



# Nomination, Scrutiny, Withdrawal & Allotment of Symbols

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SUNIL VERMA, NLMT



# Reference ....

- Representation of People Act, 1951
- Conduct of Election Rules, 1961
- Elections Symbol (Reservation & Allotment) Order, 1968
- RO Handbook



# A brief Background. . . .

- Relevant Notifications
- Nomination Form/Form 26
- Form A & B
- Various forms under Conduct of Elections Rules



# Some case studies

- Scrutiny of Substitute candidate's nomination paper- form rejected despite of having 10 proposers
- Lack of due diligence during Scrutiny- Independent candidate having 1 proposer- nomination accepted
- Form A & B to two candidates- a high stake case



# Various Stages...

- Announcement of Elections
- Nominations
- Scrutiny
- Withdrawal
- Allotment of Symbols
- List of contesting candidates



# Pre Nominations Preparations

- Action regarding Model Code of Conduct
- Preparing Public Notice
- Orders regarding vehicles/persons allowed
- CCTV/Videography arrangement
- Prepare the material to be handed over to candidate

# Restriction on Number of vehicles and people at the time of Filing of Nominations



- ✓ Maximum **three vehicles** in the convoy of a candidate or accompanying him to be allowed to come within a periphery of 100 meters of ROs/AROs Office
- ✓ Maximum **five persons** (including the candidate) can be allowed to enter the Office of ROs/AROs at the time of filing nomination.
- ✓ Any violation of this instruction at the time of filing nomination papers will be seriously viewed by the Commission and actions will be taken against DEO/RO or such other person including candidate and or his party responsible for violation.





# Instructions on CCTV/Videography

- Installation of CCTV Cameras inside the RO room as well as exit gate of room.
- The recording of the CCTV footage shall be ensured with uninterrupted power supply.
- If CCTV arrangement cannot be made, then there should be videography done with time stamping facility.
- Entire Process of filing of each nomination to be videographed.
- Continuous/unedited videography in the last hour of filing nomination (2 PM onwards on the last day ).





# Nomination

- In the case of a general election to House of People/State Legislative Assembly, the President/Governor, under Section 14/15 of the Representation of the People Act, 1951 shall, by one or more notifications published in the gazette on such date or dates as may be recommended by the Election Commission, call upon the Parliamentary/Assembly constituencies in the State to elect members for the purpose of constituting a new House/Assembly.
- On the same date on which the above notification calling the election is issued, the Election Commission will issue a notification in the official gazette under Section 30 of that Act fixing the program for the various stages of the election.
- Immediately after such notification, Returning Officer is required to issue a public notice of the election under Section 31 of the Representation of the People Act, 1951 read with Rule 3 of the Conduct of Elections Rules, 1961.



# Nomination Process

**Filing of nomination starts on the date of notification by the President/Governor under Section 14/15 of the R.P. Act, 51.**

- RO must issue public notice of election (under Sec. 31) in Form -1 (appended to CE Rules, 61)
- In the case of election to Sikkim Legislative Assembly the notice is to be issued in Form 3D and 3E of Conduct of Assembly Elections (Sikkim) Rules 1979, as the case may be.
- Public notice has to be **under the signature of the RO only**. No other authority can issue this public notice.



# Case

## *A Case where the election notification was rescinded on account of improper public Notice.*

- In a bye-election to the Lok Sabha in Uttar Pradesh, the Public Notice was issued by the DM whereas the ADM was the RO.
- When this error was noticed, **ECI cancelled the election notification and issued a fresh notification subsequently.**

# Public Notice

## Particulars to be specified [in Form 1]



- Specify the election.
- Mention the place at which nominations are to be filed (normally at the headquarters of RO) .
- Specify the ARO who will receive nomination paper in addition to RO. In normal circumstances, only one ARO should be so specified.
- Mention the last date of filing nomination, date, time and place of scrutiny, withdrawal and date & hours of poll.



# Public Notice-Publishing

- Public notice to be published in the morning of the date of notification well before **11:00 AM** (time for commencement of nomination filing).
- Notice shall be in English and the official language of the State.
- Notice to be displayed on the notice board of RO, AROs and in other prominent public offices. ( O/o Panchayat Samiti, Gram Panchayat, etc.)



# FORM 1

## NOTICE OF ELECTION

Notice is hereby given that :-

(1) an election is to be held of a member to the House of the People  
/.....

