



# SUMATI IAS

Article-III

## Representation of People Act, 1951

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## The Representation of People Act, 1950

- The holding of **free and fair elections** is the sine-qua-non of democracy. To ensure the conduct of elections in free, fair and in an impartial manner, the constitution-makers incorporated **Part XV (Articles 324-329)** in the constitution and empowered Parliament to make laws to regulate the electoral process.
- **The Election Commission of India (ECI)** is the watchdog of **free and fair elections** in the country and **Article 324** of the Constitution provides for its establishment.
- **Election Commission of India (ECI):** The ECI as an **independent constitutional authority** was therefore brought into force from **November 26<sup>th</sup>, 1949**.
- In this context, the Parliament has enacted the Representation of the People Act (**RPA**), 1950 and Representation of the People Act, 1951.

## Representation of People Act, 1950

### Constitutional Provisions

- **Article 324** envisages the **provision of the Election Commission of India**. Article 324 empowers the Election Commission of India to **issue rules and guidelines for conducting elections of Parliament, President, Vice President and State Legislature Assemblies in the country**.
- **Article 327** of the Indian Constitution empowers the Parliament **to make law with respect to all matters relating to elections to either House of Parliament or to the House or either House of the Legislature of a State**. The Parliament has made the following laws under this article:
  - Representation of the People Act of 1950.
  - Representation of the People Act of 1951.
  - Delimitation Commission Act of 1952.
  - **Delimitation:** For the purpose of **first general elections** to the Lok Sabha and Vidhan Sabhas, the **first delimitation order** was issued by the President, **in consultation with ECI** and with the approval of Parliament in August 1951.
- **Article 328** empowers the Legislature of a State to make provision with respect to elections to such Legislature subject to the provisions of the Constitution and any

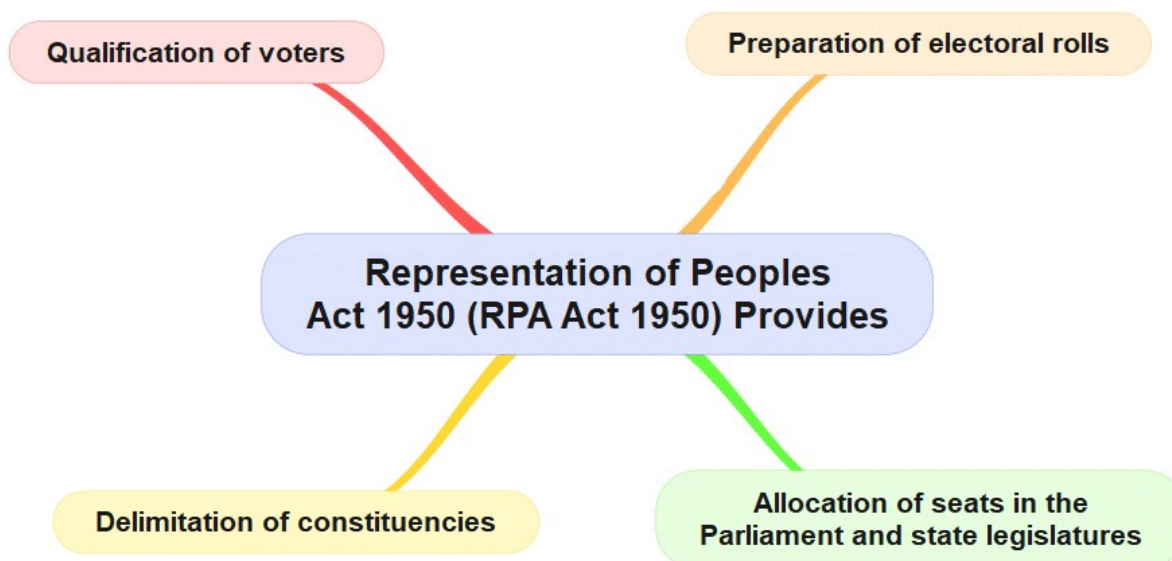
law in that respect made by the parliament (Similar to article 327, with an added restriction under any law made by parliament with that respect).

- **Article 329 prevents any interference by courts in electoral matters.** It provides that the validity of any law made under
- **Article 327 or 328**, like delimitation of constituencies or the allotment of seats to such constituencies **shall not be called in question in any court.** Petition to any dispute regarding election to the parliament or to assembly shall be made in manner and to authority as sanctioned by some law made by an appropriate legislature.

### Definition

- The **Act also sought to give the President the authority to delimit the various constituencies** for the purpose of elections to fill seats in the House of People, Legislative Assemblies, and Legislative Councils of States, **after consultation with the Election Commission.**
- The Act also provided for the registration of electors for Parliamentary Constituencies, Assembly Constituencies, and Council Constituencies, as well as the qualifications and disqualifications for such registration.

### Salient Features



## Parliament

- It provides for the **allocation of seats to the States in the House of the People and the number of seats**, if any to be reserved for the Scheduled Castes and for the Scheduled Tribes of each State.
- All the seats in the House of the People shall be filled by the persons chosen by **direct election** from parliamentary constituencies in the States.
- Every parliamentary constituency shall be a **single member** constituency .

## Electoral Rolls for Parliamentary Constituencies

- Electoral roll for every parliamentary constituency, except Union territory without its own assembly, shall be **sum total of all the electoral rolls of assembly constituencies inside that parliamentary constituencies**.
- The 1950 Act permits the registration of persons in electoral rolls who are **ordinarily resident** in a constituency and persons **holding**:
  - **Service** qualification such as a member of **armed forces, member of the armed police force of a state**, serving outside the state, or central government employees posted outside India.
  - **Certain offices in India** declared by the President in consultation with ECI.
  - The wives of such persons are also deemed to be ordinarily residing in India. There is a proposal for making some provisions **gender-neutral** by replacing the term 'wife' with 'spouse'.

## Legislative Assemblies

- It provides for the **allocation of seats to the Legislative Assembly of each State and the number of seats** if any to be reserved for the Scheduled Castes and for the Scheduled Tribes of the State.
- It is to be filled by direct election from assembly constituencies (not same as parliamentary constituencies).
- Every Assembly constituency shall be a single member constituency.

## Electoral Roll for Assembly Constituency

- Election commission shall be responsible for **making electoral rolls for every constituency** under each assembly and such roll has to be made according to the provisions of this act .

