



PARLIAMENT OF INDIA
RAJYA SABHA

DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE
ON PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE

ONE HUNDRED THIRTY SECOND REPORT

ON

SPECIFIC ASPECTS OF ELECTION PROCESS AND THEIR REFORM

(Presented to the Rajya Sabha on 4th August, 2023)

(Laid on the Table of Lok Sabha on 4th August, 2023)



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COMPOSITION OF THE COMMITTEE

DEPARTMENT RELATED PARLIAMENTARY STANDING COMMITTEE ON PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE

1. Shri Sushil Kumar Modi — *Chairman*

RAJYA SABHA

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3. Shri Mahesh Jethmalani
4. Shri Kanakamedala Ravindra Kumar
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LOK SABHA

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13. Shri Pradan Baruah
14. Shri Venkatesh Netha Borlakunta
15. * *Vacant*
16. Shri Vinod Chavda
17. Shrimati Veena Devi
18. Shri Jasbir Singh Gill
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21. Shri Jyotirmay Singh Mahato
22. Shri Malook Nagar
23. Dr. Ramesh Pokhriyal "Nishank"
24. Shri Suresh Kumar Pujari
25. Shri A. Raja
26. Shri Omprakash Bhupalsingh *alias* Pavan Rajenimbalkar
27. Shri Upendra Singh Rawat
28. Shrimati Sandhya Ray
29. Shri Kuldeep Rai Sharma
30. Shri Mahendra Singh Solanky
31. Shri Rajan Baburao Vichare

SECRETARIAT

1. Shri P.Narayanan, Director
2. Shri Sammer Kapoor, Deputy Secretary
3. Shri Sunil Tripathi, Under Secretary
4. Ms. Meera Nair, Assistant Research Officer

* vacant due to change in nomination of Shri Durai Murugan Kathir Anand w.e.f. 08.12.2022

INTRODUCTION

I, Chairman of the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, having been authorised by the Committee on its behalf, do hereby present the 132nd Report on the Subject '**Specific aspects of Election Process and their Reforms**'.

2. The report analyses the significance of elections in India and their influence on democratic governance, political representation, and societal progress. It explores different facets, including voter participation and comprehensive representation through a single electoral roll, and transparency and accountability of candidature and minimum age for contesting elections.

3. The report emphasizes the significance of elections in India and the necessity of overhauling specific components of the electoral system to maintain a thriving democracy in the country. Due to the vastness of the topic, the report has been divided into multiple sections for improved organisation and preparation.

4. To gain a comprehensive understanding of the electoral process, the Committee has divided the subject into three issues and organised them into the following categories:

- i. Status of Common Electoral Roll for conducting elections in the country;
- ii. False declarations during filing of nomination for elections; and
- iii. Establishing parity between the minimum age of voting and contesting elections to Parliament/State Legislatures/local bodies

5. At its meetings on November 25th, 2022, December 21st, 2021, and January 9th, 2023, the Committee heard the Legislative Department (Ministry of Law and Justice) Government of India and the Election Commission of India, on the subject. Additionally, the Committee had also sought input from various National Political Parties. At the time of presentation of this Report, replies of two National Political Parties namely, A.A.P and C.P.I (M) have been received and the same are appended at the end of this report as an **Annexure**.

6. The Committee reviewed the following documents/information in regard to the subject:

- i. Background note on the Subject submitted by the Legislative Department;
- ii. Background note on the Subject submitted by the Election Commission of India;
- iii. The Constitution of India;
- iv. The Representation of People Act, 1950;
- v. The Representation of Peoples Act, 1951;
- vi. The Registration of Electors Rules, 1960;
- vii. The Conduct of Election Rules, 1961;
- viii. Two Hundred and Forty Forth Report of Law Commission of India on Electoral Disqualifications
- ix. Two Hundred and Fifty-Fifth Report of Law Commission of India on Electoral Laws; and
- x. *Union of India v. Association for Democratic Reform*, 2002 AIR 2112
- xi. *People's Union for Civil Liberties v. Union of India*, (2003) 4 SCC 399; (2019) 3 SCC 224.
- xii. *Resurgence India v Election Commission of India and Another*, (2014) 14 SCC 189
- xiii. *Satish Ukey v Devendra Gangadharrao Fadnavis & Anr*, (2019) 9 SCC 1
- xiv. *Krishnamoorthy v. Sivakumar and Other*, (2015) 3 SCC 467

7. The Committee considered and adopted its Report in its meeting held on the 31st July, 2023.

8. For the facility of reference and convenience, the observations and recommendations of the Committee have been printed in bold letters in the body of the Report.

New Delhi
04-08-2023

SUSHIL KUMAR MODI
Chairman,
Department-related Parliamentary Standing
Committee on Personnel Public Grievances
Law and Justice

ACRONYMS

A.A.P	Aam Admi Party
B.L.Os	Booth Level Officers
C.E.O	Chief Electoral Officer
C.P.I (M)	Communist Party of India (Marxist)
Cr. P.C.	The Code of Criminal Procedure, 1973
E.C.I	Election Commission of India
E.P.I.C	Elector Photo Identity Card
E.V.Ms	Electronic Voting Machines
I.P.C	Indian Penal Code, 1860
M.C.C	Model Code of Conduct
M.P	Member of Parliament
R.O	Returning Officer
R.P.A	The Representation of the People Act
S.C	Supreme Court of India
S.E.Cs	State Election Commissions

ISSUE NUMBER ONE

STATUS OF COMMON ELECTORAL ROLL

INTRODUCTION

1.0 In India, the electoral system is complex and diverse, reflecting the country's federal structure and the division of responsibilities between different constitutional authorities. As a result, various types of electoral rolls exist to accommodate the different levels of government and their corresponding elections.

1.2 India has two main types of electoral rolls: the general electoral rolls overseen by the Election Commission of India for national and state-level elections, and the separate electoral rolls prepared by the State Election Commissions for municipal and Panchayat elections. This distinction arises from the constitutional division of responsibilities between these two authorities, allowing for effective management of the diverse electoral processes in the country.

1.3 At the national level, the Election Commission of India (ECI) holds the responsibility for conducting elections to the highest offices of the country, such as the President and Vice-President, as well as for Parliament, state assemblies, and legislative councils. The electoral rolls used for these elections are commonly known as the '**General Electoral Rolls**'. These rolls encompass eligible voters from across the country, regardless of their specific region or local jurisdiction.

1.4 However, when it comes to Municipal and Panchayat Elections, the supervision and conduct of these polls are entrusted to the State Election Commissions (SECs). Each state in India has its own State Election Commission, which is independent of the Election Commission of India. The SECs are responsible for overseeing the electoral processes of Municipalities and Panchayats within their respective states.

1.5 The State Election Commissions have the authority to prepare their own electoral rolls exclusively for the local body elections. These rolls are distinct from the general electoral rolls used for national and state-level elections. The

SECs have the flexibility to design and manage these Electoral Rolls as per their requirements and local demographics without the need for coordination with the Election Commission of India.

THE PRESENT NATURE OF ELECTORAL ROLLS

1.6 The system of Electoral Rolls for local body elections in India varies from State to State, and not all States have a separate list exclusively for these elections. The State Election Commissions (SECs) are governed by individual State Acts, which provide guidelines for their functioning and electoral processes.

1.7 The use of separate lists for local body elections in India depends on the State's legislation and the approach taken by the respective State Election Commissions. While some States utilise the ECI's rolls either in their entirety or as a foundation, others have their own independent processes for maintaining electoral rolls for Municipal and Panchayat Elections, resulting in a diverse electoral landscape across the country.

1.8 Only a few States statutorily permit State Election Commissions (SECs) to borrow and utilise voter rolls from the Election Commission of India (ECI) for local body elections. In these states, the same Electoral Rolls are used for National and State-Level Elections, maintained by the ECI, and are also used for Municipal and Panchayat Elections. This practice allows for a streamlined process and consistency in the voter database.

1.9 In contrast, several States have laws mandating the use of the Election Commission's Electoral Rolls as a basis for creating and updating voting lists, especially for local government elections in Municipalities and Panchayats. In these cases, the SECs build upon the ECI's rolls, making necessary amendments and additions to suit the requirements of the local body polls.

1.10 It is worth noting that some States do not implement the EC's rolls for their local body elections. Nine States/ UTs, namely Uttar Pradesh, Uttarakhand, Odisha, Assam, Madhya Pradesh, Kerala, Arunachal Pradesh, Nagaland and, Union Territory of Jammu and Kashmir, do not adopt the EC's rolls for their Municipal and Panchayat polls. Instead, they follow their own distinct processes for creating and maintaining electoral rolls for local body elections.

HISTORY OF COMMON ELECTORAL ROLL

1.11 In 1999, the Chief Election Commissioner proposed a Common Electoral roll through a letter to the Prime Minister. This proposal suggested the use of a shared Electoral Roll to enhance the electoral process by promoting collaboration between the Election Commission of India and the State Election Commission. The implementation of this proposal aimed to increase accuracy, efficiency, and transparency, ultimately ensuring fairness and inclusivity in the National Elections.¹The suggestion was reiterated once again in 2004.

THE BENEFITS OF HAVING A COMMON ELECTORAL ROLL

1.12 The Common Electoral Roll is designed to streamline resources, minimise effort, and reduce expenses. The current practice of having different agencies prepare voter lists for each election leads to duplication of efforts. Multiple agencies perform the same task of identifying eligible voters, resulting in unnecessary expenses and effort. By consolidating the Electoral Rolls into a single, comprehensive database, the government would be able to eliminate duplication and streamline the process. This would entail synchronising the efforts of various agencies involved in maintaining electoral rolls, including the Election Commission of India and relevant State Election Commissions. The Common Electoral Roll would serve as a centralised repository of voter information accessible to all concerned authorities.

1.13 Moreover, reducing duplication enhances the efficiency and accuracy of the electoral process. It would enable easier verification of voter credentials, prevent multiple entries, and facilitate the identification of eligible voters across different elections. Further, the registration process for voters can be made more streamlined by allowing them to register just once and having their information automatically updated for all future elections.

PRESENT STATUS OF COMMON ELECTORAL ROLL

1.14 According to Article 324(1) of the Constitution, the Election Commission of India (ECI) is empowered to supervise, direct, and control the preparation and revision of Electoral Rolls for all elections to Parliament and State Legislatures.

¹ Proposed Electoral Reforms, Election Commission of India, 2004. Pp.20

Similarly, for local body elections, the State Election Commission is responsible for overseeing the preparation and revision of Electoral Rolls in accordance with relevant State laws. However, there needs to be more coordination between the ECI and State Election Commissions regarding the preparation of Electoral Rolls.

1.15 In a background paper on Electoral Reforms prepared by the Legislative Department of the Law Ministry in 2010, it was observed that while some States have aligned their electoral rolls with those prepared by the ECI, others have made significant modifications. In fact, certain States even have different qualifying dates for their Electoral rolls compared to the rolls prepared by the Election Commission.

1.16 Acknowledging this non-uniformity, the ECI has recognised three different approaches taken by State laws regarding the use of electoral rolls for local body elections.

- First, some States use the Electoral Rolls prepared by the ECI as the basis for drafting and revising rolls for local body elections.
- Second, the ECI's Electoral Rolls are directly used in their entirety for local body elections.
- And third, the ECI's Parliamentary and Assembly Rolls are used as a draft for local elections, subject to further modifications in terms of inclusions and exclusions.

1.17 In some instances, the qualifying dates for the ECI's electoral rolls and the rolls for local body elections may vary.

1.18 One way to address the issue is through the use of Common Electoral Rolls. This would save time and resources as the Election Commission of India already has a significant amount of data from Parliamentary and Assembly Elections. Essentially, this approach involves using the existing rolls as a foundation for local body elections and making necessary adjustments based on specific wards or polling areas. In addition, the Electoral Roll, whether prepared or adopted, should be reviewed before each by-election to fill a casual vacancy in a seat allotted to the ward. The revision should adhere to prescribed rules based on the qualifying date. The Election Commission may also direct the revision of

the electoral roll in any year if necessary. However, the validity or continued operation of the electoral roll is only impacted if it is revised as stipulated.²

RECOMMENDATION MADE BY LAW COMMISSION

1.19 The Law Commission has given its unwavering support for the Election Commission of India's (ECI) proposal to establish a Common Electoral Roll that is applicable to various types of elections, comprising Parliamentary, Assembly, and local body elections. This initiative is expected to enhance the efficiency and transparency of the electoral process, enabling more accurate and reliable results.

1.20 The Commission highlighted the challenge of implementing this proposal, which involves changing State laws that govern local body elections. To overcome this difficulty, the Law Commission proposed that the Central Government should take the lead in persuading different States to adopt a standard electoral roll. The Commission expects that the States will take these recommendations into account, appreciate the advantages of streamlining the electoral rolls, and implement the laws proposed by both the ECI and the Law Commission to create a more efficient and consistent electoral system.³

CURRENT LEGAL FRAMEWORK OF ELECTIONS

1.21 The Constitution of India, by virtue of Article 324(1), has entrusted the Election Commission of India with the responsibility of overseeing the preparation and revision of electoral rolls for elections to the House of the People and State Legislative Assemblies. This includes functions such as superintendence, direction, and control.

324. Superintendence, direction and control of elections to be vested in an Election Commission

(1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice

² Report on 'Proposals for Electoral Reforms', ECI, 2004. Pp. 29-30

³ 255 Report of Law Commission of India on 'Electoral Reforms', 2015. Pp. 214

President held under this Constitution shall be vested in a Commission (referred to in this Constitution as the Election Commission)

1.22 Further, Article 325 of the Indian Constitution states that each territorial constituency must have a single general electoral roll.

325. There shall be one general electoral roll for every territorial constituency for election to either House of Parliament or to the House or either House of the Legislature of a State, and no person shall be ineligible for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, race, caste, sex or any of them.