Legislative Assembly/.....Legislative Council in the  
..... constituency;

OR



# FORM 1

(1) an election is to be held of a member(s) to the Council of State /..... legislative Council/ ..... by the elected members of the .....Legislative Assembly.

(2) nomination papers may be delivered by a candidate or any of his proposer to the Returning Officer or to ..... Assistant Returning Officer, at ..... between 11 A.M. and 3 P.M. on any day (other than public holiday) not later than the .....



## FORM 1 Contd..

(3) forms of nomination paper may be obtained at the place and times aforesaid;

(4) nomination paper will be taken up for scrutiny at  
..... on .....  
..... at .....

(5) notice of withdrawal of candidature may be delivered either by a candidate or his proposer or his election agent [who has been authorised in writing by the candidate to deliver it] to either of the officers specified in paragraph (2) above at his office before 3 P.M. on the  
.....



# FORM 1 Contd..

(6) in the event of the election being contested, the poll will be taken on ..... between the hours of ..... and...  
.....

Place .....

Date .....

.....Returning Officer.]



# Nominations... essentials

- Nomination Form
- Affidavit
- Form A & B
- Security Deposit
- Oath of affirmation
- Copy of Caste Certificate (if applicable)
- Extract of electoral Roll (if applicable)



# Requirements for valid nomination [Sec. 33(1)]

- Form of nomination paper – [Form 2A](#) for Lok Sabha and [Form 2B](#) for Legislative Assembly.
- To be presented before RO/ specified ARO only.
- Can only be filed at the place mentioned in the public notice.
- Can be filed only between **11 AM and 3 PM** during the period for filing as per schedule notified by ECI u/s 30 of RP Act, 51.

# Requirements for valid nomination contd.



- Nomination can be filed only by candidate or any of the proposers.
- Cannot be sent by post or filed through any other person.
- To be filed only at the prescribed place(s).
- Nomination to be signed by the candidate and the prescribed number of proposers.
- Cannot be filed on a public holiday.



# Prescribed number of proposers

Recognized Party*	For all other candidates*
One proposer**	10 proposers**

## Note :

- ✓ **\*Recognized Party**-Recognized National Parties or one of the recognized State Parties of the State concerned.
- ✓ \*\*Proposers should be **electors of the constituency concerned**.
- ✓ **Recognized Party** of the other States- Also requires 10 proposers.



# Proposers-clarifications

- Under rule 2 (2) of C.E. Rules, 1961, in case of proposers who are illiterate persons, their thumb Impression has to be attested by the RO or an officer authorized by ECI.
- Therefore Thumb Impression has to be affixed in the presence of the RO or the authorized officer (an Administrative Officer not below the rank of SDO has been authorized for the purpose by ECI) .
- Form of nomination paper – [Form 2A](#) for Lok Sabha and [Form 2B](#) for Legislative Assembly may be seen for reference.



# Security Deposit



- Rs.25,000 for Lok Sabha election.
- Rs. 10,000 for Assembly election.
- Half the amount for SC/ST candidates (even in general constituencies).
- To be made either in cash before the RO/ARO or in RBI/ Treasury-***no deposit acceptable by cheque or Bank draft.***
- Deposit to be made when filing the first set of nomination or prior to it.



# For Reserved Constituencies

- For reserved constituencies, candidates have to give a declaration specifying the caste/tribe to which he/she belongs.
- Such caste/tribe should be included in the list of SC/ST in that State [Sec.33 (2)] .
- It is desirable to obtain certificate to prove SC/ST status.



# Important points..

- Public Holiday
- Role of ARO
- Revised form 26
- Number of proposers
- Nomination at 3 p.m.
- CCTV/Video Recording
- Number of Nomination papers
- No. of persons/vehicles allowed (example)



## Some questions...

- Can a proposer of any candidate be also a candidate for the same constituency?
- What if 5 or more than 5 persons, who are proposers, happen to be illiterate & their thumb impressions are to be attested, can we allow more than 5 persons in the RO room in that case?
- Whether nomination papers of a candidate who was physically present just a minute before 3:00 PM on the last day of nomination, but without documents will be received or not?



