COMMITTEE ON ELECTORAL REFORMS

(47)



REPORT OF THE

COMMITTEE ON

ELECTORAL REFORMS

MAY, 1990

GOVERNMENT OF INDIA
MINISTRY OF LAW AND JUSTICE
LEGISLATIVE DEPARTMENT

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CHAPTER I

INTRODUCTION

Success of Parliamentary democracy.

1.1 Bharat can legitimately be proud of its being the largest democracy in the world and of its unique success as demonstrated through regular periodical elections inspite of steep illiteracy and backwardness of its people.

Display of maturity of judgment by people at elections.

1.2 The credit for our success with the working of parliamentary democracy based on universal adult suffrage goes, in no small measure, to our people who have displayed their maturity of judgment through their native intelligence and commonsense in choosing, and also changing, the Government according to their choice.

Massive operation in a country wide elections

1.3 The massive operation of our country wide elections naturally inspires global awe and respect. Holding of elections in sky high and snow-clad mountains in North; scattered tiny islands in South; thick forests in East; and a vast tracks of marshy and desert lands in West; poses daunting problems which have been, time and again, successfully overcome. At the present reckoning, the electoral machinery has to plan and manage an election for an electorate of nearly 500 millions spread over 25 States and 7 Union territories of big, medium and small sizes; nearly 5.5 lakhs of polling stations ; requirement of an army of about 3 million personnel; vast quantity of ballot papers, ballot boxes and other materials.

Observation of Sir Antony Eden on Indian Experiment.

1.4 Sir Antony Eden, Former Prime Minister of United Kingdom was perhaps greatly influenced by these factors when he observed:-

> "Of all the experiments in government which have been attempted since the beginning of Time, I believe that the Indian venture into parliamentary government is the most exciting. A vast sub-continent is attempting to apply to its tens and hundreds of millions a system of free democracy which has been slowly evolved

over the centuries in this small island, Great Britan. It is a brave thing to try to do so. The Indian venture is not a pale imitation of our practice at home, but a magnified and multiplied reproduction on a scale we have never dreamt of. If it succeeds, its influence on Asia is incalculable for good. Whatever the outcome, we must honour those who attempt it."

Danger to free and fair elections.

1.5 Leaving now our laurels alone, it becomes imperative to take stock of the present state of affairs which causes real concern and anxiety because of the existence of the looming danger threatening to cut at the very roots of free and fair elections.

1.6 The role of money and muscle powers at elections affecting seriously the well accepted democratic values and ethos and corrupting the process; rapid criminalisation of politics greatly encouraging evils of booth capturing, rigging, violence etc.; misuse of official machinery, i.e. official media and ministerial; increasing menace of participation of non-serious candidates; form the core of our electoral problems. Urgent corrective measures are the need of the hour lest the system itself should collapse.

Recent Measures of electoral reforms.

1.7 Electoral reforms are correctly understood to be a continuous process. But the attempts so far made in this area did not touch even the fringe of the problem. They proved to be abortive. Some of the recent measures like reduction of voting age and anti-defection law are no doubt laudable and the basic principles underlying those measures should be appreciated. But there are other vital and important areas in election field completely neglected and left high and dry.

Details of steps so far on electoral reforms.

1.8 All these four decades, especially after 1967 the demand for electoral reforms has been mounting up. The subject of electoral reforms received wide attention at various Seminars and Forums. Many eminent persons and academicians have written on various aspects of electoral reforms. It would be relevant to make reference in brief to

some of them.

(1) The Report of the Joint Parliamentary Committee on amendment to election law - Part I and Part II - submitted in 1972 in two parts and the draft Bill appended thereto.

(2) The Report of the Committee For Democracy (CFD) set up by Shri Jaya Prakash Narayan under the Chairmanship of Justice Tarkunde in August 1974.

(3) Consideration of the various aspects of electoral reforms by the Sub-Committee of Cabinet appointed in 1977.

(4) Consideration of the various aspects of electoral reforms by the Sub-Committee of the Cabinet between 1982 - 1984.

(5) Various Presidential Addresses in Parliament.

(6) Various Reports of Election Commission containing the views, suggestions and recommendations of the Chief Election Commissioners from 1952 onwards and the package of proposals made by the Commission in 1982.

(7) The comments and views of the present Chief Election Commissioner, Shri R.V.S. Peri Sastri, as contained in his Notes circulated at the meeting of the political parties held on 9-1-1990.

(8) The recommendations of the various Seminars including the one organised in March, 1983 by the Institute of Constitutional and Parliamentary Studies in New Delhi to deal with the various aspects of electoral reforms.

(9) Write ups, articles etc. in national press regarding various aspects of electoral law and procedure.

(10) Articles in Periodical "Swarajya" by Shri R. Venkataraman, Preident of India in Sixties (1960)

1.9 Some of the books by eminent authors dealing with either comprehensively the various aspects of electoral reforms or particular important aspects thereof are -

(1) 'Lack of Political Will' by Shri Ramakrishna Hegde, former Chief Minister of Karnataka and at present Deputy Chairman of the Planning Commission.

(2) 'Electoral Reforms' a book by Shri L.P. Singh, former Governor.

(3) 'Rescue Democracy From Money Power' by Shri Rajagopalachari (Rajaji), former Governor-General and an eminent statesman.

(4) Reports of various Seminars addressed by Shri S.L. Shakdher, former Chief Election Commissioner; Shri R.K. Trivedi, Former Chief Election Commissioner; Shri R.V.S. Peri Sastri, Present Chief Election Commissioner; Shri L.K. Advani (MP) and others.

1.10 Thus, there are in existence informative, productive and useful voluminuous materials on the subject. The general public has been getting the feeling that there is lack of political will to undertake any useful exercise of electoral reforms.

eeting with presentatives of litical Parties der Chairmanship he Prime ister.

1.11 In this context, the quick and timely initiative of the Prime Minister, Shri Visvanath Pratap Singh, on the assumption of office of the National Front Government is refreshing. It has revived the hope that meaningful electoral reforms could now be a distinct possibility and efforts would be directed towards removing the serious drawbacks and distortions in the election law and procedure.

1.12 A meeting mainly of the representatives of political parties in Parliament was convened on the 9th January, 1990 at New Delhi under

the Chairmanship of the Prime Minister, Shri Vishwanath Pratap Singh. Various aspects of electoral reforms were discussed at the meeting. In summing up of the deliberations, the Prime Minister outlined the following areas of electoral reforms on which general discussions at the meeting took place and broad consensus on the need for corrective measures emerged :-

Outlines of areas of electoral reforms indicated by Prime Minister.

(1) Change of electoral system with special reference to Proportional Representation System and List System on which divergent views were earlier expressed; (2) Strengthening of the Election Commission and securing its independence including making the holder of the post of the Chief Election Commissioner ineligible for any office under the government after his term; (3) More stringent laws to deal with evil of booth capturing and impersonation; (4) Fresh delimitation to cure the various distortions; provision for rotation of seats reserved for scheduled castes; Reservation of seats for women; (5) Expeditious disposal of election petitions and appeals by sitting Judges and to manage their other work by appointment of ad hoc Judges; (6. Examination of the present provision of Anti-Defection Law and introduction of necessary changes to limit its application only to certain areas of legislative activities and to limit the powers of the presiding officers of the Legislatures; (7) Public Funding of elections; (8) Fixation of rational basis for ceiling of election expenses and need for removing the present distortions; (9) Multi-purpose photo identity cards to voters; (10) Statutory time-limit for holding bye-elections; (11) Statutory backing to certain provisions of Model Code; (12) Statutory backing to the Observers' role; (13) Combating the evil of non-serious candidates contesting elections; (14) Elimination of misuse of official machinery.

Constitution of a Committee on Electoral Reforms.

1.13 On the basis of the conclusions at the meeting of 9th January, 1990, the Government constituted a Committee under the Chairmanship of Law Minister Shri Dinesh Goswami with the following members to go into the various aspects of electoral reforms enumerated above:-

1.	Shri H.K.L. Bhagat,	M.P. (Indian National Congress)
2.	Shri L.K. Advani,	M.P. (Bharatiya Janata Party)
3.	Shri Somnath Chatterjee,	M.P. (Communist Party of India) [Marxist]
4.	Shri Ghulam Rasool Matto,	M.P. (National Conference)
5.	Shri Chimanbhai Mehta,	M.P.
6.	Shri Indrajit	M.P.
7.	Shri Homi F. Daji,	Former M.P. (Communist Party of India)
8.	Shri Era Sezhiyan,	Former M.P. (Janata Dal)
9.	Shri V. Kishore Chandra Deo,	Former M.P. (Congress (S))
10.	Shri L.P. Singh,	Former Governor
11.	Shri S.L. Shakdher,	Former Chief Election Commissioner

1.14 Shri K.Ganesan, former Secretary, Election Commission of India, who has been appointed honorary Consultant in the Ministry of Law and Justice for the specific work of electoral reforms has been instructed to assist the Committee in its deliberations. Shri J.C. Sharma, Consultant in the Ministry of Law and Justice, Legislative Department has been instructed to assist Shri K. Ganesan in the matter.

1.15 Smt. V.S. Rama Devi, Secretary, Legislative Department, Ministry of Law and Justice, has also been requested to assist the Committee in its deliberations.

1.16 At the first meeting of the Committee held on the 3rd February, 1990 at New Delhi under the Chairmanship of Shri Dinesh Goswami, Law Minister, the Chairman indicated that detailed working paper under various heads of subjects of the contemplated electoral reforms would be prepared and circulated to members.

1.17 Shri K. Ganesan has been instructed to prepare the detailed working paper' in consultation with Shri Era Sezhiyan and the Law Minister.

Preparation of detailed Notes - Part I and Part II

1.18 Detailed Notes under different Headings have been prepared with necessary Appendices thereto. The number of such main headings are 10 in Part-I and the number of sub-items thereunder are 55 covering every main aspects of election law and procedure.

1.19 Under Part - II, detailed notes on the different electoral systems obtaining in a few countries and the examination of those systems from the point of view of its suitability to Indian conditions have been prepared with necessary Appendices thereto.

1.20 These notes - Parts I and II - were circulated to the members of the Committee well in advance.

Details of Meetings of the Committee.

1.21 Thereafter, the Committee had six meetings as per the details given below:-

1. 7th March, 1990
2. 8th March, 1990
3. 30th March, 1990
4. 31st March, 1990
5. 2nd April, 1990
6. 11th April, 1990

Further Notes on Specific Subjects.

1.22 At these meetings, the Committee examined the Notes on subjects in Part-I and Part-II and also considered the following additional notes prepared on specific subjects:-

(1) Note on proposal regarding amendment to section 39 of the Representation of the People Act, 1951 (relating to increase in the number of proposers to a nomination paper in the case of elections to Rajya Sabha and Legislative Councils).

(2) Recommendations made by the National Seminar on 'Elections and role of Law Enforcement' organised by the National Police Academy, Hyderabad and a note thereon.

(3) Additional notes on 'Offence of Booth Capturing' prepared in consultation with Shri L.P. Singh.

(4) The opinion of the Attorney-General on the various legislative measures proposed for discouraging non-serious candidates from contesting elections.

(5) A Note containing broad outlines of U.K. law regarding election expenses prepared by Shri Era Sezhiyan.

(6) A Note on 'Contribution by Companies to Political Parties' prepared by Shri L.P. Singh.

Suggestions and views from MPs & Others.

1.23 Apart from the above Notes, a brief statement containing gist of the suggestions in the letters received from Members of Parliament and other important persons on electoral reforms in response to the letter of the Minister of Law and Justice dated the 28th December, 1989 inviting their views and suggestions, were also circulated to the members of the Committee. Such of the important suggestions as are having a bearing on the subjects dealt with in the Notes have also been taken into account by the Committee.

1.24 The Committee concluded its work on the 4th May, 1990 at which the draft final report of the Committee has been approved .

CHAPTER II

Electoral Machinery

1. Set up of multi-member Commission

Set up of multi member Commission with three members.