1.23 Similarly, Articles 243K and 243ZA of the Constitution, as inserted by the Constitution (73rd and 74th Amendments) Acts, 1992, entrust the State Election Commissioners with the task of overseeing the preparation and revision of electoral rolls for Local Body elections.

243K. (1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor.

(4) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Panchayats.

243ZA. (1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Municipalities shall be vested in the State Election Commission referred to in Article 243K.

(2) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Municipalities.

1.24 Under Article 327 of the Constitution, Parliament has the authority to enact laws regarding all aspects of elections for either House of Parliament or either House of the Legislature of a State, including preparing electoral rolls. Parliament enacted the Representation of the People Act 1950 to exercise this power. Similarly, under Article 328, the State Legislatures are entrusted to make laws with respect to all matters relating to elections to the Legislature of the concerned state, including the preparation of electoral rolls.

327. Subject to the provisions of this Constitution, Parliament may from time to time by law make provision with respect to all matters relating to, or in connection with, elections to either House of Parliament or to the House or either House of the Legislature of a State including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due constitution of such House or Houses.

328. Subject to the provisions of this Constitution and in so far as provision in that behalf is not made by Parliament, the Legislature of a State may from time to time by law make provision with respect to all matters relating to, or in connection with, the elections to the House or either House of the Legislature of the State including the preparation of electoral rolls and all other matters necessary for securing the due constitution of such House or Houses.

1.25 Further, the preparation and revision of electoral rolls for Parliamentary and Assembly Constituencies are governed under the provisions contained in PART IIB Section 13D of the Representation of the People Act, 1950 (R.P. Act,1950), made by Parliament.

[13D. Electoral rolls for parliamentary constituencies.— (1) The electoral roll for every parliamentary constituency, other than a parliamentary constituency in the State of Jammu and Kashmir or in a Union territory not having a Legislative Assembly, shall consist of the electoral rolls for all the assembly constituencies comprised within that parliamentary constituency; and it shall not be necessary to prepare or revise separately the electoral roll for any such parliamentary constituency:

Provided that for the period referred to in clause (2) of article 371A, it shall be necessary to prepare and revise separately the electoral roll for that part of the parliamentary constituency of Nagaland, which comprises the Tuensang district and the provisions of Part III shall apply in relation to the preparation and revision of the electoral roll of the said part as they apply in relation to an assembly constituency.

(2) The provisions of Part III shall apply in relation to every parliamentary constituency in the State of Jammu and Kashmir or in a Union territory not having a Legislative Assembly as they apply in relation to an assembly constituency.]

1.26 Whereas the preparation and revision of rolls for local bodies elections are regulated by the State laws of the state concerned.

1.27 According to the Article 324 of the Constitution, the Election Commission has the authority to supervise the generation and modification of electoral rolls in compliance with the Representation of the People Act, 1950 and the Registration of Electors Rules, 1960. The Election Commission can improve the electoral rolls by putting out executive orders, fortifying the electoral organization, prohibiting transfers/postings of officials who are part of the process, and enforcing measures to ensure the security and upkeep of the electoral database.

1.28 The Election Commission's instructions and directions are highly regarded by election authorities, State governments, and political parties, but their legal authority is limited. Despite this, these instructions and directions are generally adhered to in order to ensure a fair and seamless election process. The Commission's powers are restricted by two conditions: their directives must comply with existing laws, and they cannot violate the principle of natural justice.⁴

OBSERVATION MADE BY THE ELECTION COMMISSION OF INDIA (ECI)

1.29 The electoral rolls for the Assembly and Parliamentary Constituencies are prepared by ECI under the provisions of Sections 15 and 13D of the RP Act,

⁴ Manual on Electoral Rolls, ECI, 2016

1950. According to ECI, 32 States/UTs presently utilise ECI's electoral roll, albeit in varying forms. Maharashtra and Goa use the same electoral roll, while other States release a draft, receive claims and objections, and then create their own final roll.

Issues in the Preparation of Common Electoral Rolls

1.30 There are two critical issues identified by the ECI regarding the implementation of the Common Electoral roll.

1.31 Firstly, there is a difference between the Assembly electoral roll and the local bodies' electoral roll. The Assembly electoral roll database is permanent, but local bodies do not maintain a permanent electoral roll. Before every election, a fresh electoral roll for the local body is prepared.

1.32 ECI informed that at present, only three states - Odisha, Telangana, and West Bengal - have specific provisions in their acts to use ECI electoral roll, and except for Odisha, all States/UTs use January 1st as the qualifying date for creating their electoral rolls. Four States (Meghalaya, Uttar Pradesh, Uttarakhand and Lakshadweep) do not use the ECI's electoral roll for elections to local bodies.

1.33 Out of remaining 32 States which are using ECI's electoral roll, though in different forms, 4 states (Tamil Nadu, Andaman and Nicobar Islands, Chandigarh and NCT of Delhi) use the current electoral roll; Two States (Sikkim and Gujarat) use either draft or final electoral roll of ECI, while remaining 26 states use the final roll with modifications.

1.34 Only Maharashtra and Goa utilize the Commission's electoral roll without many modifications and independently create their own ward-wise roll. Remaining 30 States use Commission's roll as draft and invite claims and objections for preparing their final roll.

1.35 It has been submitted that several Indian States have not been utilizing the data provided by the Election Commission of India (ECI) for their electoral processes. For instance, Arunachal Pradesh has only utilized it for municipal elections and urban local bodies but not for rural local bodies. Similarly, Kerala has not used ECI data since 2014 and instead relied on its own electoral roll.

Nagaland last utilized ECI data in 2016 and has not done so since. Uttarakhand has also not used ECI data and has created its own electoral roll. Uttar Pradesh stopped using ECI data in 2005. However, the other 30 states/union territories use ECI's electoral roll as a draft and invite claims and objections to prepare their final roll. According to the Election Commission of India, this can lead to variations in the electoral data as State Election Commissions (SECs) use ECI electoral data at different stages and categorise it on a ward-wise basis.

1.36 According to the ECI, establishing a Common Electoral Roll would enhance efficiency and minimise administrative expenses. Although the ECI can incorporate fields for Election Wards in its database, the responsibility of populating this data according to their requirements lies with State Election Commissions (SECs). To achieve a consolidated electoral roll, SECs must cooperate on a common platform to compile voter information flawlessly.

1.37 Secondly, the delimitation of assembly and parliamentary constituencies happens less frequently, usually every 15 to 20 years. Delimitation of local bodies, on the other hand, is often done before elections. These periodic delimitation processes play a critical role in ensuring fair and equitable representation within the broader political landscape.

STEPS TAKEN BY ECI

1.38 The ECI has informed that they have been assisting the State ECs by sharing the electoral database upon request from the respective State's Chief Electoral Officer (CEO). To further aid the SECs, the ECI has directed CEOs to add additional columns of wards on an '*as is where is*' basis. In the past, the ECI proposed electoral reforms, including the use of Common Electoral Rolls, in a letter dated 22nd November 1999 addressed to the Hon'ble Prime Minister. This proposal has been reiterated multiple times.

1.39 The Election Commission of India (ECI) has stated that it has implemented a standard policy for sharing the Electoral Roll/Election Photo Identity Card (ER/EPIC) database since December 10, 2008. Upon request from State Election Commissions (SECs) to prepare the roll, the ECI shares this data. Moreover, in January, 2012, ECI sent a letter allowing the sharing of the ECI database, including new columns for Ward-Level details, on an *as-is-where-is* basis. It has

been informed that Blank columns for Panchayat and Municipal bodies were also added. In 2013, a pilot project was conducted in Himachal Pradesh, where the State Election Commission was provided with an electoral database with an additional field for capturing ward details.

1.40 It was also stated that the Union Cabinet had approved the Election Commission's proposal to link Aadhaar with Voter ID, which aims to improve the accuracy of electoral rolls by eliminating duplicate entries. The Representation of the People Act of 1950 and 1951 has been amended and Section 23 now includes sub-sections (4) and (5). The electoral registration officer can use the Aadhaar number provided by the Unique Identification Authority of India to confirm a person's identity under sub-section (4). Additionally, the officer can require the Aadhaar number from those already on the electoral roll to verify their registration in various constituencies or the same constituency more than once. Sub-section (5) allows individuals on the electoral roll to provide their Aadhaar number in the prescribed manner before a date announced by the Central Government in the Official Gazette. Sub-section (6) ensures that individuals who are unable to provide their Aadhaar number due to a valid reason will not be denied inclusion in the electoral roll nor have their entries deleted. Section 26B requires existing electors to inform the registration officer of their Aadhaar number using Form 6B. Forms I, 2, 2A, 3, 6, 7, 8, II, II A, 18, and 19 of the Registration of Electors Rules, 1960 have been revised, and a new Form 6B has been added. However it was submitted that **linking the Aadhaar with the Voter ID is optional and not mandatory.**

SUGGESTIONS FROM ECI

1.41 The Election Commission of India has put forward a plan for the implementation of a Common Electoral Roll. Two options have been proposed:

(i) The Election Commission of India (ECI) has suggested that creating a Common Electoral Roll could benefit both ECI and State Election Commissions. However, concerns have been raised about maintaining citizens' privacy and the security of the electoral database. While the ECI has a policy for sharing the database with other departments, implementing a Common Electoral Roll would grant SECs the same level of access. To mitigate these concerns, a Standard

Operating Procedure (SoP) needs to be developed to determine the extent of database sharing with SECs while ensuring citizens' privacy and cyber security. Additionally, it is suggested that SECs must also implement the ECI's policy in their system.

(ii) The delimitation of local wards and panchayats is mandated by the State Government and State Election Commissions before every local body and panchayat elections. While these boundaries are not essential components for the preparation of electoral rolls for Assembly and Parliamentary Constituencies, coordination between the Election Commission of India (ECI) and SECs can be a major challenge. Challenges may arise when attempting to establish a common electoral roll and delimitation process. The boundaries of ECI polling stations may not match those of local bodies, and delimitation of ACs/PCs occurs less frequently than local ward delimitation. To establish a Common Electoral Roll, it is necessary to map the wards of local bodies and panchayats with the Assembly Constituencies (ACs). The entire ward/panchayat should remain within a part (polling station) of an AC. An AC should consist of entire wards/panchayats, similar to how a PC consists of a few ACs. To capture the mapping of the basic unit of SEC rolls, such as panchayat and urban wards, structural changes in the ECI roll and amendments in States' laws are required. State governments will need to be pursued for necessary law amendments.

1.42 The Law Commission and the Election Commission of India have both suggested the implementation of Common Electoral Rolls for Parliamentary, Assembly, and local bodies elections in their respective proposals/recommendations.

OBSERVATION MADE BY THE LEGISLATIVE DEPARTMENT

1.43 According to a report from the Legislative Department, the Government has been giving thorough consideration to the issue of Common Electoral Roll. Accordingly, Section 14(b) of the Representation of the People Act, 1951 has been amended. The proposed amendment aimed to introduce four qualifying dates that are relevant to the creation and revision of the common electoral roll. The Amendment Bill in question has already been passed by both the Rajya Sabha and the Lok Sabha in December 2022.

1.44 The Government aims to promote the use of information gathered by the Election Commission of India through the proposed legislation. This data will be utilized to form electoral rolls for Panchayat and Municipal Elections at the local level.

1.45 The Department, however, stated that many States have shown reluctance in receiving electoral roll from the ECI, as it had only one qualifying date - January 1st. This caused individuals turning 18 after January 2nd to wait a year before registering as voters, leading to a smaller voter base. To address this problem, the Department aims to develop its own electoral roll that encompasses all eligible individuals with different qualifying dates. With the introduction of the new Act featuring four electoral dates, the Department anticipates that the States will now be more open to accepting their data.

1.46 The Department has suggested an alternative solution to amending Article 243K and Article 243-ZA, which give State Governments the power to create a joint electoral roll. Instead, they propose that States adopt the electoral roll produced by the Election Commission of India. This approach aims to ease the burden on States and ensure a seamless electoral roll. The Election Commission has committed to compiling the roll with voter classification by ward and booth, and they plan to share their results in the near future.

THE OBSERVATION, SUGGESTIONS AND RECOMMENDATIONS FROM THE COMMITTEE ARE AS FOLLOWS:

1.47 The Committee observes that an amendment has been passed by Parliament to Section 14(b) of the Representation of the People Act to insert four qualifying dates (or cut-off dates) to enroll as voters and is awaiting the President's approval. This amendment increases the qualifying dates to four, tentatively set for January 1st, April 1st, July 1st, and October 1st, instead of only January 1st. This change can be beneficial for States to effectively use data from the Election Commission. With the additional dates, the ECI can create a more comprehensive electoral roll, improve the database, and help State Governments develop their own databases.

1.48 The Committee while extending its appreciation to the Election Commission of India for their diligent efforts in conducting free and fair

elections in the country recommends that citizens should have greater transparency when it comes to the Common Electoral Roll and the integration of Aadhaar with EPIC. However, Committee emphasised that linking Aadhaar with Voter ID is voluntary and not obligatory.

1.49 During discussions, some members of the Committee raised doubts about the linking of Aadhaar with EPIC of non-citizens, which led the Committee to suggest that the ECI should establish a legal provision or an alternative mechanism to ensure that non-citizens with Aadhaar are not included in the voter list. Additionally, citizens who have not yet linked their Aadhaar should be assured that they can still exercise their legal right to vote. The Committee emphasized the importance of these clarifications in addressing concerns related to the implementation of a Common Electoral Roll.

1.50 The implementation of electoral reforms has faced significant delays, with limited progress made since the Election Commission of India first presented the Common Electoral Roll proposal to the Prime Minister in 1999 and subsequently in 2004. This has resulted in a delay of approximately 20 to 23 years. The Committee therefore recommends that the ECI may develop a comprehensive plan that considers all the factors involved in implementing a Common Electoral Roll before making any changes to the current regulations.