## Delimitation of Parliamentary Constituencies

- Delimitation act is enacted by parliament, after **every census (ten years)**, as provided under the **Article 82** of the Constitution.
- Delimitation Commission is **established by central government under the provisions of new Delimitation act formed after every census**.
- Its task is to **carve out the boundaries of the Parliamentary Constituencies** as per provisions of the Delimitation Act.
- The **present delimitation** has been done using **2001 census** figures under the provisions of **Delimitation Act 2002**.
- Since then, **delimitation of constituencies has been frozen by an amendment in constitution**, which demands **no delimitation of constituencies can be done before the data on next census soon after 2026 is made available**. Thus, the present constituencies carved out on the basis of 2001 census shall continue to be in operation till the first census after 2026.
- The extent of all parliamentary constituencies except the parliamentary constituencies in the Union territory of Arunachal Pradesh shall be as determined by the orders of the Delimitation Commission made under the provisions of the **Delimitation Act 1972** and the extent of the parliamentary constituencies in the Union territory of Arunachal Pradesh shall be as determined by the order of the Election Commission under the provisions of the Government of **Union Territories Act 1963**.
- **Allocation of seats for Scheduled Castes and Tribes in the Lok Sabha are made on the basis of proportion of Scheduled Castes and Tribes in the State concerned to that of the total population, vide provision contained in Article 330 of the Constitution of India read with Section 3 of the Representation of People Act 1950.** For Scheduled Castes 84 seats are reserved in Lok Sabha. The 1st schedule to Representation of People Act 1950 as amended vide Representation of People (Amendment) Act 2008 gives the State wise breakup. For Scheduled Tribes 47 seats are reserved in Lok Sabha. The 1st schedule to Representation of People Act 1950 as

amended vide Representation of People (Amendment) Act 2008 gives the State-wise break up.

### Process of Delimitation of Council Constituencies

As soon as may be after the commencement of Representation of Peoples Act 1950, the **President shall, by order determine:**

- The constituencies into which **each State having a Legislative Council** shall be divided for the purpose of elections to that Council;
- The **extent** of each constituency; and
- The **number of seats** allotted to each constituency.

### Conditions for Registration in Electoral Rolls

- For every constituency, there is a voters list. **Article 326 of the Constitution and Section 19 of Representation of People's Act 1950 stipulates that the minimum age for registration of a voter is 18 years.**
- **Earlier, the age for registration of a voter was 21 years.** Through the **61st amendment Act 1988** of the Constitution read with Act 21 of 1989 amending the Representation of People Act 1950, the minimum age of registration of a voter has been brought down to 18 years. This has been made effective from 28th March 1989.
- **A person cannot be enrolled as a voter in more than one place in the same constituency or in more than one constituency** in view of the provisions contained under Section 17 and 18 of Representation of People Act 1950.
- He should be the **ordinarily resident in a constituency**. A person shall not be deemed to be ordinarily resident in a constituency on the ground only that he owns or is in possession of a dwelling house therein.
- **No civil court shall have jurisdiction to entertain or adjudicate upon any question** whether any person is or is not entitled to be registered in an electoral roll for a constituency.

### Criteria for the Disqualifications for Registration in an Electoral Roll

A person shall be disqualified for registration in an electoral roll if he:



- is **not a citizen** of India; or
- is of **unsound mind** and stands so declared by a competent court; or
- is for the time being **disqualified from voting under the provisions of this relating to corrupt practices and other offences** in connection with election.

### **Preparation of Electoral Rolls**

- The **electoral roll for each constituency shall be prepared** in the prescribed timing by reference to the qualifying date and shall come into force immediately upon its final publication in accordance with the rules made under this Act.

### **Revision of Electoral Rolls**

Shall, unless otherwise directed by the Election Commission for to be recorded in writing be revised in the prescribed manner by reference to the qualifying date:

- Before each by election to the House of People or to the Legislative Assembly of a State;
- Before each by election to fill in casual vacancy in a seat allotted to the constituency; and
- Shall be revised in any year in the prescribed manner by reference to the qualifying date if such revision has been directed by Election Commission.

### **Making False Declarations**

**If any person makes in connection with:**

- The preparation, revision or correction of an electoral roll, or
- The inclusion or exclusion of any entry in or from an electoral roll, a statement or declaration in writing which is false and which he either knows or believes to be false or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

## Election Machinery

**Deputy Election Commissioner or the Secretary to the Election Commission can assume job of delegated function** on the basis of directions, as may be given by election commission.

- **Chief Electoral Officer (CEO):** The Chief Electoral Officer of a state/ Union Territory is authorised to supervise the election work in the state/Union Territory subject to the overall superintendence, direction and control of the Election Commission. The Election Commission of India nominates or designates an Officer of the Government of the state / Union Territory as the Chief Electoral Officer in consultation with that State Government / Union Territory Administration.
- **District Election Officer (DEO):** Subject to the superintendence, direction and control of the Chief Electoral Officer, the District Election Officer supervises the election work of a district. The Election Commission of India nominates or designates an officer of the state Government as the District Election Officer in consultation with the state government.
- **Returning Officer (RO):** The Returning Officer of a Parliamentary or assembly constituency is responsible for the conduct of elections in the Parliamentary or Assembly constituency concerned. The Election Commission of India nominates or designates an officer of the Government or a local authority as the Returning Officer for each of the assembly and parliamentary constituencies in consultation with the State Government / Union Territory Administration.
- **Assistant Returning Officers:** In addition the Election Commission of India also appoints one or more assistant Returning Officers for each of the assembly and Parliamentary constituencies to assist the Returning Officer in the performance of his functions in connection with the conduct of elections
- **Electoral Registration Officer (ERO):** The Electoral Registration Officer is responsible for the preparation of electoral rolls for a Parliamentary/assembly constituency. The Election Commission of India, in consultation with the State / UT government, appoints an officer of the government or the local authorities as the Electoral Registration Officer. In addition, the Election Commission of India also appoints one or more Assistant Electoral Registration Officers to assist the Electoral Registration Officer in the performance of his functions in the matter of preparation / revision of electoral rolls.



- **Presiding Officer:** The Presiding Officer with the assistance of polling officers conducts the poll at a polling station. The District Election Officer appoints the Presiding Officers and the Polling Officers. In the case of Union Territories, such appointments are made by the Returning Officers.
- **Observer:** The Election Commission may nominate an Observer who shall be an officer of Government to watch the conduct of election or elections in a constituency or a group of constituencies. They report directly to the Commission. The Observer has the power to direct the returning officer for the constituency or for any of the constituencies for which he has been nominated, to stop the counting of votes at any time before the declaration of the result or not to declare the result if in his opinion booth capturing has taken place. In case of stopping the counting of votes or non-declaration of result, a report shall be sent by the Observer to the EC, which issue appropriate directions.
- **A polling officer:** A polling officer performs all or any of the functions of a presiding officer based upon his direction. If the presiding officer is absent from the polling station due to illness or other unavoidable cause, his functions shall be performed by such polling officer as has been previously authorized by the district election Officer to perform such functions during any such absence. It is the duty of the polling officers at a polling station to assist the presiding officer for such station in the performance of his functions.

### **Manner of Filling of Seats in the Council of States Allotted to Union Territories**

- For the purpose of filling any seat or seats in the Council of States allotted to any Union territory in the **Fourth Schedule** to the Constitution there shall be an electoral college for that territory.

