



GS FOUNDATION BATCH FOR CSE 2024

Polity - 20

(Electoral Reforms and RPA)

Electoral Politics in India- Reforms and Representation of People Act

The stimulus to the beginning and the evolution of the Indian nationalist movement is mainly to be traced in the long series of varied social, political and economic factors which began to unfold in the aftermath of East India Company's victory in the battle of Plassey (1757) leading to the steady establishment of their political and economic dominance over the whole of India. Critical analysis of their policies by nationalists like Dadabhai Nauroji revealed that new economic, administrative and revenue systems introduced by the East India Company rulers were broadly exploitative.

The founding of the Congress Party in 1885 became a turning point in the evolution of the nationalist movement in India. Beginning as a small organisation of educated and urban Indians, the Indian National Congress ultimately evolved as a massive umbrella organisation of all sections of the Indian people.

The Indian National Congress led freedom struggle has left certain legacies for the generations to come, which could be broadly based on these principles:

- Establishment of a democratic polity.
- Division of powers in terms of a unique federation
- Secular State
- Independent and non-aligned foreign policy
- Democratic socialism with a mandate of establishing a welfare state.

However these things were easier said than done. Many even mocked the long fought independence and vesting of popular sovereignty in ordinary Indians by giving them equal right to vote.

But Indian polity since its inception has been able to retain its democratic ethos barring some sporadic events, though there had been certain challenges and there are still certain challenges present on the political landscape of India.



- **Bad mouthing for attention:** During the election brought out not just inter-party bad mouthing but also intra-party bad mouthing. This thing is not restricted to some party only; all political parties face a similar situation with little to no action taken to reign in these irresponsible politicians.
- **Criminalisation of Politics:** According to data from the ADR, the number of candidates with criminal charges elected to Parliament in India has been on the rise since 2004. In 2004, 24% of parliamentarians had pending criminal cases, which rose to 43% in 2019.
- **Alliance Government:** The era of coalition governments is running in India. A political party has to take the help of regional parties to come into power. That's creates the problem
- with coalition governments. The party should take note to the every party's demands and that running with it. Under the alliance government party cannot breach the limit. policy not come due to opposition and decision making process will be slow. Few policies may not come into action due to opposition. Every day, the party has to check whether numbers of supporters are good in health.
- **Family politics** If some person is victorious in politics his major family will be come in the political system. Family politics is an ordinary thing in Indian political system. The Father, Mother, daughter and relatives found in Assemblies and parliament. Family politics is hazardous because they can influence whole system more than other can.
- **Community based politics** Caste politics is one of the worst scenario in India. These are deeply prevailing in Indian villages. Rural people support political parties based on caste. Under this circumstances most people belongs to same community, the community will support same caste. This leads to polarization of votes and hence political class starts to

appease certain caste of group of caste with lucrative policies which may compromise the overall balanced growth of the nation or state.

DETERMINANTS OF ELECTORAL BEHAVIOUR

The electoral behaviour is determined by various factors such as language, religion, caste, sex, tribes and region. The regional and linguistic factors have been in use by the Akali Dal in Punjab in order to garner votes and to mobilise votes by the DMK in Tamil Nadu and TDP in Telangana region. These variables somehow identify the contemporary Indian political behaviour. The political parties have tried to exploit the caste factor during the election process to enable the elite group of caste to get inducted to the political process. The politicisation of caste has however become a parameter for distribution of election tickets, formation of ministries and also a major issue in the decision making of the voter in favour of the candidate taking into consideration the caste association.

Though the caste association has helped the uneducated masses conscious in analysing their rights and privileges. Politics has penetrated and expanded in the remote areas in the democratic process and finds stuff for its articulation to transform it into its own pattern and attain an opportunity to strive for positions and assert their identity.