1.51 To ensure a fair and effective implementation, the Committee recommends that extensive consultations be held with the Legislative Department and with the various State Governments and Political Parties, including those who use their own electoral rolls for local body elections. By conducting these consultations, final proposal on Common Electoral Roll can be developed taking into consideration the different viewpoints and concerns of all parties involved.

1.52 The Committee points out two important issues in implementing Common Electoral Roll, namely the current legal framework and Constitutional regulations that guide the creation of electoral rolls by the ECI, and the process for conducting local body polls. The Committee

expressed concern about the potential impact on State powers, mentioned under Chapter IX and IX A of the Constitution of India. The Committee therefore suggests that the ECI before taking up the responsibility of preparing the Common Electoral Roll may give due consideration to the constitutional provisions and powers of the States. The ECI may also keep in mind the principles of federalism enshrined under the constitution and the powers reserved for the State Election Commissions under List II Entry 5.

1.53 The Committee observes that implementing a Common Electoral Roll, as proposed by the Central Government and ECI, is presently outside the scope of Article 325 of the Constitution. This article stipulates that separate electoral rolls must be used for elections to Parliament and the State Legislatures. To ensure that all actions are in line with the Constitution, the Committee suggests consensus shall be made in line with Article 325. The Committee advises the government to proceed with caution, adhere to the principles of federalism enshrined in the Constitution, and carefully assess the potential consequences before taking any action.

1.54 According to Article 243D (1) and (6) and Article 243T (1) and (6) of the Constitution, it is the responsibility of the individual State Governments to reserve seats for the Scheduled Classes and Scheduled Tribes (SCs/STs) in the Municipality and Panchayat Elections. Some Members of the Committee have raised concerns about the nature of power proposed to be conferred to the Election Commission of India for preparing the Common Electoral Roll. The Committee suggests that the Election Commission should be careful and avoid overstepping its boundaries into the State's domain. Instead, the Commission should aim to propose a solution that benefits all the parties involved.

1.55 The Committee recommends that the Legislative Department and the Election Commission collaborate to examine the effects of the delimitation process, especially in challenging terrains. The Election Commission lacks the authority to direct State Election Commissions or appraise the performance of State Election Commissioners. The Committee draws the attention of ECI to the fact that treating all regions in India as identical can

pose a significant risk. It is therefore imperative to recognize this reality and take appropriate measures to address it.

1.56 The Committee has taken note of the potential benefits that could be derived from the creation of a Common Electoral Roll through the collaborative participation of officials who serve in both the Election Commission of India and State Election Commissions. However, it stresses the importance of proper constitutional and statutory authorization before the Election Commission takes charge of creating or managing electoral rolls for State Election Commissions. The Committee suggests that States may continue the practice of utilizing the final electoral roll of the Election Commission, calling claims and objections, until necessary legal changes are made. Furthermore, the Committee strongly recommends that the Election Commission of India and the Legislative Department collaborate to preserve the rights of both State Election Commissions and State Governments when preparing the Common Electoral Roll.

1.57 The Committee suggests that the Election Commission and Legislative Department collaborate to encourage States to utilize the Election Commission's electoral roll when creating their own until there is a change in constitutional and statutory provisions. The Committee strongly emphasizes the significance of preserving the rights of State Election Commissions and State Governments while taking action.

ISSUE NUMBER TWO

FALSE DECLARATIONS DURING FILING OF NOMINATION FOR ELECTIONS

INTRODUCTION

2.0 In any democratic society, it is imperative to maintain a fair and transparent democratic process to ensure the credibility and survival of institutions.

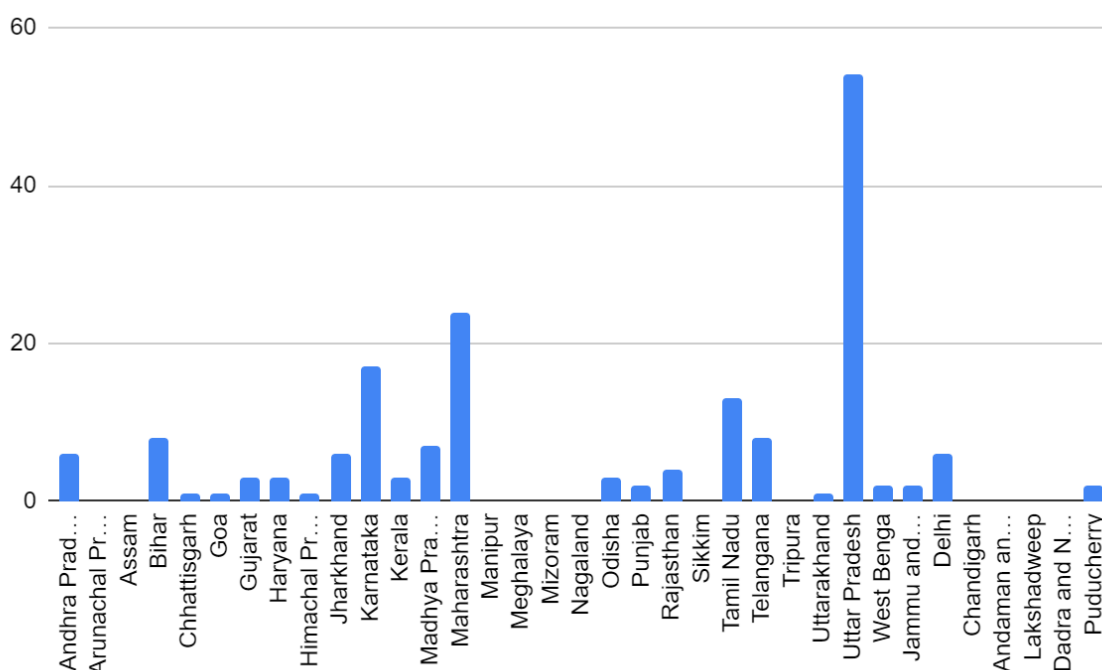
2.1 In order to maintain a healthy democracy and fair elections, it is important that voters are provided with relevant information about the candidates. To ensure the purity of elections and a healthy democracy, voters must be well-informed about the candidates they are voting for. This includes information such as the candidate's assets, educational qualifications, and any criminal history. It is important that voters are not kept in the dark about relevant facts.

2.2 False affidavits submitted during elections can be extremely detrimental to the fairness of the process as they can mislead voters and affect their choices. To prevent this from happening, the Representation of the People Act, 1951 was enacted. This Act sets out qualifications and disqualifications for candidates running for public office and provides a structured framework that promotes free and fair elections. It ensures that voters have access to accurate and unbiased information about the candidates.

2.3 Candidates contesting elections must file an Affidavit in Form 26 under the Conduct of Elections Rules, 1961. This affidavit discloses various details, such as their assets, liabilities, and educational qualifications, among others. It is mandatory for candidates to provide truthful information, failing which will be considered a violation of the law and can result in imprisonment under Section 125A of the RPA.

2.4 However, despite the strict regulations, false affidavits remain prevalent during elections. The punishment for this offence is only six months imprisonment and does not result in disqualification under S. 8(1) or (2) of the

RPA. Moreover, submitting false information on an affidavit does not constitute corrupt practices, and it cannot nullify an election under Section 100. As a result, there is a widespread trend of dispensing incorrect/unreliable information without facing significant consequences. To ensure the integrity of the democratic process, it is crucial for the government to take strict measures to deter the filing of false declarations/ affidavits.



Source: Election Commission of India

2.5 The above list shows the number of false declarations in each state and union territory of India. Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, UT of Chandigarh, UT of A&NI, UT of Lakshadweep, and UT of Dadar Nagar Haveli and Daman & Diu had no false declarations. Bihar, Chhattisgarh, Goa, Gujarat, Himachal Pradesh, Jharkhand, Karnataka, Maharashtra, Odisha, Punjab, Rajasthan, Uttar Pradesh, West Bengal, UT of Jammu & Kashmir, and Delhi had some false declarations, with the highest number being 54 in Uttar Pradesh.

GENESIS OF FILING AFFIDAVITS.

2.6 In 1999, the Law Commission Report on Electoral Reforms recommended an addition to the Representation of the People Act, 1951, which required candidates to disclose their assets, their spouse's and dependent relatives' assets, and any charges they faced for specific criminal offences. Following this recommendation, in 2002, the Association of Democratic Reforms (ADR)⁵ requested the Hon'ble Supreme Court to implement the Commission's suggestion. The Supreme Court directed the Election Commission to mandate details of candidates' assets, liabilities, criminal cases, and educational qualifications on affidavits filed with their nomination papers. Following the SC order, the ECI has notified that the candidates who failed to comply with this directive could face penal consequences under the Indian Penal Code. The Returning Officer has given responsibility for reviewing nomination papers and had the power to reject candidacy for significant errors.

2.7 In 2002, Sections 33A and 33B were added to the RPA, 1951. Section 33A required candidates to disclose information about charges framed by a court against them for offences punishable by more than two years imprisonment and any convictions resulting in imprisonment of one year or more. However, Section 33B nullified the directives issued by the Election Commission, pursuant to the Association of Democratic Reforms judgment and state that, candidates are only required to provide certain information related to their election. Regardless of any court decision, order from the Election Commission, or other instructions, candidates are not obligated to disclose or furnish any information beyond what is required by the Act and its rules.

2.8 In 2013, the Constitutional validity of Section 33B was challenged in the case of *PUCL v. Union of India*,⁶ and it was declared unconstitutional by the Supreme Court. The Court observed that the right to vote is a form of free expression that cannot be infringed upon by Section 33B. The Supreme Court requested the Law Commission to submit a report on Election Disqualification, which was released in 2014 as Report No. 244. The report recommended

⁵ (2002) 5 SCC 294.

⁶ (2013) 10 SCC 1

several amendments to the RPA, 1951 to tackle the violation of laws related to candidate affidavits. The recommendations included imposing a minimum sentence of two years for filing false affidavits, disqualifying any individual convicted of this offence, and categorising it as a corrupt practice. The Law Commission also suggested that the Supreme Court may order the relevant courts to conduct trials on a daily basis and that there should be a one-week gap between the deadline for submitting nomination papers and the date of scrutiny.

2.9 The Law Commission also recommended amendments to the law on false disclosure on affidavits. The proposed changes included amending Section 125A of the Representation of the People Act, 1951, which would require a candidate who fails to furnish information or provides false information in his/her nomination paper or affidavit to be punished with a minimum of two years of imprisonment and also be liable to pay a fine. The amended Section 125A would expedite the trial process and mandate that the case is heard on a daily basis. Additionally, Section 8(1)(i) would be amended to include Section 125A as an offence, imposing disqualification on conviction. Finally, Section 123 would have a new clause added, which would deem failure to provide information or giving false information in the nomination paper or affidavit as a corrupt practice.

CURRENT LEGAL FRAMEWORK UNDER THE REPRESENTATION OF THE PEOPLE ACT, 1951

Section 33A

1[33A. Right to information.—

(1) A candidate shall, apart from any information which he is required to furnish, under this Act or the rules made thereunder, in his nomination paper delivered under sub-section (1) of section 33, also furnish the information as to whether—

(i) he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the court of competent jurisdiction;

(ii) he has been convicted of an offence [other than any offence referred to in sub-section (1) or sub-section (2), or covered in sub-section (3), of section 8] and sentenced to imprisonment for one year or more.

(2) The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (1) of section 33, also deliver to him an affidavit sworn by the candidate in a prescribed form verifying the information specified in sub-section (1).

(3) The returning officer shall, as soon as may be after the furnishing of information to him under sub-section (1), display the aforesaid information by affixing a copy of the affidavit, delivered under sub-section (2), at a conspicuous place at his office for the information of the electors relating to a constituency for which the nomination paper is delivered.]

Section 125A of the Representation of People Act of 1951, deals with the penalties for providing false information in the affidavit submitted by a candidate under Section 33A of the Act.

1[125A. Penalty for filing false affidavit, etc.—A candidate who himself or through his proposer, with intent to be elected in an election,—

*(i) fails to furnish information relating to sub-section (1) of section 33A;
or*

(ii) gives false information which he knows or has reason to believe to be false; or

(iii) conceals any information in his nomination paper delivered under sub-section (1) of section 33 or in his affidavit which is required to be delivered under sub-section (2) of section 33A, as the case may be, shall, notwithstanding anything contained in any other law for the time being in

force, be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.]

Corrupt Practice

Section 123 (4)

**123. Corrupt practices.—The following shall be deemed to be corrupt practices for the purposes of this Act:—*

*(4) The publication by a candidate or his agent or by any other person 9[with the consent of a candidate or his election agent], of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate or in relation to the candidature, or withdrawal,10[***] of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election.*

Filing of Election Petition

Section 83

1[83. Contents of petition.—

(1) An election petition—

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings: 2[Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the

prescribed form in support of the allegation of such corrupt practice and the particulars thereof.]

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.]

Grounds for declaring the election void.

Section 100

"100. Grounds for declaring election to be void.- (1) Subject to the provisions of sub-section (2) if the High Court is of opinion- (a) that on the date of his election, a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963); or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c) that any nomination has been improperly rejected; or

(d) that the result of the election, insofar as it concerns a returned candidate, has been materially affected-

(I) by the improper acceptance or any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, The High Court shall declare the election of the returned candidate to be void.

PROVISIONS UNDER INDIAN PENAL CODE

2.10 Apart from the aforementioned provision, other enabling provisions are available. Section 171G and 177 of the IPC contains penal provisions for furnishing false information to a public servant in general.

Section 171G of the Indian Penal Code

171G. False statement in connection with an election.—Whoever with intent to affect the result of an election makes or publishes any statement purporting to be a statement of fact which is false and which he either knows or believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate shall be punished with a fine.

