constitution. Therefore, there can be no bar on the state adopting welfare measures. But, political parties must refrain from making promises that undermine the purity of the election process or aim to exert undue influence on the voters
- There must be transparency w.r.t to the promises and how the parties aim to implement their promises. The promises must also be credible. Wherever freebies are offered, parties must broadly state how they plan to gather the funds and finances to fulfil such promises.

### **Alternatives to freebies**

Setting aside the issue of the Election Commission's right to regulate manifestos, the rationality behind giving freebies itself can be questioned. In many instances, freebies offer only temporary solutions to the larger problem, instead of looking for a permanent solution to resolve the problem once and for all. For instance, in the Delhi Assembly Elections, almost all major parties have promised reduction of power bills. However, in light of increasing costs of inputs that are used to generate power and paucity of supply, the government will have to heavily subsidize the distribution companies. In the Budget for Delhi presented in July 2014, there was already a provision of Rs. 260 crores to cover the cost of subsidizing households. This figure is set to increase substantially once the new government is in place in Delhi. Therefore, this plan of subsidizing electricity will not work in the long-term. However, if instead of promising such freebies, the parties aimed to promote power generation, and increase the supply of electricity, the prices will automatically reduce with no requirement of continuous subsidising. Similarly, there are multiple election promises such as free Wi-fi which espouse an excellent idea, but fail to state where the financial resources for providing such facilities will be procured from, or paint even a broad picture as to how the idea will be implemented. And this occurs despite the Election Commission's guidelines being in place. Hence, it would be more beneficial for parties to offer people permanent solutions to their problem in the election manifestos instead of a slew of seemingly advantageous, but temporary stop-gap measures.





## Paid News

The Press Council of India (PCI) defines paid news as any news or analysis appearing in print or electronic media for consideration in cash or kind. However, it is very difficult to prove that a particular news or analysis appeared in newspaper was paid. So, there are challenges in defining and determining what constitutes or qualifies as 'paid news'. A parliamentary committee on paid news also include the following under the paid news in its report submitted to Parliament in May 2013.

- Advertisements camouflaged as news
- Denial of coverage to select electoral candidates
- Rise in paid content
- The parliamentary committee had advised the government to formulate a comprehensive legal definition of 'paid news'. The committee suggested that 'circumstantial evidence' should be used in identifying paid news.

### Why Paid news is on rise?

Most of the Indian media are for profit and owned by corporate. The major reasons why the Paid news has become "pervasive, structured and highly organised" are as follows:

- Corporatisation of media rajawat.rs.surajsingh@gmail.com | www.gktoday.in/upsc/ias-general-studies
- Desegregation of ownership and editorial roles
- Decline in autonomy of editors/journalists due to emergence of contract system
- Poor wage levels of journalists

### Recommendations of the Parliamentary Committee on Paid News

The measures suggested by Parliamentary Committee to tackle the Paid news are as follows:

- Government should ensure periodic review of the editor/journalist autonomy and wage conditions.
- Financial accounts of the media houses should be subject to examination, especially the revenue source for a suspected paid news case.
- There should be a mandatory disclosure of 'private treaties' and details of advertising revenue received by the media houses.
- The exiting regulatory set-up dealing with paid news as inadequate.
- At present, there are voluntary self-regulatory industry bodies such as News Broadcasting Standards Authority and Broadcasting Content Complaints Council are just an 'eye wash'.
- The punitive powers of statutory regulators like the PCI and Electronic Media Monitoring Centre (EMMC) are inadequate. There has been a conflict of interest inherent with appointment of media-owners as members of the PCI or self-regulatory bodies.



- The Parliamentary committee suggested that either there should be a single regulatory body for both print and electronic media or the punitive powers of the PCI should be enhanced and a similar statutory body for the electronic media should be established.
- Such regulators should have the power to take strong action against offenders and should not include media owners/interested parties as members.
- ECI should have the authority to take punitive action against electoral candidates in cases of paid news. It endorsed the ECI's proposed amendments to the RP Act and urged the government to provide the ECI with more powers to deal with paid news.
- Committee observed that existing penal provisions have not served as an effective deterrent for the practice of paid news and stricter penal provisions are needed. It highlighted the lack of clarity regarding the jurisdiction of the designated authority to penalise offenders, given existence of multiple bodies like the MoIB, PCI, EMMC and ECI.