1.1 The Committee examined the question of making the Election Commission as a multi-member body. There has been broad agreement among all members about the Commission being a multi- member body. The Committee feels that the Election Commission should be a three member body.

Mode of Appointment.

1.2 As regards the mode of appointment of the Chief Election Commissioner and the two Election Commissioners, the Committee recommends as follows:-

(i) The appointment of the Chief Election Commissioner should be made by the President in consultation with Chief Justice of India and the Leader of the Opposition (and in case no Leader of the opposition is available, the consultation should be with the leader of the largest opposition group in the Lok Sabha).

(ii) The consultation process should have a statutory backing.

(iii) The appointment of the other two Election Commissioners should be made in consultation with the Chief Justice of India, Leader of the Opposition (in case the Leader of the opposition is not available, the consultation should be with the leader of the largest opposition group in the Lok Sabha) and the Chief Election Commissioner.

Appointment of Regional Commissioner.

(iv) The appointment of Regional Commissioners for different zones as proposed is not favoured. However, such appointment should be made only as envisaged in the Constitution and not on a permanent footing.

2. Steps for securing independence of the Commission

2.1 Various measures have been considered for securing the real independence of the Election Commission.

Protection of Salary of Chief Election Commissioner and other Election Commissioners on the analogy of Chief Justice of India and Judges of the Supreme Court.

2.2 The Committee recommends that the protection of salary and other allied matters relating to the Chief Election Commissioner and the Election Commissioners should be provided for in the Constitution itself on the analogy of the provisions in respect of the Chief Justice and Judges of the Supreme Court. Pending such measures being taken, a parliamentary law should be enacted for achieving the object.

Expenditure to be 'Voted'.

2.3 The Committee feels that the proposal to make the expenditure of the Commission to be 'charged' is not necessary. Such expenditure should continue to be 'voted' as of now.

Ineligibility

Ineligibility for any appointment under the Government after expiry of term.

2.4 The Committee further recommends that on the expiry of the terms of office, the Chief Election Commissioner and the Election Commissioners should be made ineligible not only for any appointment under the Government but also to any office including the post of Governor the appointment to which is made by the President.

Tenure of the Chief Election Co-mmissioner and other Election Commissioners

2.5 As regards the tenure of the Chief Election Commissioner and other Election Commissioners, the Committee recommends that it should be for a term of five years or sixty-five years of age whichever is later. The Committee makes it clear that the Chief Election Commissioner and Election Commissioners should in no case continue in office beyond the age of sixty-five years and for more than ten years in all.

3. Set up of the Secretariat

Provision analogous in respect of Lok Sabha Secretariat.

The Committee agrees that in regard to the set up of the secretariat of the Commission, provisions on the lines of Article 98(2) of the Constitution relating to Lok Sabha Secretariat should be made and that till such provision is made, a law of Parliament should be enacted.

4. Set up of electoral machinery at State level

Chief Electoral Officer to be exclusively entrusted with election work.

4.1 The Committee considered the suggestion for appointment of a full-time Chief Electoral Officers in States. The consensus is that Chief Electoral Officers, when so appointed, should exclusively be entrusted with the election work and not saddled with any other items of work.

The Committee is of the view that the present provision in the law is adequate.

Creation of supervisory agency not favoured.

4.2 The Committee examined the suggestion of the Election Commission for the creation of a supervisory agency for a group of districts. However, it does not accept the suggestion.

Disciplinary control of Election Commission over State-level officers employed for election work to be made effective and complete.

4.3 As regards the disciplinary control over the state-level officers including the Chief Electoral Officer, the Committee feels that even after the recent insertion of the provision in section 28A of the Representation of the People Act, 1951 treating such officers as are drafted for election duties, on deputation to the Election Commission, no disciplinary proceedings could be taken against them directly by the Election Commission itself. Keeping this in view, the Committee recommends that the matter should be further examined as to how best the Commission's control over the officers during the election period could be made more effective and complete in all respects including framing of charges, launching of prosecution and disciplinary proceedings against concerned officers for breach of duty during the period of his deputation to the Election Commission.

Transfer of officers connected with election work to be only with concurrence of the Election Commission.

4.4 As regards the question of placing certain restrictions on the transfer of officers connected with the election work when the election is in prospect, the Committee agrees that such transfers should be effected only with the concurrence of the Election Commission.

5. Extension of jurisdiction of electoral machinery in relation to elections to Panchayat Raj institutions.

Matter to be considered after ascertaining contemplated constitutional measures.

The committee took note of the proposal under contemplation to amend the Constitution of India in regard to set up of Panchayat Raj institutions. For this reason, the Committee feels that the matter relating to the extension of jurisdiction of electoral machinery in relation to elections to Panchayat Raj institutions should be taken up only after ascertaining the exact details of the contemplated legislative or constitutional measures.

6. Power of contempt in favour of Election Commission

Conferment of Power of contempt on Election Commission not favoured.

The Committee considered the proposal of empowering the Election Commission with power of contempt of court to the limited purpose of Symbol cases and reference cases regarding disqualification of sitting members. It does not, however, favour the proposal.

REFERENCE SOURCES

1. Minutes of the meeting of the Committee dated 3rd February, 1990.

2. Minutes of the meeting of the Committee dated the 7th March, 1990.

3. Minutes of the meeting of the Committee dated the 8th March, 1990.

4. Minutes of the meeting of the Committee dated the 31st March, 1990.

5. Minutes of the meeting of the Committee dated the 2nd April, 1990.

6. Notes on Subjects in Part I - Chapter II - Electoral Machinery.

CHAPTER III

Delimitation of Constituencies

1.1 The Committee discussed the matter relating to fresh delimitation of Parliamentary and Assembly constituencies both on 7th March, 1990 and 2nd April, 1990 in some detail. It also considered the question of increasing the total number of seats in the House of the People and Legislative Assemblies of the States; the rotation of seats reserved for scheduled castes and the reservation of seats for women.

1.2 The Committee took note of that if the proposals are accepted, it would require amendment to the Constitution as at present there is a constitutional bar not only in regard to the increase of seats and also fresh delimitation of constituencies.

Need for fresh delimitation and rotation of seats reserved for S.Cs.

1.3 All members, except Shri H.K.L. Bhagat, expressed agreement on the need for fresh delimitation on the basis of 1981 census. The members also agree that there should be rotation of seats for scheduled castes. The Committee is of the view that the manner of achieving the object of rotation of seats for Scheduled Castes should be left to the Delimitation Commission and the Parliamentary law to be made for the purpose.

Reservation of seats for women. Political parties giving larger representation to women candidates at elections favoured.

1.4 As regards reservation of seats for women, while some members favour reservation of seats for women, few others feel that reservation of seats for women would raise complex problems. Ultimately, the Committee is of the view that it should leave a record favouring larger representation of women candidates at elections to the Houses of Parliament and State Legislatures and that to achieve this objective, the Committee should express its hope that political parties would respond positively to this

suggestion by putting up more number of women candidates at elections.

Change of multiple of Assembly Seats not favoured.

1.5 As regards rationalisation of multiple of Assembly constituencies, while Shri Era Sezhiyan, Ex-M.P. representing Janata Dal, desires that there must be some uniform rational for fixing the multiple for various States as against different multiples even among States more or less standing on an equal footing, some other members feel that if the total number of seats in the Legislative Assemblies is to be increased by the change of the multiple, the total number of seats in the Lok Sabha equally calls for such increase.

No unanimity of views exists among members in regard to this proposal.

REFERENCE SOURCES

1. Minutes of the Meeting of the Committee dated the 7th March, 1990.

2. Minutes of the Meeting of the Committee dated the 8th March, 1990.

3. Minutes of the Meeting of the Committee dated the 2nd April, 1990.

4. Notes on Subjects - Part I - Chapter III - Delimitation of Constituencies.

CHAPTER IV

Electoral Rolls

1. Steps for improving enrolment of all eligible names:

Post office to be focal point.

1.1 The Committee took for consideration various measures proposed in the Notes. As regards the post offices being made as a focal point in the sense that they should be associated with the preparation and maintenance of electoral rolls up-to-date and up-keep of records, there is broad consensus among the members for the acceptance of this proposal.

1.2 The Committee further agrees that the mater might be fully discussed as pointed out in the Notes by the Election Commission with the Postal Board and the Census Commissioner.

Defects and drawbacks in present system of preparation of electoral rolls.

1.3 Many members of the Committee are strongly of the view that there are various defects and drawbacks in the present system of the preparation of electoral rolls because of acts of omissions and commissions of the officials. They observed that in some cases there were large scale omissions of names from the electoral rolls in the past even though enumeration cards were delivered to the electors at the time of house to house enumeration. In that context, the Committee considered the question of strengthening the relevant provisions of the Representation of the People Act, 1950 so as to provide for a more stringent punishment for breach of official duty in connection with the preparation, revision etc. of electoral rolls.

Stringent punishment for breach of official duty in connection with prepur-ation or revision of electoral rolls.

1.4 The Committee recommends that section 32 of the Representation of the People Act, 1950 should be suitable amended for this purpose. The Committee feel that the punishment of sentence for breach of official duty in connection with the preparation and revision of electoral rolls should be atleast for six months as against only the imposition of fine as at present.

Power to Commission in regard to dis-ciplinary pro-deedings and Recording of adverse entries.

1.5 The Committee agrees that the Election Commission should be given power not only to recommend disciplinary proceedings for breach of official duty but also should be empowered to record adverse entries against officers found guilty of lapses in their duty and forward them to the concerned authorites.

Officers connected with preparation of rolls to be deemed to be on deputation to Election Commission.

1.6 For the above purpose, as in the case of officers connected with the conduct of poll who are deemed to be on deputation subject to the control, superintendence and discipline of the Election Commission (vide section 28A of the Representation of the People Act, 1951), officers connected with the preparation and revision of electoral rolls should also be brought under the control and disciplinary jurisdiction of the Election Commission.

2. Issue of multi-purpose photo identity cards:

Acceptance of the scheme.

2.1 There is unanimity of views among all the members in regard to the implementation of the scheme of issue of multi-purpose photo identity cards.

2.2 The Committee agrees that the steps for successful implementation of the scheme as proposed in para 3.11 of the Notes - Part I should be undertaken and that a time-bound programme for

covering the entire country with the proposed scheme is desirable.

Steps to be taken for successful implementation of the scheme.

2.3 The following steps are indicated in paragraph 3.11 of the Notes which are accepted.

(a) Other Government departments and Ministries should be involved to make the possession of the card by every adult citizen compulsory for receiving benefits and facilities.

(b) Baba Atomic Research Centre should be associated to prepare fuller details of the scheme from the point of view of cheaper cost and of its intamperability with a provision for keeping some sort of a duplicate photo identity lists containing all the names of the electors in a particular area which could ultimately take the place of the electoral roll.

(c) Active involvement of the postal agencies for covering all areas and make them to serve as the focal point for the field operation connected with the scheme, is necessary.

(d) Provision of adequate funds of the Government in the annual budgets of the Central Government and the State Governments to meet the expenditure is necessary.

(e) Identifying an agency of the State Government and making it fully responsible for the implementation of the scheme is essential.

(f) Fixation of a time-bound programme for covering the entire country is desirable.

REFERENCE SOURCE

1. Minutes of the Meeting of the Committee dated the 8th March, 1990.

2. Minutes of the Meeting of the Committee dated the 2nd April, 1990.

3. Notes on Subjects - Part I - Chapter IV - Electoral Rolls -

CHAPTER V

Political Parties and Candidates

Prohibition of candidates contesting from more than two constituencies

1. Restriction on candidates contesting from several constituencies:

The Committee took note of the problems created by persons contesting elections from several constituencies in the absence of any kind of restrictions in that regard. The Committee therefore, recommends that a person should not be allowed to contest elections from more than two constituencies of the same class.

2. Lowering of age-limit for contesting candidates:

Age-limit to be lowered.

The Committee feels that with the reduction of voting age from 21 to 18 years, it would be appropriate that the age qualification for contesting should be reduced to 21 years in the case of elections to Legislative Assemblies and Lok Sabha and to 25 years in the case of elections to Legislative Councils and Council of States. Accordingly, the Committee recommends the reduction of the age as proposed.