# Other Documents to be filed with Nomination Papers

1. For a person dismissed from an office under govt. of India/any State Govt., to contest election within 5 years of dismissal:

**Submit along with nomination paper, a certificate from ECI stating that the dismissal was not on account of corruption or disloyalty to State. [S. 33(3)]**

2. Candidate who is an elector of a different constituency:

**Certified extract of entries in the relevant roll to be submitted –[S.33(5)]**

**If not filed with nomination, this can be filed by the time of scrutiny. RO to give a notice - in the check-list in the format as per *ECI letter No.***

***576/3/ECI/LET/FUNC/JUD/SDR/2013 dated 12th January 2017.***



# Affidavit by candidate

## 3. Affidavit:

**Candidate is required to file affidavit in Form-26 (Form 26 has been amended vide 3/4/2019/SDR/Vol. I dated 28.02.2019)**

**The affidavit to be filed along with nomination paper or up to 3:00 pm on the last date of filing nomination.**

**All the columns in the affidavit must be filled in. No column should be left blank.**

**If candidate does not have information to be filled in a column, he/she should fill – Not Applicable / No/Not Known.**



# Clarifications on Affidavit by candidate

- ✓ Affidavit to be sworn before Notary Public/Oath Commissioner/Magistrate of the first class. Affidavit to be typed or written legibly and no columns to be left blank.
- ✓ If the affidavit has not been filed with nomination, in that case notice to be given (as per check list).
- ✓ Can Executive Magistrate attest the affidavit ?



# Action on Affidavit

- ✓ Copy to be displayed on notice board of RO and also notice board of ARO if his office is in a different place. If office of both RO and AROs are outside the boundary of constituency, one set of copies of affidavits to be displayed in a prominent public place within constituency limits.
- ✓ Copies to be supplied free of cost to whoever requests for it. Copy to be uploaded on website of CEO within 24 hours of filing.
- ✓ If anyone files affidavit pointing out false statements in any affidavit, that also to be displayed on notice board.
- ✓ RO is not required to conduct enquiry into correctness of statements in the affidavits.



# Photographs of Candidates

- ✓ As per revised Form (sent vide letter dated 7<sup>th</sup> July, 2017), each candidate has to affix a photograph on the nomination paper
- ✓ Photographs of candidates is to be printed on ballot paper
- ✓ Candidates required to submit stamp size photograph (2 cm x 2.5 cm).



# Preliminary Examination

- ✓ Preliminary examination from technical standpoint at the time of receiving nomination paper. [ S. 33(4)]
- ✓ Entries relating to electoral roll details to be compared.
- ✓ Clerical errors in names, Sl. No. etc. can be allowed to be corrected or even ignored.
- ✓ Defects, if any, to be pointed out to candidate.



## Forms “A” and “B” by Pol. Parties

- ✓ Paragraph 13 of Symbols Order provide requirements for treating a candidate as a candidate set up by political party.
- ✓ Forms A and B to be filed latest by 3 PM on the last day of filing nomination.
- ✓ Both Forms A and B to be submitted to RO.
- ✓ Forms A & B to be signed in ink in original. Photocopy not acceptable. Form received through Fax / e-mail also not acceptable.



## Forms 'A' & 'B'.....

- ✓ There is provision in Form B to cancel the notice given in favour of a candidate by submitting a fresh Form B (by 3 PM on last date of filing nomination) mentioning the name of the new candidate, and **specifically rescinding** the notice given earlier in favour of the first candidate.
- ✓ If you receive Form B from the same party in favour of more than one candidate, duly signed by the authorized office-bearer, and there is no cancellation/rescinding of Form B for any candidate, then among such candidates, the one who filed **nomination paper first** shall be treated as the candidate sponsored by that Party (**para 13A of Symbols Order**).



# All About Oath/Affirmation

- ✓ Oath had to be made and subscribed by the candidate in person **after** the submission of nomination paper to RO and by the day before the date of scrutiny of nominations. (***Latest by mid-night of the date preceding the date of scrutiny***)
- ✓ One oath is sufficient for all nomination papers if candidate is contesting for same house.
- ✓ Two separate oaths are required for contesting to different houses (Lok Sabha/Legislative Assembly).
- ✓ Oath to be made only after filing nomination and before the day of scrutiny



# All About Oath/Affirmation-Contd

- ✓ Candidate required to make oath or affirmation in the prescribed format in person. Certificate of oath to be given to the candidate without his applying for it.
- ✓ Onus is on candidate to produce Certificate of Oath before the RO (wherever taken before a different authority).
- ✓ RO/ARO are authorized authorities before whom oath can be made.
- ✓ Oath can also be taken before certain other authorities prescribed by ECI