The parliamentary Committee also said that Government had failed to take appropriate measures as a follow up to various recommendations made by the PCI and the ECI.

### **Press Council of India Recommendations**

The PCI had sought amendment in the Press Council Act, 1978, to make its directions binding on government authorities and bring the electronic media under its purview. The recommendations were as follows:

- Representation of the People Act, 1951 should be amended to make incidence of paid news a punishable electoral malpractice.
- The Press Council of India must be fully empowered to adjudicate the complaints of 'paid news' and give final judgment in the matter.
- Press Council Act be amended to make its recommendations binding and electronic media be brought under its purview, and
- Press Council of India should be reconstituted to include representatives from electronic and other media.
- The measures sought by the Election Commission of India
- The ECI has made a reference to the Ministry of Law and Justice to amend the Representation of the People Act, 1951 (RP Act) in order to include indulgence of an electoral candidate in paid news as a corrupt practice.
- It also recommended inclusion of abetting and publishing of such paid news as an electoral offence with minimum punishment

### **Efforts done by Election Commission**

Paid news is still a widespread phenomenon in India. There is no blanket prohibition nor is there a



provision exclusively dealing with political advertisement or paid news. Thus, legal position of Paid News is such that it cannot be eliminated 100% without very strong law as well as media being ethical. This seems impossible in current environment. Yet, the efforts made by ECI in its limited capacity are worth praises. The Election Commission of India (EC) has estimated (on the basis of its internal assessment) the market of paid news to be of as much as Rs.500 crore. According to the estimates of the Election Commission, around 40% of the election expenditure of political parties is earmarked towards publicity that includes media advertisements. Of the total amount paid to media firms, EC estimates half to be towards paid news.

- The biggest hurdle for election commission of India to tackle the problem is that, paid news is not an electoral offence. The election commission had proposed to the law ministry to make it an electoral offence. Thus, legal position cannot be used by Election Commission to punish those in media. Such matters are referred to the PCI by the ECI, but eventually PCI has its members from those in media houses so never ever anyone punished.
- At the same time, Election Commission is handling the problem on the basis of the expenditures done by a candidate in elections. This finds its legal base in the Representation of the Peoples Act. raj\_winner | rajawat.rs.surajsingh@gmail.com | www.gktoday.in/upsc/ias-general-studies
- Under sections of the Representation of the People Act, a candidate is required to maintain an account of election expenses and ensure these do not exceed the prescribed limit. A candidate has to file expenses with EC within 30 days from the date of declaration of election results. If the expenditure is mis-stated, a candidate can be served a notice and disqualified for three years. If already elected by the time the scrutiny is complete, the person may lose the seat.
- On the basis of this, in October 2011, the Election Commission had disqualified Umlesh Yadav, the sitting MLA from Bisauli in Uttar Pradesh, under Section 10-A of the Representation of the People Act 1951 for a period of three years for failing to provide a “true and correct account” of her election expenses. She had failed to include in her official poll accounts the amount she spent on advertisements, dressed up as news, in two Hindi dailies, Dainik Jagran and Amar Ujala, during her 2007 election campaign.
- This was a historic decision as no sitting MP or MLA before Ms Yadav was ever disqualified by the ECI on grounds of excessive expenditure. This was also the first verdict in the paid news saga
- Apart from that, ECI had issued a set of guidelines to monitor political advertisement during election campaigns. Most notable of them are as follows:
- The state Chief Electoral Officers will have to obtain a list of all TV and Radio Channels and



newspapers in the state with their standard rate cards six months before the term of the Lok Sabha or Assembly in state expires.

- There will be a Media Certification and Monitoring Committee at district and state level, which will monitor all political advertisements in relation to candidates.

Apart from that, Election commission has taken help of senior officials of the Income Tax Departments to head its poll expenditure monitoring wing to check the practice of 'paid news' and other abuses of money power in elections. Following the *name and shame policy*, the Election Commission of India (ECI) has decided to upload the names of media houses and candidates on its website if they are found guilty of indulging in paid news.

