



NEWSLETTER

May 2018

PROPOSED ELECTORAL REFORMS

Proposed Electoral Reforms

By Dr. Gopal Ganesh, Vice President, FRNV

India's democratic setup is a paradigm for many countries in the world due to its remarkable success over the past six decades. However, there are certain challenges and issues that electoral system has faced over the years. Trust and confidence of citizens in electoral system can be affected if these challenges remain unattended. Thus, keeping in view these difficulties the Election Commission of India after conducting extensive study and research, has recommended certain changes that need to be taken up expeditiously to amend certain provisions of the electoral law.

Amendments to the Representation of People Act, 1950.

Apart from amendments suggested for ensuring Constitutional protection to all members of the Election Commission, it has recommended that the Representation of the People Act 1950 be amended for use of Common Electoral Rolls for Parliament/Assembly/Local Bodies Elections throughout the Country. It has also recommended that overseas electors (those citizens living abroad but have not acquired citizenship of another country) should be given the option of proxy voting or postal ballot voting. The electronic transmission of postal ballot can be provided by amendment of Rules as has been done in the case of service voters. Section 14(b) of The Representation of the People Act, 1950 needs to be amended so that a person can be enrolled in the roll the day he or she turns 18. By such amendment, the principle of universal adult franchise is also respected and no person is deprived from enrolment for a period of one year.

The following important changes have been suggested to give more teeth to the Representation of People Act, 1950:

1. Election Management Issues

a. Making of any false statement or declaration before authorities punishable

The Commission proposes that making of any false statement or declaration before the Election Commission, Chief Electoral Officer, District Election Officer, Presiding Officer or any authority appointed under The Representation of the People Act, 1951, in connection with any electoral matter should be an electoral offence under the said Act, along the lines of section 31 of The Representation of the People Act, 1950.

b. Proposal regarding filing of false affidavit

Filing of false declaration about the background of the candidate undermines the very basic value of candidate disclosure, in turn affecting the right of the electors to know the antecedents of candidate. Therefore, it is necessary to enhance the punishment for filing false affidavit.

Law Commission's Recommendation

The Law Commission in its 244th Report on 'Electoral Disqualifications' gave the following recommendations endorsing the view of the Election Commission:

- i. Introduce enhanced sentence of a minimum of two years under section 125A.
- ii. Include conviction under section 125A as a ground of disqualification under section 8(1) of The Representation of the People Act, 1951.
- iii. Set up an independent method of verification of winners' affidavits to check the incidence of false disclosures in a speedy fashion.
- iv. Include the offence of filing false affidavit as a corrupt practice under section 123 of The Representation of the People Act, 1951.

c. Retirement of members in council of states and legislative council

The Commission has proposed amendments in sections 154 and 156 of The Representation of People Act, 1951 and suggested dividing the seats in the Council of States and State Legislative Councils into three categories and specifying the term for each category in such a way that biennial retirement of 1/3rd of the members would be ensured.

d. Providing open ballot system in case of the election to fill seat/ seats in the state legislative councils

The members of the Council of States are elected by the elected members of Legislative Assemblies of the States and Union Territories.

The Commission is of the view that there should be uniformity in the procedure of voting system in the case of election of members of State Legislative Council and the Council of States by members of Legislative Assembly. The logic for providing open ballot system in the case of elections to Council of States would equally apply for elections to Legislative Councils also, and there is no reason to have separate system for the elections involving the same electorate.

In view of the above, the Commission recommends that the open ballot system may also be made applicable in case of the election to fill a seat or seats in the State Legislative Councils by the Members of Legislative Assembly by appropriately amending section 59 of The Representation of the People Act, 1951.

e. Adjournment of poll or countermanding of election on the ground of bribery

On account of increasing incidents of misuse of money in elections, the Commission is of the considered view that there should be a provision in The Representation of the People Act, 1951 to deal with such cases.

Therefore, the commission proposes that on the lines of section 58A, there should be a specific provision enabling the Commission to take appropriate action including countermanding of election in the event of incidents of bribery of electors in a constituency, if in the opinion of the Commission such incidents are likely to vitiate the election.

2. Election officials and Logistics

a. Sections 13cc and 28a of the Representation of the People Act, 1951

Transfer of election officials on the eve of elections can disturb the election preparedness.

Section 13CC of the Representation of the People Act, 1950 and Section 28A of the Representation of the People Act, 1951 should be amended to provide a ban on the transfer of officers referred to in these sections during a period of 6 months before the expiry of the term of the House.

b. Section 160 of the Representation of the People Act, 1951

The election process requires requisition of premises for purposes other than polling stations and storage of ballot boxes, such as for providing accommodation to employees, paramilitary forces and observers etc.