Section 177 of the Indian Penal Code

177. Furnishing false information.—Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both; or, if the information which he is legally bound to give respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

2.11 Under Section 195 of Cr. P.C., no court shall take cognisance of any offence punishable under Section 177 of IPC, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate.

OBSERVATIONS MADE BY THE COURT

2.12 In the case of the *Public Interest Foundation and Ors. v. Union of India and Anr.*⁷ the Supreme Court emphasised the importance of de-criminalization of politics and disqualification for filing false affidavits.

2.13 In *Resurgence India v. Election Commission of India and Another*⁸, the Supreme Court of India had exhaustively discussed the purpose of filing an affidavit along with the Nomination Paper, and it has been held as follows: -

“The voter has the elementary right to know full particulars of a candidate who is to represent him in Parliament/Assemblies, and such right to get information is universally recognised. Thus, it is held that the right to know about the candidate is a natural right flowing from the concept of democracy and is an integral part of Article 19(1)(a) of the Constitution.

The ultimate purpose of filing of affidavit along with the nomination paper is to effectuate the fundamental right of the citizens under Article 19(1)(a) of the Constitution of India. The citizens are supposed to have the necessary information at the time of filing of nomination paper, and for that purpose, the Returning Officer can very well compel a candidate to furnish the relevant information.

Filing of an affidavit with blank particulars will render the affidavit nugatory.

It is the duty of the Returning Officer to check whether the information required is fully furnished at the time of filing of an affidavit with the nomination paper since such information is very vital for giving effect to the "right to know" of the citizens. If a candidate fails to fill in the blanks even after the reminder by the Returning Officer, the nomination paper is fit to be rejected. We do comprehend that the power of the Returning

⁷(2019) 3 SCC 224.

⁸ (2014) 14 SCC 189, at Para. No. 29

Officer to reject the nomination paper must be exercised very sparingly, but the bar should not be laid so high that the justice itself is prejudiced.

We clarify to the extent that para 73 of the People's Union for Civil Liberties case will not come in the way of the Returning Officer to reject the nomination paper when the affidavit is filed with blank particulars.

The candidate must take the minimum effort to explicitly remark as "NIL" or "Not Applicable" or "Not known" in the columns and not to leave the particulars blank.

Filing of affidavits with blanks will be directly hit by Section 125-A(i) of the RP Act. However, as the nomination paper itself is rejected by the Returning Officer, we find no reason why the candidate must be again penalised for the same act by prosecuting him/her.”

2.14 Further, in *Satish Ukey vDevendra GangadharraoFadnavis&Anr*⁹, The Supreme Court of India has discussed the Right to information as follows:

“10. The new Section 33-A, which is the bone of contention in the present case, deals with the "Right to Information" and reads as under

33A. Right to information :(1) A candidate shall, apart from any information which he is required to furnish, under this Act or the rules made thereunder, in his nomination paper delivered under Sub-section (1) of Section 33, also furnish the information as to whether-

(i) he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the court of competent jurisdiction;

(ii) he has been convicted of an offence other than any offence referred to in Sub-section

(1) or Sub-section (2), or covered in Sub-section (3), of section 8 and sentenced to imprisonment for one year or more.

⁹ (2019) 9 SCC 1, at Para. No. 10

(2) The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (1) of Section 33, also deliver to him an affidavit sworn by the candidate in a prescribed form verifying the information specified in sub-section (1).

The returning officer shall, as soon as may be after the furnishing of information to him under Sub-section (1), display the aforesaid information by affixing a copy of the affidavit, delivered under Sub-section (2), at a conspicuous place at his office for the information of the electors relating to a constituency for which the nomination paper is delivered.

14. It is pertinent to note here that Section 33-A (1), as worded and drafted, requires furnishing of the information of cases where the person filing the nomination has been convicted; and (ii) where charges have been framed against the person filing the nomination but excluded cases where cognizance had been taken. This was despite the order of the Apex Court, to the effect that details of the case(s) of which cognizance has been taken should also be furnished.”

2.15 In the case of *People's Union for Civil Liberties (PUCL)*, it was held as under:

“114. The Election Commission was directed to call for details from the contesting candidates broadly on three points/ namely/ (I) criminal record/ (ii) assets and liabilities/ and (iii) educational qualification....

....It is common knowledge that on account of a variety of reasons, such as the delaying tactics of one or the other accused and inadequacies of the prosecuting machinery, framing of formal charges gets delayed considerably, especially in serious cases where committal procedure has to be gone through. On that account, the voter/citizen shall not be denied information regarding cognizance taken by the Court of an offence punishable with imprisonment for two years or more. The citizen's right to information, when once it is recognised to be part of the fundamental right under Article 19(1)(a), cannot be truncated in the manner in which it has been done. Clause (i) of Section 33-A(I) therefore, falls short of the

avowed goal to effectuate the right of information on a vital aspect. Cases in which cognizance has been taken should therefore be comprehended within the area of information accessible to the voters/citizens, in addition to what is provided for in clause (i) of Section 33- A.

123. Finally, the summary of my conclusions: (3) The directives given by this Court in Union of India v. Assn. for Democratic Reforms were intended to operate only till the law was made by the legislature and, in that sense, "pro tempore" in nature. Once legislation is made, the Court has to make an independent assessment in order to evaluate whether the items of information statutorily ordained are reasonably adequate to secure the right of information available to the voter/citizen. In embarking on this exercise, the points of disclosure indicated by this Court, even if they be tentative or ad hoc in nature, should be given due weight, and substantial departure there from cannot be countenanced.

123(6) The right to information provided for by Parliament under Section 33-A in regard to the pending criminal cases and past involvement in such cases is reasonably adequate to safeguard the right to information vested in the voter/citizen. However, there is no good reason for excluding the pending cases in which cognizance has been taken by the Court from the ambit of disclosure."

2.16 The Supreme Court of the People's Union of Civil Liberties has declared Section 33-B unconstitutional as it violates citizens' fundamental right to know the background of candidates participating in elections. This right is considered an essential aspect of freedom of speech and expression, as enshrined in Article 19(1)(a) of the Indian Constitution. Any limitations to this right must comply with the restrictions outlined in Article 19(2) of the Constitution.

2.17 In *Krishnamoorthy v. Sivakumar and Others*¹⁰, the Supreme Court of India held that in cases of non disclosure of pending cases in the Form 26, it amounted to commission of corrupt practice of 'undue influence'; the election is

¹⁰ (2015) 3 SCC 467

to be declared null and void, and the question whether it materially affects the election or not will not arise. It was held as under:

“60. The purpose of referring to the same is to remind one that the right to contest in an election is a plain and simple statutory right and the election of an elected candidate can only be declared null and void regard being had to the grounds provided in the statutory enactment. And the ground of 'undue influence' is a part of corrupt practice.....

62., if the corrupt practice is proven, the Election Tribunal or the High Court is bound to declare the election of the returned candidate to be void. The said view has been laid down in M. Narayan Rao V. G. Venkata Reddy & Others (1977) 1 SCC 771 and Harinder Singh Jassi(supra).

INPUTS RECEIVED FROM THE ELECTION COMMISSION OF INDIA

2.18 The ECI informed the Committee that the requirements for a valid nomination are laid out in Section 33 of the 1951 RP Act, which outlines the necessary procedure and information that a candidate must disclose. In 2022, Section 33(a) was added which requires candidates to disclose whether they have been accused of offences punishable by two years or more in a pending case where charges have been framed or have been convicted of an offence not already mentioned in the RP Act and sentenced to one year or more of imprisonment.

2.19 In case the Form 26 prescribed under the Conduct of Elections Rules, 1961, declaration is left incomplete, the Returning Officer has the authority to instruct the candidate to make necessary amendments. Failure to comply with the instructions would result in the candidate's nomination being rejected or declared invalid. In the event of a public disclosure of affidavits, particularly related to criminal activities, any Indian citizen can file a petition. The Election Commission is collaborating with the Ministry of Law and Justice to establish the repercussions of such non-compliance.

2.20 The Election Commission of India, in April, 2006, had given direction to the Returning Officers to file a formal complaint and take action on the basis of documentary evidence against any candidate, who is found to have submitted false information. Further in July, 2008, in a letter addressed to the Chief Electoral Officers of all States and Union Territories, the ECI had stipulated that *“it is clarified that in the second affidavit to be filed in the format prescribed by the Commission’s order dated 27-03-2003, all pending cases are required to be mentioned even if charges have not been framed in the cases as directed by the Hon’ble Supreme Court.”*¹¹

2.21 On April, 2014, the Election Commission issued another Circular, which states that any person who files a false affidavit in Form 26 can be taken to court under Section 125A of the Representation of the People Act, 1951. This way, it is not only restricted to the Returning Officer to move the court for complaints received on false affidavits. Anyone who is aggrieved can file a petition before the appropriate competent court.

2.22 The relevant excerpts from the Circular are as follows:

“3..... (Under Section 125A, there is no stipulation that complaints under that section have to be made by the public servant concerned (in this case the R.O.). Therefore, it would be open to any aggrieved person to move petition before the appropriate Court of competent jurisdiction with petition for action under section 125A in the case of any false declaration or concealing of information in the affidavit in Form 26.

When the guidelines have been issued that have got statutory force also, have to be followed by all the concerned officials unless Statute requires expressly.”

2.23 Further, in 2014, the High Court of Andhra Pradesh¹² reiterated that Section 125A of the Representation of the People Act, 1951 does not require the Election Officer to take legal action against individuals who submit false or

¹¹ COMPENDIUM OF INSTRUCTIONS ON CONDUCT OF ELECTIONS, VOLUME – II, Nomination, Scrutiny and Related Instructions, 2009

¹² WP No.12066 of 2014

incomplete information in an affidavit. The provision simply outlines penalties for such actions but does not give any power or duty to the Election Officer to take any action. Similarly, in the case of *A.R.Antulay v. RammdasSrinivas Nayak &Anr*¹³, the court held that any person can initiate criminal proceedings unless the statute creating the offence indicates otherwise.

2.24 Recognizing the importance of truthful and complete affidavits, the Election Commission of India has reviewed its stance on the matter and issued a press note on 16.06.2020. It was highlighted that filing such affidavits undermines the right of voters to be fully informed about their political representatives. To address the issue of false affidavits, the Election Commission of India has outlined its efforts to uphold the integrity of elections in the country through its Press Release. The excerpts from the press Note are as follows:

“The Commission has reviewed this position and decided that, in pursuit of a level-playing field, it will take cognisance of complaints, which indicate serious omission on the part of the candidate, and refer such matters to the relevant investigating authorities on a case-to-case basis.”

2.25 Further, the Election Commission of India has put forward a proposal to the Ministry of Law & Justice to include a sub-section in Section 125A that would allow individuals to file complaints against candidates for making false statements in their affidavits. It was proposed that to file a complaint, the individual must provide substantiating evidence and submit it to the relevant R.O. within 30 days of the election declaration. The R.O. is responsible for taking appropriate action.

2.26 Further, in 2004, the Commission proposed another modification in the provision to increase the punishment for filing false affidavits, whereby offenders would face a minimum sentence of two years imprisonment. The Commission subsequently reiterated the proposal in 2011.

¹³ (1984) 2 SCC 500

2.27 According to the Election Commission of India, Section 125 and the relevant forms have not been updated recently, and there is an ongoing dispute in the courts. Although the Commission is working on resolving the issue, it cannot make any commitments to the Committee due to the pending public interest litigations. The Commission did point out that the penalty for non-compliance is currently low and has only been in effect for a year. However, if the penalty is set for more than two years, automatic disqualification comes into play, which is emphasised in public interest litigations. Various courts are currently hearing public interest litigations, which are advocating for severe consequences for any type of default or mistake, while the court has stated that only significant mistakes will be considered a default.

SUGGESTIONS AND RECOMMENDATIONS

2.28 For elections to be truly free and fair, it is crucial to ensure that accurate information is provided to voters. The Supreme Court recognizes this importance and this Committee also emphasizes the need to define what is considered a False Declaration/affidavit and when penalties, criminal action, or disqualification are warranted. It's important to note that minor factual errors should not be treated as significant enough to require penalization.

2.29 The Committee observes that it is essential to uphold the integrity of the democratic processes in accordance with the Constitutional mandate. The Committee recommends that the government sets up a verification process for affidavits and promptly informs the Election Commission of any false data to ensure adherence to regulations.

2.30 The Committee observes that it is important to involve stakeholders in the process of creating fair regulations for defining reasonable declarations in election affidavits. This is crucial to protect innocent individuals and distinguish fraudulent declarations from unintentional mistakes. To ensure fair and effective elections, it is necessary to address the challenges faced by political parties and candidates.

2.31 The Committee strongly recommends that the RP Act of 1951 needs to have a clear definition of what constitute a false declaration/affidavit which is presently mentioned under Section 123(4) that covers corrupt practices, and concealment of information specified under Section 125A which specifies penalties for filing false affidavits respectively, so as to establish fair practices in election process.

2.32 The Committee also recommends that the penalties associated with these actions should be based on their severity of the act committed and be included as a separate provision in addition to or in place of the existing Section 125A that deals with penalties for false declarations.

2.33 The Committee suggests that the Election Commission should bear the primary responsibility of taking legal action against false declarations/affidavits instead of placing the burden on the general public.

2.34. The Committee also recommends that if a candidate is found to have provided false information, under the updated/new provision proposed by the Committee, they should be deemed ineligible for any benefits resulting from such election. This measure is aimed at ensuring a level playing field for all candidates and upholding the integrity of the election process.

2.35 The Committee observes that the current punishment, which is only six months under Section 125A, is insufficient and should be increased. The severity of punishment should be based on the severity of the offence committed. The Committee suggests that if someone files a false affidavit, their offence level should be taken into account and may be added to the list of offences under Section 8(1) that lead to disqualification.