### Opinion Polls

Pre-election opinion polls and exit polls have become a regular feature in the last one and half decades within the Indian electoral landscape. Opinion polls are conducted by polling agencies and disseminated widely by the electronic and print media

#### ECI guidelines

The earliest attempt to regulate opinion polls was made in 1998 when the ECI took an overall view of the situation and issued an order laying down "*Guidelines for Publication and Dissemination of Results of Opinion Polls/Exit Polls*", including government-controlled electronic media, in connection with the conduct of opinion polls and exit polls by them.

Currently, opinion polls are barred from being published in electronic media for 48 hours prior to an election in that polling area under Section 126(1)(b) of the RP Act, 1951. The contravention of Section 126(1)(b) is punishable under Section 126(2) with imprisonment for a term which may extend to two years or with fine, or with both.

The ECI has strongly argued for further restriction on publication of opinion polls. Such restrictions are necessary because Section 126(1)(b) applies only to electronic media. This essentially means that an anomalous situation is created where the publication of the findings of opinion polls in print media remains unregulated.

#### Issues and challenges

##### Effects on the purity of the electoral process

Legitimate apprehensions regarding the accuracy of opinion polls. There are a number of instances where election results predicted by such polls turned out to be incorrect, by a large margin.

##### Potential of opinion polls to influence voters

The central justification for the regulation of opinion polls is the preservation of the sanctity and integrity of the electoral process. Concerns on this count arise on the grounds that opinion polls are able to influence electoral behaviour and distort electoral outcomes. This refers to the case where



information predicting the victory of a candidate could lead to votes being switched in his or her favour and away from other candidates. Second, voters may favour candidates not predicted to win, so that the prediction or appearance of success undermines the actual outcome. On the other hand, an argument against opinion polls has been that information from opinion polls confuses voters.

### **Independence of polling agencies**

The independence of the agencies/organisations is threatened by the possibility of opinion polls being manipulated to favour certain political parties, or through bias in choosing sample sizes. More importantly, for a first-past-the-post system like ours, this can spell drastic changes in election results and hence, the need for regulation of opinion polls should be urgently addressed.

### **Issue of robustness in findings**

While the findings of opinion polls in India are largely considered to be fallible, it has been argued that a few instances of manipulation, in whatever manner they exist, do not make a case for an outright ban. Instead, they call for better regulation of opinion polls. A total prohibition on publication and dissemination of results of opinion polls may amount to an infringement of the right under Article 19(1)(a) of the Constitution.

### **Suggestions and way forward**

The ban on opinion polls in the electronic media does not extend to the print media and section 126(1)(b) of RPA, should be amended to prevent the publication, publicity, or dissemination of any election matter by print or electronic media. The regulation of opinion polls is necessary to ensure the credentials of the organisations conducting the poll is made known to the public. Further, public has a chance to assess the validity of the methods used in conducting the opinion polls and the public is made adequately aware that opinion polls are in the nature of forecasts.

## **Issue of Compulsory Voting**

The idea of making voting compulsory in response to declining voter turnout in elections have been debated for many years. This section attempts to cover the issue of compulsory voting and its implementation in detail.

### **Attempts in the past to make voting compulsory:**

The idea of making voting compulsory was rejected by Dr. B R Ambedkar on account of *practical difficulties* during the discussion on the People's Representation Bill in Parliament in the year 1951. Since then, many committees have discussed the issue and one such committee was *Dinesh Goswami Committee (1990)*. The Dinesh Goswami Committee briefly examined the issue. The idea was again rejected on the grounds of practical difficulties in implementing.

Private Member's bills for making voting compulsory:

- In July 2004, the Compulsory Voting Bill, 2004 was introduced as a Private Member Bill by



Mr. Bachi Singh Rawat. The Bill envisaged to make it compulsory for every eligible voter to vote and exemption was provided only in certain cases, like that of illness etc.

