



REPORT NO.

61

PARLIAMENT OF INDIA
RAJYA SABHA

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

SIXTY FIRST REPORT

**Electoral Reforms-Code of Conduct for Political Parties &
Anti Defection Law**

(Presented to the Rajya Sabha on 26th August, 2013)
(Laid on the Table of Lok Sabha on 26th August, 2013)



Rajya Sabha Secretariat, New Delhi
August, 2013/Bhadrapada, 1935 (Saka)



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ACRONYMS

AIR	ALL INDIA REPORTER
CrPC	CODE OF CRIMINAL PROCEDURE
ECI	ELECTION COMMISSION OF INDIA
IPC	INDIAN PENAL CODE
MCC	MODEL CODE OF CONDUCT
NIT	NOTICE INVITING TENDER
ORS	OTHERS
RP ACT	REPRESENTATION OF PEOPLE ACT
SC	SUPREME COURT OF INDIA
SCC	SUPREME COURT CASES

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* To be appended at printing stage.

COMPOSITION OF THE COMMITTEE

1. Shri Shantaram Naik — *Chairman*

RAJYA SABHA

2. Dr. Abhishek Manu Singhvi
3. Shri Ram Jethmalani
4. Shri Bhupender Yadav
5. Shri Ramchandra Prasad Singh
6. Shri Sukhendu Sekhar Roy
7. Shri Ram Vilas Paswan
8. Shri Sanjiv Kumar
9. Shri Parimal Nathwani
10. @Vacant

LOK SABHA

11. Maulana Badruddin Ajmal
12. Shri P.C. Gaddigoudar
13. Shri D.B. Chandre Gowda
14. Shri Shailendra Kumar
15. Shri Jitender Singh Malik
16. Shri Arjun Ram Meghwal
17. Shri Pinaki Misra
18. Shri S. Semmalai
19. Shri S.D. "Shariq"
20. Smt. Meena Singh
21. Shri Vijay Bahadur Singh
22. Dr. Prabha Kishore Taviad
23. Shri Suresh Kashinath Taware
24. Shri Madhusudan Yadav
25. *Shri T. R. Baalu
26. *Shri S. S. Ramasubbu
27. *Shri N.S.V. Chitthan
28. *Shri E.T. Mohammed Basheer
29. *Shri Abhijit Mukherjee
30. Vacant
31. Vacant

SECRETARIAT

Shri Alok Kumar Chaterjee, Joint Secretary
Shri K.P. Singh, Director
Shri Ashok K. Sahoo, Joint Director
Smt Niangkhanem Guite, Assistant Director
Smt. Catherine John L., Assistant Director

@ Vacancy caused due to induction of Shri Jesudas Seelam in the Council of Minister w.e.f. 19th June, 2013.

* Nominated to be Member of the Committee w.e.f. 1st May, 2013.

INTRODUCTION

I, the Chairman of the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, having been authorized by the Committee, present Sixty-first Report on Electoral Reforms-Code of Conduct for Political Parties and Anti-Defection Law. The objective of the Report is to review the working of the Model Code of Conduct enforced by the Election Commission of India during elections and Anti-Defection Laws as contained in the Tenth Schedule of the Constitution.

2. The Committee held discussions on the subject with the Legislative Department, Department of Legal Affairs, Election Commission of India, Law Commission of India and Political Parties to gather information related to the subject and to get acquainted with various problems/issues faced by political parties and candidates during the electoral process.

3. The Committee visited Mumbai, Kolkata, Shillong and held discussions with the State Governments of Maharashtra, Assam, Meghalaya, Manipur, Arunachal Pradesh, Nagaland, Tripura, various political parties, NGOs, individuals and other stakeholders on the subject.

4. The Secretary and Additional Secretary, Legislative Department, Ministry of Law and Justice made a detailed presentation on the subject on 22nd May, 5th June, and 14th June, 2013. The Deputy Election Commissioner made presentation on 16th July, 2013 on the subject. On 24th July, the Committee again heard by Secretary, Legislative Department, Secretary, Legal Affairs, Senior Law Officer, Law Commission of India.

5. While considering the subject, the Committee has relied on following documents/information: —

- (i) Background Note on the subject;
- (ii) The Representation of the People Act, 1950;
- (iii) The Representation of The People Act, 1951;
- (iv) The Constitution of India;
- (v) Model Code of Conduct followed by Election Commission of India; and
- (vi) Extracts of recommendations/suggestions made by various Committees and Commissions set-up by the Government.

7. The Committee adopted the Report on 19th August, 2013.

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;
August, 2013.