### **Significance**

- It was enacted to provide for the **allocation of seats and the delimitation of constituencies, to establish voter qualifications, to determine the procedure for preparing electoral rolls, and to determine the method of filling seats.**
- This Act has been amended numerous times since then, with the most recent change occurring in 2017.
- The Act **allows ordinary residents of a constituency to be registered on its electoral rolls.**

- Since elections are held at the constituency level, people have the ability to choose their leaders in a direct and participatory democracy.
- To **ensure equity**, MPs and MLAs are elected based on population, with the assistance of a delimitation commission.
- The **regular updating of electoral rolls** keeps ghost and false voters at bay.
- Sections such as 8(4), which **prohibit the admission of members with criminal records**, help to decriminalize politics.
- It encourages **free and fair elections** by prohibiting candidates from using money to influence voters.
- Act as a deterrent for candidates **to avoid corruption and malpractice** and work for the public good.

## Criticism

- Implementation issues by the Election Commission of India (ECI), since the constitutional body **lacks sufficient powers** due to a lack of independent staff and a separate secretariat for its own operation.
- Unlike Germany and Portugal, **India has no legal framework in place to enforce internal party democracy, not even the RPA act.**
- Despite the fact that the Supreme Court and the **RPA require candidates to declare their assets and liabilities, they fail to do so.**
- Misuse of Government Machinery, RPAs lack clear provisions and guidelines on matters relating to the misuse of official machinery **that gives the ruling party an unfair advantage during elections.**
- **False affidavits or material suspension are not grounds** for election offences under the RPA act.

## Way Forward

- Election funding from the state could be implemented, as suggested by the 2nd ARC report.
- Giving ECI more authority, as well as the ability to deregister political parties.

- Parliament should pass legislation to decriminalize politics, as recommended by the Supreme Court.
- Include a conviction under Section 125A (filing a false affidavit) as a ground for disqualification under Section 8(1), as well as a sentence enhancement for false affidavits.
- To reduce the occurrence of false disclosures, the Law Commission recommended establishing an independent method of verifying the winning candidate's affidavit.
- Insertion of new section 58B of the RPA, as proposed by the Election Commission, to take action against political parties that bribe voters.

## Conclusion

India, as a democratic country where people elect their representatives, must have a mechanism to protect people's interests and electors work for people's interests rather than self-interest. With these considerations in mind, Parliament passed the Representation of the Peoples Act (RPA).

## Representation of People Act, 1951

Representation of People Act, 1951 is an **act of Parliament of India that governs elections** to the Houses of Parliament and the House or Houses of the State Legislature, as well as the qualifications and disqualifications for membership in those Houses, as well as the conduct of such elections and the resolution of doubts and disputes.

The **Representation of People Act 1951 (RPA)** provides for the following:

- **Conduct of elections** of the Houses of Parliament and to the House or Houses of the Legislature of each State.
- Details about the **structure of administrative machinery** for the conduct of elections.
- **Qualifications and disqualifications for membership of those Houses.**
- **Corrupt practices and other offences** at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections.
- It **regulates how elections and by-elections are held.**
- It lays out the method for **resolving election-related concerns and controversies.**

The act consists of **171 sections in 13 parts.**

PART I (Sec. 1 and 2)	• Preliminary
PART II (Sec 3-11B)	• Qualifications and Disqualifications
PART III (Sec 12-16)	• Notification of General Elections
PART IV (Sec 19-29)	• Administrative Machinery for Conduct of Elections
PART IV A (Sec 29A-29C)	• Registration of Political Parties
PART V (Sec 30-78)	• Conduct of Elections • Free Supply of Certain Material to Candidates of Recognised
PART V A (Sec 78A-78B)	• Political Parties
Part VI (Sec 79-122)	• Disputes Regarding Elections
Part VII (Sec 123-138)	• Corrupt Practices and Electoral Offences
Part VIII (Sec 139-146C)	• Disqualifications
Part IX (Sec 147-151A)	• Byelections
Part X (Sec 152-168)	• Miscellaneous
Part XI (Sec 169-171)	• General

## Salient Features

### Qualifications for Membership of the Council of States/ Legislative Council

Apart from constitutional qualifications which are provided for elected representatives under Article 84 and 173 for parliament and assembly respectively, RPA, 1951 also provides the qualifications of representatives.

**Sections 3 to 10A** of the Representation of People Act 1951 deals about the **qualification for membership of the council of states**.

- **Qualification for membership of the Council of States (section 3):**
  - A person shall not be qualified to be chosen as a representative of any State or Union territory in the Council of States unless **he is an elector for any Parliamentary constituency in India**.
  - In its earlier form, condition for elector was required to be from that state or territory itself. However, in 2003, it was amended to remove this narrow requirement.
- **Qualifications for membership of the House of the People (section 4):** A person shall not be qualified to be chosen to fill a seat in the House of the People, unless:
  - In the case of a **seat reserved for the Scheduled Castes in any State, he is a member of any of the Scheduled Castes**, whether of that State or of any other State and is an elector for any Parliamentary constituency;
  - In the case of a **seat reserved for the Scheduled Tribes in any State (other than those in the autonomous districts of Assam), he is a member of any of the Scheduled Tribes**, whether of that State or of any other State (excluding the tribal areas of Assam), and is an elector for any Parliamentary constituency;
  - In the case of a **seat reserved for the Scheduled Tribes in the autonomous districts of Assam, he is a member of any of those Scheduled Tribes and is an elector for the Parliamentary constituency** in which such seat is reserved or for any other Parliamentary constituency comprising any such autonomous district;
  - In the case of the seat reserved for the Scheduled Tribes in the Union territory of Lakshadweep, he is a member of any of those Scheduled Tribes and is an elector for the Parliamentary constituency of that Union territory;

- In the case of the seat allotted to the State of Sikkim, he is an elector for the Parliamentary constituency for Sikkim;
- In the case of any other seat, he is an elector for any Parliamentary constituency.
- **Qualifications for membership of a Legislative Assembly (section 5):** A person shall not be qualified to be chosen to fill a seat in the Legislative Assembly of a State unless:
  - In the case of a **seat reserved for the Scheduled Castes or for the Scheduled Tribes of that State, he is a member of any of those castes or of those tribes**, as the case may be, and is an elector for any Assembly constituency in that State;
  - In the case of a **seat reserved for an autonomous district of Assam, he is a member of a Scheduled Tribe of any autonomous district and is an elector for the Assembly constituency** in which such seat or any other seat is reserved for that district; and
  - In the case of any other seat, he is an elector for any Assembly constituency in that State.
- **Qualifications for membership of Legislative Assembly of Sikkim (section 5A):** Section 5A mentions some special provisions regarding qualifications for membership of Legislative Assembly of Sikkim.
- **Qualification for membership of a Legislative Council (section 6):**
  - A person shall not be qualified to be chosen to fill a seat in the Legislative Council of a State to be filled by election unless he is an elector for any Assembly constituency in that State.
  - A person shall not be qualified to be chosen to fill a seat in the Legislative Council of a State to be filled by nomination by the Governor unless he is ordinarily resident in the State.