- JP Agarwal in 2009 introduced a Private Member Bill related to compulsory voting. The bill proposed to make voting mandatory and also cast the duty upon the state to ensure large number of polling booths at convenient places, and special arrangements for senior citizens, persons with physical disability and pregnant women.
- a private member's bill on Compulsory Voting moved by Janardan Singh in the year 2015.

### Voting pattern of 2014 Lok Sabha elections

The overall turnout in the nine phased 2014 Lok Sabha polls is 66.38%. It is the highest in the history of Lok Sabha elections in the country surpassing the 64.01% which was polled in 1984 elections in the wake of assassination of former PM Indira Gandhi. State-wise the highest turnout was recorded in Nagaland (87.82%) and the lowest turnout was recorded in Jammu and Kashmir (49.52%).

The highest male turnout was reported in Nagaland (88.15%) while the highest female turnout was reported in Lakshadweep (88.42%). Female voter turnout in percentage was reported to be higher than male turnout in 16 States and UTs.

### Arguments in favour of compulsory voting:

- Compulsory voting will strengthen democracy. It is argued that if compulsory voting was introduced, Parliament will be able to reflect more accurately, the will of the electorate. Compulsory voting will ensure that people take politics more seriously and will begin to take more proactive role. Further, citizens who live in a democratic state have a duty to vote, which is an essential part of that democracy.
- A person always has the option to press NOTA button if he does not like the candidates who are contesting the elections.
- Compulsory voting benefits the prevention of extremist and special interest groups from grabbing power. Otherwise if less number of people vote then it becomes easier for the special interest groups to motivate a small section of people and influence the outcome of the election process.
- Financial resources can be saved as Election Commission no longer needs to spend money in convincing people about the need to vote.

### Arguments against making voting compulsory

- Practical difficulties such as remoteness of polling booths, difficulties faced by certain classes of people like daily wage labourers, nomadic groups, disabled, pregnant women etc. in casting their vote. There is a need for government to create an enabling environment for the voter to cast his vote. This included updating of electoral rolls, timely distribution of voter ID cards to



all individuals and ensuring easy access to polling stations etc.

- Compulsory voting may be in violation of the fundamental rights of liberty and expression that are guaranteed to citizens in a democratic state. So every individual should be able to choose whether or not he or she wants to vote. The right to cast one's vote is only a statutory right, the Supreme Court has recognised that the act of choosing one candidate over another falls under the freedom of expression guaranteed in Article 19(1)(a) of the Constitution. Therefore, active participation in a democratic set up must be voluntary, and not coerced.
- The expenditure increases with enforcing compulsory voting. For instance, the cost per voter in 2009 Lok Sabha elections is Rs.12. If in case a large number of voters who do not want to vote presses NOTA button, then it becomes an unnecessary expenditure without any decisive outcome on the election.

### Attempts of state governments to make voting compulsory

#### Gujarat Local Authorities Laws (Amendment) Act, 2009

- Gujarat became the first state to make voting compulsory in local bodies (municipal as well as panchayat polls) with the enactment of the Gujarat Local Authorities Laws (Amendment) Bill, 2009.  
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- It shall now be the duty of a qualified voter to cast his vote at elections to each of these bodies.
- Also, the Act contains a provision to fix the reservation for women in local bodies at 50 per cent.
- The Act carves provides for certain exemptions for certain individuals from voting if
  - He/ She is rendered physically incapable due to illness etc.;
  - He/ She is not present in the state of Gujarat on the date of election; or
  - for any other reasons to be laid down in the Rules.
- The Act empowers an election officer to serve a notice if a person has failed to vote at the election. The voter is then required to provide sufficient reasons within a period of one month, failing which he is declared as a “defaulter voter”. According to the Act, if a voter failed to vote for reasons other than those permitted in the rules he may be declared a “default voter”. The defaulter voter can challenge this order before a designated appellate officer, whose decision will be final.
- The government had announced Rs 100 as fine to those who fails to vote without proper reason.
- It had been rejected by earlier governor Kamla Beniwal stating that it violates Article 21 of the Constitution and the principles of individual liberty.