Electoral process thus has been an awakening call for participation and exercising of rights to vote and powers and analysing the fate of political leaders by all segments of society. The electoral process at times has been a route to social mobility for Yadavs in Bihar and UP. The rate of illiteracy is high amongst the dalits and the poor section of the society or the people living below poverty line and do not have proper access to communication and are inclined towards superstition and belonging to a particular religion or caste. The result of the election mainly depends on this section of the society. The electoral process becomes a tool to manipulate their rights and interest with an expectation to surrender their sovereign right.

Another variable is the dominant social group that persuades and influences the method of proxy voting which constraints the rights to vote of lower backward classes by leaving the choice to the landowner or zamindars.

Role of Caste as a Determinant of Electoral Behaviour

Castes has always played a decisive role in electoral process by granting the priority and power to the higher caste groups as a result of green revolution and land reforms such as Rajputs, Zamindars, Brahmins. The Dalits of north India have also been included in this group with the rise of Bahujan Samaj Party in UP. The caste groups are exploited by the class elites to attain the self-interest of the political parties and these castes groups are thus considered as the vote banks and supporters of political parties. A caste association is formed to mobilise votes at the time of election and affects democracy.

There are three types of mobilisation such as horizontal, vertical and differential on the basis of caste.

- **Vertical mobilisation** is the organising of the political support by traditional elites in local societies that are organised and integrated by rank, mutual dependence and the legitimacy of traditional authority.
- **Horizontal mobilisation** involves the grouping of political support by class or community leaders and their specialised organisations.
- **Differential mobilisation** involves the organising of direct or indirect political support by political parties and other integrative structures from viable but internally differentiated communities through parallel appeals to ideology, sentiment and interest.

The communists in AP used caste idioms to mobilise the class of agricultural labourers. The vital role played by caste is proved by the campaign strategies and mobilisation of votes during the selection process of candidates'. The clustering together of lower, middle and higher caste for one common interest has helped communists managing further consolidations.

Need for Electoral Reforms:

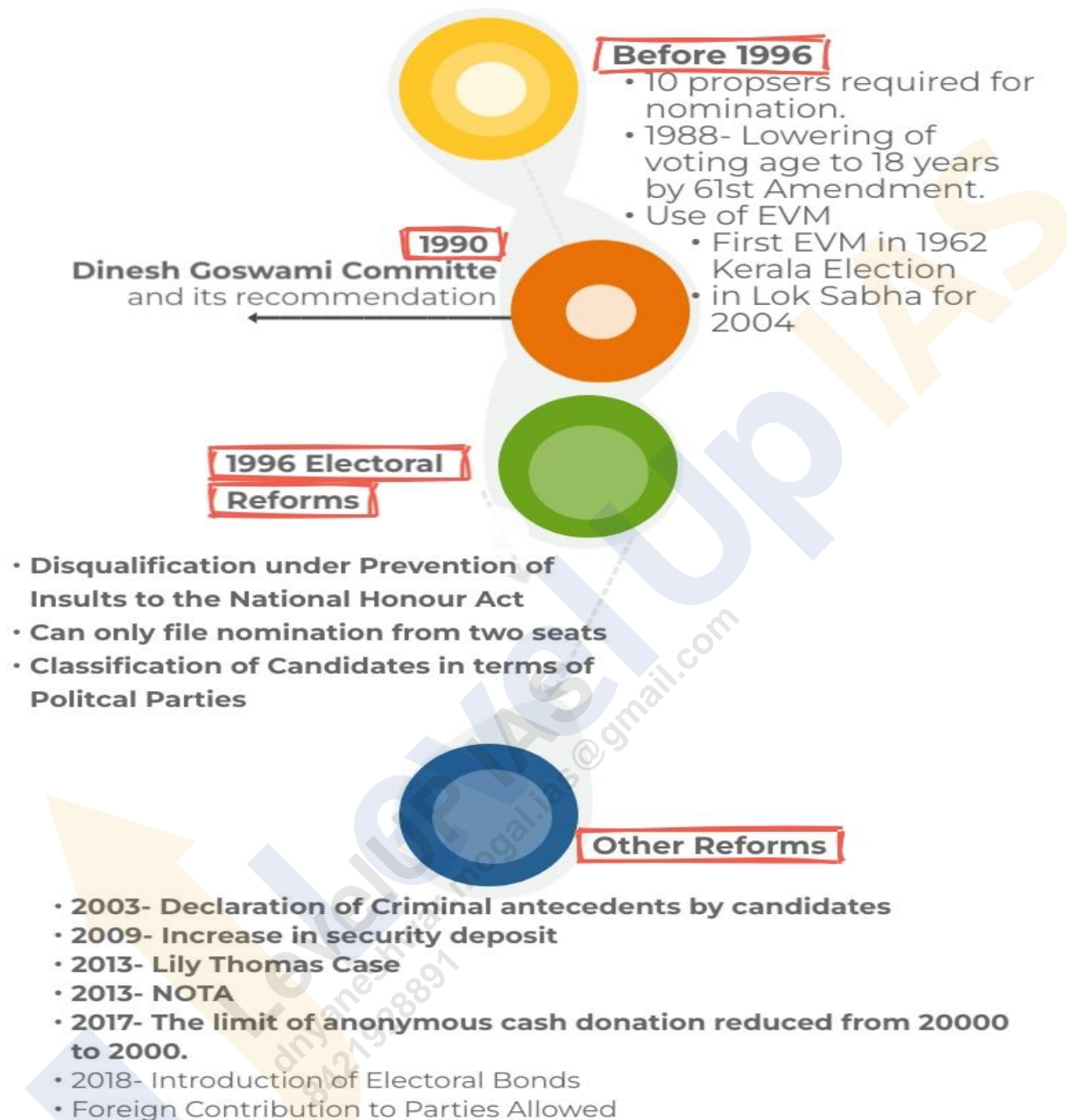
1. **Free and fair elections** is the sine-qua-none for the successful democracy and democracy is part of basic structure of Indian constitution. Hence, election commission is tasked by the constitution under the ambit of article 324 to conduct free and fair elections. So regular reforms in electoral process are mandatory.
2. **Making democracy more participatory and increase voter's participation in election.**
3. **Right to make informed choices:** Choice without adequate information is a no choice at all.