### **Disqualifications from Membership of Parliament and State Legislatures**

- **Disqualification on conviction of certain offences (section 8):**
  1. **A person convicted of an offence punishable under:**
    - Section 153A (offence of promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc ., and doing acts prejudicial to maintenance of harmony) or section 171E (offence of bribery) or section 171F (offence of undue influence or personation at an election) or sub-section (1) or sub-



section (2) of section 376 or section 376A or section 376B or section 376C or section 376 (offences relating to rape) or section 498A (offence of cruelty towards a woman by husband or relative of a husband) or sub-section (2) or sub-section (3) of section 505 (offence of making statement creating or promoting enmity, hatred or ill-will between classes or offence relating to such statement in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies) of the Indian Penal Code; or

- The Protection of Civil Rights Act 1955 which provides for punishment for the preaching and practice of “untouchability” and for the enforcement of any disability arising there from; or
- Section 11 (offence of importing or exporting prohibited goods) of the Customs Act 1962; or
- Sections 10 to 12 (offence of being a member of an association declared unlawful, offence relating to dealing with funds of an unlawful association or offence relating to contravention of an order made in respect of a notified place) of the Unlawful Activities (Prevention) Act 1967; or
- Foreign Exchange (Regulation) Act 1973; or
- Narcotic Drugs and Psychotropic Substances Act 1985; or
- Section 3 (offence of committing terrorist acts) or section 4 (offence of committing disruptive activities) of the Terrorist and Disruptive Activities (Prevention) Act 1987; or
- Section 7 (offence of contravention of the provisions of sections 3 to 6) of the Religious Institutions (Prevention of Misuse) Act 1988; or
- Section 125 (offence of promoting enmity between classes in connection with the election) or section 135 (offence of removal of ballot papers from polling stations) or section 135A (offence of booth capturing) of clause (a) of sub-section (2) of section 136 (offence of fraudulently defacing or fraudulently destroying any nomination paper) of this Act; or section 6 (offence of conversion of a place of worship) of the Places of Worship (Special Provisions) Act 1991; or 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; or the Commission of Sati (Prevention) Act 1987; or
- The Prevention of Corruption Act 1988; or

- The Prevention of Terrorism Act 2002 shall be disqualified, where the convicted person is sentenced to:
  - Only fine, for a period of six years from the date of such conviction;
  - Imprisonment, from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

**2. A person convicted for the contravention of:**

- Any law providing for the prevention of hoarding or profiteering; or
- Any law relating to the adulteration of food or drugs; or
- Any provisions of the Dowry Prohibition Act 1961;
- And sentenced to imprisonment for not less than six months, shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

**A person convicted of any offence and sentenced to imprisonment for not less than two years other than any offence referred to in sub-section (1) or subsection (2) shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.**

**Disqualification on Ground of Corrupt Practices (Section 8A)**

- The case of every person found guilty of a corrupt practice by an order under section 99 shall be submitted, as soon as may be, after such order takes effect, by such authority as the Central Government may specify in this behalf, to the President for determination of the question as to whether such person shall be disqualified and if so, for what period. Provided that the period for which any person may be disqualified under this sub-section shall in no case exceed six years from the date on which the order made in relation to him ' under section 99 takes effect.
- Any person who stands disqualified under section 8A of this Act as it stood immediately before the commencement of the Election Laws (Amendment) Act 1975 may, if the period of such disqualification has not expired, submit a petition to the President for the removal of such disqualification for the unexpired portion of the said period.
- Before giving his decision on any question mentioned in above sub-section or on any petition submitted under above sub-section the President shall obtain the opinion of

the Election Commission on such question or petition and shall act according to such opinion.

- If disqualified under section 8A by the President, then the disqualification will be for the period as decided by the President. The EC can reduce or remove the disqualification, except those disqualified under section 8A.

### **Disqualification for Dismissal for Corruption or Disloyalty (Section 9)**

- A person who having held an office under the Government of India or under the Government of any State has been dismissed for corruption or for disloyalty to the State shall be disqualified for a period of five years from the date of such dismissal.
- For the purposes of above sub-section a certificate issued by the Election Commission to the effect that a person having held office under the Government of India or under the Government of a State, has or has not been dismissed for corruption or for disloyalty to the State shall be conclusive proof of the fact. Provided that no certificate to the effect that a person has been dismissed for corruption or for disloyalty to the State shall be issued unless an opportunity of being heard has been given to the said person.

### **Disqualification for Government Contracts etc. (Section 9A)**

- A person shall be disqualified if, and for so long as, there subsists a contract entered into by him in the course of his trade or business with the appropriate Government for the supply of goods to, or for the execution of any works undertaken by, that Government.

### **Disqualification for Office under Government Company (Section 10)**

- A person shall be disqualified if, and for so long as, he is a managing agent, manager or secretary of any company or corporation (other than a cooperative society) in the capital of which the appropriate Government has not less than twenty-five per cent share.

### **Disqualification for Failure to Lodge Account of Election Expenses (Section 10 A)**

If the Election Commission is satisfied that a person:

- has failed to lodge an account of election expenses within the time and in the manner required by or under this Act; and
- has no good reason or justification for the failure, the Election Commission shall, by order published in the Official Gazette, declare him to be disqualified and any such person shall be disqualified for a period of three years from the date of the order.

### **Disqualification Arising Out of Conviction and Corrupt Practices (section 11A)**

- If any person, after the commencement of this act is convicted of an offence punishable under section 171- E or section 171-F of the Indian Penal Code, or under section 125 or section 135 or clause (a) of sub-section (2) of section 136 of this Act, he shall for a period of six years from the date of the conviction or from the date on which the order takes effects is disqualified for voting at any election.
- Any person disqualified by a decision of the president under sub-section (I) of section 8-A for any period shall be disqualified for the same period for voting at any election.
- The decision of the President on a petition submitted by any person under sub-section (2) of section 8-A in respect of any disqualification for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State shall, so far as may be apply in respect of the disqualification for voting at any election incurred by him under clause (b) of sub-section (1) of section 11-A of this Act as is stood immediately before the commencement of the Election Laws (Amendment) Act. 1975, as if such decision were a decision in respect of the said disqualification for voting also.

### **Notifications for Elections to the House of the People**

- In the case of a general election to the House of the People, the President of India, under section 14 of the Representation of the People Act 1951, shall, by one or more notifications published in the Gazette of India on such date or dates as may be recommended by the Election Commission, call upon the parliamentary constituencies to elect members for the purpose of constituting a new house.
- Notifications in respect of bye-elections to the House of the People will be issued by the Election Commission under the provisions of Section 149 of that Act.
- On the same date on which the above notification calling the election is issued, the Election Commission will issue a notification in the official gazette under Section 30 of that Act fixing the programme for the various stages of the election.

- No such notification can be issued at any time earlier than six months prior to the date on which the duration of that House would expire, except in the case of dissolution of the existing House of People.

### **Notification for Biennial Election to the Council of States**

- For the purpose of filling the seats of members of the Council of States retiring on the expiration of their term of office the President shall by one or more notifications published in the Gazette of India on such date or dates as may be recommended by the Election Commission, call upon the elected members of the Legislative Assembly or as the case may be, the members of the electoral college, of each State concerned to elect members in accordance with the provisions of this Act and of the rules and orders made thereunder.
- Provided that no notification under this section shall be issued more than three months prior to the date on which the term of office of the retiring members is due to expire.