3. Registration and recognition of political parties:

Present position.

3.1 The Committee took note of that before insertion of the provisions in the Representation of the People Act, 1951 in 1988 (vide section 29A) the registration and recognition of political parties were fully regulated by the Election Symbols (Reservation and Allotment) Order, 1968 which is operated by the Election Commission.

Problems and difficulties created by section 29A of the Act.

3.2 After the insertion of new section 29A of the Act for the purpose of making the political organisations seeking registration to conform in form only to the provisions of the Constitution, especially to the preamble thereto, the powers of the Election Commission in regard to registration of political parties under the Symbols Order has been taken away. The Election Commission has to apply the new provisions for the registration of political parties.

3.3 The Committee observed that in view of the provisions of section 29A of the Act and of a very large number of applications from political parties for registration on the eve of the last Lok Sabha elections, the Commission had no option except to register as many as 261 political parties. This has created many practical and administrative problems and difficulties at the time of election.

3.4 All the members of the Committee, except Shri H.K.L. Bhagat, feel that the new provision in section 29A do not serve any purpose.

Seeking Attorney-General's opinion.

3.5 It has been brought to the notice of the members of the Committee that the Attorney-General of India whose opinion was sought on the various measures for discouraging non-serious candidates from election contests, has observed that new section 29A has not served any useful purpose.

Deletion of Section 29A favoured.

3.6 After taking into account the above factors, all the members of the Committee, except Shri H.K.L. Bhagat, feel that section 29A should be deleted and the matter of registration of political parties should be left to be decided solely by the Election Commission under the Symbols Order applying the criteria of tangible proof of 1% of the valid votes to be secured by applicant party for registration.

3.7 The question of what would be the effect of deletion of section 29A on the continuance or otherwise of the 261 political parties which have been registered under that section has also been raised. Members of the Committee feel that the proposed provision relating to the deletion of section 29A should also include a consequential provision authorising the Election Commission to deal with afresh any application for registration after the removal of the 261 political parties from the list of registered parties.

No need to recognise Alliance of political parties and any change in the Symbols Order.

3.8 The Committee feels that there is no need for recognising alliances of political parties at elections and for any change in the present procedure of allotment of symbols.

4. Regulations for containing contests by non-serious candidates:

4.1 When the matter regarding various measures proposed for containing non-serious candidates from contesting election was taken up, some members felt that the opinion of the Attorney-General should be obtained as to whether restrictions proposed would not amount to discrimination as envisaged in the provisions of the Constitution. Accordingly, the opinion of the Attorney-General was obtained.

Attorney-General's opinion.

4.2 The Attorney-General has inter-alia given the opinion that the various measures proposed for discouraging non-serious candidates from election contests would not be open to challenge on the ground that they introduce the element of discrimination as the proposed legislative measures could be sustained on their being on rational basis in regard to classification. Therefore they are not discriminatory.

Measures recommended

4.3 The Committee further discussed the matter with reference to the opinion of the Attorney-General. The Committee recommends that the following measures should be taken up:

(a) Security deposit should be fixed as follows:-

(i) In the case of a candidate set up by a recognised National or State Party -

(i) for Assembly elections - Rs. 500

(ii) for Lok Sabha elections - Rs.1000

The usual concessions to Scheduled castes and Scheduled tribes candidates should also be available.

(ii) In the case of independents and candidates set up by registered parties -

(i) for Assembly elections - Rs.2500

(ii) for Lok Sabha elections - Rs.5000

(b) If an independent candidate or a candidate set up by a registered party fails to secure 1/4, as against 1/6 of the valid votes polled as at present, the security deposit should be forfeited.

(c) The number of proposers to a nomination paper to be filed by an independent candidate or a candidate set up by a registered party should be ten drawn from different assembly segments.

(d) Arrangement of names of candidates in the ballot paper should be in the following order:-

1. Candidates of recognised national parties.
2. Candidates of recognised state parties.
3. Candidates of registered parties.
4. Independent.

4.4 The Committee also considered the proposal that there should be a separate deposit by each of the proposer or a bond to be executed by him if the contest is by an independent candidate or a candidate set up by a registered party. However, the Committee does not favour the acceptance of this proposal.

4.5 The Committee does not also favour the proposal to prevent agents of independent candidates and candidates set up by registered parties from attending to the duties as polling agents and counting agents as it would be very harsh to do so.

5. (a) Regulation of functioning of political parties;

(b) Compulsory maintenance of account of election expenses by political parties and audit thereof;

(c) Submission of Annual Returns by political parties;

(d) Enforcement of observance by political parties of requirements;

No unanimity of views on question of regulations.

5.1 The Committee discussed in details all aspects of the matters referred to above with reference to the Notes on the subject as contained in sub-items Nos. 8 to 10. It is found that there is no unanimity of views among the members of the Committee. While a few members want regulation of functioning of political parties as it is the best way to ensure internal democracy and also compulsory audit of account of political parties, some others are not in favour of such a proposal because of practical difficulties.

Regulation through Symbols order also not favoured.

5.2 It has been brought to the notice that even though making a law regulating the functioning of political parties would be controversial one, it could be considered whether the Election Commission should be asked to make suitable provisions in the Symbols Order to the limited effect that if a party does not observe the provisions of its constitution in regard to holding of periodical elections to its various organs, the Election Commission should have the power to withhold the allotment of symbols to the candidates set up by that party till such time the requirements are

fulfilled by the party. Majority of the members do not favour this approach.

6. Statutory backing for model code of conduct:

6.1 The Committee considered the various items in Part VII, Party in Power, in the present Model Code of Conduct evolved by the Election Commission.

Only vital and important provisions of code to be covered by statute.

6.2 The Committee is of the view that only such of the provisions of the Model Code as are vital and important in nature should be brought under the Statute. The Committee feels that to make any violation of the Model Code by Ministers and others as a corrupt practice would result in penalising the contesting candidate who might not have any part to play in regard to such violation. However, the Committee agrees that the items enumerated in para 11.6 of the Notes should be brought under the Statute as an electoral offence instead of corrupt practice.

Details of items.

6.3 The following are the items which according to the Committee, should be brought within the ambit of the proposed electoral offence:-

(a) Combining of official visit with work relating to elections or making use of official machinery or personnel in connection with any such work;

(b) Using Government transport, including official aircrafts, vehicles, machinery and personnel in connection with any work relating to elections;

(c) restricting or monopolising the use of public places for holding election meetings or use of helipads for air flights in connection with any work relating to elections;

(d) restricting or monopolising the use of rest houses, dak bungalows or other Government accommo-

dation or the use of such accommodation (including premises appurtaining thereto) as a campaign office or for holding any public meeting for the purposes of election propaganda;

(e) issuing of advertisements at the cost of public exchequer in the newspapers and other media;

(f) using official news media for partisan coverage of political news and publicity of achievements with a view to furthering the prospects of any party or candidate;

(g) announcing or sanctioning of any financial grants in any form or making payments out of discretionary funds;

(h) laying of foundation stones of projects or the inauguration of schemes of any kind or the making of any promises of construction of roads or the provision of any facilities;

(i) making of any ad hoc appointments in Government or public undertakings during the election period for the furtherence of the prospects of any party or candidate;

(j) entering any polling station or place of counting by a Minister except in his capacity as a candidate or as a voter or as an authorised agent;

(k) ban on transfer of officers and staff specified in section 28A when election is in prospect.

REFERENCE SOURCE

1. Minutes of the Meeting of the Committee dated the 8th March, 1990.

2. Minutes of the Meeting of the Committee dated the 31st March, 1990.

3. Minutes of the Meeting of the Committee dated the 2nd April, 1990.

4. Notes on Subjects - Part I - Chapter V - Political Parties and Candidates.

5. Opinion of Attorney-General on the subject of containing non-serious candidates dated the 30th March, 1990.

CHAPTER VI

Conduct of Poll

1. Constitution of Indian Election Service

Constitution of Indian Election Service not favoured.

The Committee considered in some detail the proposal of the Election Commission recommending the constitution of Indian Election Service. However, the Committee feels that there is no need for such a service to be constituted.

2. Ban on transfer of offices connected with elections

Ban on transfer officers.

The Committee accepts the proposal for legal provision for imposing ban on transfer of civil and police officers connected with elections for a specific period. The Committee recommends accordingly that the law should be suitably amended.

3. Statutory status of Commission's observers

Statutory status for observers.

3.1 The Committee accepts the suggestion to clothe the Commission's observers at elections with statutory powers.

Power to stop poll, counting and declaration of result pending decision by Commission.

3.2 The Committee desires that the law should spell out their specific role like the power to stop (1) the poll for specified reasons; (2) the counting and (3) the declaration of the result. The Committee further suggests that in all these cases, the matter should be referred to the Election Commission for final decision.

Power of Election Commission to assign other functions.

3.3 The Committee also agrees that there could be a general provision in the proposed law to the effect that an observer may be assigned such other functions as may be entrusted to him by the Election Commission, as in the case of a District Election

Officer.

4. Role of Voluntary organisations

No need to give statutory recognition to role of voluntary organisation.

The Committee does not favour the proposal to give statutory recognition to the role of voluntary organisations and constitution of a Political Council or Election Council in regard to the conduct of free and fair elections.

Facility under general powers of Election Commission.

The Committee feels that the Election Commission itself could afford under its general powers, such facilities as it finds proper and necessary.

5. Use of Electronic Voting Machines

Demonstration of working of Electronic Voting Machines.

5.1 The Committee considered the proposal for the use of electronic voting machines at elections. It feels that the machines should be tested by technological experts with a view to remove any doubts or misapprehensions in the minds of the public with regard to the credibility of the working of the machines. The Committee discussed further the matter on 30th March, 1990 and 31st March, 1990. The technoligical experts from the Electronic Corporation of India Limited, Hyderabad and of the Department of Electronics have demonstrated the working of the machine on those days.

Testing and clearance from technological experts.

5.2 The members have been prima facie satisfied that the electronic voting machines are free from the drawbacks alleged on the eve of the last general election to Lok Sabha held in 1989. Still the Committee desired that a clearance from technological experts to the effect that the doubts and misapprehensions entertained about the credibility of the working of the machines are not well founded, should be obtained. High level technological experts were commissioned by the Electronics Department of the Government of India to go into the question of all aspects of the

working of the machines especially from the points of view of its credibility and intamperabil·ty. This team of technological experts, after through probe i. to the matter has given clearance certifying that the machines could be used at our elections.

Use of Electronic Voting machines at all future elections.

5.3 The Committee desires that the electronic voting machines should be put to use at all future bye-elections and general elections to Lok Sabha, Assemblies and also Panchayats and Local Bodies elections with a view to educating the electors in all parts of the country and familiarising them with the working of the machines.

Intensive training to polling personnel.

5.4 The Committee further desires that intensive training programme of polling personnel at all levels should also be arranged.

5.5 The Secretary of the Electronics Department, Shri Rajamani who was also present at the meeting on 31st March, 1990 to assist the members of the Committee in the matter, has been requested to get the Electronic Voting Machines tested by a team of technological experts to be identified by his Department. He has been further instructed to take urgent steps in this behalf.

6. <u>Provision of an electronic device to record particulars of electors as in the photo identity card as a safeguard against booth capturing etc.</u>

Possibility of new electronic device to record details of electors.

6.1 Shri Kishore Chandra Deo, one of the members, has suggested that the possibility of providing a suitable separate gadget or device or in the electronic voting machine itself to record essential particulars of an elector with his coded numbers as contained in multi-purpose identity card should be explored so as to provide for a fool proof measure to safeguard

against booth capturing and impersonation. At the time of the poll, each elector should produce his multi-purpose identity card which should be fed into this machine to record his essential particulars. According to him, the system would be foolproof because each elector should produce individually his identity card at the time of his identification and it would not therefore be possible for booth capturers or impersonators to procure in bulk such multi-purpose identity cards.