SHANTARAM NAIK
Chairman,
Department Related Parliamentary
Standing Committee on Personnel,
Public Grievances, Law and Justice

REPORT

CHAPTER - I

Model Code of Conduct for political parties

Model Code of Conduct (MCC) for political parties and candidates is a set of norms evolved with the consensus of political parties and enforced by the Election Commission of India. Provisions in that Code of Conduct have been, by and large, adhered to by political parties helping the Election Commission to conduct free and fair elections. The main objective of the Code is to provide a level playing field between contestants during the time of elections.

Genesis and evolution

2.0. The Model Code of Conduct for election was for the first time adopted for Assembly Election of Kerala way back in 1960. In 1962, the Election Commission of India circulated that code amongst all recognised political parties at that time and to State Governments with an advisory to discuss the code with political parties in their States and urge upon them to give their consent and acceptance to the provisions contained in that code on the eve of Third General Election. Political parties generally accepted and followed the provisions of code in that General Election. In 1991, the code was consolidated by the Election Commission and from that time the Commission has been ensuring its strict compliance in letter and spirit for conduct of peaceful, free and fair election. The present code contains guidelines for political parties and candidates. The present code has seven paragraphs which includes general conduct for parties and candidates and also parties in power (**Annexure-I**).

2.1. The general perception about the MCC is that the code is self regulatory and given to themselves by the political parties but the fact is that its violation largely attracts penal action. Even the Election Commission of India is empowered under para 16A of the Election Symbols (Reservation and Allotment) Order, 1968 either to suspend or withdraw the recognition of party after giving that party a reasonable opportunity to defend itself in the event of violation of Model Code of Conduct. Most of the provisions of the code in paras - I, II, III and IV are relatable to provisions contained in one of the three Statutes - Indian Penal Code, 1860, Code of Criminal Procedure, 1973 and Representations of People Act, 1951. Only a few provisions in the Model Code of Conduct do not have statutory backing. Provisions of Model Code of Conduct having statutory back up are given at **Annexure II**.

Views of Nodal Ministry and Election Commission of India

3.0. The Legislative Department, Ministry of Law and Justice which is nodal Ministry for the Election Commission has submitted that the Model Code of Conduct by its very nomenclature is only a self regulatory code. Often it is said that the code does not have any legal status for the simple reason that on the one hand some of its provisions could be co-related with certain statutory provisions already in the statute book (IPC, CRPC, RP Act, 1951); on the other hand, many of its provisions are generally advisory in nature which does not have specific legal backing of any statutory provisions.

3.1. One of the Deputy Election Commissioners during his deposition before the Committee submitted that the MCC is self regulatory from the point of view of its genesis. It was evolved over a period of time by political parties themselves while the Election Commission has been essentially playing a facilitating role and enforcing it with the consensus of stake holders. Several provisions of the code have a corresponding echo in Indian Penal Code in the form of electoral offences and in the Representation of People Act, 1951 in the form of electoral practices.

3.2. However, the code is implemented at the time of election more or less in the nature of rule of game to provide level playing field where the Election Commission looks upon itself as an umpire. If it finds that someone is committing a foul, it shows the yellow card and then the game restarts again.

3.3. The Election Commission has expressed its considered view that MCC has become an effective tool in the conduct of free and fair election and should be left as it is. It further added that although statutory back up to the code may make it more effective and strengthen its binding nature, it may complicate the implementation of the code in the middle of elections. The manner in which the odd violations of MCC have been handled by the Election Commission with the speed and urgency that election situation demands, proves that the code has stood the test of time. Therefore, it should be left as an established way of enforcing the code.

3.4. The Department of Legal Affairs added that the provisions in the code having statutory back up are enforceable. Whenever the Election Commission of India enforces the code of conduct, in fact they enforce the statutory provisions of the code. As a norm, the cases of violation of the code are dealt with, within a couple of days.

3.5. The code has sustained its credibility and relevance with the cooperation of political parties which is the vital tool in the mammoth

exercise of conduct of free and fair elections. The political parties have shown their sincerity in observance of the code and willingness to mend ways in the event of transgression of MCC which are only instances of aberration of the rule.

Role of Election Commission of India vis a vis MCC

4.0. Election Commission of India which enforces MCC is a permanent constitutional body totally insulated from executive and political interference. Article 324 of Constitution vests in Election Commission of India the power of superintendence, direction and control of entire process for conduct of election to Parliament, Legislatures of every State and offices of President and Vice-President of India. Articles 327 and 328 vests the power with Parliament and State Legislature, respectively, to make laws with respect to elections to legislatures. The Representation of People Act, 1950 and the Representation of People Act, 1951 have been enacted under the Article 327 by Parliament to deal with all aspects of conduct of election and post-election disputes. The Apex Court has also held that Article 324 gives plenary power to Election Commission of India but that constitutional provision is supplemented by laws enacted by Parliament. The Supreme Court has also consistently held (in the cases - Mohinder Singh Gill Vs. Chief Election Commissioner (1978) 1 SCC 405: AIR 1978 SC 851), A.C. Jose Vs. Sivan Pillai and Ors (1984) 2 SCC 656) and Kanhiyalal Omar Vs. R.K. Trivedi and Ors (1985) 4 SCC 628: AIR 1986 SC 111) that the ECI has residuary power under the Constitution to act in appropriate manner in the matter of conduct of election where the enacted laws are silent or insufficient to deal with a given situation.