### **Notifications for Elections to the State Legislative Assemblies**

- In the case of a general election to a State Legislative Assembly, the Governor of the State, under Section 15 of the Representation of the People Act, 1951 shall, by one or more notifications published in the State gazette on such date or dates as may be recommended by the Election Commission, call upon the Assembly constituencies in the State to elect members for the purpose of constituting a new Assembly.
- Notifications in respect of bye-elections will be issued by the Commission under the provisions of Section 150 of that Act.
- On the same date on which the above notification calling the election is issued, the Election Commission will issue a notification in the official gazette, under section 30 fixing the programme for various stages of the election.

### **Registration of Political Parties**

- For the purpose of registration of any association or body of individual citizens of India as a political party, the association or body is required to make an application to the Election Commission of India giving therein full particulars required under sub-section (4) of section 29A of the Representation of the People Act 1951 and

additional particulars required under the Registration of Political Parties (Furnishing of Additional Particulars) Order 1992, separately .

- The application should be neatly typed on the party's letter-head , if any, and it should be sent by registered post/presented personally to the Secretary to the Election Commission within 30 days following the date of the formation of the party. Any application made after the said period will be time-barred under the provisions of section 29A(2)(b) of the Representation of the People Act 1951.
- **Every such application shall contain the following particulars, namely:**
  - The name of the association or body;
  - The State in which its head office is situate;
  - The address to which letters and other communications meant for it should be sent;
  - The names of its president, secretary, treasurer and other office-bearers;
  - The numerical strength of its members, and if there are categories of its members, the numerical strength in each category;
  - Whether it has any local units, if so, at what levels;
  - Whether it is represented by any member or members in either House of Parliament or of any State Legislature, if so, the number of such member or members.
  - Article XI: Mandatory provision under section 29A (5) of RP Act 1951:
    - Printed copy of the memorandum/rules and bye-laws/Constitution of the party containing a specific provision as required under sub-section (5) of section 29A of the Representation of the People Act 1951 in the exact terms, shall bear true faith and allegiance to the Constitution of India as by law established, and to the principles of socialism, secularism and democracy and would uphold the sovereignty, unity and integrity of India. The above mandatory provision must be included in the text of party constitution itself as one of the clauses. As per provision to sub-section (7) of the said section 29A of the Representation of the People Act 1951, no association or body shall be registered as a political party unless the memorandum, rules and regulations or the constitution of such association or body conform to the above referred provision of sub-section (5) of section 29A.
  - The Commission may call for such other particulars as it may deem fit from the association or body.
  - After considering all the particulars as aforesaid in its possession and any other necessary and relevant factors and after giving the representatives of the association



or body reasonable opportunity of being heard, the Commission shall decide either to register the association or body as a political party for the purposes of this part, or not so to register it; and the Commission shall communicate its decision to the association or body. Provided that no association or body shall be registered as a political party under this sub-section unless the memorandum or rules and regulations of such association or body conform to the provisions of sub-section (5).

- The decision of the Commission shall be final.
- After an association or body has been registered as a political party as aforesaid, any change in its name, head office, office-bearers, address or in any other material matters shall be communicated to the Commission without delay.
- The Election Commission registers political parties for the purpose of elections and grants them recognition as national or state parties on the basis of their poll performance. The other parties are simply declared as registered-unrecognised parties.

### **Registered Political Party**

- Political parties have to be registered with the Election Commission. The Commission determines whether the party is structured and committed to principles of democracy, secularism and socialism in accordance with the Indian Constitution and would uphold the sovereignty, unity and integrity of India. Parties are expected to hold organisational elections and have a written constitution.
- A registered political party is an association or body of individual citizens of India intending to avail itself of the provisions of Part-IV-A of the Representation of the People Act 1951. The party is required to get itself registered with the Election Commission of India to participate in elections.

### **Benefits of a Registered Party**

- The RPA allows political parties to accept contributions voluntarily offered to it by any person or company other than a government company.
- Candidates of registered parties get preference in allotment of election symbols. Other Candidates are identified as independents and do not get preference in symbol allocation.
- Registered political parties, in course of time, can get recognition as 'State Party' or 'National Party' subject to the fulfillment of the conditions prescribed by the

Commission in the Election Symbols (Reservation and Allotment) Order 1968, as amended from time to time.

### **Recognised Political Party**

A political party shall be treated as a recognised political party in a State, if and only if the political party fulfills any of the following conditions:

- At General Elections or Legislative Assembly elections, the party has won 3% of seats in the legislative assembly of the State (subject to a minimum of 3 seats).
- At a Lok Sabha General Elections, the party has won 1 Lok Sabha seat for every 25 Lok Sabha seat allotted for the State.
- At a General Election to Lok Sabha or Legislative Assembly, the party has polled minimum of 6% of votes in a State and in addition it has won 1 Lok Sabha or 2 Legislative Assembly seats.
- At a General Election to Lok Sabha or Legislative Assembly, the party has polled 8% of votes in a State. Likewise, a political party shall be entitled to be recognised as a national party, if:-
  - the party wins 2% of seats in the Lok Sabha (11 seats) from at least 3 different States.
  - at a General Election to Lok Sabha or Legislative Assembly, the party polls 6% of votes in four States and in addition it wins 4 Lok Sabha seats.
  - a party gets recognition as State Party in four or more States.

### **Recognized National Parties**

- Bahujan Samaj Party
- Bharatiya Janata Party
- Communist Party of India
- Communist Party of India (Marxist)
- Indian National Congress
- Nationalist Congress Party
- Trinamool Congress
- National People's Party (NPP)

Both national and state parties have to fulfill these conditions for all subsequent Lok Sabha or State elections. Else, they lose their status. Recently, the poll panel amended a rule whereby it will now review the national and state party status of political parties every 10 years instead of the five. Had the rule not been amended, Trinamool Congress would not have been recognised as a national party as it had not performed well in the Arunachal Pradesh Assembly polls and would have lost the state party status there.

### **Benefits Enjoyed by Recognised Political Party**

- If a party is recognised as a 'State Party' it is entitled for exclusive allotment of its reserved symbol to the candidates set up by it in the State in which it is so recognized.
- If a party is recognised as a 'National Party' it is entitled for exclusive allotment of its reserved symbol to the candidates set up by it throughout India.
- Recognised 'State' and 'National' parties need only one proposer for filing the nomination.
- Recognised 'State' and 'National' parties are also entitled for two sets of electoral rolls free of cost at the time of revision of rolls.
- Their candidates get one copy of electoral roll free of cost during general elections.
- They get broadcast/telecast facilities over Akashvani/ Doordarshan during general elections.
- Political parties are entitled to nominate "Star Campaigners" during general elections. A recognized National or State party can have a maximum of 40 "Star campaigners" and a registered un-recognised party can nominate a maximum of 20 'Star Campaigners'.
- The travel expenses of star campaigners are not to be accounted for in the election expense accounts of candidates of their party.