Feasibility report from technologists.

6.2 The Committee considered the suggestion of Shri Kishore Chandra Deo and instructed the technologists of the Electronics Corporation of India who were present for the demonstration of the voting machine to apply their mind to all aspects of the matter ans send their feasibility report quickly.

7. Set up of mobile polling stations:

7.1 The Committee considered the proposal regarding set up of mobile polling stations as detailed in the Notes.

Set up of Mobile auxiliary polling stations.

7.2 It has been explained that the set up of mobile polling stations would mostly be with a view to enabling weaker sections of electorate who run the risk of being prevented from travelling a long distance to a polling station to exercise their votes near their area of residence. In other words, the mobile polling stations would take the place of auxiliary polling stations which are being set up at present in a limited way to enable weaker sections to exercise their votes freely near their place of residence.

Protection to auxiliary stations.

7.3 The members want such mobile polling stations (vans) to be used only as auxiliary polling stations and it should be stationed for the full polling period. It should also be well protected with adequate police force.

7.4 The Committee also took note of that set up of such auxiliary polling stations does not require amendment of law as the Election Commission could, by executive administrative instructions, achieve the object.

8. Steps to eradicate booth capturing, rigging, intimidation etc.

8.1 The fact that the Committee is exercised over the problems of booth capturing which seriously affect a free and fair election is clear from the detailed discussions on the topic among the members and consideration of various measures to tackle the problems.

Consideration of suggestions.

8.2 The Committee not only considered the Notes on the subject put up for consideration but also the additional Notes prepared on the advice of Shri L.P. Singh, one of the members of the Committee.

Inadequacy of recent amendments of law.

8.3 The Committee took note of that the law has been specifically amended in 1988 with a view to dealing with the menace of booth capturing.

The amendments introduced in 1988 are as follows:-

(i) Insertion of a new provision, as section 58A of the Representation of the People Act, 1951 (adjourment of poll or countermanding of election on the ground of booth capturing);

(ii) Insertion of a new clause (8) in section 123 to make booth capturing as a corrupt practice; and

(iii) Insertion of new section 135-A to make the offence of booth capturing as an electoral offence.

8.4 The Committee feels that inspite of these amendments, the situation does not improve in any way. On the other hand, it has been found that cases of booth capturing were assuming alarming proportions at the recent general elections to Lok Sabha and to a number of State Legislative Assemblies held in 1989 and 1990. The Committee also feels that the new provisions are suffering from serious drawbacks making the provisions ineffective in operation. They therefore proved to be inadequate.

8.5 The Committee notices the following drawbacks:-

Drawbacks in present law.

(i) Under section 58A of the Act, the Election Commission is required to be guided only by the report of the Returning Officer in the matter of deciding whether booth capturing has taken place or not. It provides a scope for misuse of power by the Returning Officer if he intentionally fails to report to the Election Commission the actual position.

(ii) Under section 58A of the Act, if the Commission is satisfied that a large number of polling stations are involved in booth capturing, it is left with the only choice under the law to countermand the election and order a fresh election and not the option of only ordering repoll in the entire constituency.

(iii) The electoral offence under section 135 A is not specifically made a cognizable offence.

(iv) The punishment for the commission of the offence of booth capturing is only imprisonment for not less than one year which may extend to three years whereas the seriousness of the offence calls for a more stringent punishment.

(v) Acts of 'coercion' and 'intimidation' or 'any form of direct or indirect threat' or 'any interference with the free

exercise of the recording of the votes' which are also the species of booth capturing have not been brought within the ambit of section 135A of the act.

(vi) There are no enabling provisions at present for the investigation of the cases of booth capturing at the instance of the Election Commission through the Central or State police investigation agency; for the establishment of special courts; and for appointment of public prosecutors. In the absence of such a power, the Election Commission is unable to play its legitimate role of conducting a free and fair poll and deal with effectively the violation of the law.

Recommendations.

8.6 After detailed discussion, the Committee recommends that-

(i) Section 58A of the Act should be so amended as to enable the Election Commission to take a decision regarding booth capturing not only on the report of the Returning Officer but even otherwise. In this context, the Committee feels that the expression "otherwise" used in Article 356 of the Constitution (provision in case of failure of constitutional machinery in States) should provide a useful guidance.

(ii) Under section 58A of the Act, the Election Commission should not only be empowered to countermand the election and order a fresh election as now provided under the law, but also empowered to declare the earlier poll to be void and order only a repoll in the entire constituency depending on the nature and seriousness of each case.

(iii) It is essential that an enabling provision should be incorporated in the law empowering the Election Commission to locate (1) an investigation agency; State or Central; (2) a prosecuting agency; (3) constitution of special courts whereever

necessary. It is not necessary to bind in any way specifically the Election Commission in regard to these matters.

(iv) The suggestion of Shri R.K. Trivedi, Former Chief Election Commissioner in his report and of Shri Rajaji that the State Government should function as a caretaker Government during the period of elections is not been favoured.

(v) The suggestion that the formation of voluntary organisations should be encouraged to oversee the conduct of the poll in every constituency is also not favoured.

(vi) The proposal to make the electoral offence of booth capturing as a cognizable offence with a stringent punishment is accepted. (This aspect is also being with dealt below).

Statutory recognition to standing instructions of the Election Commission.

(vii) The proposals that there should be a strict enforcement of standing instructions of the Commission regarding surrender of arms, apprehensions of bad elements etc. and that for this purpose a statutory recognition should be given to the issue of standing instructions by the Commission by insertion of a suitable enabling provision in the Act, are accepted.

Election Commission to take concrete steps for proper coordination between State and Central Police Forces.

(viii) The suggestions that there should be proper coordination between State and Central Police Forces and deployment of Central Forces for election duty at polling stations whereever found necessary are accepted. The Committee desires that the Election Commission should be asked to examine further the matter for taking concrete steps in that behalf.

No Need for deployment of planning and supervisory machinery over existing arrangement.

(ix) The suggestion for deployment of planning and supervisory machinery in the constituencies to oversee the arrangements over and above the existing arrangements under the existing instructions of the Commission is found to be neither feasible nor necessary.

9. Time-limit for holding bye-elections.

9.1 The Committee took note of the reasons for the delay in holding bye-elections as explained in the Notes.

9.2 In this context, the Committee examined the proposal as contained in the Notes that a bye-election should be held within three months of the vacancy with the rider that if the vacancy has arisen within six months prior to a general election normally due, it would not be necessary to fill the vacancy.

Time limit of six months and non-filling of vacancy if general election due within one year.

9.3 The consensus among members is that a bye-election should be held within six months of the occurrence of the vacancy as against the proposal of three months provided that bye-election to fill a vacancy need not be held if a general election is normally due within one year from the date of the occurrence of the vacancy.

10. Power to order repoll.

10.1 The Committee has already recommended that the Election Commission should enjoy a statutory power in cases of booth capturing either to countermand the election after declaring the election held to be void or order a repoll in the entire constituency (vide sub-item 5 - Steps to eradicate booth capturing, rigging, intimidation etc.). It has also decided to recommend that the Election Commission should be enabled to act not only on the basis of a report from the Returning Officer but also otherwise on the basis of all material circumstances brought before it.

Regional Commissioners, observers to have power to order deferring of counting etc.

10.2 Incidentally, the Committee feels that the Regional Commissioners and observers appointed by the Commission or any other supervisory officers employed by the Commission at elections, should have the power under the law to order the deferring of counting or declaration of the result pending decision

of the Commission on their report regarding the facts submitted to the Commission.

11. Reasons for low polling and remedial measures.

11.1 The Committee discussed at length the matter analysing the reasons for low polling and about the remedial measures that would be required to set right the matter.

11.2 Incidentally, one of the members observed that where there has been a low percentage of voting, say 20 percent, it might be on account of threats given to the electorate not to participate at elections as has happened in the recent past. In such a case, he felt that there should be a repoll in the entire constituency for the reason that there has been no free and fair poll reflecting fully the verdict of the constituency.

11.3 On the other hand, some other members have felt that a winning candidate who might not have any connection or any hand in issuing such threats resulting in low polling, should not be deprived of his success.

In these circumstances, the Committee feels that the matter need not be pursued.

11.4 One of the members feels that the only effective remedy for low percentage of voting is to introduce the system of compulsory voting as in Australia. The Committee does not however favour the suggestion because of practical difficulties involved in its implementation.

Present procedure regarding postal ballot most unsatisfactory.

11.5 Some members feel that the procedure followed now in regard to postal ballot paper facilities is most unsatisfactory as many of the persons who are entitled to such facility are not actually benefitted. In many cases, the facility remains only in paper.

Need for close examination of present procedure to remove drawbacks.

11.6 The Committee feels strongly that there should be a close examination of the present procedure to remove the drawbacks and make the facility of postal ballot really meaningful.

Eligibility of candidates' workers etc. for postal ballot suggested.

11.7 One member observed that persons employed as drivers, workers etc. of transport vehicles used by candidates should also be made eligible for postal ballot paper facility.

Examination by Election Commission.

11.8 The Committee recommends that the Election Commission should look into this aspect and make these categories of persons to be entitled to the facility of postal ballot paper by treating them to be on election duty under the law.

Drawbacks in procedure followed in regard to Army Personnel etc.

11.9 The Committee has examined the Notes in paragraphs 8.6 to 8.8 regarding the existing system of voting by postal ballot paper followed in the case of army personnel, persons employed in diplomatic service, personnel of para-military force, etc.

11.10 The Committee agrees that as explained in the Notes, the present facility of voting by postal ballot paper in these cases has not served any useful purpose for the reason that there are many practical difficulties in ensuring that the despatch of postal ballot papers to these categories of persons and return of those papers to the Returning Officers concerned in time after voting according to the time schedule could not be followed.

Proposal for Voting through Proxy accepted

11.11 The Committee accepts the proposal that the army personnel, persons outside India in diplomatic services, and also persons belonging to para-military forces, etc. should enjoy the facility of voting at elections through proxy.

Study of procedure obtaining in U.K.

11.12 In this context, the Committee wants that the system of voting by proxy as followed in the United Kingdom should be studied quickly for adoption in our country by suitable amendment to the law and procedure.

12. Countermanding of poll on death of candidates.

Countermanding only in case candidate set up by recognised party dies.

12.1 The Committee examined the Notes on this item and also took note of similar provisions in 1985 Ordinance issued in the case of last general election to the Punjab Legislative Assembly in 1985. The Committee agrees that the law should be amended so as to provide to the effect that only if a candidate set up by recognised political party dies, the election should be countermanded and not otherwise.

Present provision regarding countermanding defective and confusing.

12.2 Incidentally, one member observed that the present provision under section 52 dealing with cases of countermanding of election on the death of a candidate seems to be defective and also confusing. In this context it has been brought to the notice of the Committee that recommendations of Shri S.P. Sen Verma, a Former Chief Election Commissioner, contained in his Report on 1968-69 elections suggesting specifically the lines on which section 52 of the Act should be amended to remove any scope for doubt.

Acceptance of Commission's proposal in 1968-69.

12.3 The Committee accepts the lines of amendment to section 52 of the Act as suggested by Shri S.P. Sen Verma except that the outer limit for countermanding the poll should be the death of a candidate 'before the commencement of the poll' and not "declaration of the result" as proposed by Shri S.P. Sen Verma.

13. Term of Members of Rajya Sabha and holding of biennial elections.

13.1 The Committee took note of the suggestion in the Notes on the subject.

Amendment of law to make cycle of retirement in all cases uniform not favoured.

13.2 The Committee feels that though the retirement of members of Rajya Sabha elected from different States on the completion of their term, is not uniform and that the cycle of retirement on the same day has been broken, it is not necessary to make the amendment to law as proposed to bring into effect one single day of retirement in all cases.

13.3 The Committee feels that such a course would unnecessarily curtail and interfere with the term of members of the Rajya Sabha.

14. Qualification for elections to Rajya Sabha and requirement as to number of proposers:

Change in requirement of candidate being elector in a state from where he seeks election not favoured.