# Authorities before whom Oath or Affirmation to be made



## **AUTHORITIES BEFORE WHOM OATH OR AFFIRMATION TO BE MADE**

- i. RO or any of the Assistant ROs of the constituency.
- ii. All stipendiary Magistrates of the first class, District Judges and persons belonging to judicial service of the State.
- iii. Superintendent of the prison if the candidate is confined in a prison.
- iv. Commandant of the detention camp if the candidate is under preventive detention.
- v. Medical Superintendent/Medical Practitioner attending to the candidate in case candidate is admitted in hospital.

# Authorities before whom Oath or Affirmation to be made-Contd



## **AUTHORITIES BEFORE WHOM OATH OR AFFIRMATION TO BE MADE**

- vi. Diplomatic or Consular Representative of India in the country, if the candidate is out of India.
- vii. Any other person nominated by the ECI, on application made to it.

### **Note:**

1. Certificate of oath to be given to the candidate without his applying for it.
2. If taken before a different authority-Onus is on candidate to produce Certificate of Oath before the RO



# Action by RO on receipt of nomination

**Step 1:** Enter date & time & initials.

**Step 2:** Give running serial number in order of presentation.

**Step 3:** Fill up Part-VI of nomination form & handover to candidate/proposer as acknowledgement.

**Step 4:** Give a notice of time, date & venue of allotment of symbol.

**Step 5:** Fill up check list & handover copy to candidate/proposer filing nomination.



# Action by RO on receipt of nomination

**Step 6:** Point out defects, specifically mention documents not filed and/or found defective in any manner in the second part of checklist as notice to candidate for filing the same within prescribed time limit.

**Step 7:** Obtain specimen signature of candidate.

**Step 8:** Ask candidate to write down his name in the language in which ballot paper to be printed.

**Step 9:** Handover to candidate/proposer-

- i. **The Register prescribed for maintaining day-to-day account of election expenses with all connected documents.**
- ii. **An extract of Section 127A.**
- iii. **Instructions regarding criminal antecedents**

**Step 10:** Advise the candidate to make and subscribe oath.



# Check List

Original/Duplicate

(Original to be kept with nomination paper and duplicate to be handed over to candidate)

## Check List of documents in connection with filing of nomination

Name of constituency : .....

Name of the candidate : .....

Date and time of filing nomination paper: .....

Sl.No. of nomination paper : .....



## Check List Contd..

Sl. No	Documents	Whether filed (write Yes/No) [if there is any defect/shortcomings in the documents, the same should be specified]
1.	<p>Affidavit in Form 26</p> <ul style="list-style-type: none"><li>(a) Whether all columns are filled up</li><li>(b) If not, which are blank column(s) (please specify).</li><li>(c) Whether the affidavit is sworn before an oath Commissioner or Magistrate of First Class or before a notary Public</li></ul>	



# Check List Contd..

Sl. No	Documents	Whether filed (write Yes/No) [if there is any defect/shortcomings in the documents, the same should be specified]
2.	Certified extract of electoral roll (when candidate is an elector of a different constituency)	
3.	Forms A and B (applicable in the case of candidates set up by political parties)	



# Check List Contd..

Sl. No	Documents	Whether filed (write Yes/No) [if there is any defect/shortcomings in the documents, the same should be specified]
4.	Copy of caste certificate (if the candidate claims to belong to SC/ST)	
5.	Security deposit (whether made)	
6.	Oath/affirmation (whether taken)	



# Check List Contd..

**The following documents which have not been filed should be filed as indicated below:**

(a) .....should be filed latest by.....

(b) Above mentioned columns in the Affidavit in Form 26 have been left blank. You must submit a revised Affidavit with columns duly filled up before the commencement of scrutiny of nominations, failing which the nomination paper will be liable to be rejected

(c) ..... should be filed latest by.....

**Received:**

.....

**(Signature of candidate)**

.....