- The law was passed in 2009 and again in 2011 when Narendra Modi was the chief minister. Former Governor Kamla Beniwal did not give her assent. Finally it got nod from Governor O.P. Kohli.

### Criticism:

- Section 79(d) of the Representation of the People Act says: that “electoral right” includes the right “to vote or refrain from voting at an election”.
- Recently the Gujarat High Court stayed its implementation after a public interest litigation challenging the constitutional validity of the Act.
- Constitutional expert and former election commissioner Hs Brahma had dubbed the law as “impractical” and “impossible to implement” in the country.

### Karnataka Panchayat Raj Amendment Act, 2015:

- This Act like the Gujarat Local Authorities Laws Act, 2009, makes voting compulsory in gram panchayat elections. Although voting was made compulsory, violations will not attract legal sanctions.
- This Act has made voting compulsory in the elections to 5,844 gram panchayats in Karnataka on May 2015.
- The new Act has 50 per cent reservation for women.
- According to the state government, voting was made compulsory to create more awareness among the people about the importance of exercising one's franchise.

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### Setback

According to post poll data, the Act has failed to serve its purpose. There has been no increase, not even a marginal one, in the voter turnout as compared to the previous gram panchayat elections (2010). The main reason according to some is the absence of punitive clause for those voters who failed to vote made others to take this Act lightly.

### Stand of Election Commission on compulsory voting

Election Commission filed an affidavit in July 2015 in response to a Public Interest Litigation (PIL) that wants a direction to the commission to frame guidelines for making voting mandatory.

In the affidavit, the Election Commission had informed the Supreme Court that:

- Right to Vote was not a fundamental right but statutory.
- Voting cannot be made compulsory since as it would violate the constitutional right of freedom of speech and expression.
- “The decision taken by the voter after verifying the credentials of the candidate either to vote or not to vote is his right of expression under the constitution. Freedom of expression means not only right to vote but would also include the right not to vote,” read the affidavit.





While States has the right to adopt laws in tune with the aspirations of its people, it would be better to evolve a wider consensus before implementing the legislation such as this, which has far-reaching consequences.

### **Compulsory voting in other countries**

Compulsory voting laws were introduced in *Belgium* in 1892, *Argentina* in 1914, *Australia* in 1924. Several other countries like *Brazil*, *Bolivia*, *Singapore*, *Cyprus* etc. have made voting compulsory for their citizens. Certain other countries like *The Netherlands*, *Austria*, *Fiji*, *Italy*, *Venezuela* have repealed such legal requirements after they had been in force for decades.

## **Right To Recall**

The right to recall (RTR) is one of the facets of direct democracy that refers to a process whereby an electorate is able to recall an elected representative for under-performance, corruption, or mismanagement while still in office, by filing a petition that triggers a reelection usually after a particular percentage of people sign the petition.

Currently, provisions for right to recall are prescribed for local elections in Chhattisgarh, Madhya Pradesh, Rajasthan, and Maharashtra and there are demands for introducing this system at the state and parliamentary level. suraj\_winner | rajawat.rs.surajsingh@gmail.com | www.gktoday.in/upsc/ias-general-studies

Section 47 of the Chhattisgarh Nagar Palika Act of 1961 provides for the right to recall of elected presidents for non-performance. The recall process is initiated when  $\frac{3}{4}$  of the total elected representatives within the urban bodies write to the district collector demanding recall.

The NCRWC in its 2001 report did not favour the introduction of RTR finding it either “impracticable or unnecessary.”

### **Arguments for Right to recall**

- The arguments supporting the RTR primarily emphasise the importance of direct democracy in holding elected representatives to account by requiring them to seek post-election approval of their electorates. By providing a tool to dissatisfied citizens to rectify their mistake and also RTR serves to deter their underperformance, mis-management, corruption, or apathy.
- Consequent improvement in public trust in governance, insofar as many politicians will deliver good performances and reduce instances of corruption under threat of recall. Introducing the RTR may also deter candidates from spending excess amounts during their campaign, for a fear of being recalled. An incidental benefit is that it will result in voters continually monitoring and assessing political performance in a bid to determine whether they want to exercise their RTR.