Section 160 of The Representation of the People Act, 1951 should be amended to widen its scope such that requisition of premises for any election should not be restricted to the purpose of setting of a polling station or for storage of ballot boxes after a poll has been taken. Sub-section (1) (a) should be amended to read "any premises that are needed or are likely to be needed for any purpose related to conduct of election, or."

c. Empowering the district election officer to requisition

Section 26 of The Representation of the People Act, 1951 empowers the District Election Officers to appoint Presiding Officers and Polling Officers for polling stations falling in his district. Further, under section 20A of the 1951 Act, the District Election Officer is required to coordinate and supervise all work in the District in connection with conduct of elections. Therefore, for convenience, there should be express provisions empowering the District Election Officers to requisition staff for conduct of election under section 159 of the 1951 Act.

Section 159 of The Representation of the People Act, 1951 should be amended to empower the District Election Officer also, apart from the Chief Election Officer, to requisition of staff for election duties.

d. Use of totalizer for counting of votes

As per the present provisions in The Conduct of Elections Rules, 1961, votes in the EVMs are to be counted polling station wise, which leads to situations where voting pattern in various localities/pockets become known to everyone. There is a view that this can result in victimization and/or discrimination and intimidation of electors of particular localities. This issue can be addressed by use of totalizer that can be used for taking out the results of voting in a group of

14 EVMs without revealing the votes in individual EVMs.

Provisions for counting of votes of a group of EVMs taken together using totalizer should be made in The Conduct of Elections Rules, 1961, and Form 20 appended to the said Rules should be suitably amended so as to suit the requirements of counting using totalizer.

3. Nomination of Candidates

a. Section 33(7) of the Representation of the People Act, 1951– restriction on the number of seats from which one may contest

When a candidate contests from two seats, it is imperative that he has to vacate one of the two seats should he win both. This, apart from the consequent unavoidable financial burden on the public exchequer and the manpower and other resources for holding bye- election against the resultant vacancy, would be an injustice to the voters of the constituency which the candidate is quitting from.

The Commission recommends that the law must be amended to provide that a person cannot contest from more than one constituency at a time for conduct and better management of elections.

In case the provision needs to be retained, then there is a need for an express provision in law requiring person who contests and wins election from two seats, resulting in bye-elections from one of the two constituencies, to deposit in the government account an appropriate amount of money being expenditure for holding the bye-election.

b. Section 33 of the Representation of the People Act, 1951 – same number of proposers

As per section 33 (1) of The Representation of the People Act, 1951, the nomination of a candidate shall not be deemed to be duly nominated for election from a constituency unless the nomination paper is subscribed by one proposer who should be an elector of the constituency in case of a candidate set up by a recognized political party and ten in case of other candidates.

The provision as existing today, was amended in August, 1996. However, the amended provision instead of being helpful to the recognised political parties has resulted in disadvantage to them. In the case of candidate of a recognised party, if there is any problem with the notice of nomination given

by the Party, and if the candidate has filed nomination although he may not be treated as candidate of the Party in the list of contesting candidates, etc.

In order to remove confusions, it is proposed that the provisions of the said section 33 (1) may be made uniform for all candidates and the number of proposers may be fixed as (10) ten in all cases. It will not cause any inconvenience to the recognised parties and, on the contrary will be greatly beneficial to them.

c. Disqualifications under Chapter III of the Representation of the People Act, 1951

In the judgment dated 7th August 2015, the Hon'ble Delhi Court had directed the Election Commission to consider the possibility, if any, of putting an impediment on a defaulter of public dues contesting election in order to ensure quick recovery of the said dues. In pursuance of the said judgment, the Commission has recommended amending provisions for disqualifications laid down in Chapter III of The Representation of the People Act, 1951 so as to provide for disqualification in the event of default in clearing public dues.

In pursuance of the second direction quoted above, the Commission has recommended that the provisions for disqualification laid down in Chapter III of The Representation of the People Act, 1951 must be amended by inserting appropriate clause for disqualification on the ground of pending public dues.

The Commission has made the following recommendations :

The proposal of the Commission is that section 126 of The Representation of the People Act, 1951 may be given a relook and in particular, necessary amendments may be made by adding a clause in section 126 stating that “no court shall take cognizance of any offence under section 126(1) (b) unless there is a complaint made by order of or under the authority from the Commission or the CEO of the State concerned as in the case of section 32 of the 1951 Act. Another amendment that is required to be made in the Act is to include 'print media' under the present provision since the current framework only includes display by electronic media.

i. The Commission recommends that the open ballot system may also be made applicable in case of the election to fill a seat or seats in the State Legislative Councils by the Members of Legislative Assembly by appropriately amending section 59 of The Representation of the People

Act, 1951.