4.1. Therefore, Article 324 needs to be harmoniously read in the light of other constitutional schemes and R.P. Acts, 1950 and 1951. Legislature can enact law without affecting plenary powers of ECI; at the same time Article 324 which gives plenary power to ECI cannot be abused to acquire legislative power.

4.2. ECI functions as a quasi-judicial body in the matter related to election and election disputes. However, its decision is subject to Judicial Review by High Courts and the Supreme Court while acting on election petitions. The jurisdiction of High Court under Article 226 and 227 is excluded during election period in view of Article 329 (b) of the Constitution. By judicial interpretation, the word 'election' under Article 329 (b) connotes the entire election process commencing with the issue of notification calling the electorate to elect their representatives and culminating with the declaration of election result. By necessary implication, the decision of ECI on the violation of MCC cannot be

challenged in High Court and Supreme Court during subsistence of election process but can be challenged in election petition after declaration of election result.

4.3. Giving statutory backing for Model Code of Conduct has been discussed in Dinesh Goswami Report (1990) at paragraph 6. That Committee was of the view that only such provisions of the Model Code of Conduct that are vital and important in nature should be brought under the statute. The following items were proposed to be brought within the ambit of electoral offence:-

- (a) Combining of official visit with work relating to elections or making use of official machinery or personnel in connection with any work;
- (b) Using Government transport, including official aircrafts, vehicles, machinery and personnel in connection with any work relating to elections;
- (c) Restricting or monopolising the use of public places for holding election meetings or use of helipads for air flights in connection with any work relating to elections;
- (d) Restricting or monopolising the use of rest houses, dak bungalow or other Government accommodation or the use of such accommodation including premises appertaining thereto as a campaign office or for holding any public meeting for the purposes of election propaganda;
- (e) Issuing of advertisements at the cost of public exchequer in the newspapers and other media;
- (f) Using official news media for partisan coverage of political news and publicity of achievements with a view to furthering the prospects of any party or candidate;
- (g) Announcing or sanctioning of any financial grants in any form or making payments out of discretionary funds;
- (h) Laying of foundation stones of projects or the inauguration of schemes of any kind or the making of any promises of construction of roads or the provision of any facilities;
- (i) Making of any ad hoc appointments in government or public undertakings during the election period for the furtherance of the prospects of any party or candidate;
- (j) Entering any polling station or place of counting by a Minister except in his capacity as a candidate or as a voter or as an authorised agent; and
- (k) Ban on transfer of officers and staff specified in Section 28A when election is in process.

4.4. Accordingly, the Representation of People (Amendment) Bill, 1990 was introduced on 30th May, 1990 in Rajya Sabha. Clause 15 of that Bill included aforesaid 11 items verbatim, from the report of Dinesh Goswami Committee. The Bill was referred to Joint Select Committee in January, 1991 and debated thereafter in House and eventually withdrawn on 13th June, 1994.

4.5. Parliament inserted Section 29 A in the Representation of People Act, 1951 in 1989 to empower the Election Commission of India to register political parties but power to de-register political parties on account of violation of law has not been given to Election Commission under the said Act. However, the Election Commission on its own has inserted para 16 A on 18th February, 1994 in the Election Symbols (Reservation and Allotment) Order, 1968 assuming power to suspend or withdraw recognition of the party as national or state party in the case of violation of the Model Code of Conduct. It is pertinent to note that the Election Commission of India has been given power to de-register a political party only when that party is declared as unlawful or it was found to obtain registration through fraudulent means, by judiciary.

Period of Enforcement

5.0. Election Commission of India announces the schedule of election in a major press conference a few weeks before the formal process of election is set in motion by it. Thereafter, the Election Commission of India issues a notification for the election and thereby the actual process of election starts. But the MCC for political parties and candidates gets enforced immediately with announcement of election schedule by ECI. The date of announcement of election schedule cannot be more than three weeks anterior to the date of notification, which has been settled by the Apex Court while disposing Special Leave Petition by Union of India against the judgement of Punjab and Haryana High Court in the case of Harbans Singh Jalal vs. Union of India and others pronounced by the latter on 27th May, 1997. The Apex Court, while disposing aforesaid Special Leave Petition, took note of the agreement reached by the Government of India and Election Commission of India to the effect that MCC shall be enforced from the date of announcement of election and the announcement of election will not ordinarily be more than three weeks before the date of notification.