### Arguments against RTR

- leads to an “excess of democracy”, wherein the threat of recall undermines the independence of the elected representatives. They will start supporting majoritarian preferences and prejudices at the expense of safeguarding minority interests in passing populist measures.
- The elected representatives will use fear or favour to ensure that they are not recalled.
- RTR threatens to challenge that inasmuch as it incentivises representatives to focus on local, constituency issues instead of larger public interest issues
- Recall petition results in a large number of signatures required to initiate a recall petition, going into lakhs. Not only will the ECI have to verify the authenticity of every single signature to prevent fraud, it will also have to determine whether the signatures are genuine and consensual or obtained via fraud or coercion. Thus, introducing the RTR might have unintended effects in increasing corruption and the use of money and influence if representatives liable to be recalled try and ensure that a recall petition is not initiated against them.

Moreover, there is still the question of implementation and the expenditure of time and monetary resources cost in conducting regular by-elections, supplemented by the fear of election fatigue. On the possibility of misuse, there is a fear that the RTR will be used by dominant caste members to harass lower caste elected representatives.

### Restriction on Number Of Seats Of Contest

Section 33(7) of the RPA permits a candidate to contest any election (parliamentary, assembly, biennial council, or bye-elections) from up to two constituencies, presumably to accord greater flexibility to candidates and increase their chances of winning a seat. Sub-section (7) was introduced through a 1996 amendment, prior to which there was no bar on the number of constituencies from which a candidate could contest; although the amendment did not explain the rationale for restricting the number to two.

However, section 70, RPA stipulates that a candidate can hold only one seat at a time, regardless of whether they have been elected to more than one seat. Thus, if a candidate wins from two seats, section 70 necessitates an unnecessary bye-election at the cost of the exchequer, effort of the ECI, and harassment of the electorate that has to vote again (which might reduced turn out due to election fatigue). Moreover, the cost of conducting a bye-election should not be underestimated.

ECI's 2004 proposal states that the RPA should be amended to provide that a person cannot contest from more than one seat at a time has also been endorsed by the Goswami Committee in 1990, the 170th Law Commission Report in 1999, and the Background Paper on Electoral Reforms prepared



by the Legislative Department of the Law Ministry in 2010.

### **Suggestion**

Keeping in mind the election fatigue and the harassment caused to the voters, it has been widely suggested that section 33(7) should be amended to permit candidates to stand from only one constituency.

## **Voting rights of Overseas Electors and Migrants**

India has a huge population of citizens known as non-resident Indian (NRIs) living abroad temporarily or permanently on account of education, employment and other related reasons. It has been estimated that there are 25 million NRIs across the world.

Earlier, these citizens were not able to participate in election process i.e. registration and voting due to the then prevailing law which required that only a citizen ordinarily resident within the territorial limits of a constituency in the country is eligible to be registered as voter in that constituency. Consequently, NRIs were not able to enroll themselves as voters in their home constituencies and were not able to exercise their franchise.

### **Amendment of RoPA**

The Representation of the People (Amendment) Act, 2010 inserted a new Section 20A to make special provisions for citizens of India residing outside India to get enrolled as an elector in the electoral roll. The provisions of the Registration of Electors Rules, 1960 were also amended and the new rules are called as Registration of Electors (Amendment) Rules, 2011 accordingly and a new Form 6A was inserted for making application for such enrolment by NRIs.

The amendment empowered every citizen of India who has not acquired citizenship of any other country and is otherwise eligible to be registered as a voter and who is absenting from his place of ordinary residence in India owing to his employment, education or otherwise is eligible to be registered as a voter in the constituency in which his place of residence in India as mentioned in his passport is located.

### **Current procedure for enrolment for overseas electors**

Non Resident Indian (NRI) has to file an application in prescribed Form 6A before the Electoral Registration Officer/Assistant Electoral Registration Officer of the Assembly constituency within which the place of ordinary residence of the applicant in India as given in his/her passport falls. Form 6A can be filed online on website of Chief Electoral Officer of the concerned State or website of Election Commission of India. While filing Form 6A on line

### **Existing Provisions for voting by overseas electors**

An overseas elector registered in the electoral roll can vote in an election in the Constituency, in person, at the polling station in which he is registered as an overseas elector



### Problems with the existing system

It is evident that the number of NRIs registered as voters is abysmally low and out of these registered NRIs, the number of voters who actually voted or turn up for voting in the elections may be even poorer. Various reasons have been ascribed to the above state of affairs. The main reason for low turnout for voting could be the provision of law requiring in person presence at polling station.

