

**Subject:** Inviting comments/suggestions from the members of public on main recommendations of Working Groups of various aspects of electoral management – regarding

Association for Democratic Reforms (ADR) commends the Election Commission of India (ECI) for initiating a discussion on the learnings of the 2019 General Elections and for inviting comments/suggestions of the public and other stakeholders on the foremost recommendations put forward by the Working Groups of various aspects of electoral management.

ADR extends its support to all the recommendations made by the working groups for better and more effective electoral management. To facilitate free and fair elections, ADR would like to emphasize on the speedy implementation of the above and would like to reiterate that the suggestions especially pertaining to *Online Nomination, Political Party Expenditure, New Voting Methods, Print and Social Media regulations, Mechanism and Declaration of Election Results* are of the utmost importance given the changing dynamics of electoral politics.

ADR would like to share its comments/suggestions on the following three main recommendations as proposed by the Working Groups and has also made 3 additional suggestions towards the end of this document:

## I.

**Political Party Expenditure:** At present, there is no cap on the expenditure to be incurred for an election by the political parties. There is felt need for having such cap for level playing field. In view of this, in 2015, ECI had recommended to Ministry of Law, a proposal to cap maximum expenditure of political parties to a multiple of half of maximum prescribed limit for individual candidates with the number of candidates fielded.

### ADR comments/suggestions

1. The **fixation of a ceiling** on political parties' election expenditure may be undertaken **depending on number of candidates** sponsored by them, the details of the exact ceiling limit may be worked out by the ECI.

2. **The capping on the expenses of the political parties must include the period before the announcement of elections**, when political parties engage in widespread mobilization and electioneering. This is crucial since the expenditure ceiling for the candidates comes into effect from the date of nomination to the date of declaring results. As a result, most of the candidates subvert this regulation by filing their nominations on the last day, escaping the scrutiny of the expenses incurred during the period prior to the nomination when a significant chunk of the overall expenditure is spent by the candidates. This loophole must be fixed to ensure that the expenditure capping is enforced to ensure maximum effectiveness.

In case of candidates, it is suggested (by the Law Commission) that expenditure ceiling to come into force from the *date of election notification to the date of declaring results*.

3. The control on election expenditure, by taking into account all the expenses made either by the political party or any of their agents while ascertaining the ceiling in case of a party. This is significant especially in light of the details brought out in this [article](#) by the Huffington Post on the secretive financial relationship between political parties and political consultancies/third party contracts which may not directly come under ECI scanner. Any regulations formulated on capping the electoral expenses of parties must ensure that **third party expenditures on behalf of the political parties are strictly monitored**. Third party expenditures without the sanction of the EC and without prior consultation of the parties must be penalized.

In the age of digital media, this has become a significant challenge and can only be addressed by using a robust monitoring mechanism. EC must ensure that the official handles of political parties, office bearers and the candidates are scrutinised for the violations of expenditure limits. Any third party/unofficial pages or dummy accounts can publish anything online and spend unlimited amounts of money on pushing a political agenda. The [Google](#) and the [Facebook Ad Transparency](#) reports for political expenditure online provide a good evidence of the above. Furthermore, platforms such as encrypted messenger service WhatsApp, and smaller platforms such as TikTok, Helo, Telegram and WeChat which are becoming increasingly popular for political

mobilisation must also be regulated. Proxy campaigning, surrogate advertising and expenditure is common practice which is rampant both offline and online and must be strictly regulated.

4. **Political parties should start submitting a statement of election expenditure beginning one year before an election is due for the Parliament or the State Assembly.** Over the last few years, the noticeable trend is that all political parties commence organising huge rallies many months before the official notification of the polling dates by the ECI. From one year before an election is due till the date of announcement of the election, political parties should submit the statement of election expenditure once a month. Thereafter from the date of announcement of elections till declaration of result, expenditure statements should be submitted every alternate day/biweekly.

The election expense statements of the political parties and candidates should be made available on the website of the Election Commission as soon as they are filed by them for public scrutiny. Any **delay in uploading the expenditure statements of parties and candidates**, as happened after the Lok Sabha elections 2019, **reduce the chances of timely scrutiny by the civil society** and its importance withers away from the public memory. If the statement runs through several pages, at least their summaries should be put on the website.

5. While capping the election expenditure of political parties is necessary, it is also imperative to ensure that the **expenditure reporting format is strictly and uniformly followed by all parties to ensure transparency and accountability.** A case in point are the election expenditure statements for Lok Sabha elections 2019. Several political parties submitted a combined account of their expenses for the 2019 Parliamentary elections and the four State Assembly elections (Arunachal Pradesh, Sikkim, Odisha, Andhra Pradesh) that took place alongside, while other parties provided a separate account of expenses for the two. The practice of submission of expenditure statements for the two types of elections in accordance with their respective deadlines of 75 days (Assembly elections) and 90 days (Lok Sabha elections) must be

followed. The availability of data in such format makes it impossible to do a comparative analysis of the election expenditure over the years, which is vital from the point of view of uniformity, transparency and independent research.