2.36 The Committee, therefore, suggests that in order to ensure fair elections and to protect citizens' rights according to Article 19(1)(a), punishment under Section 125A should be increased to a maximum of two years imprisonment and a fine. However, this penalty should only be applied in exceptional cases, and not for minor errors or unintentional mistakes. Under the new provision, submitting a false affidavit should be

considered a violation of constitutional provisions, and an election may be invalidated under sub-Section 1(d)(iv) of Section 100 of the Act.

2.37 Further, the Committee proposes that intentionally disregarding other requirements, such as the furnishing of information outlined in Section 33A of the RP Act, 1951, as listed in Section 125A, should be considered a "Corrupt Practice" under Section 123 of the RP Act, 1951, for the ease of filing election petitions.

2.38 The Committee also recommends the removal of the phrase '*with the intent to be elected in an election*' from the Section 125A as it creates legal ambiguity in finalizing the penalty.

2.39 The Committee also recommends empowering the Election Commission of India with the authority to review and make a verdict on the falsification of affidavits based on a referral from the Returning Officer. The Committee also suggests expediting the resolution of disqualification cases, as prolonged litigation undermines the intended purpose of the legal provisions.

ISSUE NUMBER THREE

ESTABLISHING PARITY BETWEEN THE MINIMUM AGE OF VOTING AND CONTESTING ELECTIONS TO PARLIAMENT/STATE LEGISLATURES/LOCAL BODIES.

INTRODUCTION

3.0 In a democracy, it is possible for the interested citizens to actively participate in the political process by running for public office. Nevertheless, to ensure that only qualified and trustworthy individuals hold positions of power, there are certain regulations in place. These regulations primarily involve age requirements that must be met by the contenders in order to seek public office. In recent times, an increasing emphasis has been placed on the participation of young adults in political organizations, rather than their exclusion from the political arena.

3.1 In the past, political parties have usually favored experienced politicians for public office and viewed younger candidates as lacking in experience. This belief suggests that political competence comes with age, a notion that Plato argued for over two thousand years ago. However, in the 21st century, this belief is increasingly being considered outdated. Due to increased education, globalization, and digitalization, younger individuals are now more than capable of running for office in all countries. It is important to have a diverse range of individuals, including younger candidates, represented in elected assemblies from a normative perspective.

3.2 Having a significant number of young individuals in legislative bodies is important for a few reasons. Firstly, they can act as spokespersons for other young people. Secondly, young parliamentarians may prioritize and introduce issues that are relevant to youths. Furthermore, having a high representation of young individuals in parliament could change the way political discussions happen, both inside and outside of the government. Research suggests that having minority groups represented in parliament can help their emancipation in other areas of society, and we believe that the same could be true for young people. In short, having young deputies in legislative bodies can strengthen the

representational links of young people and foster positive attitudes towards the government. It can also increase the government's responsiveness to the demands of disadvantaged groups.¹⁴

3.3 Most European countries stipulate that candidates for national general elections must be at least 18 years old. However, some countries, including Bulgaria, the Czech Republic, Estonia, Ireland, Latvia, Poland, and Slovakia, have higher age requirements, mandating that candidates be at least 21 years old. In Romania, candidates must be 23 years old, while in Cyprus, Greece, Italy, and Lithuania, candidates must be 25 years old. For regional elections, many countries require candidates to be at least 18 years old. When it comes to elections for the European Parliament, 15 Member States permit candidates who are at least 18 years old to participate.¹⁵

3.4 In the year 2010, the International Parliamentary Union (IPU) passed an important resolution regarding the involvement of youth in the democratic process. To lead this initiative, the IPU established a Forum of Young Parliamentarians in 2013. Since its inception, the Forum has successfully organized four global conferences for young MPs in Switzerland, Japan, Zambia, and Canada. The primary objective of these conferences is to foster inclusivity in politics, empower young parliamentarians, and enrich parliamentary work with young people's perspectives, thereby encouraging active and diverse participation in the democratic process.

3.5 On April 14, 2022, in the third meeting of World Bank Global Young MP Initiative, the World Bank Vice President of External and Corporate Relations, Sheila Redzepi, highlighted that young parliamentarians have a unique advantage in understanding the perspectives of the younger generation who are disproportionately affected by many of today's challenges. These

¹⁴Stockemer, D., & Sundström, A. (2018). Age representation in parliaments: Can institutions pave the way for the young? *European Political Science Review*, 10(3), 467-490.

¹⁵ Standing as a candidate: The right to stand as a candidate is restricted to adults in all Member States, with no exceptions. <http://fra.europa.eu/en/publication/2017/mapping-minimum-age-requirements-concerning-rights-child-eu/standing-candidate>

representatives not only give vulnerable demographics a voice in parliaments, but they also bring fresh ideas and technological expertise to debates.¹⁶

LEGAL FRAMEWORK IN INDIA

3.6 As per the present legal mandate to contest in Lok Sabha or Assembly elections, candidates must be at least 25 years old, ensuring that they possess the necessary maturity, experience, and understanding of their responsibilities. Article 84 of the Constitution of India outlines the qualifications for Members of Parliament, requiring a person to be at least 30 years old to hold a seat in the Council of States and at least 25 years old to hold a seat in the House of the People. These minimum age criteria for aspiring public officials ensure that only capable and responsible individuals can serve the people.

Article 84 of the Constitution of India 1949

84. Qualification for membership of Parliament A person shall not be qualified to be chosen to fill a seat in Parliament unless he

(a) is a citizen of India and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule;

(b) is, in the case of a seat in the Council of States, not less than thirty years of age and, in the case of a seat in the House of the People, not less than twenty-five years of age; and

(c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament

Article 173 of the Constitution Of India 1949

¹⁶Young Parliamentarians at the Forefront of Innovation to Advance Learning Outcomes, World Bank News, April 14, 2022. <https://www.worldbank.org/en/news/feature/2022/04/27/young-parliamentarians-at-the-forefront-of-innovation-to-advance-learning-outcomes>

173. Qualification for membership of the State Legislature A person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he

(a) is a citizen of India and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule;

(b) is, in the case of a seat in the Legislative Assembly, not less than twenty five years of age and in the case of a seat in the Legislative Council, not less than thirty years of age; and

(c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament

The Representation of the People Act, 1951

Section 36 2(a)

*“[(a)7[that on the date fixed for the scrutiny of nominations the candidate] either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely:— Articles 84, 102, 173 and 191, 8***.9*

*[Part II of this Act and sections 4 and 14 of the Government of Union Territories Act, 1963 (20 of 1963)] 10***;”*

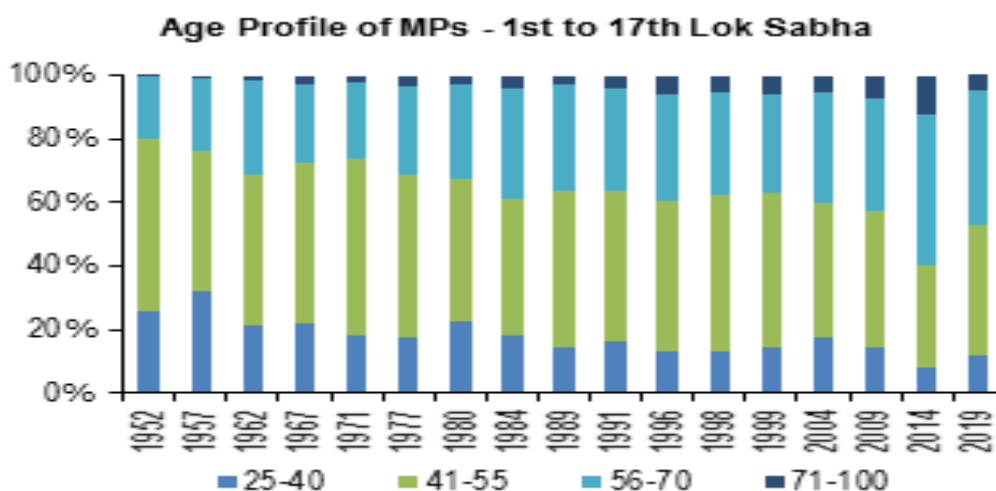
YOUTH IN INDIAN PARLIAMENT

3.7 It is concerning to note that there is a lack of representation of India's youth population in the political arena, despite a growing number of young voters. The report by PRS Legislative Research revealed that in 2019, 47% of Lok Sabha MPs are over the age of 55. This trend is particularly disconcerting, given that India's median age is only 27.9 years.

3.8 Further, only 2.2% of Lok Sabha MPs are under the age of 30, while less than 1.7% of MPs worldwide fall within this age bracket. This is despite the

fact that a significant portion of the global voting age population - almost half - falls within the 20-39 year age range, according to the Inter-Parliamentary Union.¹⁷ In the 17th Lok Sabha, there are currently 34 Sitting Members of Parliament between the ages of 30 and 40.¹⁸

3.9 According to the draft National Youth Policy, individuals aged between 16 and 30 are classified as youth. However, when we look at the current Lok Sabha, it's clear that only a few members belong to this age group. To analyze the situation, we consider MPs between the ages of 25 and 40 as young MPs. Over the last six decades, the age distribution of Lok Sabha members has undergone a significant change. However, the age of Lok Sabha members has consistently increased over the years.¹⁹



Source: PRS²⁰

3.10 It is worth noting that India ranks 19th among 98 countries in terms of having MPs below the age of 30, but there is still significant room for improvement. It is therefore important to take definite actions towards better

¹⁷ Why Lok Sabha needs more young faces, Read more at:

https://economictimes.indiatimes.com/news/elections/lok-sabha/india/why-lok-sabha-needs-more-young-faces/articleshow/68597530.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

¹⁸ <https://sansad.in/lm/members>

¹⁹ Chakshu Roy, "High hopes, low returns", The Pioneer, Oct 13, 2013

²⁰ Profile of the newly elected 17th Lok Sabha, <https://prsindia.org/parliamenttrack/vital-stats/profile-of-the-newly-elected-17th-lok-sabha>

representation of young people to accurately depict the country's demographics.

INPUTS RECEIVED FROM THE ELECTION COMMISSION

3.11 According to the Election Commission of India, unless compelling reasons exist to alter a provision of the Constitution, it should remain unchanged. The Commission believes that this principle falls under the age requirement for eligibility to join Lok Sabha, Rajya Sabha, Legislative Assemblies, and Legislative Councils. The Commission has already considered the issue of aligning the minimum age for voting and contesting elections to Parliament, State Legislature, and local bodies and has found that it is unrealistic to expect 18-year-olds to possess the necessary experience and maturity for these responsibilities. Therefore, the minimum age for voting and contesting elections is appropriate. The Commission does not favour reducing the age requirement for membership of Parliament and State Legislatures and still maintains this view.

AGE OF CANDIDACY- A GLOBAL PERSPECTIVE

3.12 Different nations with diverse democratic systems have varying regulations governing the minimum age required for citizens to vote and run in elections. Exploring the unique rules of each country, such as those in India, can provide us with valuable insights into their electoral processes.

THE UNITED STATES OF AMERICA

3.13 The minimum voting age for federal elections in the United States is 18 years. However, when it comes to contesting elections, there are additional age requirements. To run for the U.S. House of Representatives, aspiring candidates must be at least 25 years old, while for the U.S. Senate, the minimum age requirement is 30 years. These criteria ensure that individuals seeking to hold positions of significant legislative power possess a certain level of life experience and maturity.

“No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United

States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.[U.S. Constitution, Article I, Section 2, Clause 2]

No Person shall be a Senator who shall not have attained to the Age of thirty Years and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen. [U.S. Constitution, Article I, section 3, clause 3] ”²¹

THE UNITED KINGDOM

3.14 To participate in elections for all parliaments, assemblies, and councils at the devolved or local level in the United Kingdom, an individual must be 18 years or older. The same age requirement applies to any elected public office, including that of an elected mayor for London or a local authority. No other higher age requirements are necessary for specific public office positions. Candidates must be 18 years old on both the day of nomination and the day of the poll, a reduction from the previous age requirement of 21, as stated in the Electoral Administration Act 2006.²²

CANADA

3.15 As per the Charter of Rights and Freedoms in Canada, every citizen can vote in the House of Commons or legislative assembly elections and qualify for membership therein. To be eligible as a candidate, a Canadian citizen of at least 18 years of age on the polling day, who is qualified as an elector, must have established residency somewhere in Canada but not necessarily within the constituency of their election campaign. Additionally, a candidate can seek election in only one electoral district.²³

AUSTRALIA

3.16 An individual must fulfill certain criteria to qualify for a nomination for either the Senate or the House of Representatives in Australia. Firstly, they

²¹U.S. Constitution, <https://www.law.cornell.edu/constitution>

²²The Electoral Administration Act 2006, Section 17. <https://www.legislation.gov.uk/ukpga/2006/22/part/5>

²³Canada Elections Act, Section 65. <https://laws-lois.justice.gc.ca/eng/acts/E-2.01/page-7.html#h-204314>

must have attained the age of 18 years or above. Secondly, they must be an Australian citizen. Lastly, they must be eligible to vote in a House of Representatives election or have the potential to become qualified voters. These are the mandatory requirements to be met before one can be considered for a nomination.²⁴

FRANCE

3.17 The minimum age to run for assembly elections in France is 18 years old, as stated in Article L44 of the French Electoral Code, which reads: "Any French citizen who has the status of an elector is eligible to run for and be elected unless otherwise prohibited by law due to incapacity or ineligibility."²⁵

JAPAN

3.18 In Japan, the minimum voting age is 18 years for national elections, enabling young adults to have their say in shaping the country's future. However, the minimum age for contesting assembly elections varies depending on the specific election. To qualify as a member of the House of Representatives in Japan, an individual must be at least 25 years old, as stipulated by Article 10 of the Public Offices Election Act, 2019. Similarly, for the House of Councilors, the minimum age requirement is 30 years old. However, if an individual is 25 years or older and has the right to vote, they can become a member of the legislatures of three prefectures. Additionally, those who are 25 years or older and have the right to vote are eligible to become members of the councils of five municipalities.²⁶

SOUTH AFRICA

3.19 The South African Constitution specifies that individuals must be at least 18 years old to participate in Assembly Elections. Section 47(1) states that any citizen eligible to vote for the National Assembly is also eligible to become a

²⁴<https://www.aec.gov.au/elections/candidates/qualification.htm>

²⁵Electoral Code: Chapter III: Conditions of eligibility and ineligibility ... (Articles L44 to L45-1); https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070239/LEGISCTA000006148456/#LEGISCTA000006148456

²⁶Public Offices Election Law (Law No. 100 of 1950); <https://elaws.e-gov.go.jp/document?lawid=325AC1000000100>

member, except for those who are disqualified by law at the time of election or appointment.²⁷

SUGGESTIONS AND RECOMMENDATIONS OF THE COMMITTEE

3.20 The Committee observes that reducing the minimum age requirement for candidacy in elections would give young individuals equal opportunities to engage in democracy. This viewpoint is reinforced by a vast amount of evidence, such as global practices, the increasing political consciousness among young people, and the advantages of youth representation.