**Signature of RO/ARO**

**Date & Time :**

**Place:**



# Check List Contd..

## N.B.:

1. The Affidavit in Form 26 and Forms A & B have to be filed latest by 3.00 P.M. on the last date of filing nominations.
2. The nomination paper will be rejected if a candidate fails to file a revised affidavit filling the blanks in Form 26 even after reminder by RO by the hour fixed for scrutiny of nomination paper.
3. Oath has to be taken after filing nomination paper and before the date fixed for scrutiny.
4. Certified extract of electoral roll can be filed up to the time of scrutiny.
5. Security deposit should be made either before filing of nomination paper or at the time of filing of nomination paper. Therefore, there is no question of issuing notice for making the security deposit.



# Acknowledgment/Notice

- ✓ Apart from acknowledgement in Part-VI of nomination form, checklist duly filled is a further acknowledgement.
- ✓ All notices for filing various documents shall be given in checklist itself.
- ✓ Notice of Photograph, if not furnished.

# Other documents to be handed over to candidates



- ✓ Handover the Register prescribed for maintaining day-to-day account of election expenses, alongwith all other connected documents. Obtain an acknowledgment from the candidate/proposer filing the nomination.
- ✓ A written notice mentioning the time and date and venue for allotment of symbols.
- ✓ Handover an extract of Section 127A (printing/ publishing of pamphlets, posters etc.)
- ✓ Handover the instructions regarding criminal antecedents.



# Notice of nomination

- ✓ RO to publish on Notice Board a notice in FORM-3A regarding nominations received up to 3 PM of each day during the nomination filing period.
- ✓ Where the Specified ARO receives nomination in a different place such ARO should also publish such notice in FORM-3A and keep the RO informed on a daily basis.

# Preparation of List of nominated candidates



- ✓ To be prepared after 3 PM on last day of filing, as per format given by ECI – Handbook.
- ✓ Candidates to be classified in 3 categories-
  - ✓ (i) Recognized parties,
  - ✓ (ii) Registered unrecognized parties and
  - ✓ (iii) independents.
- ✓ Within each category, names of candidates shall be arranged alphabetically.
- ✓ Recognized parties of other States will be included in the 2nd category (registered unrecognized party).

# Do's during nomination process

## Do's



- ✓ Carefully check the documents received with nomination papers & communicate all deficiencies in writing in the checklist.
- ✓ Keep adequate security and arrangements for last day rush and videograph the process in the last hour.
- ✓ Maintain separate file for different candidates

# Do's during nomination process-Contd

## Do's



- ✓ Follow statutory rules and ECI guidelines and the prescribed checklist.
- ✓ Check every Form A and B at the time of receiving nominations with respect to the office address given in the list of registered political parties issued by the Commission before every general election.
- ✓ Keep all the nomination papers and connected documents filled by a candidate together and in safe custody of RO.

# Don'ts during nomination process



## Don'ts

- ✓ Hasty receipt of nomination papers.
- ✓ Inadequate arrangements for last day rush.
- ✓ Improper videography of the process.
- ✓ Not following statutory rules and ECI guidelines



## Questions..

- Whether the nomination paper filed by a candidate not signed at the time of submission or filing of nomination papers can be signed thereafter before scrutiny of nomination papers or not?
- In case of reserved constituency, the SC/ST certificate if objected to on the ground that the caste/ tribe do not figure in the list of the Constitution (Scheduled Castes) and (Scheduled Tribes), Order 1950, even though the certificate is proved to be issued by a competent authority, then what happens?
- Nomination at 3 pm but oath at 4 pm. Time to be entered in certificate of oath ?



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# INSTRUCTIONS ON CRIMINAL ANTECEDENTS



# Directions of Hon'ble Supreme Court

- Hon'ble Supreme Court in its catena of judgments [dated 13th March, 2003 in Civil Appeal No. 490 of 2002 (People's Union for Civil Liberties and another v Union of India)] facilitated disclosure of full background including criminal antecedents and financial status of every candidate in the form of affidavit.
- In WP (C) No. 784 of 2015 (Lok Prahari Vs. Union of India & Others) and WP (C) No. 536 of 2011 (Public Interest Foundation & Ors. Vs. Union of India & Anr. the Court on 25th September, 2018 directed vide Para 4:
  - (i) Each contesting candidate shall fill up the form as provided by the Election Commission and the form must contain all the particulars as required therein.