5.1. The MCC remains enforceable from the date of announcement of election till the completion of election i.e. announcement of election result. In general election to Lok Sabha, the MCC applies through out the country and in the case of election to Legislative Assemblies/Councils,

the code applies within the State concerned. During bye-election, developmental work and implementation of schemes are held up in the portion of particular district which is involved in the election process, whereas use of Government machinery and resources for advertisement, tour, etc. is applicable to the whole district. Keeping in view the massive size of the electorate, different climatic conditions and mobilisation of huge paramilitary forces, elections are now-a-days held in multiple phases for ensuring free and fair elections. Normally, the MCC which was to be in force three weeks before the election notification till results are declared, remains in force from the date of announcement which is often more than three weeks before the notification, and continues to remain in force until the election process in respect of all the phases is complete. It has been experienced that when elections are held together in several States that too in three to four phases, the MCC was in force for more than ninety days or more and thereby paralysing the developmental work in States for as many as five to six months.

5.2. The Committee has received various suggestions from stake holders on the issue of duration of enforcement of MCC which are as under:-

- (i) The Model Code of Conduct may be suspended in the case of natural disaster such as flood and drought and other emergency to give relief to the needy;
- (ii) The reduction of period of three weeks to the minimum between the announcement of election schedule and election notification;
- (iii) In case of delay in announcement of result of election enforcement of MCC may be withdrawn after vote is cast.
- (iv) State Government of Tripura suggested to implement MCC from the date of election schedule;
- (v) For developmental work undertaken by Municipal Councils and Zila Parishad may be allowed to continue since those institutions are somehow independent in their functions;
- (vi) Enforcement of MCC should be entrusted to separate machinery under Election Commission with a view to reduce the burden on Election Commission of India as Chief Electoral Officer is pre-occupied with the conduct of free and fair election which is their primary job;
- (vii) Fast track courts to dispose off violation of MCC within a given time;
- (viii) Ongoing work not to be discontinued with the enforcement of MCC;

- (ix) Single phase election in the State instead of multiple phases which will reduce the period of enforcement of MCC;
- (x) The Development work on which Notice Inviting Tender (NIT) followed by award of work order which precedes the announcement of election schedule should not get affected;
- (xi) The State Government also remain in the state of paralysis because the large number of serving bureaucrats was deputed as election observer for different States by Election Commission of India. In that context, it was suggested that retired civil servants may be put on panel to be used as Election Observer which would not affect the administration of the State Government;
- (xii) On the issue of paid news it was pointed out that many media houses are owned by political people and have their political inclination. Separation of print and electronic media was also suggested; and
- (xiii) The office bearers of political party should not have criminal antecedent. This would give good message to people at large because contesting election is the next logical conclusion after becoming the office bearers of a party.

Committee's observations/Recommendations

Statutory backup to Model Code of Conduct

6.0. While most of the provisions of MCC having corresponding provisions in other statutes like IPC, CrPC and RP Act, 1951 are enforceable in the event of their violation, it is erroneous to say that the MCC is of voluntary in nature. Rather application of law in the case of MCC is mandatory. The Committee further observes that the Election Commission of India strictly enforces the provisions of MCC which are relatable to other statutes enacted by Parliament. The Election Commission of India issues warning/censure to the political parties and candidates concerned, in respect of paras which are enforceable or otherwise. But it can even de-recognise the political party as National or State Party under para 16 A of Election Symbols (Reservation and Allotment) Order, 1968 even in the case of violation of those provisions of MCC which are not enforceable.

6.1. The Election Commission claims to have powers to punish political parties by the exercise of plenary power given under Article 324 of Constitution and particularly after amendment of its own order made on 18th February, 1994. The Committee strongly feels that it is, therefore, expedient to enact law for giving statutory back

up to MCC leaving no vacuum for ECI to exercise its power which is residuary in nature. The Committee recommends that provisions of Model Code of Conduct may be formed a part of Representation of People Act, 1951 or rules framed thereunder for free and fair elections in the Country.

6.2. The instructions/orders issued by Election Commission of India under Article 324 of the Constitution sometimes appears to be encroaching upon legislative power of Parliament. The Committee stresses upon the Government that such instructions/orders issued by Election Commission of India may be suitably incorporated in the Representation of People Act, 1951 or rules framed thereunder.

