

**Brief comments and suggestions compiled by ADR based on various
committee reports and expert recommendations for several aspects of
Electoral Reforms and Electoral Management in India**

I.

Decriminalization of Electoral Politics

A. Key recommendations on decriminalisation:

- I. Strict criterion for selection of candidates by political parties. As per the SC judgment the reasons as to selection shall be with reference to the **qualifications, achievements and merit of the candidate concerned**, and **not mere “winnability”** at the polls.
- II. **Disqualification on charges framed:** Tainted candidates to be outrightly banned from entering the electoral process based on both stage and degree of crime.
- III. There should be a permanent disqualification of candidates convicted for heinous crimes like murder, rape, smuggling, dacoity, kidnapping, robbery etc.
- IV. **List of candidates** contesting elections should be **announced at least 3 months prior to elections** and they should be required **to submit affidavits stating specific reasons for changing/joining a particular party and approximate amount to be spent by them in the next elections and of the source thereof**.
- V. There should be an immediate disqualification of candidates who furnish misinformation, no information false, information in the election affidavit.
- VI. More power to NOTA: The Supreme Court judgment dated 23rd September, 2013 on provision of NOTA buttons on the EVMs needs to be implemented in its letter and spirit by ensuring a) **if NOTA gets more votes than any of the candidates, none of the candidates should be declared elected, and a fresh election should be held; b) in the fresh election, none of the candidates in the earlier election, in which NOTA got the highest number of votes, should be allowed to contest**.
- VII. All pending cases against MPs and MLAs should be fast tracked and brought to conclusion **within a period of one year as mandated by the Supreme Court orders**

dated 10th March 2014 and 1st November 2017..

- VIII. Bringing political parties under the ambit of Right to Information Act, 2005 will usher transparency and accountability in the functioning of political parties and party leaders at one hand, on the other, it will also give a chance to the citizens to play their part in a democracy by acting as a watchdog.
 - IX. Need for a comprehensive legislation **regulating the functioning of political parties, recognition of their party constitution, election at various levels of party organs, conditions for registration and de-registration, compulsory maintenance of accounts, women representation at organisational positions**, as recommended in the '170th Law Commission Report, Part III, Chapter I' and Chapter 8 of the NCRW report.
 - X. **Introduce inner-party democracy, transparent decision-making, ticket distribution, elections of office bearers, financial transparency and stronger organisational discipline** within the political parties. **Mandatory secret ballot voting for all elections for all inner party posts and selection of candidates, as suggested by the 170th Law Commission Report.**
 - XI. Elected MPs and MLAs should be required to submit an '**Annual Report**' to their constituency giving details of their accomplishments for previous year and the plan for the next year.
- B. **Format C7 - Publication of Reasons Given for Selection of Candidates with Criminal Cases by Political Parties specific recommendations:**
- a. **A "show cause notice"** should be sent to those political parties who failed to follow the mandatory directions. In addition, the Commission should also immediately take a strict contempt action against political parties, their office bearers and candidates for blatantly bypassing its 25th September 2018 and 13th February 2020 orders.
 - b. The Commission should **deregister those political parties who are found guilty of such violation** by invoking its powers under Article 324 of the Constitution read with Section 29(A)(5) of the RP Act, 1951.
 - c. Suspend or withdraw recognition of a recognized political party for its incessant failure and disobedience of the SC directions.

- d. Officer bearers of a Political Party to file annual information on criminal antecedents.
- e. List of defaulting political parties to be prepared after every election and the same should be uploaded on ECI's website for public inspection.
- f. Reporting of such contempt to the Supreme Court of India.
- g. **Contempt action against its orders by Supreme Court:** Immediately take a strict contempt action against political parties, their office bearers and candidates for blatantly bypassing its 25th September 2018 and 13th February 2020 orders.
- h. Parties should be held accountable for brazenly defying the Supreme Court's order dated 25th September, 2018 and 13th February 2020. ***There should be a heavy financial penalty levied. An officer in-charge of a political party pertaining to submission of a compliance report should also be held accountable for such a breach.***
- i. ECI should constitute **a separate cell for monitoring and audit of C7 and C8 forms** submitted by parties during elections in order to minutely check/verify/cross verify the compliance of these forms and appropriate actions should be taken immediately to ensure such compliance.
- j. ECI should issue modified guidelines specifically clarifying the ambiguities regarding format, font size, language etc to be used in the newspapers including the vernacular newspapers in the states.

II.