- (ii) It shall state, in bold letters, with regard to the criminal cases pending against the candidate.
- (iii) If a candidate is contesting an election on the ticket of a particular party, he/she is required to inform the party about the criminal cases pending against him/her.
- (iv) The concerned political party shall be obligated to put up on its website the aforesaid information pertaining to candidates having criminal antecedents.
- (v) The candidate as well as the concerned political party shall issue a declaration in the widely circulated newspapers in the locality about the antecedents of the candidate and also give wide publicity in the electronic media. When we say wide publicity, we mean that the same shall be done at least thrice after filing of the nomination papers. "



- In pursuance of this, Election Commission issued detailed instructions on 10th October 2018. In its directions, it prescribed six forms for the said purpose.
- The Commission also released detailed Frequently Asked Questions (FAQs) on 5<sup>th</sup> November, 2018 which was reiterated on 19<sup>th</sup> March, 2019 in this regard.



<b>Formats</b>	<b>Action to be taken by</b>	<b>Platform</b>
C1	Candidates	News Paper & TV
C2	Political Parties	Newspaper, TV & Political Party's website,
C3	Returning Officer	Reminder to the Candidate
C4	Candidate to DEO	Report to be submitted before the DEO (in case of elections to Lok Sabha and Vidhan Sabha)
C5	Political Parties to CEO	Report about publishing of the declaration. To CEO of the State concerned
C6	CEO to the Commission	Report regarding compliance by the political parties

- Further, in contempt petition(C) no. 2192 of 2018 in WP(C) no. 536 of 2018, the Hon'ble Supreme Court on 13th February, 2020, in the matter related to candidates with criminal antecedents, directed:-

"4. We have also noted that the political parties offer no explanation as to why candidates with pending criminal cases are selected as candidates in the first place. We therefore issue the following directions in exercise of our constitutional powers under Articles 129 and 142 of the Constitution of India:

(1) It shall be mandatory for political parties (at the Central and State election level) to upload on their website detailed information regarding individuals with pending criminal cases (including the nature of the offences, and relevant particulars such as whether charges have been framed, the concerned Court, the case number etc.) who have been selected as candidates, along with the reasons for such selection, as also as to why other individuals without criminal antecedents could not be selected as candidates.





- (2) The reasons as to selection shall be with reference to the qualifications, achievements and merit of the candidate concerned, and not mere "winnability" at the polls.
- (3) This information shall also be published in:
  - (a) One local vernacular newspaper and one national newspaper;
  - (b) On the officials social media platforms of the political party, including Facebook & Twitter.
- (4) These details shall be published within 48 hours of the selection of the candidate and not prior to two weeks before the first date for filing of nominations.



(5) The political party concerned shall then submit a report of compliance with these directions with the Election Commission within 72 hours of the selection of the said candidate.

(6) If a political party fails to submit such compliances report with the Election Commission, the Election Commission shall bring such non-compliance by the political party concerned to the notice of the Supreme Court as being in contempt of this Court's orders/directions. "



The Commission, in pursuance to this, on 6th March, 2020 prescribed two more forms for compliance by the political parties,

<b>Formats</b>	<b>Action to be taken by</b>	<b>Purpose</b>
C7	Political Parties	Newspapers, social media platforms & website of the party.
C8	Political Parties To Commission	Report of compliance of the directions



The Commission has now prescribed following timeline for publicity of criminal antecedents during the period starting from the day following the last date of withdrawal and upto 48 hours before ending with the hour fixed for conclusion of poll

- i. Within first 4 days of withdrawal of nominations.
- ii. Between next 5th - 8th days.
- iii. From 9th day till the last day of campaign (the second day prior to date of poll)



Illustration: if the last date for withdrawal is 10th of the month and poll is on 24th of the Month, the publication of declaration shall be done in the following time period: -

- i. First block for publication shall be done between 11th and 14th of the Month,
- ii. Second block for publication shall be done between 15th and 18th the Month
- iii. and the third block for publication shall be done between 19th and 22nd of the Month



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# SCRUTINY OF NOMINATIONS

# Authority: Scrutiny of Nominations



**Returning Officer is the only authorized person who can do the scrutiny of nomination papers.**

## **Exception:**

- ✓ *Only under extremely rare instances of unavoidable circumstances which prevent RO from undertaking this function can one of the Assistant Returning Officers be authorized by RO in this behalf can do the scrutiny.*
- ✓ *If such situation occurs, record immediately the unavoidable reasons for such delegation as also written authority by RO in favour of one of the Assistant Returning Officers by name.*
- ✓ *Also intimate the District Election Officer about it before authorizing the ARO.*



# Date, Time and Place of Scrutiny

- ✓ Date of scrutiny specified by the Commission in its programme notification and the RO has no discretion to change it;
- ✓ However, he has a discretion under the law to fix the time and place of scrutiny.
- ✓ The RO has to give notice about scrutiny both in public notice in Form-1 and also in the receipt which he has to give to each candidate in acknowledgement of receipt of nomination.