### **Note**

- Any Indian citizen who is more than 25 years old and is registered as a voter can contest elections even without forming a party.

- Similarly, associations can also contest elections without getting registered by the Election Commission. They however, will not be identified as political parties and hence will not be eligible for availing of benefits under the provisions of the Representation of the People Act, 1951 (RPA).

## Election Process

- **Time of Elections:** Elections for the Lok Sabha and every state Legislative Assembly have to take place every five years, unless called earlier.
- **Schedule of Elections:** Since constitution puts a limitation of maximum 6-month gap between two sessions of parliament or assembly, election to the parliament or assembly, this has to be completed before the end of 6 months from last sitting of respective legislature. Election Commission declares the normal schedule for conducting election in a press conference and from then, model code of conduct takes off, for the guidance of candidates and political parties:
- **The formal process:** It begins with the notifications asking the electorate to elect Members of a House. As soon as notifications are issued, candidates start to fill their nomination in respective constituencies they wish to contest. Returning officer scrutinises these nomination papers. Those nomination paper which are authenticated as valid, can still pull back of election, within 2 days from the start of scrutiny. Contesting candidates get at least two weeks for political campaign before the actual date of poll.
- **Conduct of election and counting:** Election is held in phases so as to facilitate the massive task of polling without any glitches. A separate date for counting is fixed and the results declared for each constituency by the concerned Returning Officer.
- **Declaration of result:** Entire list of elected candidates is declared in the list issued by the commission. Henceforth, its president in case of parliament and governor in case of assembly, that convenes respective houses for the session.
- **Oath or Affirmation:** Candidates have to make and subscribe an oath or affirmation before an officer authorised by the Election Commission. Generally, it's the Returning Officer and the Assistant Returning Officer for the constituency. The superintendent of the prison or commandant of detention or medical practitioner is authorised to administer the oath for person in prison or detention or in hospital respectively. If a candidate is outside India, the Indian Ambassador or High Commissioner or diplomatic consular authorised by him can also administer oath/affirmation. The candidate, in person, is required to make the oath or

affirmation immediately after presenting his nomination papers and in any case not later.

- **Election Campaign:** The campaign is the period when the political parties put forward their candidates and arguments with which they hope to persuade people to vote for their candidates and parties. Candidates have to submit their nominations within a week. Returning Officers scrutinise it and may reject after a summary hearing, if found to be improper and incorrect. Validly nominated candidates can withdraw within two days after nominations have been scrutinised. The official campaign continues for at least two weeks from the declaration of the list of nominated candidates, and officially ends 48 hours before polling closes. During the election campaign, the political parties and contesting candidates are expected to abide by a Model Code of Conduct. The model Code lays down broad guidelines as to how the political parties and candidates should conduct themselves during the election campaign. Manifestos form the critical element of this part, where parties broadcast their promises and reasons of being elected and reflect the loopholes in their opposition's ideology and strategies.
- **Polling Days:** Polling is normally held on a number of different days in different constituencies, to enable the security forces and those monitoring the election to keep law and order and ensure that voting during the election is fair.
- **Ballot Papers and Symbols:** After nomination of candidates is complete, a list of competing candidates is prepared by the Returning Officer, and ballot papers are printed. Ballot papers are printed with the names of the candidates (in languages set by the Election Commission) and the symbols allotted to each of the candidates. Candidates of recognised parties are allotted their party symbols.
- **Voting Procedure:** Voting is by secret ballot. Polling stations are usually set up in public institutions, such as schools and community halls. To enable as many electors as possible to vote, the officials of the Election Commission try to ensure that there is a polling station within two kilometres of every voter, and that no polling stations should have to deal with more than 1500 voters. Each polling station is open for at least eight hours on the day of the election.

### **Declaration of Assets and Liabilities by Elected Candidate in RPA, 1951**

- Every elected candidate for a House of Parliament shall, within ninety days from the date on which he makes and subscribes an oath or affirmation, shall furnish the information, relating to:

- The movable and immovable property of which he, His spouse and his dependent children are jointly or severally owners or beneficiary;
- His liabilities to any public financial institution; and
- His liabilities to the Central Government or the State Government, to the Chairman of the Council of States or the Speaker of the House of the People, as the case may be.
- The Chairman of the Council of States or the Speaker of the House of the People, as the case may be, may make rules for the purposes of furnishing information in as simple and lucid manner as possible. The Chairman of the Council of States or the Speaker of the House of the People, as the case may be, may direct that any wilful contravention of the rules made, by an elected candidate may be dealt with in the same manner as a breach of privilege of the Council of States or the House of the People, as the case may be.

### **Election Expenses by the Candidate in RPA, 1951**

Every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his election agent between the date on which he has been nominated and the date of declaration of the result thereof, both dates inclusive.

- The expenditure incurred by leaders of a political party (not exceeding 40 lakh in case of recognised party and 20 lakh in case of registered party) on account of travel by air or by any other means of transport for propagating programme of the political party shall not be deemed to be the expenditure in connection with the election.
- Any expenditure incurred in respect of any arrangements made, facilities provided or any other act or thing done by any person in the service of the Government and in the discharge or purported discharge of his official duty as shall not be deemed as expenditure.
- The total of the said expenditure shall not exceed such amount as may be prescribed.



## Settlement of Disputes Regarding Elections Mentioned in RPA, 1951

- No election shall be called in question except by an election petition presented to the High Court having jurisdiction of the state involved. Such jurisdiction of High court shall be exercised ordinarily by a single Judge of the High Court and the Chief Justice shall, from time to time, assign one or more Judges for that purpose. An election petition calling in question any election may be presented to the High Court by any candidate at such election or any elector within fortyfive days from, but not earlier than the date of election of the elected candidate, or if there are more than one elected candidate at the election and the dates of their election are different, the later of those two dates.
- An election petition may be presented on one or more of the following grounds:
  - that on the date of his election a returned candidate was not qualified, or was disqualified to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act 1963;
  - that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or
  - that any nomination has been improperly rejected; or
  - that the result of the election, in so far as it concerns an elected candidate, has been materially affected; or
  - by the improper acceptance or any nomination; or
  - by any corrupt practice committed in the interests of the elected candidate by an agent other than his election agent; or
  - by the improper reception, refusal or rejection of any vote or the reception of any vote which is void; or
  - by any non-compliance with the provisions of the Constitution or of RPA 1951 or of any rules or orders made under RPA 1951.
- **An election petition:**
  - must contain a concise statement of the material facts on which the petitioner relies; or
  - must set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have

committed such corrupt practice and the date and place of the commission of each such practice.

- every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial. If the High Court upholds the election petition on the one or more of the above grounds it declares the election of the selected candidate to be void.
- **High court may:**
  - dismissing the election petition; or
  - declaring the election of all or any of the elected candidates to be void; or
  - declaring the election, of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected.
- According to section 170 of RPA 1951 no civil court has jurisdiction to question the legality of any action taken or of any decision given by the returning officer or by any other person appointed under this act in connection with an election.