- iii. The commission proposes that on the lines of section 58A, there should be a specific provision enabling the Commission to take appropriate action including countermanding of election in the event of incidents of bribery of electors in a constituency, if in the opinion of the Commission such incidents are likely to vitiate the election.
- iv. Transfer of election officials on the eve of elections can disturb the election preparedness. Section 13CC of the Representation of the People Act, 1950 and Section 28A of the Representation of the People Act, 1951 should be amended to provide a ban on the transfer of officers referred to in these sections during a period of 6 months before the expiry of the term of the House.
- v. Section 160 of The Representation of the People Act, 1951 should be amended to widen its scope such that requisition of premises for any election should not be restricted to the purpose of setting of a polling station or for storage of ballot boxes after a poll has been taken. Sub-section (1) (a) should be amended to read "any premises that are needed or are likely to be needed for any purpose related to conduct of election, or."
- vi. Section 159 of The Representation of the People Act, 1951 should be amended to empower the District Election Officer also, apart from the Chief Election Officer, to requisition of staff for election duties.
- vii. Provisions for counting of votes of a group of EVMs taken together using totalizer should be made in The Conduct of Elections Rules, 1961, and Form 20 appended to the said Rules should be suitably amended so as to suit the requirements of counting using totalizer.
- viii. The Law Commission has agreed that a person cannot contest from more than one seat at a time. However, the Law Commission has not endorsed the Commission's alternative proposal to require winning candidates to deposit an appropriate amount of money being the expenditure for conducting the elections.
- ix. In order to remove confusions, it is proposed that the provisions of the said section 33 (1) may be made uniform for all candidates and the number of proposers may be fixed as (10) ten in all cases. It will not cause any inconvenience to the recognised parties and, on the contrary will be greatly beneficial to them.
- ix. In pursuance of the second direction quoted above, the Commission has recommended that the provisions for disqualification laid down in Chapter III of The Representation of the People Act, 1951 must be amended by inserting appropriate clause for disqualification on the ground of pending public dues.
- x. Expediting trials in relevant courts where a case is filed against a sitting MP/MLA and to conduct the trial on a day-to-day basis with an outer limit of completing the trial in one year. If the trial cannot be completed within the said time period or the charge is not quashed in the said period, the trial judge shall give reasons in writing to the relevant High Court. Retroactive application- from the date the proposed amendments come into effect, all persons with criminal charges (punishable by more than five years) pending on that date are liable to be disqualified subject to certain safeguards.
- xi. Misuse of religion for electoral gain - The Commission proposed that for giving effect to the recommendations in the Liberhan Commission Report, the law should be amended as was proposed in the Bills of 1990 and 1994 referred to above.
- xii. The proposal of the Commission is that Section 171B and 171E of the Code of Criminal Procedure (Cr.P.C), 1973, shall be amended immediately to include bribery as a cognisable offence with minimum 2 years of Imprisonment.
- xiii. The Election Commission of India should be given powers to de-register a political party should be authorised to issue necessary orders regulating registration and de-registration of political parties.
- xiv. Provisions for exemption of Income Tax should be made applicable only to political parties that contest elections and win seat(s) in the Parliament or Legislative Assemblies.
- xv. Accounting and auditing standards to help political parties to maintain uniformity in

presentation of financial statements, proper disclosure and transparency of their accounts.

xv. Anonymous contributions above or equal to the amount of Rupees two thousand should be prohibited.

xvi. Currently, the details of donors are not required for coupons with small amounts such as for Rs. 10 or 20. These smaller sums aggregate into a bigger amount and hence, they need to be accounted for, to ensure transparency.

xvii. To ensure better accountability, laws relating to election expenditure need to be amended.

xviii. A suitable sub-section should be inserted in section 77 of The Representation of People Act, 1951 stating that amount of financial assistance given to a candidate by a political party should not exceed the limit prescribed under section 77(3) of the 1951 Act.

xix. The ceiling on campaign expenditure made by political parties towards Parliamentary or Assembly elections should be provided. It should be either 50% of or not more than the expenditure ceiling limit provided for the candidate multiplied by the number of candidates of the party contesting the election.

xx. The maximum number of star campaigners should be prescribed for bye-elections to ensure level playing field and for smoother election management.

xxi. A candidate contesting at an election should be required to maintain the accounts from the date of notification of the election till the date of declaration of result of the election.