Political Party Financing

- Monitoring and regulation of political parties and candidates
- ECI must also be empowered to deregister any party which has not contested elections for more than ten years and yet it continues to benefit from tax exemption.
- Bribery should be defined clearly under election law.

- **A political finance framework or legislation** that is adopted must be able to address the issue of disparity in access to funds among political parties, lack of level-playing field, concentration of economic power in the hands of few parties and donors, and political corruption as a result of illegitimate sources of funding.

Private Donations

- Donation limits must ensure that no single donor may have undue influence on a candidate/political party and on the political process as a whole.
- In order to have greater transparency regarding details of corporates which fund political parties, it would be ideal to include the name of the parent company in the name of the Electoral Trust.
- Scrutiny and verification of the disclosures made by elected lawmakers in respect of their assets and sources of income should be made by the Comptroller and Auditor General (CAG) with necessary follow-up action by ECI and CBDT.
- The 255th Law Commission report recommended amendments to Section 29C of the RPA that annual accounts of political parties should be audited by a qualified and practicing chartered accountant from a panel maintained for the purpose by the CAG, and submitted to the ECI every financial year should be implemented.
- A complete prohibition on anonymous donations is crucial for transparency and accountability in political finance.
- No party should be allowed to accept any donation in cash.
- Section 182(1) of the Companies Act, 2013 should be amended to require the passing of the resolution authorizing the contribution from the company's funds to a political party at the company's Annual General Meeting (AGM) instead of its Board of Directors as per para 2.31(a)2 of (Law Commission of India 2015).

Public Funding

- Objective, fair and reasonable criteria to be applied regarding the distribution of state support. It should enable new parties to enter the political arena and compete under fair conditions with more established parties.
- The existing system of giving indirect in-kind subsidies should continue. Any reform in state funding should be first preceded by reforms such as comprehensive law on parties, bringing parties under RTI, ban on corporate donations, no donations in cash, suo motu disclosure by parties on their official website, decriminalization of politics,

the introduction of inner-party democracy, electoral finance reform, transparency and accountability in political funding, check on mushrooming of parties, etc. to reduce the incentive to raise money and abuse power.

- Make provision for public funding to political parties to help facilitate level-playing. The most popular approach is to allocate public funding in proportion to either votes received or seats won by political parties. Additionally, gender-based public funding could be promoted to ensure the representation of women candidates, youth and other under-represented groups.

Campaign Expenditure

- There should be a limit on expenditure incurred by political parties' on and during election in order to reduce/eradicate financial dominance of those with financial superiority, under reported finances, black money, corruption and other instances of quid pro quo.
- **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.
- 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.
- 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.
- 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**.
- 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.
- 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.

- These proposed limits on political parties' election expenditure should be enforceable and practical in nature.
- There is a need for a specific law on online campaign finance.
- Introduction of a spending limit on third-party campaigning and more effective monitoring of the same.

Reporting and Disclosure

- Incomplete contributions reports having missing or incorrect PAN/mode of payment details must be returned to the parties by the ECI, to deter them from providing incomplete information.
- ECI to publicize on its website details of the action taken (if any) against political parties that fail to provide complete, correct and timely details of their finances, violate the provisions of MCC and defy any lawful instructions of the Commission.
- ECI must provide status updates on its website on the submission of party reports showing which all registered parties submitted on time, which delayed their submission and those which defaulted, including the action taken against such parties by the Commission.
- Corporations should make details of their political contributions available in the public domain through their websites (in annual reports or on a dedicated page) for increasing transparency in political financing.
- Political parties in India should also be directed to submit expenditure statements beginning one year prior to the polls. In addition, political parties should submit the account statements of income and expenditure periodically, i.e., once a month before the declaration of the election and at least once a week during the elections.
- The sources of income and expenditure of both political parties and candidates must be disclosed for the election and non-election period.
- There should be a scrutiny of the revenue foregone by the State by virtue of tax exemptions given on the contributors to political parties by donors and to the receipts, which are political parties.
- A register of pecuniary Interests of members of the Lok Sabha should be maintained by the Lok Sabha Secretariat and made available in the public domain.

- Pecuniary details provided in the 'Register of Interests for Rajya Sabha MPs should be provided to the Income Tax authorities or other appropriate body for cross-checking with the Income Tax Returns filed by the MPs.
- Scanned PDF documents which are not user-friendly or easily readable must be substituted by an online database which is easily searchable and downloadable to improve access.
- Public databases can be created by the ECI where information about funding sources and expenses incurred on political advertisements (including digital ads) is available in a user-friendly format for scrutiny by the general public.

