3.1 Decriminalization of Politics and Disqualification of Candidates

(i) Whether the existing provisions (constitutional or statutory) relating to disqualification to contest elections need to be amended?

Over the last two decades, a number of government committees and civil society groups working on electoral reforms have presented a strong case for amending the current provisions relating to disqualification, focusing on *enforcement of the disclosure of criminal antecedents of candidates* and *eligibility restrictions for candidates with criminal cases pending against them.* The existing statutory provisions have proved to be clearly inadequate in curbing entry of those with known criminal record into legislatures. More robust measures are warranted.

(ii) Whether disqualification should be triggered upon conviction, as it exists today or upon framing of charges by the Court or upon presentation of report by the Investigating Officer under Section 173 of the Code of Criminal Procedure, 1973?

- Given below are some of the recommendations from various reports:

1. Election Commission Report 2004: Section 8 of the Representation of the People Act, 1951 should be amended to disqualify candidates accused of an offence punishable by imprisonment for 5 years or more even when trial is pending, given that the Court has framed charges against the person. To prevent misuse, a compromise has been suggested whereas only cases filed prior to six months before an election would lead to disqualification of a candidate. In addition, the Commission proposed that Candidates found guilty by a Commission of Enquiry should stand disqualified.

2. Ethics in Governance Report of the Administrative Reforms Commission 2008:

a) Section 8 of the Representation of the People Act, 1951, be amended such that a candidate accused of an offence punishable by imprisonment of 5 years or more be disqualified on the expiry of a period of one year from the date the charges were framed against him, and unless cleared during that one year period, he shall remain disqualified until the conclusion of his trial.

b) Establishment of Special Courts to decide cases against candidates within a period of six months or less. Potential candidates against whom charges are pending may take the matter to the Special Court, which can decide if there is indeed a prima facie case justifying the framing of the charges. Special Courts would be constituted at the level of High Courts and decisions would be appealable only to the Supreme Court.

3. Law Commission of India Report, 1999: Addition of a new section – Section 8B, which would provide a separate set of penalties for electoral offences and offences having a bearing upon the conduct of elections under sections 153A and 505 IPC and serious *offences punishable with death or life imprisonment*. The proposed Section 8B would provide that framing of charges shall be a ground of disqualification but this disqualification shall last only for a period of five years or till the acquittal of the person of those charges, whichever event happens earlier. If a candidate is found guilty they would automatically be disqualified under Section 8.

On balance, we are of the view that the following measures should be taken:

a. All those who are facing criminal charges which entail imprisonment of 5 years are more should be disqualified from being members of legislatures, provided an appropriate court has framed charges after a prima facie case has been established in the preliminary enquiry by the court.

b. The aggrieved persons against whom charges have been framed, if they wish to contest elections, and have earlier been elected to public office, or have contested for public office on behalf of a recognized political party, should have recourse to an appellate process to an Advisory Board chaired by a Judge of High Court. The Advisory Board will have the powers to decide whether framing of charges is justified based on the available evidence or not, and on confirmation of charges by the Advisory Board, disqualification will apply.
c. Fast Track Courts should be established to deal with such cases involving disqualification of individuals who were earlier elected to public office, or were earlier contestants on behalf of a recognized party.

(iii) Whether, in addition to the existing scheme of disqualifications, a new statutory provision needs to be inserted for evaluation of fitness of a candidate by an independent body?

The creation of an independent body would be akin to creating a parallel bureaucratic structure, with quasi-judicial powers – an exercise which would leave a tremendous scope for misuse, and might end up adding further complicating the process. Moreover, there is also a perspective that pre-screening candidates for elections based on subjective criteria might subvert the democratic processes. The only fair process for selecting suitable candidates would be an internal primary election monitored by an independent authority like Election Commission.

(iv) If yes, what standards of public life need to be enumerated for the purpose of determining the fitness of a candidate?

- NA

3.2 Need to strengthen the provisions relating to the period of disqualification

(i) Whether the existing provisions relating to disqualification need to be amended?