Top Court has observed in 2023 case: {Bhim Rao Baswanth Rao Patil V. K. Madan Mohan Rao}- a case under Article 136

"the right to vote, based on an informed choice, is a crucial component of the essence of democracy. This right is precious and was the result of a long and arduous fight for freedom, for Swaraj, where the citizen has an inalienable right to exercise her or his right to franchise.

4. **Reducing the influence of money and muscle power:** Electoral reforms help to reduce the influence of money and muscle power by regulating campaign finance and ensuring the safety of voters.
5. **To curb criminalisation of Politics:**
Lily Thomas Vs Union of India Case (2013)- declared section 8A of RoPA as ultra vires of constitution as it provided for deferment of disqualification of MPs after being sentenced from the court.
6. **Addressing electoral inequalities:** Electoral reforms try to bring down the inequalities such as the under-representation of women and marginalized communities.

Electoral Refroms in India



Electoral reform is welcome, but shouldn't be selective

- Government must take up all pending electoral reform proposals, instead of only going for politically motivated reforms like simultaneous elections and electoral bonds.
- Various pending electoral reforms:
 - Unified Electoral rolls for General Elections (Parliament and State) as well as Local Bodies : At present, the process for making electoral rolls is laid down in

the **Registration of Electors Rules, 1960**. The primary unit of electoral rolls is the assembly election constituency. Several such constituencies are aggregated to make a Lok Sabha constituency or broken down to make municipal or panchayat wards.

- The process of making electoral rolls requires manpower from all governmental departments. A major chunk of the work falls on schoolteachers. Their involvement in non-teaching work takes its toll.
- Another problem is stuffing of bogus voters in the panchayat/municipal rolls and at time exclusion of some genuine voters as well.
- **Extending the qualifying date for registration of young new voters:** According to Section 14(b) of the Representation of People Act of 1950, only those who have turned 18 on or before January 1 of the year are to be registered. This implies that all those who turn 18 between January 2 and December 31 of a year must wait till the next year. This technicality results in the exclusion of a large section of 18-year-olds.
- **About fairness in appointment of election commissioner:** For much of Indian democracy's history, the ECI has performed very well, earning accolades not only from the citizens of India but the world. The track record of most CECs was exemplary in displaying independence and neutrality, with the courage to stand up to the government of the day and it was hoped that this trend would continue.