3.21 After examining various countries' practices, such as Canada, the United Kingdom, and Australia, the Committee observes that the minimum age for candidacy in national elections needs to be 18 years. These nations' examples demonstrate that young individuals can be reliable and responsible political participants.

3.22 The Committee also observes that surveys indicate that youth globally have significant political awareness and knowledge. This is evident through youth-led movements such as Fridays for Future and March for Our Lives, highlighting their capacity to rally and champion critical social and political concerns.

3.23 The Committee, therefore, suggests reducing the minimum age requirement for candidacy in Assembly Elections. The Committee believes that this measure can promote a wider range of viewpoints in policy deliberations and results. Additionally, younger candidates can help connect different generations, facilitating discussions and cooperation. This can boost the credibility and faith in the political process.

3.24 The Committee suggests that both the Election Commission and the Government should prioritize providing comprehensive civic education programs to equip young people with the knowledge and skills necessary

²⁷ Constitution of the Republic of South Africa (Ch. 5); <https://www.gov.za/documents/constitution-republic-south-africa-1996-chapter-4-parliament#47>

for political engagement. They can consider successful models from other countries, like Finland's citizenship education, and adapt them accordingly.

3.25 The Committee urges Governments, political parties, and youth organisations to work together towards enabling greater youth participation in decision-making processes. This can be achieved through collaborations between governments and youth organisations and by promoting youth-led initiatives such as candidate training programs and mentorship schemes. By embracing the potential of its youth and creating an inclusive democratic process, India can foster a dynamic and diverse political arena that empowers young individuals to contribute towards the country's development.

RECOMMENDATIONS/OBSERVATIONS AT A GLANCE

STATUS OF COMMON ELECTORAL ROLL

- 1. The Committee while extending its appreciation to the Election Commission of India for their diligent efforts in conducting free and fair elections in the country recommends that citizens should have greater transparency when it comes to the Common Electoral Roll and the integration of Aadhaar with EPIC. However, Committee emphasised that linking Aadhaar with Voter ID is voluntary and not obligatory. (Para 1.48)**
- 2. During discussions, some members of the Committee raised doubts about the linking of Aadhaar with EPIC of non-citizens, which led the Committee to suggest that the ECI should establish a legal provision or an alternative mechanism to ensure that non-citizens with Aadhaar are not included in the Common Electoral Roll. Additionally, citizens who have not yet linked their Aadhaar should be assured that they can still exercise their legal right to vote. The Committee emphasized the importance of these clarifications in addressing concerns related to the implementation of a Common Electoral Roll (Para 1.49)**
- 3. The Committee recommends that the ECI may develop a comprehensive plan that considers all the factors involved in implementing a Common Electoral Roll before making any changes to the current regulations.
(Para 1.50)**
- 4. To ensure a fair and effective implementation, the Committee recommends that extensive consultations be held with the Legislative Department and the Election Commission of India, along with the various States and Political Parties, including those who use their own electoral rolls for local body elections. By conducting these consultations, final proposal on Common Electoral Roll can be**

developed taking into consideration the different viewpoints and concerns of all parties involved. (Para 1.51)

- 5. The Committee points out two important issues in implementing Common Electoral Roll, namely the current legal framework and Constitutional regulations that guide the creation of electoral rolls by the ECI, and the process for conducting local body polls. The Committee expressed concern about the potential impact on State powers, mentioned under Chapter IX and IX A of the Constitution of India. The Committee therefore suggests that the ECI before taking up the responsibility of preparing the Common Electoral Roll may give due consideration to the constitutional provisions and powers of the States. The ECI may also keep in mind the principles of federalism enshrined under the constitution and the powers reserved for the State Election Commissions under List II Entry 5. (Para 1.52)**
- 6. The Committee observes that implementing a Common Electoral Roll, as proposed by the Central Government and ECI, is presently outside the scope of Article 325 of the Constitution. This article stipulates that separate electoral rolls must be used for elections to Parliament and the State Legislatures. To ensure that all actions are in line with the Constitution, the Committee suggests consensus shall be made in line with Article 325. The Committee advises the government to proceed with caution, adhere to the principles of federalism enshrined in the Constitution, and carefully assess the potential consequences before taking any actions. (Para 1.53)**
- 7. The Committee suggests that the Election Commission should be careful and avoid overstepping its boundaries into the State's domain. Instead, the Commission should aim to propose a solution that benefits all the parties involved. (Para 1.54)**

- 8. The Committee recommends that the Legislative Department and the Election Commission collaborate to examine the effects of the delimitation process, especially in challenging terrains. The Election Commission lacks the authority to direct State Election Commissions or appraise the performance of State Election Commissioners. The Committee draws the attention of ECI to the fact that treating all regions in India as identical can pose a significant risk. It is therefore imperative to recognize this reality and take appropriate measures to address it. (Para 1.55)**
- 9. The Committee has taken note of the potential benefits that could be derived from the creation of a Common Electoral Roll through the collaborative participation of officials who serve in both the Election Commission of India and State Election Commissions. However, it stresses the importance of proper constitutional and statutory authorization before the Election Commission takes charge of creating or managing electoral rolls for State Election Commissions. The Committee suggests that States may continue the practice of utilizing the electoral roll of the Election Commission, calling claims and objections until necessary legal changes are made. Furthermore, the Committee strongly recommends that the Election Commission of India and the Legislative Department collaborate to preserve the rights of both State Election Commissions and State Governments when preparing the Common Electoral Roll. (Para 1.56)**
- 10. The Committee suggests that the Election Commission and Legislative Department collaborate to encourage States to utilize the Election Commission's electoral roll when creating their own until there is a change in constitutional and statutory provisions. The Committee strongly emphasizes the significance of preserving the rights of State Election Commissions and State Governments while taking action. (Para 1.57)**

FALSE DECLARATIONS DURING FILING OF NOMINATION FOR ELECTIONS

- 11. For elections to be truly free and fair, it is crucial to ensure that accurate information is provided to voters. The Supreme Court recognizes this importance and this Committee also emphasizes the need to define what is considered a False Declaration/affidavit and when penalties, criminal action, or disqualification are warranted. It's important to note that minor factual errors should not be treated as significant enough to require penalization. (Para 2.28)**
- 12. The Committee believes this is essential to uphold the integrity of the democratic processes in accordance with the Constitutional mandate. The Committee recommends that the government sets up a verification process for affidavits and promptly informs the Election Commission of any false data to ensure adherence to regulations. (Para 2.29)**
- 13. The Committee observes that it is important to involve stakeholders in the process of creating fair regulations for defining reasonable declarations in election affidavits. This is crucial to protect innocent individuals and distinguish fraudulent declarations from unintentional mistakes. To ensure fair and effective elections, it is necessary to address the challenges faced by political parties and candidates. (Para 2.30)**
- 14. The Committee strongly recommends that the RP Act of 1951 needs to have a clear definition of what constitute a false declaration/affidavit which is presently mentioned under Section 123(4) that covers corrupt practices, and concealment of information specified under Section 125A which specifies penalties for filing false affidavits respectively, so as to establish fair practices in election process. (Para 2.31)**

- 15.The Committee also recommends that the penalties associated with these actions should be based on their severity of the act committed and be included as a separate provision in addition to or in place of the existing Section 125A that deals with penalties for false declarations.(Para 2.32)**
- 16.The Committee suggests that the Election Commission should bear the primary responsibility of taking legal action against false declarations/affidavits instead of placing the burden on the general public.(Para 2.33)**
- 17.The Committee also recommends that if a candidate is found to have provided false information, under the updated/new provision proposed by the Committee, they should be deemed ineligible for any benefits resulting from such election. This measure is aimed at ensuring a level playing field for all candidates and upholding the integrity of the election process. (Para 2.34)**
- 18.The Committee observes that the current punishment, which is only six months under Section 125A, is insufficient and should be increased. The severity of punishment should be based on the severity of the offence committed. The Committee suggests that if someone files a false affidavit, their offence level should be taken into account and may be added to the list of offences under Section 8(1) that lead to disqualification.(Para 2.35)**
- 19.The Committee suggests that in order to ensure fair elections and to protect citizens' rights according to Article 19(1)(a), punishment under Section 125A should be increased to a maximum of two years imprisonment and a fine. However, this penalty should only be applied in exceptional cases, and not for minor errors or unintentional mistakes. Under the new provision, submitting a false affidavit should be considered a violation of constitutional provisions, and an election**

may be invalidated under sub-Section 1(d)(iv) of Section 100 of the Act. (Para 2.36)

20. Further, the Committee proposes that intentionally disregarding other requirements, such as the furnishing of information outlined in Section 33A of the RP Act, 1951, as listed in Section 125A, should be considered a "Corrupt Practice" under Section 123 of the RP Act, 1951, for the ease of filing election petitions. (Para 2.37)

21. The Committee also recommends the removal of the phrase '*with the intent to be elected in an election*' from the Section 125A as it creates legal ambiguity in finalizing the penalty. (Para 2.38)

22. The Committee also recommends empowering the Election Commission of India with the authority to review and make a verdict on the falsification of affidavits based on a referral from the Returning Officer. The Committee also suggests expediting the resolution of disqualification cases, as prolonged litigation undermines the intended purpose of the legal provisions. (Para 2.39)

ESTABLISHING PARITY BETWEEN THE MINIMUM AGE OF VOTING AND CONTESTING ELECTIONS TO PARLIAMENT/STATE LEGISLATURES/LOCAL BODIES

23. The Committee observes that reducing the minimum age requirement for candidacy in elections would give young individuals equal opportunities to engage in democracy. This viewpoint is reinforced by a vast amount of evidence, such as global practices, the increasing political consciousness among young people, and the advantages of youth representation. (Para 3.20)

- 24. After examining various countries' practices, such as Canada, the United Kingdom, and Australia, the Committee observes that the minimum age for candidacy in national elections needs to be 18 years. These nations' examples demonstrate that young individuals can be reliable and responsible political participants. (Para 3.21)**
- 25. The Committee also observes that surveys indicate that youth globally have significant political awareness and knowledge. This is evident through youth-led movements such as Fridays for Future and March for Our Lives, highlighting their capacity to rally and champion critical social and political concerns. (Para 3.22)**
- 26. The Committee, therefore, suggests reducing the minimum age requirement for candidacy in Assembly Elections. The Committee believes that this measure can promote a wider range of viewpoints in policy deliberations and results. Additionally, younger candidates can help connect different generations, facilitating discussions and cooperation. This can boost the credibility and faith in the political process. (Para 3.23)**
- 27. The Committee suggests that both the Election Commission and the Government should prioritize providing comprehensive civic education programs to equip young people with the knowledge and skills necessary for political engagement. They can consider successful models from other countries, like Finland's citizenship education, and adapt them accordingly. (Para 3.24)**
- 28. The Committee urges Governments, political parties, and youth organisations to work together towards enabling greater youth participation in decision-making processes. This can be achieved through collaborations between governments and youth organisations and by promoting youth-led initiatives such as candidate training programs and mentorship schemes. By embracing the potential of its**

youth and creating an inclusive democratic process, India can foster a dynamic and diverse political arena that empowers young individuals to contribute towards the country's development. (Para 3.25)

RELEVANT MINUTES OF THE COMMITTEE MEETINGS*

**WILL BE APPENDED AT A LATER STAGE*

ANNEXURE

Email

Committee Section PPG

Specific aspects of Election Process and their reforms - regarding !

From : secretary@aamaadmiparty.org Thu, Jul 20, 2023 12:01 PM
Subject : Specific aspects of Election Process and their reforms - regarding ! 1 attachment
To : Committee Section PPG <rs-cpers@sansad.nic.in>

Date: 20.07.2023

To

Shri Sushil Kumar Modi

(Chairman)

Standing Committee on Personnel, Public Grievances, Law & Justice
 Parliament of India

Sir,

We are in receipt of your letter LAFEAS-PP19/7/2022-PPG-RSS dated 04.07.2023, whereby you have sought the views of the Aam Aadmi Party on '**Specific Aspects of Election Process and their reforms**' for perusal by the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, and Law & Justice ("**Committee**").

2. We are pleased to share below the views of our party on the specific aspects as listed in your letter.

i. Status of Common Electoral Roll for conducting elections in the country

3. The issue of Common Electoral Roll appears to have merit, but it needs to be operationalised in a manner that it does not compromise the federal nature of our country and the power of states to administer municipal-level elections in spirit of the 73rd and 74th amendments to the Constitution.