Power of Election Commission to de-recognize Political Party

7. Under Section 29 (A) Representation of People Act, 1951, the Election Commission of India has been given power to register Political Parties but the power of de-registration of Political Parties has not been given to Election Commission of India under that law. However, the Election Commission of India has assumed the power under para 16 A of the Election Symbol (Reservation and Allotment) Order, 1968 to de-recognize the Political Parties in the event of violation of Model Code of Conduct. The net effect of de-recognition of political party makes that party almost dysfunctional as its symbol is taken away. The Committee, therefore, recommends that the power to de-recognize Political Parties on account of violation of Model Code of Conduct may be incorporated in the Representation of People Act, 1951 itself.

Enforcement of Model Code of Conduct

8.0. The Model Code of Conduct is enforced from the date of declaration of poll schedule by Election Commission of India and the period between announcement of election schedule and date of notification of election invariably exceeds three weeks. The three weeks gap between announcement of election schedule and issue of notification for election by ECI is due to an agreement between Union Government and ECI and reported to the Apex Court in a case.

8.1. It has been observed that most of the State Governments are under the spell of paralysis of developmental work during the enforcement of MCC which exceeded the period of six weeks particularly in the case of multiple phases of election. In that context, it was pointed out that the date of enforcement of MCC should be

from the date of notification of poll, rather than from the date of announcement of election schedule by Election Commission. The Committee, accordingly, is of the considered view that enforcement of MCC be made from the date of notification and not from the announcement of election schedule.

Appeal against decision of Returning Officer

9.0. As the law stands, the decision of Returning Officer in the case of rejection of nomination paper of the candidate is final which can only be challenged in the High Court concerned, as an election petition, after the election results are declared.

9.1. It has come to the notice that in cases of erroneous use of power by Returning Officers, there is no remedy available to the affected candidates. Such rulings are utterly incongruous to the true functioning of democracy in the country. Election disputes are adjudicated by the High Court concerned only after the declaration of election result while disposing election petition which takes a longer time to get justice from the Court. By that time the usual five years' term also expires which adversely affects the political prospects of contesting candidates. Since there occurs a judicial delay in such matters, the Committee recommends that some sort of mechanism may be provided to prefer an appeal against the decision of Returning Officer in cases of rejection of nomination paper by the Returning Officers which could provide the opportunity to candidates to get justice in real terms.

Fast Track Court for Election Dispute

10.0. In the matter of election petitions under various provisions of Constitution and Representation of People Act, 1951, the Committee recommends that Fast Track Courts may be setup to dispose off election disputes, within a period of twelve months.

Surrogate Advertisement

11.0. The Committee is disturbed to note that surrogate advertisements are appearing in the form of news items sponsored unofficially by the candidates in the print media to escape provisions of law. The general public is cheated as the true nature of expenses made on those news items is not disclosed.

11.1. The growing power of money used by candidates to skewing election result in their favour has undermined the democratic norms in the country. The Committee, therefore, recommends that

provisions as regards advertisements contained in the Representation of People Act/Rules be enforced in letter and spirit and Press Council of India has to play an effective role in ensuring the enforcement of the law by its members.

Election Expenditure Ceiling Limit

12. Rule 90 of the Conduct of Election Rules, 1961 provide ceiling limit of election expenditure for candidates in different States for Parliament/Assembly Seats. The Committee feels that the actual expenditure on the election has been more than the ceiling fixed by Election Commission and it is alleged that candidates have been concealing election expenditure to escape the obligation laid in the Representation of People Act. The Committee recommends that election expenditure needs to be substantially enhanced and the Rule 90 of Conduct of Election Rules, 1961 may be periodically reviewed to increase/decrease election expenditure for candidates in Parliament/Assembly seats.

Simplification of Nomination papers

13. The nomination proforma appears to be complicated and the candidature of a candidate is sometimes rejected by the Returning Officer due to minor short comings/errors while filing of the nomination paper. The contestants in their practical experience have found nomination paper to be cumbersome, requiring simplification. The Committee, therefore, desires that the nomination papers may be simplified to enable any ordinary citizen to file the same without much difficulty.

Allotment of Election Symbols to Independent Candidates.

14. The election symbol reserved for national political party is applicable for the whole country, whereas, the symbol reserved for state party is applicable within that state. It means that the symbol reserved for state party can be allotted to another unrecognized party or independent candidate in another State. The symbols which are not reserved are treated as free symbols and can be allotted to unrecognized parties and independent candidates. It may happen that two independent candidates may get same symbol in two different constituencies of a State or two States which create confusion in the minds of electorate while exercising their franchise. In order to avoid this confusion, the Committee would like to recommend that same criteria should be adopted to allot election symbol to individual candidates in different constituencies in the

same state as is being done to the national / State parties. The Committee, accordingly, further recommends that in order to give effect to such suggestion, suitable changes may be made in the Election Symbols (Reservation and Allotment) Order, 1968.