# Scrutiny: A Quasi-Judicial Process

- ✓ Scrutiny of nominations is a quasi-judicial function of the RO but that does not give him the status of a Court. The enquiry into the question of validity or otherwise of a nomination paper is a summary enquiry.
- ✓ All present at time of scrutiny should be given reasonable opportunity of inspecting all nomination papers and their accompanying documents. They should not, however, be permitted to handle those papers.
- ✓ RO Should be fair & impartial and should follow high code of conduct. He should decide the validity of nomination papers on his own and should be guided only by the provisions of Law & instructions of Commission.

# Persons Who Can Be Present At Scrutiny Of Nominations



Candidate himself.

His election agent.

One of his proposers.

One other person authorized by the candidate.

## Note:

- ✓ Presence of a candidate or his representative not mandatory at the time of scrutiny.
- ✓ Even if none is present on behalf of a candidate, the nomination paper shall be scrutinized on merits and appropriate decision shall be taken.



# Scrutiny: How to Conduct

- ✓ The whole process of scrutiny of nominations should be video-graphed in all cases for ensuring more transparency in the scrutiny.
- ✓ All nomination papers should be scrutinized **one by one** and decision accepting or rejecting should be recorded on each nomination paper separately.
- ✓ Even if one of the nomination papers of a candidate is accepted, his remaining nomination papers must also be scrutinized individually.
- ✓ Where any objection is made against any nomination paper, RO must record his decision giving reasons for accepting or rejecting the objection. RO can raise objection to any nomination suo motu also.



# Scrutiny: How to Conduct

- ✓ If the nomination of a candidate has been objected to, he should be given reasonable opportunity of rebutting the same and, where necessary, scrutiny proceedings in relation to his nomination may be adjourned. ***Scrutiny proceedings in relation to other candidates should, however, continue.***
- ✓ Scrutiny can be adjourned maximum upto the 2<sup>nd</sup> day after the day of scrutiny which is normally the last date of withdrawal for candidatures. Scrutiny in such case has to be completed by 11 am on that day.
- ✓ Even if no objection has been raised with regard to a nomination paper, Returning Officer has to satisfy himself/herself that it is valid in law.



# Scrutiny: How to Conduct

- ✓ If any objection is raised, Returning Officer shall have to hold a summary inquiry to decide the same and to treat the nomination paper to be either valid or invalid. Returning Officer should record his/her decision in each such case (giving briefly the reasons) where an objection has been raised.
- ✓ If the nomination of any candidate is rejected, reasons for rejection should be recorded in brief and copy of the order should be furnished to the candidate urgently.
- ✓ If Returning Officer accepts the nomination paper of a candidate overruling the objections raised by an objector, he may be supplied with a certified copy of his/her decision upon his request.



# Presumption of Validity

- ✓ There is a presumption that every nomination paper is valid unless the contrary is prima facie obvious or has been made out. In case of a doubt as to the validity of a nomination paper, the benefit of such doubt must go to the candidate concerned and the nomination paper should be held to be valid. Returning Officer should adopt a comparatively liberal approach in dealing with minor technical or clerical errors.
- ✓ The qualification or disqualification of a candidate should be related to the date fixed for scrutiny of nominations. Articles 84, 102, 173 and 191 of the Constitution of India and Chapters II and III of Part II of the RP Act, 1951 deal with qualifications and disqualifications. RO must go through these carefully.