The root of the problem lies in the flawed system of appointment of the Election Commissioners. They have so far been appointed unilaterally by the government of the day.

National Commission to Review the Working of the Constitution Report (2002)

Had also recommended that election commissioner in India should be appointed on the recommendation of the committee consisting of:-

Prime Minister + Leader of the Opposition in Lok Sabha + the Leader of the Opposition in Rajya Sabha + the Speaker of Lok Sabha + the Deputy Chairman of Rajya Sabha.

Earlier in 1990 an effort was made to amend the constitution in this regard-

When **The Constitution (Seventieth Amendment) Bill 1990** proposed that election commissioner in India should be appointed on the recommendation of the committee consisting of:

Chairman of Rajya Sabha + Speaker of Lok Sabha + Leader of the Opposition (or the leader of the largest party) in Lok Sabha. The CEC was further made a part of the consultative process in the appointment of the Election Commissioners.

However this bill was withdrawn in 1994.

There has been multiple demand for appointments through a broad-based consultation, as is done in most countries, including parliamentary scrutiny. In its 255th Report, the Law Commission of India also recommended a collegium system for appointing Election Commissioners.

Apart from the manner of appointment, the provision for the removal of Election Commissioners also needs correction. **At present, only the CEC is protected from being removed.**

The verdict of the Supreme Court:

In 2015, a public interest litigation was filed by Anoop Baranwal challenging the constitutional validity of the practice of the Centre appointing members of the Election Commission. In October 2018, a two-judge bench of the SC referred the case to a larger bench since it would require a close examination of Article 324 of the Constitution, which deals with the mandate of the Chief Election Commissioner.

A five-judge bench of the Supreme Court unanimously ruled that a high-power committee consisting of the Prime Minister, Leader of Opposition in Lok Sabha, and the Chief Justice of India must pick the Chief Election Commissioner (CEC) and Election Commissioners (ECs).

Aftermath of the judgment: The Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Bill, 2023.

Highlights of the Bill

- The Bill replaces the Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991. **It provides for the appointment, salary, and removal of the Chief Election Commissioner (CEC) and Election Commissioners (ECs).**
- The CEC and ECs will be appointed by the President upon the recommendation of a Selection Committee. The Selection Committee will **consist of the Prime Minister, a Union Cabinet Minister, and Leader of Opposition/leader of the largest opposition party in Lok Sabha.**
- Recommendations of the Selection Committee will be valid even when there is a vacancy in this Committee.
- **A Search Committee headed by the Cabinet Secretary will propose a panel of names to the Selection Committee.** Eligibility for the posts includes holding (or having held) a post equivalent to the Secretary to the central government.

- The salary and conditions of service of the CEC and ECs will be equivalent to that of Cabinet Secretary. **Under the 1991 Act, it was equivalent to the salary of a Supreme Court Judge.**

Key Issues and Analysis

- The selection process of the Election Commission **may be dominated by the government**, which has implications for its independence.
- Accepting the Selection Committee's recommendations in spite of a vacancy in its constitution **may effectively lead to a monopoly of government members in selecting candidates.**
- Making the CEC and EC's salary equivalent to the Cabinet Secretary may **lead to government influence as it is fixed by the government.** This is unlike the salary of a Supreme Court judge which is fixed through an Act of Parliament.
- CECs and ECs also perform quasi-judicial functions. **Limiting these posts to senior bureaucrats may exclude other suitable candidates.**

Electoral Bonds Scheme

The Government has notified the scheme of Electoral Bonds to cleanse the system of political funding in the country. The broad features of the scheme are given below:

1. Electoral Bond would **be a bearer instrument** in the nature of a Promissory Note and an interest free banking instrument.
2. A **citizen of India or a body incorporated** in India will be eligible to purchase the bond.
3. Electoral bond would be issued/purchased for any value, in multiples of `1,000, `10,000, `1,00,000, `10,00,000 and `1,00,00,000 from the specified branches of the State Bank of India (SBI).
4. The purchaser would be allowed to buy electoral bond(s) **only on due fulfilment of all the extant KYC norms** and by making payment from a bank account. It will not carry the name of payee.
5. Electoral Bonds **would have a life of only 15 days** during which it can be used for making donation only to the political parties registered under section 29A of the Representation of the Peoples Act, 1951 (43 of 1951) and which secured not less than one per cent of the votes polled in the last general election to the House of the People or a Legislative Assembly.
6. **The bonds under the Scheme shall be available for purchase for a period of 10 days each in the months of January, April, July and October**, as may be specified by the Central Government. An additional period of 30 days shall be specified by the Central Government in the year of the General election to the House of People.
7. The bond **shall be encashed by an eligible political party only through a designated bank account with the authorised bank.**

The Supreme Court on October 16, 2023 referred the challenge to the validity of the electoral bonds scheme which facilitates anonymous donations to political parties to a Constitution Bench of five judges.

According to an analysis by the Association of Democratic Reforms (ADR), between 2016-17 and 2021-22, the seven national and 24 regional parties in the country received a total donation of ₹9,188.35 crore from electoral bonds out of which the BJP's share was ₹5,271.9751 crore, while all other national parties together amassed ₹1,783.9331 crore.

Issues Raised in PILs:

- The scheme's anonymity violates a citizen's 'right to know, as inscribed under article 19(1)(a)
- Section 29C of the RoP Act had been amended to exempt political parties from informing the ECI about the details of contributions made to them through electoral bonds — this, would adversely impact transparency in the electoral process and make it difficult to ascertain whether donations were received illegally from companies or foreign sources.
- All the amendments to key statutes to ensure the scheme's implementation were done through the passage of the Finance Acts of 2016 and 2017 as Money Bills under Article 110 of the Constitution.

Stance of the election commission of India: In an affidavit filed before the Supreme Court in 2019, the ECI said that

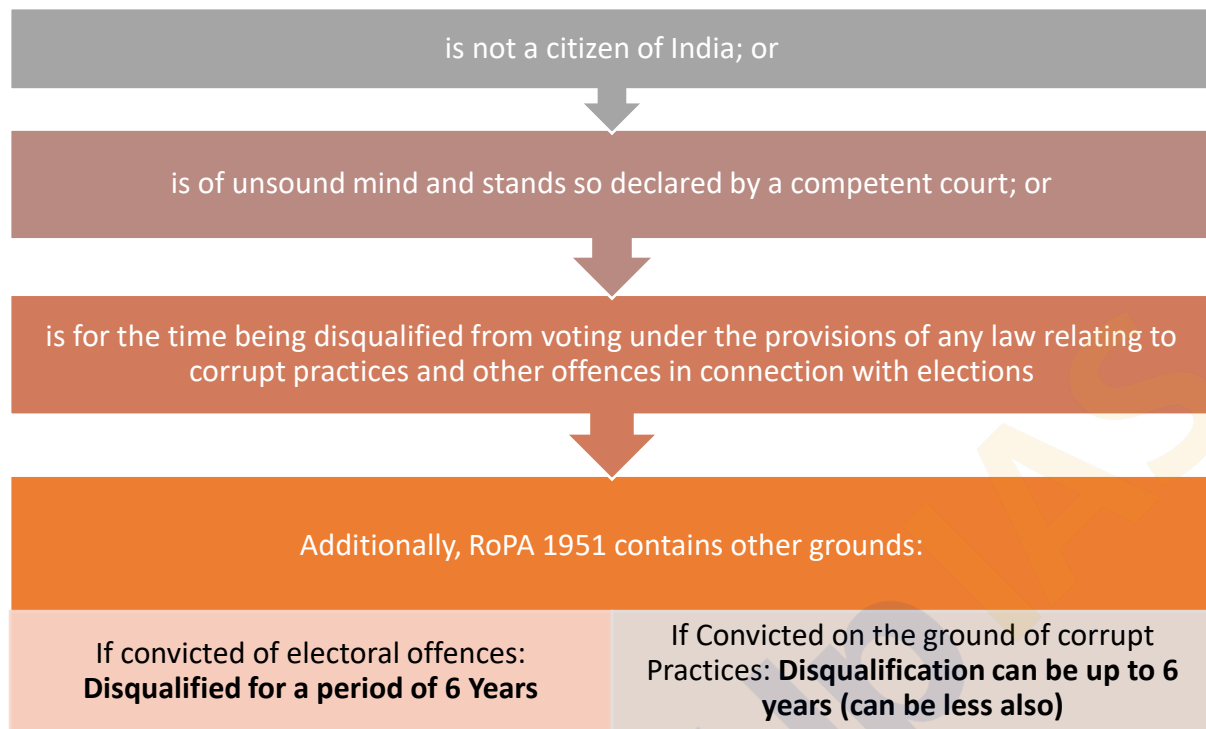
- electoral bonds would wreck transparency in political funding and invite foreign corporate powers to impact Indian politics.
- It also warned that the amendments brought about to key legislations would open up the possibility of shell companies set up for the sole purpose of making donations to political parties, with no other business consequence or disburseable profit.
- It also pointed out that the amendments virtually made the ECI guidelines of August 29, 2014 redundant which required political parties to file reports on contributions received, audited annual accounts, and election expenditure statements.