Valuation of Assets

15.0. In the course of deliberations of the Committee, the Committee's attention was drawn to the details of assets furnished by the candidates while filing the nomination papers. There was a feeling amongst the Members that the valuation of the assets is done at the present market rate whereas those assets could have been inherited or acquired long back at a much lesser value.

15.1. Considering the value of those assets at present rate, many a times leads to the impression as if, the said property or the assets were acquired through unaccountable sources. In such a situation, candidates fail to offer the reasonable explanation to the people / media when they are questioned. It has been experienced that such aspects damage the reputation of the candidates during the time of elections. In this background, the Committee feels that the valuation of the assets has to be done at the rate when the property was inherited or acquired. The Committee, therefore, calls for necessary amendments in the relevant rules in this context.

CHAPTER - II

Anti-Defection Law:

16.0. Tenth Schedule together with Articles 102 and 192 of Constitution of India are known as Anti-Defection Law. Tenth Schedule of Constitutions in particular sets out provisions as to disqualification from membership of Parliament and the State Legislature on the ground of political defection. It came into force w.e.f. 1st March, 1985.

16.1. A member would be disqualified under Tenth Schedule:-

- (a) If he voluntarily gives up membership of his political party;
- (b) Votes or abstain from voting contrary to any direction (whip) without obtaining prior permission and the same has not been condoned by his party.
- (c) When an elected member elected as a candidate from a party when he joins any other political party after such election.
- (d) The nominated member when joins any political party after expiry of six months from the date that member takes the seat.

16.2. However, there are exceptions from disqualification under Tenth Schedule.

- Disqualification will not apply in case of merger of political parties.
- A Member shall not be disqualified if his original political party merges with another political party.
- After merger such other party or new party or group, as the case may be, shall be deemed to be his political party.
- A Member may claim that he has become the member of such other or new political party or opted to function as a separate group.
- The merger shall be deemed to have taken place if, and only if, not less than two-thirds of the members of the legislature party concerned have agreed to such merger.

16.3. The Speaker or the Deputy Speaker or Deputy Chairman of Council of States/Legislative Council of States shall not be disqualified if he or she:

- Voluntarily gives up the membership of his/her party and does not rejoin that political party or join any other party so long as he continues to hold such office; and
- Rejoins his/her party having given up membership earlier after he ceases to hold such office.

16.4. The Speaker, Lok Sabha or Legislative Assembly or Chairman of Rajya Sabha/Council is the final authority to decide about the question of disqualification of member of that House and his decision is final under Para 7 to Tenth Schedule. The rules framed by Presiding Officer of the House under that Schedule regulate political defection. However, the apex Court while disposing Kihoto Hollohon Vs. Zachillhu (AIR 1993 SC 412) has declared Para 7 of Tenth Schedule as invalid for want of ratification in accordance with the proviso to clause (2) of Article 368 of Constitution. Further the decision of Speaker/Chairman of the House about disqualification under Tenth Schedule is justiciable and subject to judicial review by High Courts and Supreme Court.

16.5. In another case Speaker Legislative Assembly Vs. Utkal Keshari Parida (AIR 2013 SC 1181), the Supreme Court has held that any person interested in the matter of disqualification of Member would be entitled to bring to the notice of Speaker/Chairman of the House that a Member the House had incurred disqualification under the Tenth Schedule to Constitution which is not available to any outsider other than member of that House under rules framed by Speaker/Chairman of Parliament and State Legislatures.

16.6. Following important suggestions were received during Committee's study visit;-

- Merger of political parties with another political party should not be exempted
- Provision of Anti-Defection Law to be made applicable to Autonomous District Councils in North Eastern Region.
- The nominated members joining political party within the period of six months should also be disqualified as has been the case of independent members.

Committee's Observations/Recommendations

Interference of Judiciary in the working of House

17.0. The interference of judiciary into the domain and power of Speaker and Chairman of Legislatures on the issue of disqualification of Member of that House has nullified certain rules framed under Tenth Schedule by the Presiding Officer. The said judicial interpretation of Tenth Schedule has impinged upon the power of the Presiding Officer. The matter falling within the domain of Presiding Officers occurring within the precinct of the House should have been left to the House itself rather than judiciary entering into that area thereby affecting the supremacy of the

legislature and violating the long standing theory of separation of powers, the Committee observes.

17.1. The Committee also observes that the decision of Apex Court on the issue of *locus-standi* has nullified another rule framed by Speaker or Chairman of Legislatures without giving notice to them, in the case of *Speaker, Orissa Legislative Assembly vs. Utkal keshari Parida*. The Committee feels that the aforesaid judgement is a clear case of impingement in the working of the House.

17.2. The Committee observes that the Government should get aforesaid judgement of Supreme Court reviewed by Supreme Court in order to safe-guard the power and majesty of the Office of Speaker of Lok Sabha and Chairman, Rajya Sabha.