4. At present, a single voter list is used for elections conducted by the Election Commission of India ("**ECI**"), while states prepare the electoral rolls for local body elections as per their specific municipal/panchayat governance statutes. As per Article 243K and 243ZA and the relevant State laws, the State Election Commission supervises, directs, and controls the preparation and revision of electoral rolls for elections to the local bodies.

5. Even at present, some states do borrow and use the electoral roll prepared by the Election Commission of India in entirety, and some utilise it as the basis for preparing and revising their own rolls. On the other hand, some states conduct their own independent exercise to prepare the rolls. As per Article 243K and 243ZA of the Constitution, this is the sole prerogative of the States.

6. A common electoral roll will certainly save effort and expenditure, however, there should not be a blanket obligation on State Election Commissions to use only the electoral rolls prepared by the ECI. State Commissions should have the power to use the ECI list as the base and amend it as per the timelines of their own local elections. Many states, in their municipal/panchayati election laws, entitle the citizens to vote if they are 18 years or above, at least 15 days before the conduct of elections, whereas as per the Electoral Laws (Amendment) Act, 2021, the ECI updates its rolls only four times a year. The right of the citizens to vote should not be taken away by imposition of an unamendable common electoral roll. The quarterly updation by ECI may not reflect the actual list of voting adults as on 15 days before the conduct of elections. In such cases, the State Commissions should have the power to amend the ECI electoral rolls as per the timeline of their local body elections. This will also be an efficient mechanism for the ECI for updating its list of voters, as the amendments made by the State Election Commissions would provide a more recent and accurate picture of the voters in a ward or constituency. The ECI must be obligated to include the amendments made by the State Commissions to the electoral roll every time it updates the list as per the prevailing law. This synergy of the election authorities at both levels can be beneficial for the voters to exercise their constitutional right to vote.

7. Further, municipal and panchayati wards very often do not coincide with the parliamentary and state legislature constituencies. A common electoral roll should not encroach on the power of state election commissions to conduct their own delimitation exercise.

8. We note that the 255th Law Commission report has advocated for Common Electoral Roll. However, the Commission's recommendations must be read in light of the concerns indicated above.

ii. Feasibility of introducing 'Remote Voting' in India

9. We wholeheartedly believe in the objective of 'No Voter Left Behind', but we also believe that electoral reforms must be planned to the detail, and executed with the larger principles of democracy and democratic politics in mind. While remote voting will be a significant step towards enfranchising migrant citizens, we feel that the mechanisms and machines proposed thus far fail to address multiple issues/queries/concerns associated with such a humongous task before undertaking the technical part of the whole exercise.

10. The ECI had conducted a discussion on 16th January 2023 with political parties regarding improving participation of domestic migrants using remote voting. It was indicated in the presentation that the country has been able to achieve around 67% of voting till last general elections, i.e. 2019 and ECI aims to bring the remaining 33 percent to vote too. It was indicated that most of these 33% consisted of youth, urban voters and migrant voters. However, in the presentation notes of ECI itself it was indicated that most of the issues (non-technical) have not been resolved or even discussed yet.

11. In the context of identification of migrant voters, AAP had expressed the following views to the ECI, which are worth noting for the Committee as well:

- No study has been conducted so far to substantiate the claim that 33% of voters who do not vote are from youth, urban and migratory voters only. Even the definition of 'migrant worker' has not been culled out by either ECI or the Committee. There is an urgent need for a comprehensive survey of voters, particularly interviewing them in respect of what challenges they face in casting their votes.
- There does not seem to be any study to arrive at an approximate percentage of migratory voters within these 33%. Rather the ECI has itself indicated that "*There is no central database available for migration within the country for the purpose as required for the matter under discussion.*" Thus, the proposal is lacking in the most crucial aspect, and is akin to putting the horse before the cart.
- It has been observed in many local elections that the voting percentage is much higher. Large voter turnouts in such elections can be attributed to multiple reasons including efforts of candidates in bringing these voters to the polling booth. This would mean that a detailed study needs to be undertaken to understand the reasons for 33% of voters not coming to the polls and not attribute it to mostly migrant workers.
- It must also be noted that migration in India is predominantly intra-state, forming 88%, while inter-state migration accounts for only 12% (Census, 2011). Very often, intra-state migrants also do not have the wherewithal, or leaves, to travel to their home constituency. This will be particularly clear with an illustration: a person may have migrated from any of the districts of Vidarbha to Mumbai for employment. In such situations, it has not been clarified whether the remote voting facility will be available even within the state where the election is being conducted.
- There has been no discussion yet on how such migrant voters across the country would come to know about the elections in their constituency and how would they enrol assuming that most of these migratory workers would find it extremely challenging to enrol for such a process. Improper, discriminatory, insensitive and lackadaisical approach of authorities can result in non-granting of the enfranchisement which is the whole purpose of this reform.
- It has not been clarified how and when would political parties/candidates come to know of such voters. This is crucial for candidates to be able to ascertain how they should channel their efforts in order to reach out to the maximum number of voters casting votes in their constituency of candidature.

12. We had also highlighted issues that will arise in the process of registering the migrant voters:

- Flowing from the above set of issues is the consideration of the number and location of remote voting machines that will be set up. If there is any threshold requirement introduced by ECI later, with regards to the minimum number of voters to be present for the remote voting facility to be provided, it will be legally and ethically suspect.
- With regards to the pre-registration and verification of voters, we believe it is one of the most critical steps in this entire reform, as it lays the foundation for who gets to vote, and who is excluded. Unfortunately, migrant workers face several challenges in routine engagement with the bureaucracy. In the absence of a clear standard operating procedure, there is enough reason to be sceptical about how the process will roll out.

13. The other major issue we have noticed in this proposal is with regards to the campaigning required by political parties and their candidates. We believe that the ECI's remote voting proposal would not provide a level playing field for the regional parties and/or independent candidates in relation to national parties. It is lopsided, and advantageous for large political parties with immense resources at their disposal.

- The proposal will require candidates of the regional parties or independent candidates to reach out to their voters across the country in the limited time and resources available for the elections, even as the proposal will make it imperative for them to do so in order to compete with national parties! As it is, electoral funding remains an opaque system in India, with the majority of funds going to the current ruling party at the centre. The system will make an already unequal system further entrenched.
- With no clarity on feasible criteria to put up remote booths, it is not clear as to how the political parties/candidates would plan the presence of polling agents across the country.
- The new system will make it increasingly difficult for agents, if set up at these remote booths, to be able to identify the voters, particularly in the absence of credible data regarding the location of migrant workers.
- It has not been clarified as to how the Model Code of Conduct will be implemented in these remote locations and how it would be ensured that parties/candidates with heavy purses or muscle power are not

influencing these voters.

- Whereas on one side it is the demand of the time that election expenditure is reduced as much as possible, this particular mechanism will throw the budget haywire of each and every candidate if they have to campaign across the country and have polling agents in an unplanned number of booths outside their constituency.

14. Therefore, before considering the proposal for remote voting, first and foremost, we need to gather credible data with regards to the state of origin and destination locations of the migrant workers, for us to comment on the feasibility and practicability of this proposal. Secondly, detailed deliberations must be conducted with state governments, organisations representing migrant workers etc. to devise a feasible framework for achieving more voting rather than straightaway arriving at a technical solution which would create more issues and open up multiple avenues of distrusting the election results rather than resolving them.

15. Needless to say, the proposal for remote voting involves immensely high stakes. Thus, administrative and execution issues must be resolved at the outset, since they will – in substance – determine the right of citizens to vote and for candidates to contest elections. While ECI did attempt to demonstrate the working of the remote voting machines, technical prowess can only be an assistance in addressing the aforementioned issues. It cannot be the end goal of reform, while leaving legal and administrative issues unresolved.

16. To conclude, the Aam Aadmi party is of the opinion that the ECI's proposal for remote voting in its current form suffers from serious drawbacks of lack of information and non-consideration of critical logistical issues. Any proposal for remote voting should be backed by a study of the on-ground circumstances, including numeration, identification, registration of voters etc., and a careful and nuanced study of logistical arrangements to ensure that the proposal is a success. We have attached a copy of AAP's response to the ECI submitted in February 2023 on its proposal for remote voting for your kind perusal.

iii. False declarations during filing of nomination for elections

17. The Aam Aadmi Party strongly supports reforms that are intended towards making elections transparent, making the electorate better-informed, and making politics corruption-free. There should be every possible incentive for election candidates to provide correct information in their election affidavits, which will help the citizens learn about their antecedents and accordingly make an informed choice.

18. However, we note that the Committee has not provided any concrete proposals in this respect. There are several questions that the Committee needs to address before eliciting views on this subject:

- What is the nature of reform that the Committee envisages to discourage candidates from giving false information in election affidavits?
- Does the Committee advocate disqualification of candidates for providing false declarations in filing of nominations?
- Is the Committee considering increasing the duration of imprisonment for providing false declarations in filing of nominations?
- What are the safeguards to prevent misuse of such a provision for disqualification of candidates on flimsy and frivolous grounds?
- What are the safeguards to ensure that a strict penal action is taken only on wilful misrepresentation?
- How does the Committee seek to ensure that only major and substantive misrepresentations are penalised?

19. The Committee would appreciate that provisions relating to information provided in filing of election nominations can be subject to misuse, and therefore, careful consideration must be spared before making any proposal so that unintended outcomes are avoided and the amendment is able to realise the spirit of the reform.

20. Thus, we would require a substantive proposal, possibly in the form of a Consultation Paper, to be able to comment on this matter.

iv. Establishing parity between the minimum age of voting and contesting elections to Parliament/ State Legislatures/ local bodies

21. The Aam Aadmi Party wholeheartedly supports the view that the minimum age for contesting elections to Parliament/ State Legislatures/ local bodies should be reduced. It may be reduced to 21, or even 18, for the lower house and to 25 for the upper house.

22. It is true that at the time of drafting of the Constitution, Dr. Ambedkar had advocated for the age limits for contesting elections as they stand. But that was because he was of the view that only people with some degree of higher qualification and a certain amount of knowledge and practical experience in the affairs of the world should serve the legislature. As far as Rajya Sabha is concerned, it was envisaged as the house of 'seniors' and was originally intended to accommodate people of high reputation similar to House of Lords in UK. Thus, the Rajya Sabha brings in these highly skilled people through indirect elections. This was the rationale for keeping the minimum age of members as 30.

23. However, with rise in education levels and opportunities, the youth of our country have also shown tremendous promise of skill, leadership and vision. They exhibit maturity at a much younger age, and are immensely politically aware. The proportion of urban youngsters showing interest in politics is constantly increasing. Today's India is not marked by the same turmoil, low literacy levels, and critical shortage of skilled workforce in the political sphere as it was during the time of independence.

24. By the sixty-first amendment to the Constitution in 1988, the voting age in elections to Lok Sabha and Vidhan Sabha was reduced from 21 to 18. This was a highly progressive step, and it is our responsibility to further this progressive agenda that the Parliament once embarked upon.

25. India's demographic dividend lies in its large young population. India is perhaps the youngest country in the world but the average age of an MP stood at 63 in 2020. More than half our population is under the age of 30. The United Nations Population Fund has stated that the youngsters of India could be a source of innovation, new thinking and lasting solutions. While there are obvious limitations in extending electoral entitlements below the age of 18, at least the people in the age group of 18-25 should have the avenue to enter electoral politics. We must acknowledge that today, education and employment for the youth has become a far more complex field, along with emerging issues such as mental health, substance abuse, application of artificial intelligence in all walks of life etc. Lowering the age for contesting elections will give a scope of representation to these young people, on critical views that affect them and the future of our country, who will be able to speak for themselves at the highest tables of the country.

26. If young people, below the age of 25, do win elections, it will be only because they would have the will of the people behind them. The people of a constituency may see promise in these young candidates, and may decide to throw their weight behind them. All democratic institutions must respect this popular will. In fact, the young people can be significant game-changers in local body elections, where candidates need to be connected with the grassroots issues. Needless to say, this will be a watershed moment in India's decentralisation drive, and will drastically improve the condition of our institutions of local self governance.

27. The idealism and hope of the younger population should be capitalised to weed out corruption, and to infuse new energy in our dilapidated system of governance. This will also encourage older politicians to grapple with the new age challenges of technology, climate change, gender justice with more vigour and nuance. The lowering of the age barrier will also be pivotal in increasing the trust between young people and politicians, and in preventing the latter from becoming complacent. It will enable the youth to appreciate the merits of democratic governance and our Constitution from a very young age. Our youth is essential for making a mature democracy, where democratic ideals and spirit percolate down the age groups, into varied aspects of life. This will be a model of true enfranchisement, and will turn Dr. Ambedkar's idea of constitutional morality into a reality.

28. It may be noted that save USA, most major democracies such as France, UK, Germany and Australia already allow candidates as young as 18 to contest elections. The UK reduced it from 21 to 18 in 2006. France has a minimum age bar of 18 for the lower house and 24 for the upper house. In Israel and Indonesia, this age is 21 for the lower house, still lesser than the benchmark of 25 that we observe. In France and Iran, one can even become the President at 18 and 21 respectively. Scotland even allows 16 year olds to vote.

29. We note that the ECI has stated that the age of 18 is too young for contesting elections and that there cannot be parity in the voting age and the age of contesting elections, and that at 25, a person has the maturity to understand intricacies of politics and law-making. This is a highly patronising and pedantic approach. On the contrary, youngsters today have shown unprecedented maturity and several of them have become successful at a very young age.

30. To conclude, the Aam Aadmi wholeheartedly supports the view that the lower age limit for contesting elections to the Parliament, State Assembly, and Local Bodies should be reduced so that our youth is provided with greater scope and avenue for political participation.