Freebies as form of inducements to entice voters

- There should be a complete ban on freebies.
- The aforementioned form of inducements should be clearly defined either under law or in absence of law by ECI and declare them to be a corrupt practice in terms of Section 123 of the RP Act, 1951. Develop a statutory distinction between welfare schemes and electoral inducements, based on timing, intent, and fiscal sustainability.
- Pre-Election Fiscal Disclosure: Require political parties to submit costed manifestos with an independent fiscal impact assessment
- Political parties found guilty of giving such inducements to woo voters should be de-recognized by the ECI.
- Candidates found guilty of distributing such freebies should be immediately disqualified.
- Violation of the MCC issued by the ECI during elections should be strictly dealt with by the Commission and such defiance should lead to de-recognition and in more grave cases, de-registration of parties.

Search and seizure of cash, liquor, drugs, narcotic substances, gold and other precious items

- ECI, CBDT and I.T. Dept should pro-actively pursue and provide in public domain vital information on search and seizure cases and their outcome.
- Money seized during elections should be separately maintained and classified as election or non-election related.

- All states and UTs should file a status report to the ECI on cases pertaining to search and seizure in their respective jurisdictions.
- ECI must follow-up with CBDT, I.T. department and police on cases relating to seizure. In addition, ECI should have a separate investigation or prosecution wing dealing with cases of seizure.

Paid News

- Paid news should be specifically defined under law.
- There should be a law/provisions under law in RPA to regulate instances of paid news and political advertisements in India.
- Paid news should be considered as an offence and corrupt practice under section 123 (4) of the RP Act, 1951 and the act of indulging in the publication of 'paid news' should be considered as a ground for direct disqualification.
- Scope of Section 126 should be broadened so as to include all formats of instances of paid content under the ambit of Section 126.

Oversight and Monitoring

- Steps should be taken to ensure the impartiality and independence of oversight and enforcement agencies.
- Empowerment and capacity building of the ECI and other relevant bodies to be able to effectively ascertain, regulate and monitor the online campaigning by political parties, candidates and third parties as well as the actual financing/spending on them.

Strengthening the Office of Election Commission

- Appointment of the Election Commissioners should not be left to the government of the day entirely before any more powers are vested in the Election Commission.
- The SC should hold the new law on appointment of ECI *as unconstitutional and arbitrary*.

- There is a need for continuous and objective dialogue between the Election Commission and other stakeholders such as the political parties, civil society and the media.
- Accept the proposal of the ECI to legally empower it to countermand elections where credible evidence of abuse of money power is found.
- Capacity building of ECI officials to effectively track or monitor unaccounted online campaign spending by third parties, proxy pages or shadow advertisers with the help of field experts.

Sanctions

- ECI and IT department should strictly monitor political party's financial statements and enforce the provisions of Section 29(c) of the RP Act, 1951 read with Section 13A of the IT Act, 1961 for its purpose.
- It is suggested that computation of total income tax exemption given to political parties in a financial year should be done by ECI/CBDT and such details must also be made available on ECI's website.
- A provision should be inserted on penalizing parties that are found guilty of accepting contributions from impermissible donors, by levying a penalty of five times the amount so accepted as per Para 2.31 (c) 12 of (Law Commission of India 2015).
- ECI should be given power to de-register political parties in cases of contravention of existing laws and time to time guidelines issued by the ECI.
- A database of information on the number and types of sanctions applied for every offence should be created and maintained in order to ensure the transparency and effectiveness of the oversight process.

III.

Dynastic Political Backgrounds of Elected Representatives

- Every registered political party should be legally mandated to give one third of the total number of party tickets it distributes at every election to women candidates.
- Selecting women candidates based on merit: Political parties should only give tickets to worthy women candidates based on their merit and credibility. Parties should

refrain from giving tickets to the candidates based on money, muscle and family background/political dynasty which only ends up making women as a proxy law-makers thereby defeating the whole purpose of gender equality and role of women in key policy making.