Representation of People's Act 1950

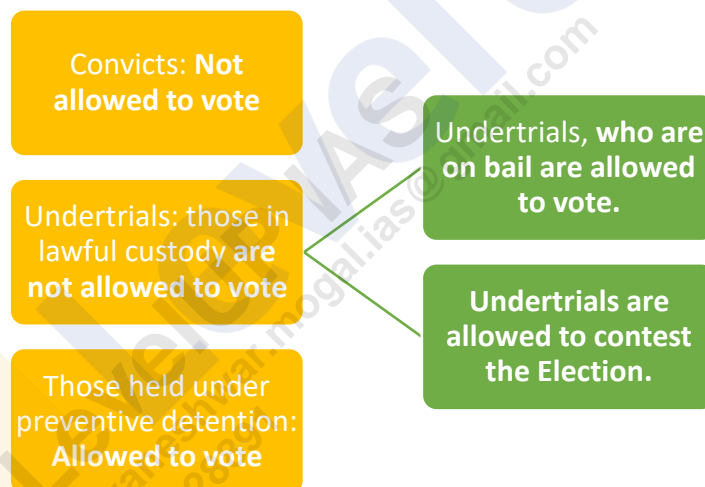
Rules for registration as a voter

- One person can register at only one constituency.
- is not less than eighteen years of age on the qualifying date, and
- is ordinarily resident in a constituency shall be entitled to be registered in the electoral roll for that constituency.

Disqualification from being a voter:



Voting Rights of Prisoners



Representation of People's Act 1951

PART IV Section 19-29 ADMINISTRATIVE MACHINERY FOR THE CONDUCT OF ELECTIONS

- **Chief Electoral Officer:** Subject to the superintendence, direction and control of the Election Commission, the chief electoral officer of each State shall supervise the conduct of all elections in the State under this Act.
- **District Election Officer:** the district election officer shall coordinate and supervise all work in the district or in the area within his jurisdiction in connection with the conduct of all elections to Parliament and the Legislature of the State.
- **Observers:** Election Commission may nominate an Observer who shall be an officer of Government to watch the conduct of election or elections in a constituency or a group of constituencies.
 - shall have the power to direct the returning officer, to stop the counting of votes at any time before the declaration of the result or not to declare the result if in the opinion of the Observer booth capturing has taken place.
- **Returning Officer:** general duty of the returning officer at any election to do all such acts and things as may be necessary for effectually conducting the election in the manner provided by this Act.
- **Presiding Officers and Other polling officers:** The district election officer shall appoint a presiding officer for each polling station and such polling officer or officers as he thinks necessary.
 - It shall be the general duty of the presiding officer at a polling station to keep order thereat and to see that the poll is fairly taken and he shall be assisted by other polling officers.