Under Section 8 of the RP Act, 1951, persons who are convicted for listed offences of a serious nature are disqualified for a period of six years from the date of conviction if only fine is imposed, and in cases where they are sentenced to imprisonment, for the whole duration of imprisonment, and for a further period of six years thereafter. Under Section 8A, in respect of persons found guilty of a corrupt practice, the period of disqualification will be as decided by the President, after obtaining the opinion of the Election commission and in case shall if exceed six years. Under Section 9, persons dismissed from government for corruption or for disloyalty to state shall be disqualified for five years. Disqualifications relating to government contracts and office of profit apply during the period of contract or office. Failure to lodge election expenses entails a disqualification for three years. Election Commission has the power to remove or reduce disqualification period. More of these disqualifications are reasonable in scope and exercise of power, and may be retained in the same form. However, in respect of certain cases where the individual has proved to be unworthy of public trust, and has been convicted or dismissed for offences relating to public office, the disqualification has to be for a life time. For instances, persons convicted for corruption, terrorism or waging war against India, or those dismissed for corruption or disloyalty to State have certainly proved to be untrustworthy in public office, and should be treated as unfit for any elective public office. Therefore, in respect of these cases, the disqualification should apply for life.

(ii) Whether certain offences, so far not included, ought to be included in law for the purpose of disqualification?

Section 8(3) of RP Act, 1951 provides for disqualification of persons convicted of any offence and sentenced to imprisonment for two years or more. This would address all serious offences, and therefore public interest in ensuring proper representation is adequately protected. In the light of this, there does not appear to be any further need to add more offences for the purpose of disqualification.

(iii) In what manner the procedure for implementing the provisions relating to disqualification be strengthened?

Written mandatory guidelines need to be approved and published in respect of exercise of presidential discretion on disqualification period under Section 8A, and rendering of Election Commission's opinion under Section 8A(3). Similarly, written guidelines are necessary in exercising Election Commission's power to remove or reduce period of disqualification under Section 11 of RP Act, 1951. Such mandatory guidelines will eliminate the possibility of discriminatory application of law and arbitrariness, and will ensure uniform application of law and a level playing field for all citizens

3.3 State funding of election expenses & regulation of conduct of Political Parties

(i) Whether there should at all be State funding of elections of a candidate or political party?

The Election and other Related Laws Amendment Act, 2003 provided for two forms of substantial indirect state funding to political parties. First the law provides for 100% exemption from personal Income Tax or Corporate Income Tax to donors in respect of all contributions made to a registered political party, subject to 5% ceiling of preceding three years net average profit in respect of corporate. Second, the law provides for free air time in all electronic media to recognized political parties during election period. The first provision is being implemented, whereas as the second provision is not applied so far because rules have not yet been framed.

These two provisions are very fair and adequate to meet the legitimate requirements of parties for their functioning and election campaigns. Any further funding is neither desirable, nor practical. Once parties get free air time, substantial cost of electioneering in modern era would have been met. Therefore, the rules need to be framed for free broadcast time, and implemented.

(ii) If yes, what should be the criteria and quantum of funding?

- NA

(iii) In what form should such funding and its accountability be provided for?

- NA

3.4 Donation

(i) Whether the existing provisions with regard to voluntary donations to political parties need to be amended?

As pointed out above, the 2003 Amendments are salutary, and go a long way in helping cleanse the electoral process. Parties now have a legitimate mechanism for raising resources for political activity, and donors have the incentive in the form of full tax exemption to contribute to parties. Disclosure norms prescribed under law enable citizens to be vigilant about the nature of contributions, and expose the nexus, if any, between political contributions and policies and decisions of a party or government.

However, experience shows that even after the enactment of the 2003 law, a substantial part of the contributions to several major parties is received in cash, and is not disclosed. Donors may sometimes prefer unaccounted contributions in cash to ward off fears of political retribution from other parties. Also, many cash contributions may be made as inducements to influence decisions of a party or government, or as a consideration for favours received or anticipated.

The problem is further compounded by the fact that in many parts of India, vote-buying with cash and other inducements has become very common. Since vote-buying or distribution of other inducements to voters is both illegal and immoral, parties may prefer unaccounted cash contributions to fund such corrupt methods that undermine democracy. In many cases, the bulk of election expenditure incurred by parties is for vote-buying and other illegitimate and corrupt activities, and not for legitimate electioneering purposes.

Now that the law provides for a tax incentive to donors, and has created a robust mechanism to raise disclosed contributions by cheque, it is

important to take strong legislative measures to discourage undisclosed and cash contributions to political parties. Two specific legislative measures will improve legitimate funding of parties and discourage cash contributions. First, undisclosed cash contributions should be treated as a criminal offence. Such donors, individuals or corporate, should be liable for a monetary penalty equal to ten times the contributions made clandestinely, and should also be liable to a prison term of not less than one year. Once the law is strengthened to impose severe penalties for undisclosed cash contributions, then it will be easy for donors to resist pressures for cash contributions, or to indulge in acts of corruption to influence parties or governments for favours. It is unlikely that a person or company making a large contribution to a party will risk severe monetary penalty and a jail term by violating law and making a cash contribution in an unaccounted manner.