The EC issued instructions that candidates and political parties shall include all expenditure on campaigning inclusive of expenditure on advertisements on social media, both for maintaining a correct account of expenditure and for submitting the statement of expenditure. However, several **parties fail to account social media expenses independent of expenses under other heads part of electronic media**. For example, one of the major National parties declared a combined figure of the amount spent on social media and bulk SMS during the Lok Sabha 2019 elections which makes it difficult to assess the actual expenditure of the parties' social media expenses.

Additionally, the election expenditure statement format must also require the political parties to disclose the identity of all donors (contributing donations above Rs 20,000), that contributed to parties from the date of announcement of election to the date of completion of election, to the Election Commission as well as made available in the public domain. **Electorate must be made aware of the sources of campaign funds to the parties prior and during the election period. A format similar to the donations report along with the date of donations**, submitted to the ECI on an annual basis, has to be prescribed for the expenditure statement so as to **bring in more transparency in the finances of the political parties especially during elections** when it is said that black money plays a major role.

6. The **inconsistencies observed between the reporting of Election Observers** (appointed to monitor the expenditure of political parties) and the expenditure accounts declared by the parties themselves must be made available in the public domain, on the ECI website.

## II.

### **Mechanism and declaration of election results under Section 61A of the Representation of People Act, 1951 read with Rule 49S & 56C (2) of the Conduct of Election Rules, 1961.**

#### ***Relevant Legal Provisions:***

**Section 61A of the Representation of People Act, 1951** not only mandates recording of votes by EVMs and ECI's discretion to prescribe recording of votes by such EVMs as it may deem fit but the section also states that this discretion has to be exercised in a manner to preserve the sanctity of the election process and ensure that the election is conducted in a free and fair manner.

**Rule 49S and Rule 56C (2) of the Conduct of Election Rules, 1961**, provide that presiding officer is to prepare an account of votes recorded in form 17C (Part I) and the returning officer is to record the number of votes in favour of each candidate (part II of the Form 17).

#### **ADR urges the Election Commission of India to completely stop the practice of announcing any provisional and estimated election results prior to actual and accurate reconciliation of poll data.**

The present system of declaration of election results not only raises confusion as also creates suspicion, error, conflict, and doubts on the creditworthiness of electoral process. It is not only imperative that election results are accurate; the citizens must also know that the results are accurate

The declaration of the final result of any election should be conducted based on **actual and accurate reconciliation of poll data**. This would remove the 'trust deficit' in the electoral system, allow the voters to exercise their 'sovereign and democratic' power confidently and would also ensure the basic principles of *transparency, verifiability* and *accountability*.

For General Elections 2019, the Election Commission of India had directed all the Returning Officers on 26th March 2019 to send the INDEX CARDS within 15 days of the declaration of the Result. The Election Commission vide its press release dated

01-06-2019 (annexed as Annexure A1) had also stated that due to the innovative IT initiatives taken by the Commission, the final data on votes counted has been made available within a few days of declaration of results unlike the previous elections where it used to take months to collect authenticated election data from all the ROs. **Therefore, in the light of transparency and fairness in the conduct of elections, the Election Commission of India should factor in this delay of 15-20 days and declare election results on the basis of authenticated and accurate data.**

**Proposed Recommendations:**

1. Accuracy and integrity of elections should not be sacrificed due to rush in declaration of results. Several serious lapses can go unnoticed in the counting process in the hurry to declare results and the winners. Indian election is an enormous exercise and a mammoth venture in terms of money spent. Therefore, it becomes imperative for the Election Commission to adopt a **cautious and careful approach and only announce accurate and actual election results**. Declaring an election result on mere assumptions and conjectures is a strictly flawed notion and therefore requires an immediate attention of the Commission.
2. Election Commission of India has a statutory duty to collate and publish accurate data relating to the elections conducted by it. This data is captured in Form 17C [Rules 49S & 56 C(2) of the Conduct of Elections Rule, 1961, Account of Votes Recorded) at every polling Station and displayed in final result sheet in Form 20 (Rule 56 (7)). Therefore, in the light of this legal and constitutional duty, the Election Commission of India should take serious steps towards reconciliation of data in statutory Form 17C, Form 20, Form 21C, Form 21D & Form 21 E for each and every constituency and place the same at the earliest in public domain.
3. The Election Commission should lay down a prescribed system for compiling, reconciliation and publishing of poll data and publish the same in public domain.

4. The “**My Voter turnout**” Mobile App, a real-time reporting of the voter turnout for every single constituency that went to polls was introduced for the first time in the Lok Sabha General Elections 2019. ADR strongly recommends that at the time of elections, the “**My Voter turnout**” app should also display the exact number of voters at every single constituency in addition to the percentage figures.
  