Part IVA- REGISTRATION OF POLITICAL PARTIES

- Any association or body of individual citizens of India calling itself a political party shall make an application to the Election Commission for its registration as a political party for the purposes of this Act **within 60 days of commencement of this act.**
- If such association has been formed after the commencement of this act then within **30 days of its formation.**
- Needs to furnish details like officer bearers of party, strength of workers, representation in legislature etc.
- The decision of the Commission shall be final.

Section 29B Political parties entitled to accept contribution. —Subject to the provisions of the Companies Act, 1956 (1 of 1956), **every political party may accept any amount of contribution voluntarily offered to it by any person or company other than a government company.**

If any contribution is received in excess of 20,000 rupees, then treasurer of the party shall make a report of it to the election commission.

PART V CONDUCT OF ELECTIONS

Nomination of Candidates

- 7 days from notification to file nomination papers.
 - Thereafter next day shall be for the screening of nominations.
 - Then 2 days' time shall be given for withdrawal of nomination if a candidate wishes.
 - the returning officer shall prepare and publish in such form and manner as may be prescribed a list of contesting candidates.
 - Then at least after 14 days only elections can be completed. This limit is 7 days for assembly elections.
1. **Nomination paper of the candidate shall be signed by one of the electors of the constituency as a proposer.**
 2. **If the candidates do not belong to a recognized political party, then need at least 10 proposers.**
 3. **Restriction on number of Nomination:** Two constituencies
 4. While filing the nomination candidate has to furnish certain information wrt his conviction or pending cases.
 5. **Security Deposit:**
 - a. **For MP:** 25,000 Rs (in case of SC/ST- 12500)
 - b. **For MLA:** 10,000 (in case of SC/ST- 5000)
 - c. For each nomination he has filed.

Advertising via media: Election Commission shall, on the basis of the past performance of a **recognised political party**, during elections, allocate equitable sharing of time on the cable television network and other electronic media in such manner as may be prescribed to display or propagate any election matter or to address public in connection with an election.

If a candidate whose nomination paper was found to be valid dies before actual poll then election has to be adjourned. ECI may call upon party to nominate new candidate.

Adjournment of Polls:

1. Due to emergency of calamities:
2. Destruction of ballot box or EVMs- election of such booth may be declared void and conducted on fresh day.

Section 61: In order to reduce impersonation for the marking with **indelible ink of the thumb or any other finger of every elector** who applies for a ballot paper or ballot papers for the purpose of voting at a polling station before delivery of such paper or papers to him;

Section 62: Right to vote: at one constituency and one booth

- Subject to disqualification under this act

- No person shall vote at any election if he is confined in a prison, whether under a sentence of imprisonment or transportation or otherwise, or is in the lawful custody of the police.
- This provision does not apply those who are detained under preventive detention- they can vote.

Counting of votes:

- Under the supervision and direction of returning officer.
- In case of equality of votes RO **shall decide winner by lottery.**
- The returning officer **shall report the result to the appropriate authority and the Election Commission**, and in the case of an election to a House of Parliament or of the Legislature of a State also **to the Secretary of that House**, and the appropriate authority shall cause to be published in the Official Gazette the declarations **containing the names of the elected candidates.**

Disputes:

- No election shall be called in question except by an election petition presented in accordance with the provisions of the act.
- **The Court having jurisdiction to try an election petition shall be the High Court.**
- A petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected.
- Every election petition shall be tried as expeditiously as possible, and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial.
- **Secrecy of voting:** No witness or other person shall be required to state for whom he has voted at an election.
- **HC may declare the election, of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected.**
- Grounds for declaring election to be void:
 - that on the date of his election a returned candidate was not qualified or was disqualified.
 - that any corrupt practice has been committed by a returned candidate or his election agent
 - that any nomination has been improperly rejected.
 - an appeal shall lie to the Supreme Court within 30 days on any question (whether of law or fact) from every order made by a High Court.