Second, parties or candidates that receive such undisclosed cash contributions should be liable for severe penalties including a fine up to ten times the undisclosed contribution received, a jail term for the office bearers, and in cases of persistent violation of law, derecognition and deregistration of the political party itself. Such provisions exist in many democratic societies. Transparent, verifiable funding of political activity and elections is at the heart of the legitimacy of the democratic process. Now that the law provides for substantial incentives for legitimate funding, the time has come to provide for severe penalties for undisclosed, illegitimate funding.

(ii) If yes, what mechanism should be developed to ensure accuracy and transparency in the process of giving and taking of donations?

All contributions, except small amounts through hundis in public meetings etc, should be disclosed to the Election Commission and the public. In case of small contributions, the total amounts received on each occasion should be disclosed, and a video-recording of the process of such collections (hundi, collection box etc) should be available and copies furnished to the Election Commission.

The amendment as suggested above, providing for monetary penalty and jail term to party functionaries or candidates who accept undisclosed, cash contributions, and derecognition and deregistration of parties for persistent violation of law would go a long way in ensuring transparent funding and full disclosure, and will discourage vote-buying and corruption.

3.5 False Affidavits

(i) Whether filing of a false affidavit under Section 125A of the Act should be a ground for disqualification?

- Yes.

(ii) If yes, what mode and mechanism needs to be provided for adjudication on the veracity of the affidavit?

There should be penalties for substantial willful false disclosure or non-disclosure of candidate details in the affidavits. These penalties should not apply for trivial errors or inconsistencies, or for inadvertent omissions. But in respect og willful and substantial false-disclosures, there should be disqualification of the candidate from elective office for a period of five years. Determination of such false disclosures can be entrusted to the EC, with a provision for appeal to High Court.

In addition, where false disclosure has the impact of undermining public morality, it should be classified as an offence entailing a jail term of not

less than two years. Such a prosecution and sentencing will be before a criminal court.

3.6 Electronic and Print Media

(i) **How can the integrity of election be protected from being affected by the impact of 'paid news'?**

"Paid news" is a growing phenomenon in elections, subverting the election expenditure ceilings and enhancing the cost of electioneering. Paid news is essentially publication of favourable stories in the form of news for a hefty fee from the candidate. Anecdotal evidence shows that many newspapers treat paid news as an important source of revenue. Often, there is deliberate blacklisting of candidates who refuse to pay a newspaper for such coverage in the form of paid news. The net result is, most candidates of major parties are compelled to submit to extortion by newspapers in order to get favourable coverage, or any coverage at all during elections. Publicity is the oxygen of politics, and if a candidate is willfully denied news coverage, and if rival candidates get abundant news coverage, his chance of getting elected diminishes considerably. In our first-past-the-post system, even voters who were initially inclined to vote in favour of a candidate may change their minds on the assumption that he may lose the election anyway, based on news blackout.

Anecdotal evidence shows that in several cases a candidate for state assembly is compelled to spend Rs. 50 Lakh to Rs. 1 Crore for paid news in several newspapers which indulge in this immoral practice. Therefore any effort to curb paid news should put the onus on the media as well as the candidates.

There are three practical steps that need to be taken to curb the unhealthy practice of paid news, and preserve the integrity of election process.

- First, there should be strong mandatory disclosure norms in respect of paid news and advertisements applicable to the candidate as well

as the newspaper. Both the candidate and newspaper should be duty bound to disclose the amounts paid/collected, and the coverage in the form of paid news, enclosing copies. Such disclosures should be made to both the Election Commission and the Press Council concurrently, along with periodic expenditure accounts furnished by the candidates to the EC. Non-disclosure or false disclosure should invite a stiff monetary penalty equal to ten times the cost of paid news, payable separately by the candidate as well as the newspaper. In addition, suppression of information should entail a jail term of two years for both parties – the candidate and the newspaper. Such a strong provision will act as a deterrent on both of them, and will curb the paid news. If a newspaper persistently violates the law, deregistration of newspaper should be mandatory, in addition to monetary penalties and prison term.