- Women's tokenistic inclusion: This implies male party leaders selecting women candidates that they can control from behind the scenes. This could be in the form of a defeated or behind the bars male politician making women of their house as their proxy. This leads to close space for dissent, free decision making amongst women leaders and concentration of power in the hands of one or few powerful male politician(s).
- **Regulate candidate selection & funding:** Election Commission could encourage parties to publicly disclose selection criteria for candidates. This information can be availed through the ECI's website and website of all political parties contesting elections. Stricter oversight on party financing, as dynastic candidates often inherit financial networks that create unfair advantages.
- **Implement ceiling on expenses of political parties during election period:** This will not only ensure free and fair elections along with level playing field among political contestants but providing a threshold limit on political parties spending will also ensure equal opportunity, healthy competition and will force parties to look beyond money and patronage politics and focus on more worthy, credible and deserving leader
- **Promote political diversity & inclusion.** Provide capacity-building programs and mentorship for young leaders, especially women, from non-political backgrounds. Encourage civil society and educational institutions to cultivate political participation among the general public.
- Reservation of seats for women (as envisaged in the Women's Reservation Bill) should be accompanied by measures ensuring opportunities for non-dynastic women leaders, to prevent dominance by political families.
- **Public awareness & voter education**

IV.

Re-contesting Candidates and MLAs who changed Political Parties

- The 10th Schedule of the Constitution should be amended and ***instead of the Presiding Officer (i.e Chairman or the Speaker), the decision to disqualify a member***

should be made by the President (in case of MPs) or the Governor (in case of MLAs) on the advice of the Election Commission.

- Disallowance of contesting by candidates from more than two constituencies
- Practice of creating a number of offices at ministerial level should be completely banned.
- Affidavit information of candidates to be certified by Political Parties.
- Remove the nexus between muscle and money from elections.
- *Cancellation of tax exemption* given to the political parties who deliberately give tickets to *undeserving, dishonest, corrupt, moneyed and tainted* candidates.
- *First-past-the-post, "50%+1 of the registered votes cast"*. As per the recommendations given by various committees, Law Commission and NCRWC, '***no candidate should be declared elected unless he or she secures more than 50% of the votes cast***'. In the case when no candidate gets the required number of votes, ***there should be a runoff between the top two candidates getting maximum votes***. It is worth noting that 50%+1 of the votes cast is an easier requirement for being declared elected, a more stringent requirement, and the ideal to ensure appropriate and proper representation.

V.

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.

Proposed Recommendations:

1. Election Commission to adopt a **cautious and careful approach and only announce accurate and actual election results**.
2. 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. 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 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.

VI.

Disproportionate assets of Elected Representatives

- There was an overall increase of almost 250% in the average assets of re-elected MPs between 2009 and 2019. It argued how it would take 346 years for a voter to match an elected representative’s assets, given that an MP’s assets may be growing faster than the average salary of the income tax-paying person.
- Scrutiny and verification of the disclosures made by elected lawmakers in respect of their assets and sources of income should be made by the CAG with necessary follow-up action by ECI and CBDT. In cases of such disclosures being found to be incorrect or false, such discrepancies should be a ground for subsequent disqualification under the RPA, 1951.

VII.

Additional Recommendations

- **Hate Speech:** ECI to Adopt clear, uniform, and publicly disclosed standards for identifying and penalising hate speech under the MCC, with time-bound, transparent enforcement applied equally to all political parties and candidates. **Publish detailed, disaggregated data on MCC complaints, actions taken, and timelines during elections.**
- **Disruption of Parliament and Passage of Bills Without Adequate Discussion:**
 - The 17th Lok Sabha held 15 sessions between June 2019 and February 2024. In these five years on an average, 17th Lok Sabha sat for 55 days per year. This is the lowest sitting amongst all full-term Lok Sabha.
 - Introduce statutory rules requiring a minimum number of sitting days and committee scrutiny before any major legislation is put to vote, except in clearly defined emergency situations.

- Strengthen Parliamentary Committees
- **Reduced Duration of State Assemblies and Weakening of Legislative Functioning**
 - Amend rules to prescribe a mandatory minimum number of sitting days annually for State Legislatures, aligned with best democratic practices.
 - Require state governments to publicly justify early adjournments or curtailed sessions.
 - Mandate real-time public disclosure of attendance, questions asked, and debates held in state assemblies.
- **Need for flexibility for implementation of ONOE:** Simultaneous elections should not be made mandatory. First, efforts should be made to move in this direction rather than forcing it by law. We must remain flexible rather than sticking to the rule that simultaneous elections will strictly happen in two stages or during a certain fixed time only. Such a major reform should not be rushed and, instead, be introduced in a phased manner to prevent unintended disruptions.

At the same time, the simple, and crucial, questions to ask are: Should the nation be looking to create the **‘most effective’ democracy or the ‘least expensive’ democracy?** Is it possible, or is it even desirable or advisable, to assign a monetary value or cost to democracy? Should the country entertain the idea of “development” without or at the cost of democracy? Only after addressing these questions, the true value of holding simultaneous elections will be clear.

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