xxii. The Commission recommends that there should be a restriction on publishing the results of such poll surveys before the elections and reiterates its view that like the Exit Polls, there should also be some restriction on conducting and disseminating the results of Opinion Polls right from the day of the first notification of an election till the completion of the poll in all the phases where a general election is held at different phases.

xxiv. The Commission proposes that whenever any general election is due on the expiration of the term of the House, advertisements of

achievements of the governments, either Central or State, in any manner, should be prohibited for a period of six months prior to the date of expiry of the term of the House and in case of premature dissolution, the date of dissolution of the House.

xxiv. Section 78, 81 and 84 of the representation of the people act, 1951. The period of filing election petition is 45 days and the time period of filing accounts is 30 days. This leaves only a small period for a person to analyse expenditure statement of candidates and decide whether an election petition needs to be filed. Hence, the time period for filing of accounts needs to be reduced. So that more time is available to analyse the accounts.

xxv. Section 84 of the 1951 Act may be amended to include a sub-section stating that "a petitioner may seek a declaration that a candidate, even if he is not the returned candidate, has indulged in corrupt practice as defined under section 123 of the Act."

xxvi. There is a lacunae in the law as there is no limit prescribed on expenditure during an election from local authorities', graduates' and teachers' constituencies. The expenditure limit for these elections could be half of the limit for the Assembly election in the state concerned.

xxvii. In case of adjournment of poll under section 52 of the Representation of the People Act, 1951 the contesting candidates should be allowed to spend additionally the full amount as prescribed under Rule 90 of The Conduct of the Election Rules, 1961, from the date of adjournment of poll if the adjournment takes place within first week from the date of scrutiny of nominations.

xxviii. The Commission has proposed that appointment of additional Judges in High Courts for trying election petitions to ensure their speedy disposal should be considered.

xxix. The Commission has proposed that Form 26 be amended by adding a new column for declaring the source of income of the candidate and spouse.

NEWS & EVENTS

□ On April 11, 2018 an event was organised in Hauz Rani community to celebrate 'World Health

Day'. A small discussion was conducted with the community women to promote healthy habits like meditation, daily exercise, eating balanced diet, proper sleep, clean environment etc to enjoy good health.



□ On April 23, 2018, FRNV Kochi chapter has organised a meeting on 'Elimination of waterlogging problem in Kochi' at Kerala Management Association house. The FRNV president, Dr. E. Sreedharan mentioned about finding a solution to the waterlogging that Kochi city faces every monsoon and how to tackle the mosquito menace in the city.



Ex-UP Chief Ministers Can't Stay In Official Bungalows: Supreme Court

The Supreme Court today cancelled changes to the law that enabled former chief ministers of Uttar Pradesh to live in official homes for life. In its order, the court said former UP chief ministers are not entitled to government bungalows as these are "public property that belongs to the people of the country". Amendments to a law by the previous Akhilesh Yadav government in 2016 entitled five ex-chief ministers, Rajnath Singh, Rajasthan Governor Kalyan Singh, Mulayam Singh Yadav,

Mayawati and ND Tiwari to government bungalows. The changes were "arbitrary and discriminatory" and violated the concept of equality, the judges said.

The Chief Minister, once they demit office, is at par with the common citizen, though by virtue of the office held, they may be entitled to security and other protocol. But the allotment of government bungalows, to be occupied during their lifetime, would not be guided by the constitutional principle of equality," they said.

The former chief ministers were allowed to keep the bungalows despite a 1981 law by the Congress government of VP Singh making it necessary for chief ministers to exit within 15 days of leaving office.

The Supreme Court today said "it is a legislative exercise based on irrelevant and legally unacceptable considerations, unsupported by any constitutional sanctity." The local laws gave these benefits to former chief ministers "without any element of reasonableness", said the judges.

Source: Excerpts from <https://www.ndtv.com/india-news/former-up-chief-ministers-cant-stay-in-official-bungalows-says-supreme-court-cancelling-law-1848183>



Join us for FRNV's 10th Foundation Day

On June 9, 2018, FRNV will complete ten years of its existence and we are planning to celebrate our 10th Foundation Day to mark the occasion at Metro Bhawan, Barakhamba Road, New Delhi from 5:00 pm-07:30 pm. We shall be honored to have you with us on this occasion.

Dear Readers,

FRNV invites stories from its readers on deep-rooted values that have helped us in our everyday lives. Some of these stories will be featured in the next issue of our newsletter. So put your thinking caps on, recall the values integral to your life which you cherish and write to us at shilpi@valuefoundation.in.