### **Corrupt Practices Mentioned in RPA, 1951**

Section 123 defines the corrupt practices like bribery, undue influence, inciting religious sentiments, booth capturing etc.

- **Bribery:** Any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly of inducing:
  - a person to stand or not to stand as, or [to withdraw or not to withdraw] from being a candidate at an election, or
  - an elector to vote or refrain from voting at an election, or as a reward to:
    - a person for having so stood or not stood or for (having withdrawn or not having withdrawn) his candidature; or
    - An elector for having voted or refrained from voting.
  - the receipt of, or agreement to receive, any. gratification, whether as a motive or a reward:

- by a person for standing or not standing as, or for (withdrawing or not withdrawing) from being, a candidate; or
- by any person whomsoever for himself or any other person for voting or refraining from voting, or inducing or attempting to induce any elector to vote or refrain from voting, or any candidate his candidature.
- **Undue influence:** Any direct or indirect interference or attempt to interfere on the part of the candidate or his agent , or of any other person, with the free exercise of any electoral right.
- The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.
- The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community, or language, by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.
- The propagation of the practice or the commission of sati or this glorification by a candidate or his agent or any other person with the consent of the candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.
- The publication by a candidate or his agent or by any other person (with the consent of a candidate or his election agent), of any statement of fact which is false, and which he either believes to be false, or does not believe to be true, in relation to the personal character, or conduct of any candidate, or in relation to the candidature, or withdrawal, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election.
- The hiring or procuring whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person [with the consent of a candidate or his election agent], of any elector (other than the candidate himself, the members of his family or his agent) to or from any polling station. Provided that the hiring of a vehicle shall not be deemed to be a corrupt practice under this clause if the vehicle

or vessel so hired is a vehicle or vessel not propelled by mechanical power, or the use of any public transport vehicle or vessel by any elector at his own cost for the purpose of going to or coming from any such polling shall not be deemed to be a corrupt practice under this clause.

- The obtaining or attempting to obtain by a candidate or his agent any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, from any person in the service of the government and belonging to any of the following classes. Provided that where any person, in the service of the government and belonging to any of the classes aforesaid, in the discharge of purported discharge of his official duty, makes any arrangement or provides any facilities or does any other act or thing for to or in relation to any candidate:
  - gazette officers;
  - stipendiary judges and magistrate;
  - members of the armed forces of the Union;
  - members of the police forces;
  - excise officers;
  - revenue officers other than village revenue;
  - such other class of persons in the service of the government as may be prescribed.
- Booth capturing by a candidate or his agent or other person.
- The incurring or authorizing of expenditure in contravention of section 77.

### **Electoral Offences Mentioned in RPA, 1951**

- **Electoral Offences Concerning Meeting:**
  - Section 125 of the RP Act 1951, 153A & 505 (2) of IPC provides that any person promote or attempt to promote enmity or hatred on ground of race, caste, community or language shall be punished with 3 years imprisonment or fine or both. The action is considered to be electoral offence only when the same is done by candidate or by any other person or agent with his consent and he shall be punished with imprisonment which may extend to 3 years, or with fine, or both.
- **Public meeting in connection with election:** Section 126 RP Act provides that public meeting for election propaganda should be ended 48 hours before the hour fixed for

the conclusion of the poll for any election and any person who contravenes the provision is to be punished with imprisonment which may extend to two years or with fine or with both.

- **Disturbance at public meeting during specific period:** Disturbance at public meeting of a political character by any person is considered to be an electoral offence and is punishable by imprisonment up to 2 years or fine up to Rs. 250 or both. The above provision applies only to those meetings which are held between the issue of notification calling upon to elect members and the date on which election is held.
- **Offence by Concerning Officer/ Persons Involved in Election Duty:**
  - **Maintenance of Secrecy of voting:** It is an offence under Section 128 of RP Act if any officer, clerk, agent, or other person who performs any duty in connection with recording or counting votes at election doesn't maintain secrecy of the voting and shall be punished with 3 months imprisonment or fine or both.
  - According to section 129 of RP Act no official connected with election shall do any act for the furtherance of the prospects of election of any candidate except giving vote. Any official connected with election commits such offence shall be punished with 6 months imprisonment or fine or both.
  - **Breach of official duty in connection with elections:** Under section 134 of RP Act breach of official duty in connection with election is considered as an offence. The same shall be cognizable and punishable with fine up to Rs. 500. No legal proceeding shall lie against any such person for damage in respect of any act or omission as aforesaid.
  - **Penalty for Government servants for acting as election agent, polling agent or counting agent:** Any government servant who acts as an agent (election, polling or counting) of a candidate at an election, shall be punished with imprisonment for 3 months or fine or both.
- **Act on Date of Poll, at or Near Polling Station which are Considered as Offence Related to Election:**
  - **Canvassing in near polling station:** Section 130 of RP Act prohibits on date of poll:
    - Canvassing in or near polling station; or
    - Soliciting the vote of any elector; or
    - Persuading any elector not to vote for any particular candidate or at election; or
    - Exhibiting any notice or sign related to the election other than official notice. Any person who contravenes the provision shall be punished with fine up to Rs. 250.

- **Disorderly conduct in or near polling station:** Section 131 of RP Act provides that any person on the date of poll shouting in disorderly manner or using loudspeakers , megaphones etc. in order to disturb poll can be arrested and apparatus can be seized. Police officer can arrest such person on the order of Presiding Officer. The offence is punishable with 3 month imprisonment, or fine, or both.
  - **Misconduct at the polling station:** Under Section 132 of RP Act any person who misconduct himself, or fail to obey lawful directions during the hour, fixed for the poll at any polling station may be removed by the presiding officer or police officer or other authorized person. Further, if the person re-enter the polling station without permission of the presiding officer, he shall be punished imprisonment upto 3 month, or fine, or both if the offence is cognizable.
  - **Going Armed at or Near Polling station:** Section 134B of RP Act prohibits any person to go armed with arms of any kind at or near polling station other than presiding officer, police officer and any person appointed to maintain peace and order. Any person who contravene the provision shall be punished with imprisonment upto 2 yrs or fine or both.
  - **Tampering of EVM/ Ballot Papers:**
    - **Removal of Ballot Paper:** If any person removes EVM/ Ballot Paper or the presiding officer has reason to believe the same, he may arrest that person or order search of that person. The offender will be punished with 1 yr imprisonment or fine or both under section 135 of RP Act.
    - If any person fraudulently defaces or fraudulently destroys any ballot paper or EVM or the official mark on any ballot paper or EVM or puts into any ballot box anything other than the ballot paper, or pastes any paper, tapes etc., on the symbol/ names/ballot button of EVM for the purpose of the election commits an offence. If the offence is committed by any officer or clerk employed on election duty, he shall be punished with 2 yrs imprisonment or fine or both and 6 month imprisonment or fine for other.
    - **Denying Someone Right to Vote:** Under section 135B of RP Act employer shall be liable for fine up to Rs. 500 for not granting of paid holiday to the employees who are entitled to vote.
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## The Law Commission of India Recommendations