14.1 One member observed that the present requirement for contesting election to Rajya Sabha that the candidate should be an elector in the State from which he seeks such election, is being generally misused. He therefore felt that as in the case of elections to Lok Sabha the requirement for contesting at elections to Rajya Sabha should be that the person must be an elector in any parliamentary constituency in India.

14.2 However, the Committee finds that there is no unanimity of views among the members on this suggestion.

Reduction of number of proposers to a nomination paper favoured.

14.3 The Committee examined the requirement as contained in section 39 of the Representation of the People Act, 1951 that a nomination filed in conection with an election to Rajya Sabha should be proposed by ten proposers and the additional notes on the subject circulated to members. The Committee feels that this requirement of ten proposers would create practical difficulties for smaller parties to muster the required number of proposers.

Amendment of section 39 to provide for one proposer and one seconder only.

14.4 Accordingly, the Committee recommends that section 39 should be so amended as to lay down that a nomination paper in connection with an election to Rajya Sabha and Legislative Council by members of the Legislative Assembly may require only one proposer and one seconder.

REFERENCE SOURCE

1. Minutes of the Meeting of the Committee dated the 8th March, 1990.

2. Minutes of the Meeting of the Committee dated the 30th and 31st March, 1990.

3. Minutes of the Meeting of the Committee dated the 2nd April, 1990.

4. Notes on Subjects-Part I (Chapter VI - Conduct of Poll).

5. Note on requirements of ten proposers for Rajya Sabha elections.

6. Note containing the recommendations of the National Seminar on "Elections and role of law enforcement" at Hyderabad - Category III).

7. Note on offences of Booth capturing.

8. Report of the Technological Experts team on the use of Electronic Voting Machines.

CHAPTER VII

Election Expenses

1. Fixing reasonable ceiling on rational basis.

Power to Election Commission to lay down ceiling on eve of every general election.

1.1 The Committee examined the suggestions contained in paragraph 7.5 of the Notes. The Committee feels that the law should lay down provisions enabling the Election Commission to revise the ceilings of election expenditure on the eve of every general election to Lok Sabha and Assembly of a State.

1.2 Accordingly, the Committee recommends that section 77(3) of the Act should be amended empowering the Election Commission to lay down the ceilings instead of the Central Government notifying as at present the maximum election expenditure under the Rules in consultation with the Election Commission.

2. Accounting of election expenses.

Amendment of law to remove present distortions.

2.1 The Committee examined the proposals contained in paragraph 3.2 of the Notes on the subject. The consensus is that the law relating to accounting of election expenses should be restored at least to the position that existed prior to 1974 and that many of the destortions should be removed.

Expression "any other person" not to be used in section 77.

2.2 In this context, the Committee feels that by bringing the expenses incurred by "any other person" within the purview of section 77, it would provide scope for the third person to misuse the provision to vitiate the election of the candidate without the expenditure being in the knowledge of the candidate or his election agent. The Committee therefore desires that the expression "or any other person" in the proposed section 77, should not be used.

2.3 The Committee also feels that the use of the words "whether before, during or after an election" should be deleted from the proposed amendment.

Recommendation regarding period of accounting.

2.4 The Committee is of the view that the period of accounting should be between the date of notification of the election and the date of declaration of the result of the election.

Deletion of two explanations and the proviso to section 77.

2.5 The Committee also favours the deletion of Explanations to Section 77 and the proviso which have made inroads into the provisions of the law making it ineffective.

Furnishing of declaration in Affidavit and with oath not favoured.

2.6 The Committee is not also in favour of the candidate furnishing a declaration in the prescribed form of affidavit with an oath sworn before a judicial magistrate or oath commissioner owning responsibility for the correct and true account of the election expenditure even though such a provision existed in the past.

Present system of declaration in return of election expenses to continue.

2.7 In this context, the Committee feels that the present system of giving simple declaration in the return of election expenses would be sufficient.

Unauthorised expenditure to be an electoral offence.

2.8 The Committee also agrees that any unauthorised expenditure incurred by any person other than the candidate or his election agent should be prohibited and treated as an electoral offence and that such an offence should be made punishable with imprisonment for a period of not less than one year in addition to fine.

Lines of Amendment to Section 77 outlined.

2.9 Keeping the above points in view, the Committee feels that the amendment to section 77(1) should be on the following lines:

"(1) All expenditure incurred or authorised either by the candidate or his election agent on account of or in respect of the conduct or management of the election shall be required to be included in the account of election expenditure of the candidate".

Penal offence for failure to keep an election account to be made more stringent.

2.10 The Committee also feels that failure to keep an election account which is already a penal offence under section 171-F, IPC should be made more stringent by providing for imprisonment of at least six months in addition to fine.

Submission of false account to be electoral offence

2.11 The Committee also recommends that submission of false account should be an electoral offence and the minimum punishment for violation of this provision should be two years imprisonment.

Guidance from UK Law

2.12 The Committee observes that the notes circulated by Shri Era Sezhiyan analysing the provisions of the U.K. Act relating to election expenses should be kept in view before formal amendments are drawn up.

3. Regulation or ban of donations by companies

3.1 The Committee examines the Notes on the subject and also the additional notes by Shri L.P. Singh.

Complete ban on Companies donation proposed.

3.2 After discussion, the Committee feels that there should be a complete ban on donations by companies and the relevant law should be amended accordingly.

Loophole of clandestine contributions to be plugged.

3.3 Shri L.P. Singh has observed that though he would agree with the proposal still there would be scope for substantial clandestine contributions to political parties under the table through the contractors of the companies though not directly by the companies and this aspect should also be examined to tighten the law. The Committee wants this aspect should also be kept in view in formulating the provisions so that no loophole is left.

REFERENCE SOURCES

1. Minutes of the Meeting of the Committee dated the 31st March, 1990.

2. Minutes of the Meeting of the Committee dated the 2nd April, 1990.

3. Notes on Subjects - Part - I (Chapter VII - Election Expenses).

4. Notes by Shri Era Sezhiyan on U.K. Law on election expenses.

5. Note on Contributations by companies to political parties by Shri L.P. Singh.

CHAPTER VIII

State Funding of Elections

1. Fixation of ceiling of State Assistance

1.1 The Committee has discussed on 2nd April and 11th April, 1990 the proposals and points contained in the Notes on the subject.

State assistance to be in kind.

1.2 The Committee is of the view that State assistance only in kind and not in cash should be extended.

1.3 While members generally agree on principle that State assistance could be extended in respect of the various items enumerated in the Notes, the Committee feels that it would be very difficult to prohibit or contain private expenditure on various items listed in the notes.

Identification of four areas for State assistance

1.4 After some discussion, the Committee feels that to start with, only in respect of three or four items out of the various items listed in the Notes, State Assistance should be provided.

1.5 Accordingly, the Committee recommends State assistance in kind in respect of -

(1) Provision of prescribed quantity of fuel or petrol to vehicles used by candidates;

(2) Supply of additional copies of electoral rolls;

(3) Payment of hire charges for prescribed number of microphones used by candidates;

(4) Distribution of voters' identity slips now being done by contesting candidates should be exclusively undertaken by electoral machinery and all candidates should be prohibited from issuing such slips.

Election Commission to work out details.

1.6 The details of the manner and mode of State assistance in the above areas and its implementation should be left to the Election Commission to work out. The Committee further feels that only minimum enabling provisions should be included in the law.

2. Eligibility of State assistance - candidates of political parties and independents.

State assistance only to candidates set up by recognised parties

2.1 The Committee recommends that State assistance in respect of the above items should be extended only to candidates set up recognised political parties.

2.2 The Committee also recommends that the Independent candidates and candidates set up by registered parties need not be made eligible for State assistance.

3. Restriction of private expenses on items made eligible for State assistance

Ban on private expenses except on distribution of voters' identity slips not favoured.

The Committee is of the view that, as pointed above, except in the case of distribution of Voters' identity slips which should be taken over by the electoral machinery prohibiting completely all the candidates from issuing such slips, there need not be any ban on private expenditure in respect of other items proposed for State assistance.

4. Financial Assistance to political parties on annual basis

Proposal not favoured.

The Committee is not in favour of any financial assistance as proposed.

REFERENCE SOURCE

1. Minutes of the Meeting of the Committee dated the 2nd April, 1990.

2. Minutes of the Meeting of the Committee dated the 11th April, 1990.

3. Notes on Subjects - Part I (Chapter VIII - State Funding of Elections).

CHAPTER IX

Election Disputes and Electoral Offences

1. Steps for expeditious disposal of election petitions and appeals.

1.1 The Committee discussed the proposal as contained in the Notes on the subject.

Recommendation for appointment of *Ad hoc* Judges.

1.2 The Committee has agreed with the proposal for the appointment of adequate number of ad hoc judges who would relieve the regular judges from their normal duty for the purpose of entrusting to them the trial of election petitions.

Appointment of Commissions to record evidence of witnesses not favoured.

1.3 The Committee does not however favour the proposal as contained in the Notes for appointment of commissions under the jurisdiction of the High Court for the purpose of taking evidence of witnesses and placing the recorded evidence before the High Court for further trial of election petition on questions of law and fact.

Substitution in cases of non prosecution not favoured.

1.4 The Committee feels also that there is no need for the amendment of law as proposed for substitution of a person as a petitioner in the event of the petitioner himself resorting to non-prosecution of the petition.

2. Stringent penal provisions against electoral offences.

2.1 The Committee discussed the various proposals on this subject at the meetings held on 2nd April, 1990 and 11th April, 1990. The views and recommendations of the Committee are as follows:-

(a) Section 126 - Prohibition of public meeting on the day preceding election day and on the election day.

Extension of prohibition period to 72 hours not favoured.

2.2 The Committee is not in favour of the proposal of the Seminar conducted by the National Police Academy, Hyderabad, to extend the prohibition to 72 hours ending with the hour fixed for the conclusion of the poll in any election. It is of the view that the present prohibition of 48 hours is adequate.

2.3 The Committee took note of that the present prohibition is only in respect of public meetings. Secondly, the punishment for contravention of the provision is only fine which may extend to Rs.250/-.

Expansion of provision as per recommendations of Joint Parliamentary Committee favoured.

2.4 After considering the Report of the Joint Parliamentary Committee of 1972 and the draft Bill appended thereto, the Committee has agreed to expand the provision of section 126 as recommended in the said draft Bill.

(b) Section 127 - Disturbance at election meeting:

The Committee approves the suggestion that the imprisonment for the violation of the provision should be for six months or fine of Rs.2,000/- or with both.

(c) Section 127-A - Restrictions on printing of pamphlets, posters, etc.

The Committee agrees that the provisions should be more stringent for violation of the restriction on printing of pamphlets, posters, etc. Accordingly, it recommends that section 127-A should be amended to increase the imprisonment to two years from six months.

Penal provisions of these sections to be made more stringent.

(d) Section 129 - Officers etc. at elections not to act for candidates or to influence voting:

Section 130 - Prohibition of canvassing in or near polling stations:

Section 131 - Penalty for disorderly conduct near polling stations:

Section 132 - Penalty for misconduct at the polling stations:

Section 134 - Breach of official duty in connection with elections:

Section 135 - Removal of ballot papers from the polling stations to be an offence:

The Committee recommends that penal provisions in all these sections should be examined further to make them more stringent.

(e) Section 133 - Penalty for illegal hiring or procuring of vehicles and conveyance at elections:

Penalty for illegal hiring or procuring of vehicles to be more stringent and cognizable.

The Committee considered the recommendations of the Joint Parliamentary Committee of 1972. It feels that the amendment to section 133 should be on the lines suggested in the Bill appended to the Report of the Joint Parliamentary Committee of 1972: that the punishment for the violation should be six months imprisonment with fine; and that the offence should also be made cognizable.

(f) Section 134 A - Penalty for Government servants acting as election agents, polling agent or counting agent:

Amplification of provision to include 'local authority' not favoured.

The Committee considered the Report of the Joint Parliamentary Committee of 1972 suggesting that the persons working in any local authority should also be brought within the ambit of this section. The Committee, however, does not agree with this proposal on account of practical difficulties.