Different criterion for Independently Elected/Nominated Members

17.3. During its deliberations with the stakeholders, the Committee noted that six months time has been given to a nominated member to join a political party, whereas an independently elected member cannot join a political party at all. The Committee does not appreciate the different criterion provided in this regard. The Committee suggests for revision of existing provision so as to enable independent members to join a political parties in the same manner as in the cases of nominated members.

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RECOMMENDATIONS/OBSERVATIONS AT A GLANCE

Statutory backup to Model Code of Conduct

1. While most of the provisions of MCC having corresponding provisions in other statutes like IPC, CrPC and RP Act, 1951 are enforceable in the event of their violation, it is erroneous to say that the MCC is of voluntary in nature. Rather application of law in the case of MCC is mandatory. The Committee further observes that the Election Commission of India strictly enforces the provisions of MCC which are relatable to other statutes enacted by Parliament. The Election Commission of India issues warning/censure to the political parties and candidates concerned, in respect of paras which are enforceable or otherwise. But it can even de-recognise the political party as National or State Party under para 16 A of Election Symbols (Reservation and Allotment) Order, 1968 even in the case of violation of those provisions of MCC which are not enforceable. [Para 6.0]

2. The Election Commission claims to have powers to punish political parties by the exercise of plenary power given under Article 324 of Constitution and particularly after amendment of its own order made on 18th February, 1994. The Committee strongly feels that it is, therefore, expedient to enact law for giving statutory back up to MCC leaving no vacuum for ECI to exercise its power which is residuary in nature. The Committee recommends that provisions of Model Code of Conduct may be formed a part of Representation of People Act, 1951 or rules framed thereunder for free and fair elections in the Country. [Para 6.1]

3. The instructions/orders issued by Election Commission of India under Article 324 of the Constitution sometimes appears to be encroaching upon legislative power of Parliament. The Committee stresses upon the Government that such instructions/orders issued by Election Commission of India may be suitably incorporated in the Representation of People Act, 1951 or rules framed thereunder. [Para 6.2]

Power of Election Commission to de-recognize Political Party

4. Under Section 29 (A) Representation of People Act, 1951, the Election Commission of India has been given power to register Political Parties but the power of de-registration of Political Parties has not been given to Election Commission of India under that law. However, the Election Commission of India has assumed the power under para 16 A of the Election Symbol (Reservation and Allotment)

Order, 1968 to de-recognize the Political Parties in the event of violation of Model Code of Conduct. The net effect of de-recognition of political party makes that party almost dysfunctional as its symbol is taken away. The Committee, therefore, recommends that the power to de-recognize Political Parties on account of violation of Model Code of Conduct may be incorporated in the Representation of People Act, 1951 itself. [Para 7]

Enforcement of Model Code of Conduct

5. The Model Code of Conduct is enforced from the date of declaration of poll schedule by Election Commission of India and the period between announcement of election schedule and date of notification of election invariably exceeds three weeks. The three weeks gap between announcement of election schedule and issue of notification for election by ECI is due to an agreement between Union Government and ECI and reported to the Apex Court in a case. [Para 8.0]

6. It has been observed that most of the State Governments are under the spell of paralysis of developmental work during the enforcement of MCC which exceeded the period of six weeks particularly in the case of multiple phases of election. In that context, it was pointed out that the date of enforcement of MCC should be from the date of notification of poll, rather than from the date of announcement of election schedule by Election Commission. The Committee, accordingly, is of the considered view that enforcement of MCC be made from the date of notification and not from the announcement of election schedule. [Para 8.1]

Appeal against decision of Returning Officer

7. As the law stands, the decision of Returning Officer in the case of rejection of nomination paper of the candidate is final which can only be challenged in the High Court concerned, as an election petition, after the election results are declared. [Para 9.0]

8. It has come to the notice that in cases of erroneous use of power by Returning Officers, there is no remedy available to the affected candidates. Such rulings are utterly incongruous to the true functioning of democracy in the country. Election disputes are adjudicated by the High Court concerned only after the declaration of election result while disposing election petition which takes a longer time to get justice from the Court. By that time the usual five years' term also expires which adversely affects the political

prospects of contesting candidates. Since there occurs a judicial delay in such matters, the Committee recommends that some sort of mechanism may be provided to prefer an appeal against the decision of Returning Officer in cases of rejection of nomination paper by the Returning Officers which could provide the opportunity to candidates to get justice in real terms. [Para 9.1]

Fast Track Court for Election Dispute

9. In the matter of election petitions under various provisions of Constitution and Representation of People Act, 1951, the Committee recommends that Fast Track Courts may be setup to dispose off election disputes, within a period of twelve months. [Para 10.0]