5. The present system of administration of election results (Manual on Conduct of Elections with EVM-VVPAT, instructions, circulars etc.) has no provisions for dealing with large number of discrepancies arising out of the counting process in the elections and is left to the discretion of the officials of the Election Commission. Therefore, the Election Commission should create a separate department/grievance cell/ombudsman to deal with the discrepancies in voter data and respond to the elector’s queries on the same.

### III.

**Online Nomination:** It is proposed to provide online facility for filing nomination for candidates. Candidates are filing nomination in person before the concerned Returning Officer. There has been avoidable error and long queue before the Returning Officer during the nomination process. Creating online facility for filing nomination will help in avoiding errors and will ease the process of filing nomination.

#### ADR comments/suggestions

ADR’s many years of experience of accessing and analysing candidates’ background information allows it to understand the importance and the timely need for an online facility for filing nomination of candidates. ADR fully concurs with this proposal and would like to bring to the attention of the EC the following issues which may be addressed after the introduction of online submission of nomination forms.

### **Problems with the current system (faced during General Elections 2019 and recent State Assembly elections)**

- Incomplete and illegible affidavits: Some of the uploaded affidavits were incomplete. Moreover, handwritten affidavits were incomprehensible for data analysis and information dissemination.
- Timely uploading of the affidavits: There were delays in uploading of the affidavits of the candidates as the ECI website server was down multiple times during the election period.
- Availability of multiple affidavits: There were multiple affidavits available for the same candidates, however, with different information pertaining to their criminal charges and assets.
- Different information provided in part A and B: Some candidates provided different details in the affidavit (Form 26 Part A) and abstract (Form 26 Part B) for their criminal charges and assets.
- Affidavits in old format: Some of the candidates submitted information in the old affidavit format.

### **If online facility will be available for filing nominations, the following issues can be resolved:**

- Minimize errors
- Incomplete and illegible affidavits issues
- Affidavit available in both latest version and old version
- Handwritten affidavits
- Blank columns and blank affidavits



## Additional Suggestions

- 1. Bring in a comprehensive bill to regulate working of political parties:** Political parties provide the foundation on which governments are formed by democratic electoral process. However, political parties under the current legal framework are loosely governed, be it registration, funding, expenditure etc. Hence, there is a requirement for a comprehensive law to be enacted to regulate the functioning of political parties. The need for a comprehensive bill to strengthen political parties has been felt for some time. The Law Commission headed by Justice Jeevan Reddy and the Working Committee to Review the Constitution headed by former Chief Justice, M.N. Venkatachaliah have addressed this issue. The Election Commission and various leaders, intellectuals and scholars have also gone into this question.  
The draft Bill to regulate Political Parties, as given in the 170th Law Commission Report Part III: Chapter I should be passed by Parliament. Strict rules should be enacted to regulate the inner functioning of the political parties, including party constitution, election of office bearers, selection of candidates for elections, etc.
- 2. Introduce provisions for inner-party democracy within political parties:** Although India is a democratic country, our political parties which run this democracy are highly undemocratic in their functioning. Provisions should be made to introduce inner-party democracy within the political parties. This should include mandatory secret ballot voting for all elections for all inner party posts and selection of candidates by the registered members overseen by Election Commission of India (as suggested by Law Commission Reports). The provisions dealing with inner-party democracy must address concerns related to party constitution, party organisation, internal elections, candidate selection, voting procedures, and the ECI's power to de-register a party in certain cases of non-compliance.
- 3. Bringing Political parties under RTI:** A decision of a full bench of the Central Information Commission (CIC) in June, 2013 declared six national political parties (BJP, INC, NCP, BSP, CPM, and CPI) as public authorities under the RTI Act. None of the six parties have complied with the decision of the CIC nor explained

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reasons for non-compliance to the CIC. None of the parties even challenged the CIC's decision in any court of law. ADR feels that in the light of larger public interest, the national parties should abide by the CIC's decision.

Urging the Supreme Court to declare all the National and Regional political parties as "public authorities" and bring them within the ambit of the RTI Act, ADR and RTI activist Mr. Subhash Chandra Agrawal filed a [petition](#) in the Apex Court on 19th May 2015. The first hearing in the case took place on 7th July 2015 wherein the Apex Court admitted the plea and sought responses from all the National political parties, Election Commission and the Central government within six-week. To its counter, Government of India had filed its affidavit stating that they do not come under RTI Act. This was despite the CIC's 2013 order.

For political parties to be truly accountable and transparent in their functioning, it is vital that they comply by the CIC's 2013 order. This is the only way to ensure parties' compliance with the disclosure requirements, given that time and again several political parties submit their audit reports/contributions reports or election expenditure statements after the deadline has passed and in some cases, parties also default on their submission each year.

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