(g) Section 135 - Removal of ballot papers from the polling stations to be an offence:

Amendment of section 135.

(1) The Committee considered the report of the Joint Parliamentary Committee of 1972 and the Bill appended thereto suggesting the inclusion of the expression " force or violence or show of force or violence" in regard to the ballot papers being taken out of the polling stations.

(2) The Committee feels that it would be sufficient if a simple expression "takes away the ballot paper or attempts to take away the ballot paper out of polling station" is inserted in the law.

(3) The Committee feels that the imprisonment for violation of this offence should be one year.

3. New Electoral offences

The Committee examined the following items for the purpose of incorporating new electoral offences and further strengthening the law.

(a) Personation (Impersonation).

Impersonation to be an electoral offence

The Committee took note of that at present it is only an offence under the Indian Penal Code (vide Chapter IXA - Offence relating to Elections - section 171 D). The Committee after considering the Report of the Joint Parliamentary Committee of 1972, recommends that impersonation should be made an electoral offence under the Representation of the People Act, 1951 and should also be made more stringent by providing for punishment of imprisonment which may extend to three years or with fine or with both.

offence to be cognizable

The Committee further recommends that the offence should be made a cognizable offence.

(b) Use of vehicles for conveyance at elections:

The Committee accepts the recommendation of the Joint Parliamentary Committee of 1972 in this regard to make this offence as an electoral offence and suggests that the provisions should be made on the lines of the Bill appended to the Report of the Committee (vide section 133A).

(c) Ban on plying of mechanically propelled vehicles on poll day:

Exemption of owner driven car and public transport buses from ban favoured.

(1) While the Committee agrees to the imposition of complete ban on mechanically propelled vehicles like lorries, tractors with trailers, buses, taxies, auto-rickshaws etc., it does not favour the imposition of any ban on owner driven cars and public transport buses which should be exempted from the ban.

offence to be made cognizable

(2) The Committee also accepts that the punishment for violation of this ban should be two years and the offence should be made cognizable.

Recommendation of cancellation of licences in suitable cases.

(3) The Committee also accepts the suggestion that in suitable cases licences of the vehicles should be cancelled and the vehicle itself could be confiscated.

Details to be worked out by Election Commission and insertion of only simple enabling provision.

(4) The Committee feels that the matter should be left to the Election Commission to work out the full details and that the parliamentary law should only provide for simple enabling provision.

(d) Prohibition of going armed to or near a polling station on poll day.

Carrying of firearms etc. to be an electoral offence.

(1) The Committee agrees to the insertion of a new penal provision banning carrying of firearms and lethal weapons on the poll day and treating the violation thereof as an electoral offence.

Offence to be made cognizable.

(2) The Committee approves that imprisonment for violation of this electoral offence should be two years. The offence should be made cognizable.

Arms to be confiscated and licence cancelled.

(3) The Committee also recommends that arms found with guilty persons should be confiscated and the licence cancelled where such licence had been issued.

(e) Ban on sale and distribution of liquor and other intoxicated drinks:

(1) The Committee considered the proposal of the Joint Parliamentary Committee of 1972 and the provisions of the Bill

appended thereto.

Sale and distribution of liquor etc. to be made an electoral offence.

(2) The Committee feels that the provisions in the said Bill should be adopted and the punishment for contravention should be six months imprisonment and fine of Rs.2,000/-.

Confiscation of quantity of liquor.

(3) The Committee also feels that the quantity of liquor found in the possession of the person in contravention of the penal provision should also be confiscated.

Exemption of 'consumption of liquor' from penal provision

(4) The Committee agrees with the suggestion of a member that the expression 'consumption of liquor' should not be used in the penal provisions.

(f) Lodging of false account of election expenses:

Lodging of flase account to be an electoral offence and imprisonment for two years.

(1) The Committee has already approved the inclusion of this new electoral offence. The Committee suggests that for contravention of this provision, the imprisonment should be for two years.

Offence to be non cognizable.

(2) The Committee feels that because of the nature of the offence, it should not be made cognizable.

(g) Violation of Model Code

Violation to be an electoral offence.

(1) The Committee has already approved the insertion of this new electoral offence.

Offence to be non-cognizable.

(2) The Committee recommends that the punishment for contravention of this provision should be for two years and that the offence need not be cognizable.

(h) Grant of paid holiday to employees on the day of poll:

(1) The Committee approves the proposal of the grant of paid holiday to employees in any business, trade, industrial undertaking or any other establishment on the day of poll as contained in the Report of the Joint Parliamentary Committee of 1972 and the Bill appended thereto (vide section 135 A).

Punishment for contravention

(2) The Committee recommends that for contravention of this provision the person should be fined Rs.500/- as against Rs.50/- as proposed by the Joint Parliamentary Committee.

4. Strengthening of statutory provisions relating to disqualification:

Conviction under the Prevention of Insults to National Honour Act to be ground for disquali-fication.

(1) The Committee considered the proposal of the Chief Election Commissioner to bring persons convicted under the Prevention of Insults to National Honour Act, 1971 under disqualification provisions by making it for six years. The Committee accepts this proposal.

Diqualification for making conviction for moral turpitude or detention under National Security Act not favoured.

3.2 However, the Committee has not favoured the suggestion to disqualify persons found guilty of moral turpitude or persons detained under the National Security Act whose detention had been approved by a judicial Advisory Committee.

REFERENCE SOURCES

1. Minutes of the Meeting of the Committee dated the 2nd April, 1990.

2. Minutes of the Meeting of the Committee dated the 11th April, 1990.

3. Notes on Subjects - Part I (Chapter IX - Election Disputes and Electoral Offences).

4. Note containing the recommendations of the Seminar on "Elections and role of law enforecement" at Hyderabad (Category III).

Chapter X

Anti-Defection Law

1.1 The Committee examined the proposals in the Notes on the subject.

1.2 Shri H.K.L. Bhagat, M.P.(Indian National Congress), is strongly opposed to any change in the present law relating to anti-defection as, according him, such changes would dilute the provisions.

1.3 Other members are unanimously of the view that the three important changes as proposed in the Notes should be accepted.

Recommendations for amendments.

1.4 The Committee has accordingly recommended that the Anti-Defection Law (Tenth Schedule to the Constitution) should be chaged in the following respects:-

1. Disqualifiction provisions should be made specifically limited to cases of (a) voluntarily giving up by an elected member of his membership of the political party to which the member belongs; and (b) voting or absentention from voting by a member contrary to his party direction or whip only in respect of a motion of vote of confidence or a motion amounting to no-confidence or Money Bill or motion of vote of thanks to the President's address.

2. The power of deciding the legal issue of disqualification should not be left to the Speaker or Chairman of the House but to the President or the Governor, as the case may be, who shall act on the advice of the Election Commission, to whom the question should be referred for determination as in the case of any other post-election disqualification of a Member.

3. The nominated members of the House concerned should incur disqualification if he joins any political party at any period of time.

Reference Source

1. The minutes of the Meeting of the Committee dated 11th April 1990.

2. Notes on the Subject- Part I (Chapter X. Anti-Defection Law).

Chapter XI

Office of Profit

1.1 The Committee took note of the drawbacks in the present position of giving blanket power of exemption to the legislatures in regard to disqualification of a member for holding office of profit, as pointed out in the Notes. However, the Committee is of the view that the suggestion that the Committee of Parliament of Office of Profit should decide the procedure for laying down stringent guiding principles for exempting the offices from the purview of inhibiting provisions of the Constitution, would not be acceptable to States as it infringed upon State subjects.

Law Ministry to prepare Model Bill and circulate it to States for adoption.

1.2 Consequently, the Committee desires that the Law Ministry should do an exercise in the matter for the preparation of a Model Bill for circulation and adoption by the various State Governments.

Reference Source

1. Minutes of the Meeting of the Committee dated 11th April 1990.

2. Notes on the subject - Part - I (Chapter XI - Office of Profit).

Chapter XII

Electoral Systems - Examination

1. Proposal for change of system of elections

No unanimity

1.1 The Committee observed that there is no unanimity in regard to this matter. Some members totally opposed the proposal for any change in the present system while others desired a change over to Proportional Representation System.

2. Constitution of Expert Committee to examine change of electoral system.

Law Ministry and Election Commission to examine constitution of Expert Committee

2.1 In view of the sharp difference of opinion in the matter, the Committee feels that it should only recommend that the subject of change of the present electoral system should be examined by an expert committee. Accordingly, it recommends to the Law Ministry and the Election Commission that the matter relating to change of the present electoral system should be pursued and that if necessary an Expert Committee should be constituted for the purpose.

Reference Source

1. Minutes of the Meeting of the Committee dated 11th April, 1990.

2. Notes on the Subject - Part II - (Electoral Systems - Examination).

CHAPTER XIII

Miscellaneous

Suggestions and comments from MPs, etc.

1. Shri Dinesh Goswami, Law Minister and Chairman of the Committee, wrote on 28th December 1989, to all Members of Parliament and some other eminent persons furnishing them with the broad outlines of electoral reforms to be considered by the Committee and seeking their views on them.

1.2 In response to this letter, many Members of Parliament and other eminent persons and organisations sent their comments and views.

1.3 A compilation of these comments and views in brief has been prepared and placed before the Committee for its consideration.

1.4 The Committee finds that many of the suggestions either directly or indirectly have already been taken note of in the Notes prepared for the consideration of the Committee and in fact examined by the Committee. The Committee however finds that a very large number of suggestions and views fall outside the scope of the Committee's task as outlined by the Prime Minister in his concluding remarks at the meeting of the political parties held on 9th January, 1990 and subsequent decisions of the Committee outlining the important items to be taken up for its consideration.

Constitution of a Standing Committee of Parliament.

1.5 At the meeting of the Committee held on 11th April, 1990, one member suggested that as the electoral reforms is a continuous process, a Standing Committee of Parliament should be constituted to go into all electoral matters from time to time.

1.6 The Committee accepts this suggestion and requests the Ministry of Law, Legislative Department, to take necessary steps in this direction.

Existence of near unanimity of decisions.

1.7 The Committee is gratified to note that there exists near unanimity or broad consensus among members in arriving at definite conclusions on majority of items discussed by the Committee. It is no doubt true that during discussions, Shri H.K.L. Bhagat, M.P. (Indian National Congress), time and again, made it clear that he was not in a position to commit his party to any definite views on the various items of the Subject and that his party would consider the various points on their merits as and when the Government brought forward legislation in the parliament.

Emergence of broad consensus or agreement.

1.8 The Committee has made sincere efforts in discussing the whole range of electoral reforms and succeeded in arriving at broad consensus in respect of the most of the items. Though it found that there were divergence of views among members in respect of some of the important and vital areas like (1) Regulation of functioning of Political parties; (2) State funding of elections; (3) Change of present electoral system etc. it was because of the very nature of these controversial or contentious subjects which, at any time, bound to generate differences of perception and approach. Barring these few areas, it is really gratifying that all the members brought to bear an objective approach to the subject of electoral reforms and contributed towards the emergence of broad consensus or agreement on very many important and vital areas.

Peculiar nature of election law.

1.9 The Committee is conscious of the fact that any amount of tinkering with the law to remove drawbacks, defects and shortcomings of the law would not produce hundred per cent success. It is so because the election law does not concern only with any particular section or specified small class of persons. It comprehends within its ambit the entire mass of millions of people and a very large number of political groupings with different ideologies and leanings. The success of any legislative measure in regard to election law and procedure therefore greatly depends on the proper working of, and adherence to, the system on the part of the electoral machinery at all levels, political parties and candidates and the electorate. The Committee only hopes that such a realisation would be strengthened among all of them so that India could continue to be an oasis of democracy as pointed by the Supreme Court.

Committee's efforts only to further the prospects of free and fair elections.

1.10 Keeping the above inhibiting factors in view, the Committee would be rest content with a recognition that the Committee has done its best with a view to injecting purity and furthering the prospects of free and fair elections.