### *Electoral Disqualifications*

- **The report examined issues related to:**
  - Disqualification of candidates with criminal background, and
  - Consequences of filing false affidavits.
- **Key recommendations include:**
  - **Stage at which disqualification is to be triggered:** The Commission examined the different stages at which disqualification may be triggered, and decided upon the stage of framing of charges.
  - **Conviction:** The current practice of disqualification upon conviction has been unable to curb the criminalisation of politics, owing to long delays in trials and rare convictions. The law must evolve to act as an effective deterrent. Filing of police report: At the stage of the filing of the police report, there is no application of judicial mind. Thus, this would not be the appropriate stage at which disqualification may be effected.
  - **Framing of charges:** The stage of framing of charges is based on adequate levels of judicial scrutiny. By effecting disqualification at this stage, with adequate safeguards, the spread of criminalisation of politics may be curbed.
  - **Safeguards at the stage of framing of charges:** Certain safeguards must be included to prevent misuse of this provision and to address the concern of lack of remedy for the accused. These include:
    - Only offences that attract a maximum punishment of five years or above should be included within the ambit of this provision.
    - Charges filed within one year before the date of scrutiny of nominations for an election will not lead to disqualification.
    - The disqualification will operate until acquittal by a trial court, or a period of 6 years, whichever is earlier.
    - For charges framed against sitting MPs or MLAs, the trial must be expedited. It must be conducted on a day to day basis, and completed within 1 year.
    - If the trial is not concluded within a one year period then the MP/MLA may be disqualified at the expiry of that period. Alternatively, the MP/MLA's right to vote in

the House as a member, remuneration and other perquisites attached to his office should be suspended at the end of 1 year.

- Disqualification at the stage of framing of charges must apply retroactively as well. Persons with charges pending (punishable by five years or more) at the time of this law coming into effect must be disqualified from contesting future elections. The safeguards for charges filed within one year of the date of scrutiny of nomination papers would apply.
- **False affidavits as grounds for disqualification:** On the issue of filing of a false affidavit, the Representation of the People Act 1951 must be amended to reflect the following:
  - Conviction on the charge of filing of a false affidavit must be grounds for disqualification.
  - Punishment to be enhanced, from a maximum of six months imprisonment, to a minimum of two years imprisonment.
  - Filing of a false affidavit should qualify as a 'corrupt practice' under the Act.

### ***Election Finance***

- The Commission recommendations stated that election expenses must be counted from the date of notification and not just from date of nomination, and companies making political contributions must get approval in their Annual General Meeting, and not just from the Board of Directors.
- 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.
- The disqualification of a candidate for a failure to lodge an account of election expenses and contributions reports should be extended from the current 3 year period up to a five year period.

### ***Regulation of Political Parties and Inner Party Democracy***

- The Commission recommends amendment to RPA requiring that the accompanying memorandum/rules/ regulations with the party's application, this document should also contain a specific provision stating that the party would shun violence for

political gains, and would avoid discrimination or distinction based on race, caste, creed, language or place of residence.

- A new Chapter IVC should be inserted dealing with the “Regulation of Political Parties” and will deal with internal democracy, party Constitutions, party organisation, internal elections, candidate selection, voting procedures, and the ECI’s power to de-register a party in certain cases of non-compliance.

### ***Proportional Representation as an Electoral System***

- The Commission stated that proportional representation was more representative while the First-Past-The-Post system (henceforth, FPTP) was more stable.
- Experience of other nations showed that to change the electoral system, India would have to combine direct and indirect elections that would mean increasing number of Lok Sabha seats, which “raises concerns regarding its effective functioning.”

### ***Strengthening the Office of the Election Commission of India***

- The ECI should be strengthened by first, giving equal constitutional protection to all members of the Commission in matters of removability; second, making the appointment process of the Election Commissioners and the CEC consultative; and third, creating a permanent, independent Secretariat for the ECI.

### ***Paid News and Political Advertisements***

- The definitions of “paying for news”, “receiving payment for news” and “political advertisement” should be inserted in section 2 of the RPA.
- The consequences attached to those indulging in such practices should be delineated by creating – an electoral offence of “paying for news” / “receiving payment for news” in a newly inserted section 127B of the RPA and a corrupt practice of paying for news under newly inserted sub-clause (iii) in section 123(2) (a) of the RPA.
- In order to curb the practice of disguised political advertisement, disclosure provisions should be made mandatory for all forms of media.

## ***Opinion Polls***

- The ban on opinion polls in the electronic media does not extend to the print media and section 126(1)(b) should be amended.
- This section should also provide for cognizance being taken only on the basis of a complaint made by order of, or under authority from, the ECI or the Chief Electoral Officer of the State.

## ***Compulsory Voting***

- The Commission does not recommend the introduction of compulsory voting in India and in fact, believes it to be highly undesirable as being undemocratic, illegitimate, expensive, unable to improve quality political participation and awareness, and difficult to implement.

## ***Election Petitions***

- The introduction of one or more “election benches” in each High Court, designated so by the Chief Justice of the particular High Court, exercising jurisdiction over all election disputes under the RPA.
- The procedure for presenting election petitions should be made simpler and less formalistic.
- The trial of election petitions by the election bench of the High Court should be expedited. The trial should be concluded within six months from the date of presentation of the petition.
- Appeals to the Supreme Court should now only be on the basis of a question of law, instead of the earlier provision permitting questions of fact as grounds for appeal.

## ***NOTA***

- The report rejected invalidating elections on the majority of None of the Above (henceforth, NOTA) votes, the motivating factor behind the right to reject, can be successfully achieved by bringing about changes in political horizontal accountability, inner party democracy, and decriminalisation.

### ***Right to Recall***

- The Commission also rejected right to recall and felt it could lead to an “excess of democracy” and affect independence of elected candidates and interest of minorities.
- It also felt the right “increases instability and chaos, increases chances of misuse and abuse, is difficult and expensive to implement in practice,” especially in a FPTP system.

### ***Counting***

- The Commission, however, favoured vote totaliser in counting to “prevent the harassment of voters in areas where voting trends in each polling station can be determined” and “counter fears of intimidation and victimisation.”

### ***Restriction on Government Sponsored Advertisements***

- The Commission recommends regulating and restricting government sponsored advertisements six months prior to the date of expiry of the House/Assembly to maintain the purity of elections; prevent the use of public money for partisan interests of, inter alia, highlighting the government’s achievements; and ensure that the ruling party or candidate does not get an undue advantage over another in the spirit of free and fair elections.

### ***Independent Candidates***

- The Law Commission recommends that independent candidates be barred from contesting elections because the current regime allows a proliferation of independents, who are mostly dummy/non-serious candidates or those who stand (with the same name) only to increase the voters’ confusion.

### ***Preparation and use of Common Electoral Rolls***

- The Law Commission endorses the ECI’s suggestions regarding the introduction of common electoral rolls for Parliamentary, Assembly and local body elections.