Surrogate Advertisement

10. The Committee is disturbed to note that surrogate advertisements are appearing in the form of news items sponsored unofficially by the candidates in the print media to escape provisions of law. The general public is cheated as the true nature of expenses made on those news items is not disclosed. [Para 11.0]

11. The growing power of money used by candidates to skewing election result in their favour has undermined the democratic norms in the country. The Committee, therefore, recommends that provisions as regards advertisements contained in the Representation of People Act/Rules be enforced in letter and spirit and Press Council of India has to play an effective role in ensuring the enforcement of the law by its members. [Para 11.1]

Election Expenditure Ceiling Limit

12. Rule 90 of the Conduct of Election Rules, 1961 provide ceiling limit of election expenditure for candidates in different States for Parliament/Assembly Seats. The Committee feels that the actual expenditure on the election has been more than the ceiling fixed by Election Commission and it is alleged that candidates have been concealing election expenditure to escape the obligation laid in the Representation of People Act. The Committee recommends that election expenditure needs to be substantially enhanced and the Rule 90 of Conduct of Election Rules, 1961 may be periodically reviewed to increase/decrease election expenditure for candidates in Parliament/Assembly seats. [Para 12]

Simplification of Nomination papers

13. The nomination proforma appears to be complicated and the candidature of a candidate is sometimes rejected by the Returning Officer due to minor short comings/errors while filing of the nomination paper. The contestants in their practical experience have found nomination paper to be cumbersome, requiring simplification. The Committee, therefore, desires that the nomination papers may be simplified to enable any ordinary citizen to file the same without much difficulty. [Para 13]

Allotment of Election Symbols to Independent Candidates.

14. The election symbol reserved for national political party is applicable for the whole country, whereas, the symbol reserved for state party is applicable within that state. It means that the symbol reserved for state party can be allotted to another unrecognized party or independent candidate in another State. The symbols which are not reserved are treated as free symbols and can be allotted to unrecognized parties and independent candidates. It may happen that two independent candidates may get same symbol in two different constituencies of a State or two States which create confusion in the minds of electorate while exercising their franchise. In order to avoid this confusion, the Committee would like to recommend that same criteria should be adopted to allot election symbol to individual candidates in different constituencies in the same state as is being done to the national / State parties. The Committee, accordingly, further recommends that in order to give effect to such suggestion, suitable changes may be made in the Election Symbols (Reservation and Allotment) Order, 1968. [Para 14]

Valuation of Assets

15. In the course of deliberations of the Committee, the Committee's attention was drawn to the details of assets furnished by the candidates while filing the nomination papers. There was a feeling amongst the Members that the valuation of the assets is done at the present market rate whereas those assets could have been inherited or acquired long back at a much lesser value. [Para 15.0]

16. Considering the value of those assets at present rate, many a times leads to the impression as if, the said property or the assets were acquired through unaccountable sources. In such a situation, candidates fail to offer the reasonable explanation to the people / media when they are questioned. It has been experienced that such

aspects damage the reputation of the candidates during the time of elections. In this background, the Committee feels that the valuation of the assets has to be done at the rate when the property was inherited or acquired. The Committee, therefore, calls for necessary amendments in the relevant rules in this context. [Para 15.1]

Interference of Judiciary in the working of House

17. The interference of judiciary into the domain and power of Speaker and Chairman of Legislatures on the issue of disqualification of Member of that House has nullified certain rules framed under Tenth Schedule by the Presiding Officer. The said judicial interpretation of Tenth Schedule has impinged upon the power of the Presiding Officer. The matter falling within the domain of Presiding Officers occurring within the precinct of the House should have been left to the House itself rather than judiciary entering into that area thereby affecting the supremacy of the legislature and violating the long standing theory of separation of powers, the Committee observes. [Para 17.0]

18. The Committee also observes that the decision of Apex Court on the issue of *locus-standi* has nullified another rule framed by Speaker or Chairman of Legislatures without giving notice to them, in the case of *Speaker, Orissa Legislative Assembly vs. Utkal keshari Parida*. The Committee feels that the aforesaid judgement is a clear case of impingement in the working of the House. [Para 17.1]

19. The Committee observes that the Government should get aforesaid judgement of Supreme Court reviewed by Supreme Court in order to safe-guard the power and majesty of the Office of Speaker of Lok Sabha and Chairman, Rajya Sabha. [Para 17.2]

Different criterion for Independently Elected/Nominated Members

20. During its deliberations with the stakeholders, the Committee noted that six months time has been given to a nominated member to join a political party, whereas an independently elected member cannot join a political party at all. The Committee does not appreciate the different criterion provided in this regard. The Committee suggests for revision of existing provision so as to enable independent members to join a political parties in the same manner as in the cases of nominated members. [Para 17.3]

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