Reference Sources

1. The Minutes of the Meeting of the Committee on Electoral Reforms dated 11.4.1990.

2. Compilation of the Comments and Views of Members of Parliament etc. in response to the letter of the Minister of Law and Justice in December, 1989.

CHAPTER XIV

Summary of Recommendations

1.1 The following is the summary of the recommendations of the Committee based on its conclusions as indicated in the earlier Chapters.

1.2 It is necesassary to state here that though decisions indicated below have been arrived at on the basis of the consensus among majority of the members, the representative of the Indian National Congress, Shri H.K.L. Bhagat M.P. has made it clear, as stated earlier, that his party would consider the law as and when brought before the Parliament on its merits and that he would not like to express any definite views on any of the matters without ascertaining the views of his party.

However, he expressed himself in favour of (1) reservation of seats for women and (2) introduction of the system of multi-purpose identity cards.

1.3 The following summary should therefore be taken as the broad consensus of the members of the Committee .

CHAPTER II

Electoral Machinery

1. Set up of multi-member Commission

1. The Election Commission should be a multi-member body with three members.
2. The Chief Election Commissioner should be appointed by the President in consultation with the Chief Justice of India and the Leader of the Opposition (and in case no Leader ot Opposition is available, the consultation should be with the Leader to the largest opposition group in the Lok Sabha).

3. The consultation process should have a statutory backing.

4. The appointment of other two Election Commissioners should be made in consultation with Chief Justice of India, the Leader of the Opposition (in case no Leader ot Opposition is available, the consultation should be with the Leader to the largest opposition group in the Lok Sabha) and the Chief Election Commissioner.

5. The appointment of Regional Commissioners for different zones is not favoured. Such appointments should be made only as and when necessary and not on a permanent footing.

2. Steps for securing independence of the Commission

6. The protection of salary and other allied matters relating to the Chief Election Commissioner and the Election Commissioners should be provided for in the Constitution itself on the analogy of the provisions in respect of the Chief Justice and Judges of the Supreme Court. Pending such measures being taken, a parliamentary law should be enacted.

7. The expenditure of the Commission should continue to be 'voted' as of now.

8. The Chief Election Commissioner and the Election Commissioners should be made ineligible not only for any appointment under the Government but also to any office including the office of Governor appointment to which is made by the President.

9. The tenure of the Chief Election Commissioner and other Election Commissioners should be for a term of five years or sixty-five years of age, whichever is later and they should in no case continue in office beyond sixty-five years and for more than ten years in all.

3. Set up of the Secretariat

10. The set up of the secretariat of the Commission should be on the lines of Article 98(2) of the Constitution relating to Lok Sabha Secretaria and till such provision is made, a law of Parliament should be enacted.

4. Set up of electoral machinery at State level

11. The Chief Electoral Officers should exclusively be entrusted with the election work and not saddled with any other items of work.

12. There is no need for the creation of a supervisory agency for a group of districts as proposed by the Election Commission.

13. The provisions in section 28A of the Representation of the People Act, 1951 should be examined further with a view to provide for effective and complete control over the officers in all respects including framing of charges, lodging of prosecution and disciplinary proceedings against those officers for breach of duty during the period of his deputation to the Election Commission.

14. The transfer of officers connected with the election work should be effected only with the concurrence of the Election Commission.

5. Extension of jurisdiction of electoral machinery in relation to Panchayat Raj Institutions.

15. The question relating to extension of jurisdiction of electoral machinery in relation to elections to Panchayat Raj Institutions should be taken up only after ascertaining the exact details of the contemplated legislative or constitutional measures.

6. Power of contempt in favour of Election Commission

16. The proposal for clothing the Election Commission with the power of contempt is not favoured.

Chapter III

Delimitation of Constituencies

17. There should be a fresh delimitation on the basis of 1981 census.

18. There should be rotation of seats reserved for Scheduled Castes but the manner of achieving the object of rotation of seats should be left to the Delimitation Commission and the Parliamentary law to be made for the purpose.

19. Political parties should give larger representation to women candidates at election to the House of Parliament and State Legislatures by putting up more numbers of them at elections.

20. Any change of multiple of assembly seats is not favoured.

Chapter IV

Electoral Rolls

1. Steps for improving enrolment of all eligible names

21. Post offices should be the focal point for the preparation and maintenance of electoral rolls, up-to-date and up-keep of records. The Election Commission should fully discuss this matter with the Postal Board and the Census Commissioner.

22. Section 32 of the Representation of the People Act, 1950 should be further strengthened so as to provide for more stringent punishment for breach of official duty in connection with the preparation, revision etc. of electoral rolls.

23. The punishment should be at least for 6 months as against only the impostion of fine as at present.

24. The Election Commission should be given power not only to recommend disciplinary proceedings for breach of official duty but also should be empowered to record adverse entries against officers found guilty of lapses in their duty and forward them to the concerned authorities.

25. The officers connected with the preparation and revision of electoral rolls should also be brought under the control and disciplinary jurisdiction of the Election Commission as in the case of officers connected with the conduct of poll.

2. Issue of multi-purpose photo identity cards

26. Steps for successful implementation of the scheme of multi-purpose photo identity cards as proposed should be undertaken and that a time-bound programme for covering the entire country with the proposed scheme is desirable.

Chapter V

Political Parties and Candidates

1. Restriction on candidates contesting from several constituencies.

27. A person should not be allowed to contest elections from more than two constituncies of the same class.

2. Lowering of age-limit for contesting candidates

28. Age qualification for contesting elections to Legislative Assemblies and Lok Sabha should be reduced to 21 years and in the case of elections to Legislative Councils and Council of States to 25 years.

3. Deletion of Section 29A relating to registration of Parties and regulation by Symbols Order.

29. Section 29A of the Representation of the People Act, 1951 dealing with the registration of political parties should be deleted and the matter of registration of political parties should be left to be decided solely by the Election Commission under the Election Symbols (Reservation and Allotment) Order, 1968. The law should also include a consequential provision authorising the Election Commission to deal with afresh any application for registration after the removal of all the political parties registered under section 29A of the Act from the list of registered parties.

30. There is no need for recognising alliances of political partiesat elections or for any change in the present procedure of allotment of symbols.

4. Regulations for containing contests by non-serious candidates

31. Security deposit in the case of a candidate set up by a recognised National or State Party should be rupees five hundred for Assembly elections and rupees one thousand for Lok Sabha elections with usual concessions to Scheduled Caste and Scheduled Tribe candidates.

32. Security deposit in the case of independents and candidates set up by registered parties should be rupees two thousand five hundred for Assembly elections and rupees five thousand for Lok Sabha elections.

33. If an independent candidate or a candidate set up by a registered party fails to secure $^1/_4$ as against $^1/_6$ of the valid votes polled as at present,

the security deposit should be forfeited.

34. The number of proposers to a nomination paper to be filed by an independent candidate or a candidate set up by a registered party should be ten, drawn from different assembly segments.

35. The arrangement of names of candidates in the ballot paper should be in the following order, namely:-

1. Candidates of recognised National Parties
2. Candidates of recognised State Parties
3. Candidates of registered parties, and
4. Independents.

36. The proposal that there should be a separate deposit by each of the proposer or a bond to be executed by him in the case of an independent candidate or a candidate set up by a registered party is not favoured.

37. The proposal to prevent agents of independent candidates and candidates set up by registered parties from attending to the duties as polling agents and counting agents is not also favoured.

5. (a) Regulation of functioning of political parties
(b) Compulsory maintenance of account of election expenses by political parties and audit thereof
(c) Submission of Annual Returns by political parties
(d) Enforcement of observance by political parties of requirements.

38. The matter relating to the above items need not be pursued as there is no unanimity of views.

39. The suggetion to clothe the Election Commission under the Symbols Order the power to withhold the allotment of symbols to the candidates set up by a political party if that party does not observe the provisions of its

constitution in regard to holding of periodical elections to its various organs is not favoured.

6. Statutory backing for model code of conduct

40. The following items in the model code should have the statutory backing and should therefore be brought within the ambit of the law :-

(a) Combining of official visit with work relating to elections or making use of official machinery or personnel in connection with any such work;

(b) Using Government transport, including official aircrafts, vehicles, machinery and personnel in connection with any work relating to elections;

(c) restricting or monopolising the use of public places for holding election meeting or use of helipads for air flights in connection with any work relating to elections;

(d) restricting or monopolising the use of rest houses, dak bungalows or other Government accommodation or the use of such accommodation (including premises appertaining thereto) as a campaign office or for holding any public meeting for the purpose of election propaganda.

(e) issuing of advertisements at the cost of public exchequer in the newspapers and other media;

(f) using official news media for partisan coverage of political news and publicity of achievements with a view to furthering the prospects of any party or candidate.

(g) announcing or sanctioning of any financial grants in any form or making payments out of discretionary funds;

(h) laying of foundation stones of projects or the inauguration of schemes of any kind or the making of any promises of construction of roads or the provision of any facilities;

(i) making of any *ad hoc* appointments in Government or public undertakings during the election period for the furtherance of the prospects of any party or candidate;

(j) entering any polling station or place of counting by a Minister except in his capacity as a candidate or a voter or as an authorised agent;

(k) Ban on transfer of officers and staff specified in section 28A when election is in prospect.

41. Violation of these provisions should be made an electoral offence and not corrupt practice.

Chapter VI

Conduct of Poll

1. Constitution of Indian Election Service

42. The constitution of Indian Election Service as proposed by the Election is not favoured.

2. Ban on transfer of officers connected with elections

43. The law should be suitably amended for imposing a ban on transfer of civil and police officers connected with elections for a specified period.

3. Statutory status of Commission's Observers

44. The Commission's observers should be clothed with statutory powers. However, the law should spell out their specific role like the power to stop (1) the poll for specified reasons; (2) the counting and (3) the declaration of the result. In all these cases, the matter should be referred to the Election Commission for final decision.

45. A general provision may also be included in the proposed law to the effect that an observer may be assigned such other functions as may be entrusted to him by the Election Commission.

4. Role of Voluntary Organisations

46. The proposal to give statutory recognition to the role of voluntary organisations and constitution of a Political Council or Election Council in regard to the conduct of elections is not favoured. The Election Commission may afford under its general powers such facilities to these voluntary organisations as it finds proper and necessary.

5. Use of Electronic Voting Machines

47. In view of the report of the technological experts certifying the credibility of the Electronic Voting Machines, the Electronic Voting Machines may be put to use at all future bye-elections and general elections to Lok Sabha and State Assemblies and local bodies. Intensive training programme for polling personnel at all levels on the working of the machines should also be arranged.

6. Provision of an electronic device to record particulars from identity card

48. Provision for an electronic device to record particulars of electors as in the photo identity cards as a safeguard against booth capturing etc. should be examined further.

7. Set up of mobile polling stations

49. Mobile polling stations fitted in vans may take the place of auxiliary polling stations which are being set up at present to enable the weaker sections to exercise their votes freely near their areas of residence. Such mobile polling stations should be stationed for the full polling period and should also be well protected with adequate police force.

8. Steps to eradicate booth capturing, rigging, intimidation etc.

50. Section 58A of the Representation of the People Act, 1951 should be amended enabling the Election Commission to take a decision regarding booth capturing not only on the report of the Returning Officer but even otherwise.

51. The Election Commission should not only be empowered to countermand the election and order a fresh election under the law but also declare the earlier poll to be void and order only a repoll in the entire constituency depending on the nature and seriousness of each case.

52. An enabling provison should be incorporated in the law empowering the Election Commission to locate (1) an investigation agency; State or Central; (2) a prosecuting agency; (3) constitution of special courts wherever necessary.' It is not necessary to bind in any way specifically the Election Commission in regard to these matters.

53. The suggestion that the State Government should function as a caretaker Government during the period of election is not favoured.

54. The suggestion that the formation of voluntary organisations should be encouraged to oversee the conduct of the poll in every constituency is also not favoured.

55. The electoral offence of booth capturing should be made a cognizabe offence.

56. Statutory recognition should be given to the issue of standing instructions by the Election Commission by insertion of a suitable enabling provision in the Act.