Bye-Elections:

- to be conducted within 6 months
- But not required if the remainder of term is less than 1 year.

Electoral Offences and Corrupt Electoral Practices:

Section 123: Defined Corrupt Practices

1. "Bribery"
2. **Receiving gratification** by a person for standing or not standing as, or for withdrawing or not withdrawing from being, a candidate;
3. **Undue Influence:** direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the free exercise of any electoral right.
4. The **promotion of, or attempt to promote, feelings of enmity or hatred between different classes** of the citizens of India on grounds of religion, race, caste,
5. The propagation of the practice or the commission of sati or its glorification
6. Publication of false statements wrt to the character of other candidates
7. The incurring or authorizing of expenditure in contravention of limit.
8. booth capturing by a candidate or his agent or other person.

Section	Offence	Punishment
125	Promoting enmity between classes in connection with election. —	imprisonment for a term which may extend to three years , or with fine, or with both
125A.	Penalty for filing false affidavit	imprisonment for a term which may extend to six months , or with fine, or with both
126	Prohibition of public meetings during period of forty-eight hours ending with hour fixed for conclusion of poll.	imprisonment for a term which may extend to two years , or with fine, or with both
126A	Publication of exit polls beginning of the hours fixed for poll on the first day of poll and continue till half an hour after closing of the poll in all the States and Union territories	imprisonment for a term which may extend to two years , or with fine, or with both
127A	No person shall print or publish, or cause to be printed or published, any election pamphlet or poster which does not bear on its face the names and addresses of the printer and the publisher thereof.	imprisonment for a term which may extend to six months , or with fine, or with both
129	Officers, etc., at elections not to act for candidates or to influence voting	imprisonment for a term which may extend to six months , or with fine, or with both

130	Prohibition of canvassing in or near polling station within 100 meters	Fine
134	Breaches of official duty in connection with election	Fine
134A	Penalty for Government servants for acting as election agent, polling agent or counting agent	imprisonment for a term which may extend to three months , or with fine, or with both
134B	Prohibition of going armed to or near a polling station	imprisonment for a term which may extend to two years , or with fine, or with both
135	Removal of ballot papers from polling station to be an offence- Even Presiding officer has the power to get that person arrested	imprisonment for a term which may extend to one year , or with fine, or with both
135A.	Offence of booth capturing. —	shall not be less than one year but which may extend to three years and with fine If government servant does booth capturing- min 3years to max 5 years
135C.	Liquor not to be sold, given or distributed on polling day	imprisonment for a term which may extend to six months , or with fine, or with both

National Party

	A political party can be recognized as a national party in India if it fulfills one of the requirements listed below as per the Election Commission of India
Obtain	Obtain at least 6% of valid votes in elections to the Legislative Assembly or Lok Sabha in four or more states and win at least four seats in the Lok Sabha from any state or state.
Win	If it has won at least 2% of the total seats in the LS from at least 3 states
Recognize	At least four states recognize the party as a state party.

State Party

If it secures 6% of the valid votes polled and , Wins 2 seats in the assembly of the state concerned or

If it secures 6% of the valid votes polled in the state at a general election to the Lok Sabha and it wins 1 seat in the Lok Sabha from the state concerned or

If it wins 3% of seats in the legislative assembly at a general election to the legislative assembly of the state concerned or 3 seats in the assembly, whichever is more or

If it wins 1 seat in the Lok Sabha for every 25 seats or any fraction thereof allotted to the state at a general election to the Lok Sabha from the state concerned or

If it secures 8% of the total valid votes polled in the state at a General Election to the Lok Sabha from the state or to the legislative assembly of the state. This condition was added in 2011.