* * *

31. We believe that the Committee would take up our views in earnest and give them due consideration before making any recommendations to the Parliament.

Your sincerely,
Pankaj Kr Gupta
National secretary
Aam Aadmi Party

Note: We are also attaching the previous response sent to ECI - with respect to " Improving voter participation of domestic migrants"

Aam Aadmi Party Mail - Improving voter participation of domestic migrants - regarding !.pdf
169 KB

Improving voter participation of domestic migrants - regarding !

2 messages

AAP Secretary <secretary@aamaadmiparty.org>

Tue, Feb 28, 2023 at 3:22 PM

To: bcpatra@eci.gov.in

Cc: cec@eci.gov.in

Dear Sir,

Please refer to the discussions held on 16th Jan 2023 with all the political parties regarding improving participation of domestic migrants using remote voting and subsequent request by your office to provide our suggestions in writing by the end of February 2023. Aam Aadmi Party is putting its observations below on the aforesaid subject:

It was indicated in the presentation that the country has been able to achieve around 67% of voting till last general elections and EC aims to bring the remaining 33 percent to vote too. It was indicated that most of these 33% consisted of Youth, urban voters and migratory voters. The remote voting mechanism is planned to enable migratory voters to vote.

While congratulating the EC on initiating the thought on this noble cause, we feel that EC has failed to address multiple issues/queries/concerns associated with such a humongous task before initiating the technical part of the whole exercise. More so over in the presentation notes of EC itself it was indicated that most of the issues (non technical) have not been resolved or even discussed yet.

- There has been no study done so far to substantiate the claim that 33% of voters who do not vote are from youth, urban and migratory voters only.
- There does not seem to be any study to arrive at an approximate percentage of migratory voters within these 33%. Rather it was clearly indicated that "There is no central database available for migration within the country for the purpose as required for the matter under discussion."
- There has been no thought process yet on how such migratory voters across the country would come to know about the elections in their constituency and how would they enroll assuming that most of these migratory workers would find it extremely challenging to enroll for such a process.
- How and when would political parties/ candidates come to know of such voters?
- It has been observed in the number of local elections, voting percentage is much higher. Large voter turnouts in such elections can be attributed to multiple reasons including effort of candidates in bringing these voters to the polling booth. This would mean that a detailed study needs to be undertaken to understand the reasons for 33% of voters not coming to the polls and not attribute it to mostly migrant workers.

Another major issue in this whole program is with regards to the campaigning required by the political parties and the candidates. In the current proposal we feel that there would be no more level playing field for the regional parties and/or independent candidates. It is lopsided advantageous for large political parties with loads of resources.

- There is no way that the candidates of the regional parties or independent candidates will ever be able to reach out to their voters across the country in the limited time and resources available for the elections!
- They simply will never have the resources required to conduct such a campaign.
- With no clarity on feasible criteria to put up remote booths, how would the political parties/candidates plan for polling agents across the country?

- How will the agents, if set up at these remote booths, ever be able to identify the voters?
- How would MCC be implemented in these remote locations and how would it be ensured that parties/candidates with heavy purses will not be influencing these voters?
- Whereas on one side it is demand of the time that election expenditure is reduced as much as possible, this particular mechanism will throw the budget haywire of each and every candidate if they have to campaign across the country and have polling agents in an unplanned number of booths outside their constituency.

A proper study of actual voting data using past voting data of sample constituencies can actually reveal how many of them who have actually not voted in past elections are because of migratory voters. It is not a difficult exercise if booth voting data is used to analyze and then interview such voters. Only such a detailed exercise will give a proper understanding of the benefits of implementing the remote voting mechanism for migratory workers.

Therefore Sir, we request the EC to first have more deliberations with all the political parties to come up with a feasible framework for achieving more voting rather than straightaway reaching out to a technical solution which would create more issues and open up multiple avenues of distrusting the election results rather than resolving them.

We do believe that EC would take up these suggestions in right earnest and resolve the issues before even starting to plan the demo for remote voting.

Best Regards

Pankaj Kr Gupta

National Secretary.

Aam Aadmi Party.

AAP Secretary <secretary@aamaadmiparty.org>

To: bcpatra@eci.gov.in

Cc: cec@eci.gov.in

Tue, Feb 28, 2023 at 4:01 PM

Dear Sir,

Please ignore our earlier email - we are sending the fresh submission by us.

Sir,

Please refer to the discussions held by the Election Commission of India (“**ECI**”) on 16th January 2023 with political parties regarding improving participation of domestic migrants using remote voting, and the subsequent request from ECI to provide our suggestions in writing by end of February 2023. The Aam Aadmi Party is putting its observations below on the aforesaid subject:

It was indicated in the presentation that the country has been able to achieve around 67% of voting till last general elections, i.e. 2019 and ECI claims to bring the remaining 33 percent to vote too. It was indicated that most of these 33% consisted of youth, urban voters and migrant voters. The remote voting mechanism is planned to enable migrant voters to vote.

We, the Aam Aadmi Party, wholeheartedly believe in the objective of ‘No Voter Left Behind’, which the ECI has regularly championed, but also believe that every reform undertaken by the ECI must be planned to the detail, and executed with the larger principles of democracy and democratic politics in mind. While congratulating the ECI on initiating the discussion on enfranchising migrant citizens, we feel that ECI has failed to address multiple issues/queries/concerns associated with such a humongous task before undertaking the technical part of the whole exercise.

Moreover, in the presentation notes of ECI itself it was indicated that most of the issues (non-technical) have not been resolved or even discussed yet. Needless to say, this proposal involves immensely high stakes. Thus, administrative and execution issues must be resolved by the ECI at the outset, since they will – in substance – determine the right of citizens to vote and for candidates to contest elections.

Technical prowess can only be an assistance in addressing the aforementioned issues. It cannot be the end goal of reform, while leaving legal and administrative issues unresolved.

In the context of identification of migrant voters, we have the following observations:

- No study has been conducted so far to substantiate the claim that 33% of voters who do not vote are from youth, urban and migratory voters only. Even the definition of 'migrant worker' has not been culled out by the ECI. There is an urgent need for a comprehensive survey of voters, particularly interviewing them in respect of what challenges they face in casting their votes.
- There does not seem to be any study to arrive at an approximate percentage of migratory voters within these 33%. Rather the ECI has itself indicated that "*There is no central database available for migration within the country for the purpose as required for the matter under discussion.*" Thus, the proposal is lacking in the most crucial aspect, and is akin to putting the horse before the cart.
- It has been observed in many local elections that voting percentage is much higher. Large voter turnouts in such elections can be attributed to multiple reasons including efforts of candidates in bringing these voters to the polling booth. This would mean that a detailed study needs to be undertaken to understand the reasons for 33% of voters not coming to poll and not attribute it to mostly migrant workers.
- It must also be noted that migration in India is predominantly intra-state, forming 88%, while inter-state migration accounts for only 12% (Census, 2011). Very often, intra-state migrants also do not have the wherewithal, or leaves, to travel to their home constituency. This will be particularly clear with an illustration: a person may have migrated from any of the districts of Vidarbha to Mumbai for employment. In such situations, ECI has not clarified whether the remote voting facility will be available even within the state where the election is being conducted.
- There has been no discussion yet on how such migrant voters across the country would come to know about the elections in their constituency and how would they enrol assuming that most of these migratory workers would find it extremely challenging to enrol for such a process. Improper, discriminatory, insensitive and lackadaisical approach of authorities can result in non-granting of the enfranchisement which is the whole purpose of this reform.
- ECI has not clarified how and when would political parties/candidates come to know of such voters. This is crucial for candidates to be able to ascertain how they should channel their efforts in order to reach out to the maximum number of voters casting votes in their constituency of candidature.

Another set of issues will arise in the process of registering the migrant voters:

- Flowing from the above set of issues is the consideration of number and location of remote voting machines that will be set up. If there is any threshold requirement introduced by ECI later, with regards to the minimum number of voters to be present for the remote voting facility to be provided, it will be legally and ethically suspect.
- With regards to the pre-registration and verification of voters, we believe it is one of the most critical steps in this entire reform, as it lays the foundation for who gets to vote, and who is excluded. Unfortunately, migrant workers face several challenges in routine engagement with the bureaucracy. In the absence of a clear standard operating procedure, there is enough reason to be sceptical about how the process will roll out.

The other major issue we have noticed in this proposal is with regards to the campaigning required by political parties and their candidates. We believe that the current proposal would not provide a level playing field for the regional parties and/or independent candidates in relation to national parties. It is lopsided, and advantageous for large political parties with immense resources at their disposal.

- The proposal will require candidates of the regional parties or independent candidates to reach out to their voters across the country in the limited time and resources available for the elections, even as the proposal will make it imperative for them to do so in order to compete with national parties! As it is, electoral funding remains an opaque system in India, with the majority of funds going to the current ruling party at the centre. The system will make an already unequal system further entrenched.
- With no clarity on feasible criteria to put up remote booths, it is not clear as to how would the political parties/candidates plan the presence of polling agents across the country.
- The new system will make it increasingly difficult for agents, if setup at these remote booths, to be able to identify the voters, particularly in the absence of credible data regarding location of

migrant workers.

- The ECI has not clarified as to how the Model Code of Conduct will be implemented in these remote locations and how it would be ensured that parties/candidates with heavy purses or muscle power are not influencing these voters.
- Whereas on one side it is the demand of the time that election expenditure is reduced as much as possible, this particular mechanism will throw the budget haywire of each and every candidate if they have to campaign across the country and have polling agents in unplanned number of booths outside their constituency.

Therefore Sir, we request the ECI to, first and foremost, gather credible data with regards to state of origin and destination locations of the migrant workers, for us to comment on the feasibility and practicability of this proposal. Secondly, the ECI must conduct detailed deliberations with all the political parties, state governments, organisations representing migrant workers etc. to devise a feasible framework for achieving more voting rather than straightaway arriving at a technical solution which would create more issues and open up multiple avenues of distrusting the election results rather than resolving them.

We believe that the ECI would take up these suggestions in right earnest and resolve the issues before planning the demonstration for remote voting.

Best Regards

Pankaj Kr Gupta.

Aam Aadmi Party

[Quoted text hidden]



COMMUNIST PARTY OF INDIA (MARXIST)
Central Committee

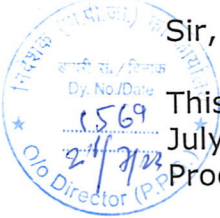
General Secretary : Sitaram Yechury

July 20, 2023



Chairman
Department Related Standing Committee on
Personnel, Public Grievances, and Law & Justice

Sir,



This is with reference to your letter No. LAFEAS-PP19/7/2022-PPG-RSS of July 4, 2023 seeking our opinion on certain "Specific Aspects of Election Process and their Reforms".

At the outset, we would like to make it abundantly clear that the CPI(M) has repeatedly reiterated the need for electoral reforms. To that extent, the Party welcomes the proposal to initiate a discussion on electoral reforms. Even while regretting the fact that this process could have been initiated much earlier, we do appreciate the need for this exercise to be undertaken before the process of the next general elections to the Lok Sabha and several state assemblies, gets initiated.

Having said that, we would like to underline that the CPI(M) does not favour a piecemeal approach and would instead like to see reforms which are full-fledged and comprehensive. Unfortunately, the current proposal is very limited in scope and fails to acknowledge and take into account the myriad issues confronting the electoral system. In restricting the scope of this exercise, the much larger issues gets excluded and obliterated to the background.

Earlier too, various proposals including but not restricted to simultaneous elections to the Lok Sabha and state assemblies etc were made without proper application of mind. This exercise too, appears to be of a similar nature.

Common Electoral Roll: The proposal for a common electoral roll, we apprehend is a move towards centralization of the entire election process and is fraught with dangers. In the absence of any reasoning for the necessity for such a common roll, it becomes difficult to give a concrete opinion.

Remote Voting: We fail to understand the necessity of discussing issues like remote voting, when the all parties meeting called by the Election Commission of India on January 16, 2023 had unanimously rejected the proposal and the ECI was forced to abandon its demonstration of the remote voting process.

Director (PPG)

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COMMUNIST PARTY OF INDIA (MARXIST) Central Committee

General Secretary : Sitaram Yechury

False Declaration by Candidates: There are already established laws and remedies to deal with false declarations by candidates while filing nominations. Even while many candidates may furnish false information, it would not be possible to establish their veracity or otherwise, within the short window available between filing of the nomination and scrutiny. This can only be done post the completion of the entire election process. Even if the returning officer has sufficient ground to believe that the information furnished by the candidate is false and has been so established, the Returning Officer cannot be armed with the power to reject the nomination papers of such a candidate as it may also lead to misuse/abuse of such powers in a polarized political climate. We do not find it necessary at this juncture to make any amends to the existing provisions.

Minimum Age to Contest Elections: The CPI(M) has always held the view that the minimum age for both voting and contesting elections to parliament, state legislatures and local bodies should be the same.

Comprehensive Electoral Reforms

We take this opportunity, however, to again reiterate our demand for comprehensive electoral reforms. Such an all-encompassing reform process would entail addressing issues connected with electoral funding (including but not limited to electoral bonds, state funding etc), corrupt practices, corporate control, proportional representation with partial list system, independent and non-partisan nature of agencies conducting elections, role of media (including social media) among others.

Immediately Scrap Electoral Bonds: Of utmost importance in this context, especially in light of the impending state assembly and parliament election is the issue of the unequal playing field for political parties. Of prime concern here is electoral bonds, whose dubious method and opaque nature legalises corruption. Even the Election Commission of India had expressed concerns about the anonymous nature of the bonds and lack of transparency. The Law Commission of India had also cautioned against such flow of unregulated funds.

We would therefore urge the Standing Committee to recommend the immediate scrapping of the electoral bond scheme, even while we wait for comprehensive electoral reforms.


(Sitaram Yechury)