NRIs have been demanding that NRI should be allowed to vote by alternative methods. Some NRIs have also approached courts.

### Vinod Zutshi Panel

In order to explore the alternative options for voting, a committee was set up under Vinod Zutshi. The committee has suggested the following options:

- The Committee favours postal ballot, where blank postal ballot paper is transferred electronically to NRI and returned by post by NRI. This is to be employed after proofing, validation of the process and pilot implementation in one or two Constituencies. According to the committee, the e-postal ballot system has almost no risk of manipulation, rigging or violation of secrecy.
- The committee recommends that the option of voting through proxy appointed by the overseas electors can be considered to be provided to the overseas electors.
- It had ruled out the possibility of allowing NRIs to vote through the Internet or at diplomatic missions abroad for the time being.

### Need for amendments

In order to enable NRI voters to cast their vote by proposed alternative options of E-postal ballot or proxy voting, necessary amendments may have to be carried out in Section 60 of the Representation of the People Act, 1951.

### Government's stand on the recommendations:

The government told the Supreme Court that the Election Commission's recommendation to extend voting rights to NRIs have been accepted in letter and spirit. Recently, the issue of voting rights to NRIs has been referred to an *11-member panel of ministers*. The panel is mandated to examine its feasibility and also to examine the issue of extending similar voting rights to migrant workers, a move which is vehemently *opposed by the Election Commission*. Both migrant workers and NRIs are denied voting because the Representation of the People Act mandates that "a citizen, to avail voting rights, should be an ordinary resident in his constituency". The EC has, however, rejected another plea to allow inter-state migrants to also have options of postal, proxy or e-ballot to enable them vote for their native constituencies.

**Implications:**

25 million NRIs could participate in the electoral process and will get a chance to redefine the political landscape of the country. It is also estimated that average of 18,000 votes per constituency may get polled from abroad. These additional votes, if polled, may play a crucial role in state and general elections.

**Voting Rights Of Defense Personnel**

The Supreme Court of India on March 24 2014, directed the Election Commission to allow the Armed Forces voters to vote like general electors in the places of their posting (only in peace areas and not on border areas).

- It should be noted that the term 'Armed Forces' also includes central police & para-military forces functioning within the ambit of the relevant Service Act.
- ECI can decide on the modus operandi of voter registration and the method of voting of all voters including the service voters, under the powers vested in it under Article 324 and the Representation of People's Act (RPA).
- The order will also be applicable to the families of such personnel and will do away the rigour of either travelling to the native place where they have been registered as voters, or use the less popular mode of postal ballot and proxy voting.
- The court said the Election Commission (EC) will register them as voters of the constituencies concerned if they have been posted at such stations since January 1, 2014, and have not chosen to vote through postal ballot or proxy voting

**Implications**

In some of the constituencies where the deployment of the service personnel is high or substantial with respect to the indigenous electorate it would alter the demographic composition or intrinsic character of the electorate there. A huge discontent may arise among the local people. This is particularly true in case of the tribal areas of the north eastern states and left wing extremism affected areas and also to some extent in Jammu and Kashmir.

Further the provision has negative political consequences. The impact may be felt more in case of state assembly elections because local opinion may get negated on issues thrown up in the polls when there are divergence in perceptions between the local people and service personnel.

**Opinion**

The existing electoral system provides opportunities and protects the interests of even the small and marginal communities to fulfil their will and aspirations. Indian service personnel have a rich tradition of being apolitical while being allowed to exercise their democratic right of voting in the electoral



process. Service personnel have also been discharging a crucial supportive role to the Election Commission for conducting peaceful and fair elections. So it would be better not to bring any institutional changes which will bring discontent among the civil electorate.

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