- Second, any expenditure, disclosed or detected, in the form of paid news should count as election expenditure by the candidate, and the expenditure ceilings should apply automatically. If the paid news expenditure combined with other election expenditure exceeds the ceiling on expenditure, the candidate would be disqualified on grounds of corrupt electoral practice.
- Third, a strong mechanism should be evolved to maintain paid news by a well-coordinated effort of the Election Commission, the Press Council, and the tax authorities. Regular scrutiny of local news coverage by Election Observers and Returning Officers will easily expose “paid news”, and action should be initiated in such cases for non-disclosure as well as exceeding expenditure ceiling.

(ii) What measures need to be taken within the constitutional framework of free speech, where print or electronic media owned or controlled by political parties, candidates or vested interests, directly or indirectly, broadcast prejudiced news in such a manner so as to

influence free and fair elections?

- The main response to address bias in news would be by enforcing transparency where any content related to elections or politics is being published or disseminated, so that consumers of the content in question are able to perceive that content is driven by partisan considerations. This has previously been attempted in order to address paid news involving corporate, rather than political interests. The Securities and Exchange Board of India has adopted guidelines (endorsed by the Press Council of India), by which any content relating to any company in which a media conglomerate has interests of ownership, management or control must always be accompanied by a full and prominent disclosure of the relationship.
- Enforced rights of reply would also ensure a fair balance between the rights of the media to editorial discretion (towards ends including the endorsement of a political ideology) and the rights of the electorate to full and true facts, and the opposing counterpoints in matters affecting right to choose their electoral representatives.
- During election period, any content in the newspaper or channel which is portrayed as news, but is actually a concealed advertisement to promote the prospects of a candidate or party should be treated as paid news, and the cost of publication should be counted as election expenditure.
- The Election Commission institutes a ban on electioneering through electronic media 48 hours before the polling date in a given constituency. That measure should be extended to print media as well.
- The Model Code of Conduct for Television in Coverage of Elections must be made enforceable against both the media, through an empowered Press Council.

(iii) Whether any restriction on governmental advertisements highlighting its achievements for a period of six months prior to the date of expiry of the term of the House should be imposed?

- Yes.

(iv) Whether violation of such restrictions or prohibitions be made punishable?

- Yes.

3.7 Enhancement of punishment for electoral offences

(i) Whether the existing scheme of electoral offences and the punishments needs to be reviewed?

Yes

(ii) If yes, what changes seem appropriate?

In respect of willful false affidavits or false disclosure, the penalties should be as indicated above, and the jail term should be not less than two years.

3.8 Adjudication of Election Disputes

(i) Whether the existing scheme of adjudication of election disputes deserves a fresh examination including timely disposal of such cases?

Yes

(ii) If yes, what kind of new arrangement should be made for speedy disposal of election disputes?

All election disputes are now adjudicated by the High Court. The process is very tardy, and often the verdict is delivered at the end of the five year term of the elected legislator, or the case becomes infructuous on account of expiry of term. Therefore the following changes are desirable.

- The EC should be the final authority in adjudicating disputes/offences in relation to election expenditure, paid news etc involving imposition of fine. EC should be empowered to impose the fine.

- The EC should be empowered to adjudicate election petitions, and should give its verdict within 90 days, with a provision for appeal, but no stay on the EC's verdict.

Where imprisonment or disqualification for a period is involved, the matter should be decided by the judiciary with a time limit.

3.9 Other issues

(i) Whether law should be amended to provide that a person shall not contest from more than one constituency at a time?

The current law providing for a candidate contesting in no more than two constituencies at a time is reasonable. However, if a by-election is necessitated on account of a member vacating a seat upon election, the cost of conduct of election should be recovered by law from the person vacating the seat, or the political party on behalf of which he contested.

(ii) Whether the official limit of the expenditure incurred on campaigning during the period of election needs to be reviewed, in light of increase in the cost/price index?

Current limit for Legislative Assembly for most major states is Rs. 16 Lakhs. For Lok Sabha the limit is Rs. 40 Lakhs. The constituency size vary enormously, ranging from 1.5 Lakh voters to 5 Lakh voters in case of Assembly segment. Therefore, for Assembly, expenditure ceiling based on constituency size, at Rs. 10 per registered voter, is reasonable. For Lok Sabha, the expenditure ceiling can be Rs. 5 per registered voter. The ceilings can be revised from time to time as per the current practice. The ceilings should include paid news, cost of party's advertising, and the estimated cost of electioneering as assessed by the Election Observers/

authorities.

(iii) Whether furnishing of incomplete, false or inaccurate particulars of election expenses should be a ground for disqualification?

Yes. But such disqualification should apply only after due process of e nquiry with an opportunity to the candidate to explain.