57. There should be proper coordination between State and Central police forces and deployment of Central forces for election duty at polling stations wherever found necessary. The Election Commission should further examine the matter for taking concrete steps in that behalf.

58. The suggestion for deployment of planning and supervisory machinery in the constituencies to oversee the arrangements over and above the existing arrangements under the existing instructions of the Commission is not favoured.

9. Time-limit for holding bye-elections

59. A bye-election should be held within six months of the occurrence of the vacancy and such a bye-election need not be held if a general election is normally due within one year from the date of the occurrence of the vacancy.

10. Power to order repoll

60. The Regional Commissioners and Observers appointed by the Commission or any other supervisory officers employed by the Commission at elections should have the power under the law to order the deferring of counting or declaration of the result pending decision of the Commission on their report.

11. Reasons for low polling and remedial measures.

61. The suggestion that there should be a repoll if there has been a low percentage of voting, say 20 per cent, in a constituency is not accepted.

62. The present procedure relating to postal ballot paper facility should be closely examined to remove drawbacks and make the facility really meaningful.

63. The suggestion that persons employed as drivers, workers etc. of transport vehicles used by candidates should be made eligible for postal ballot paper facility should be looked into by the Election Commission with a view to making these categories of persons entitled to the facility of postal ballot paper.

64. Army personnel, persons outside India in diplomatic service and also persons belonging to para-military forces should enjoy the facility of voting at elections through proxy and the system obtaining in that behalf in the U.K. should be studied quickly for adoption in our country by suitable amendment to law and procedure.

12. Countermanding of poll on death of candidate

65. Section 52 of the Representation of the People Act, 1951 should be amended to provide to the effect that only if a candidate set up by recognised political party dies, the election should be countermanded and not otherwise.

66. Section 52 of the Representation of the People Act, 1951 should be further amended on the lines proposed in the Report of the Election Commission on 1968-89 Elections in order to remove any scope for doubt or confusion. However, the countermanding of the poll should be ordered if the death of a candidate takes place before the commencement of the poll and not declaration of the result, as proposed by the Election Commission.

13. Term of members of Rajya Sabha and holding of biennial elections

67. Though the retirement of members of Rajya Sabha elected from different States on the completion of their term is not uniform and cycle of retirement on the same day has been broken, it is not necessary to make amendment to law as proposed for the purpose of bringing into effect one single day of retirement in all cases.

14. Qualification for election to Rajya Sabha and requirement as to number of proposers.

68. Any change in the present requirement that a candidate at elections to Rajya Sabha should be an elector in the State from which he seeks such election is not necessary.

69. Section 39 to the Representation of the People Act, 1951 relating to number of proposers to a nomination paper of a candidate at elections to Rajya Sabha and Legislative Councils by the members of the Legislative Assembly should be amended to provide for only one proposer and one seconder as against ten proposers.

Chapter VII

Election Expenses

1. Fixing reasonable ceiling on raational basis

70. Section 77(3) of the Representation of the People Act, 1951 should be amended empowering the Election Commission to lay down the ceilings instead of the Central Government notifying as at present the maximum election expenses under the Rules in consultation with the Election Commission.

2. Accounting of election expenses

71. Section 77(1) should be amended on the following lines:-

"(1) All expenditure incurred or authorised either by the candidate or his election agent on account of or in respect of the conduct or management of the election shall be required to be included in the account of election expenditure of the candidate".

72. There is no need for including "any other person" within the purview of section 77(1) or the use therein of expression "whether before, during or after an election".

73. The two Explanations and the proviso to section 77 should be deleted.

74. There is no need for the candidate furnishing in the prescribed form of affidavit with an oath sworn before a judicial magistrate or oath commissioner owning responsibility for the correct and true account of the election expenses. The present system of giving simple declaration in return of election expenses would be sufficient.

75. Any unauthorised expenditure incurred by any person other than the candidate or his election agent should be prohibited and treated as an electoral offence and that such offence should be made punishable with imprisonment for a period of not less than one year in addition to fine.

76. Failure to keep an election account which is already a penal offence under section 171-F, IPC should be made more stringent by providing for imprisonment of at least six months in addition to fine.

77. Submission of false account should be made an electoral offence and the minimum punishment for violation of this provision should be two years imprisonment.

3. Regulation or ban of donations by companies.

There should be a complete ban on donations by companies and the relevant law should be amended accordingly.

Chapter VIII

State Funding of Elections

1. Fixing of ceiling of State Assistance

78. To start with State assistance in kind should be given in respect of -

(1) Provision of prescribed quantity of fuel or petrol to vehicles used by candidates.

(2) Supply of additional copies of electoral rolls.

(3) Payment of hire charges for prescribed number of microphones used by candidates.

(4) Distribution of voters' identity slips now being done by contesting candidates should be exclusively undertaken by electoral machinery and all candidates should be prohibited from issuing such slips. The details of the manner and mode of State assistance in the above areas and its implementation should be left to the Election Commission to work out. The law should contain minimum enabling provison for the purpose.

2. Eligibility of State assistance - candidates of political parties and independents

79. The State assistance in respect of the above items should be extended only to candidates set up by recognised political parties.

3. Restriction of private expenses on items made eligible for State assistance

80. There need not be any ban on private expenditure in respect of items proposed for State assistance except in the case of distribution of Voters' identity slips which should be taken over by the electoral machinery prohibiting completely all the candidates from issuing such slips.

4. Financial assistance to political parties on annual basis

81. Any financial assistance to political parties on annual basis as proposed is not favoured.

Chapter IX

Election Disputes and Electoral Offences

1. Steps for expeditious disposal of election petitions and appeals

82. The proposal for the appointment of adequate number of ad hoc judges who would relieve the regular judges from their normal duty for the purpose of entrusting to them the trial of election petitions is accepted.

83. The proposal for the appointment of commissions under the jurisdiction of the High Court for the purpose of taking evidence of witnesses and placing the recorded evidence before the High Court for further trial of election petition on questions of law and facts is not accepted.

84. There is no need for the amendment of law for substitution of a person as a petitioner in the event of the petitioner himself resorting to non-prosecution of the petition.

2. Stringent penal provisions against electoral offences

85. The suggestion that the prohibition of public meetings as envisaged in section 126 should be extended to 72 hours ending with the hour fixed for the completion of the poll in any election is not accepted. The present prohibition of 48 hours is adequate.

86. Expansion of provision as per recommendation of Joint Parliamentary Committee is favoured.

87. Section 127 - Disturbance at election meetings - the imprisonment for the violation of the provision should be for six months or fine of rupees two thousand or with both.

88. Section 127 A - Restrictions on printing of pamphlets, posters etc. - This section should be amended to increase the imprisonment to two years from six months.

89. Section 129 - Officers etc. at election not to act for candidates or to influence voting:
Section 130 - Penalty for canvassing in or near polling stations:
Section 131 - Penalty for disorderly conduct near polling stations:
Section 132 - Penalty for misconduct at the polling stations:
Section 134 - Breach of official duty in connection with election:
Section 135 - Removal of ballot papers from the polling stations to be an offence:
Penal provisions in all these sections should be examined further to make them more stringent.

90. Section 133 - Penalty for illegal hiring or procuring conveyance at elections :
Section 133 should be amended on the lines proposed in the Bill appended to the Report of the Joint Parliamentary Committee of 1972. The punishment for the violation should be six months imprisonment and also with fine. The offence should also be made cognizable.

Section 134A - Penalty for Government servants acting as election agent, polling agent or counting agent:

91. Section 134A need not be amended for bringing within its ambit persons working in any local authority also.

Section 135 - Removal of ballot papers from the polling stations to be an offence:

92. Section 135 should be amended for using the expression "takes away the ballot paper or attempts to take away the ballot paper out of polling station" in substitution of the word "fraudulently takes or attempts to take".

3. New Electoral Offences

93. Personation (Impersonation) should be made an electoral offence. It should also be made more stringent by providing for punishment of imprisonment which may extend to three years or fine or with both. The offence should also be made cognizable.

Use of vehicles for conveyance at elections

94. Provision should be made on the lines of the Bill appended to the Report of the Joint Parliamentary Committee of 1972 (vide section 133A).

Ban on plying of mechanically propelled vehicles on poll day

95. Law should be amended to impose complete ban on mechanically propelled vehicles like lorries, tractors with trailers, buses, auto-rickshaws etc. However owner driven cars and public buses should be exempted from the ban. Punishment for violation of this ban should be two years. The offence should be made cognizable. In suitable cases licences of the vehicles should be cancelled and the vehicles confiscated. The matter

should be left to the Election Commission to work out the full details and the parliamentary law should only provide for simple enabling provision.

Prohibition of going armed to or near a polling station

96. A new penal provision banning carrying of firearms and lethal weapons on the poll day and treating the violation thereof as an electoral offence should be inserted in the Representation of the People Act, 1951. Imprisonment for violation should be two years and the offence should be made cognizable. Arms found with guilty persons should be confiscated and the licence cancelled where such licence had been issued.

Ban on sale and distribution of liquor and other intoxicated drinks.

97. Provisions in the Bill appended to the Report of the Joint Parliamentary Committee of 1972 should be adopted. Punishment for contravention should be six months imprisonment and fine of rupees two thousand. The quantity of liquor found in the possession of the person in contravention of the penal provision should also be confiscated.

98. The expression "consumption of liquor" need not be used in the penal provisions.

Lodging of false account of election expenses

99. As already stated the lodging of false account of election expenses should be made an electoral offence. The imprisonment for contravention of the provision should be for two years. However, the offence need not be made cognizable.

Mode Code violation

100. As already stated, the violation of model code should be an electoral offence. Punishment for contravention of this provision should be two

years imprisonment. The offence need not be made cognizable.

Grant of paid holiday to employees on the day of poll

101. A provison as contained in the Report of the Joint Parliamentary Committee of 1972 and the Bill appended thereto (vide section 135A) should be made for the purpose of grant of paid holiday to employees in any business, trade, industrial undertaking or any other establishment on the day of poll. Punishment for contravention of this provision should be a fine of rupees five hundred as against rupees fifty proposed by the Joint Parliamentary Committee.

Strengthening of statutory provisions relating to disqualification

102. Conviction under the Prevention of National Honour Act, 1971 should be a ground for disqualification for six years as proposed by the Chief Election Commissioner.

103. The suggestion to disqualify persons found guilty of moral turpitude or persons detained under National Security Act whose detention had been approved by a Judicial Advisory Committee is not accepted.

Chapter X

Anti-Defection Law

104. The Anti-Defection Law (10th Schedule to the Constitution) should be amended in the following respects :-

1. Disqualifiction provisions should be made specifically limited to cases of (a) voluntarily giving up by an elected member of his membership of the political party to which the member belongs; and (b) voting or absentention from voting by a member contrary to his party direction or whip only in respect of a

motion of vote of confidence or a motion amounting to no-confidence or Money Bill or motion of vote of thanks to the President's address.

2. The power of deciding the legal issue of disqualification should not be left to the Speaker or Chairman of the House but to the President or the Governor, as the case may be, who shall act on the advice of the Election Commission, to whom the question should be referred for determination as in the case of any other post-election disqualification of a Member.

3. The nominated members of the House concerned should incur disqualification if he joins any political party at any period of time.

Chapter XI

Office of Profit

105. The suggestion that the Committee of Parliament on Office of Profit should decide the procedure for laying down stringent guiding principles for exempting the offices from the purview of inhibiting provisions of the Constitution is not desirable. However, the Law Ministry should do an exercise in the matter for the preparation of a model bill for circulation and adoption by various State Governments.

Chapter XII

Electoral Systems - Examination

106. The subject relating to change of the present electoral system should be examined by an expert Committee. Law Ministry and Election Commission should take up the matter for examination of the suggestion to constitute an expert committee.

Chapter XIII

Miscellaneous

107. A Standing Committee of Parliament should be constituted to go into all electoral matters from time to time as the electoral reforms is a continuous proces. The Ministry of law, Legislative Department, should take necessary steps in this direction.