# Grounds for Rejection of Nomination Papers



Not qualified or is disqualified on the date fixed for scrutiny of nominations;

Nomination paper not signed by candidate or subscribed by requisite number of proposers;

Requisite security deposit & oath has not been made;

Certified extract of entry in the electoral roll not submitted, if candidate is contesting election from a different constituency;

# Grounds for Rejection of Nomination Papers



The Candidate does not belong to SC/ST Category (if contesting on seats reserved for such category)

Prescribed Affidavit not filed at all

Fresh affidavit not filed after removing the shortcomings

# Insufficient Grounds for Rejection of Nomination Papers



- ✓ Nomination paper shall not be rejected on ground of defect which is not of substantial character, like, defect in declaration relating to symbols, or any other insignificant ground.
- ✓ Any wrong information in candidate's affidavits is not defect of substantial character. However, failure to furnish affidavit, even after notice by RO, is defect of substantial character entailing rejection of nomination.
- ✓ If any column is left blank in affidavit even after notice, nomination shall be rejected.
- ✓ Don't reject a nomination paper only because none of the persons were present at the time of scrutiny

# Clarifications regarding candidates of political parties



**Case 1 – Recognised party-** Form A & B not received till 3 pm of last day of filing. Form will be rejected if subscribed by 1 proposer but will be accepted if subscribed by 10 proposers (as an independent candidate)

**Case 2- Unrecognised Party-** Form A & B not received till 3 pm of last day of filing. Form will be accepted if subscribed by 10 proposers (as an independent candidate)

**Case 3-** If nomination papers of a candidate, one nominating him as a candidate set up by a recognized political party and the other as an independent candidate, are accepted

**Case 4-** A & B forms to 2 candidates



- The nomination paper of a substitute candidate of a recognized political party signed by only one proposer will be rejected if the nomination paper of the main approved candidate of that recognized political party is accepted. However, if such substitute candidate has also filled Part II of the nomination paper with ten proposers or filed another nomination paper and it is subscribed by ten electors as proposers, his nomination paper(s) will be scrutinized independently by treating the candidate as an independent candidate.
- Further, if the nomination paper of the main approved candidate of the party is rejected, then the substitute candidate will be treated as the candidate of the party, provided that the party has already intimated his name as its substitute candidate in Form 'A' and 'B' filed before 3 pm on the last date for making nominations.



# **CASE STUDIES ON SCRUTINY OF NOMINATIONS**



# CASE STUDY- 1

President of a registered political party (Ambedkar Party) in Chhattisgarh authorized Mr. X in form A to sign form B. Later on he signed form B himself.

An objection was raised during the scrutiny before RO that form B submitted by the party is not signed by the authorized person.

What should be course of action ?



## CASE STUDY- 2

In 2013 Assembly elections in Chattisgarh nearly 20 candidates of Indian National Congress filed nomination papers mentioning the name of party as “Bhartiya Rashtriya Congress”.

The same was objected to during scrutiny on ground that no such party exists as registered or recognized political party in the rolls of ECI.

What should be course of action ?



# Preparation of list of validly nominated candidates

- ✓ **After the completion of scrutiny proceedings, RO should prepare a list of validly nominated candidates, i.e., candidates whose nominations have been found valid on scrutiny in FORM 4.**
- ✓ **Arrangement of names in Form 4 should be on the same lines as in the list of nominated candidates.**

## **STEP 1: Classification of Candidates as:**

- i. Recognized National and State political parties (belonging to the state)
- ii. Registered un-recognized political parties including state parties of other states.
- iii. Independent candidates.



# Preparation of list of validly nominated candidates

**STEP 2: Arrangement of names in alphabetical order shall be made in each category separately.**

## **OTHER CLARIFICATIONS:**

### **Addition of titles:**

- ✓ *No objection to the addition of any honorific, academic, hereditary, professional or any other title to the name of a candidate,*
- ✓ *However, such title should on no account be taken into consideration in the arrangement of names in alphabetical order.*

# Preparation of list of validly nominated candidates



## **Language(s):**

- ✓ ***List is to be prepared in the language(s) specified in the Commission's direction dated 16-09-2008 for Assembly Constituencies and direction dated 06-02-2009 for Parliamentary Elections***
- ✓ ***Category headings should not appear on the ballot papers.***



# FORM 4

(See rule 8)

**List of Validity Nominated Candidates Election to the\***

.....

Serial	Name of candidate	Name of **father/mother/ husband]	Address candidate	@Party affiliation
1	2	3	4	5

i. Candidates of recognized National and State Political Parties

\_\_\_\_\_

ii. Candidates of registered political parties (other than recognized National and State Political Parties).

\_\_\_\_\_



# FORM 4-Contd

iii. Other candidates.

---

\_\_\_\_\_ Place.....

Date .....

Returning Officer

---

\*Appropriate particulars of the election to be inserted here. \*\*Strike off the inappropriate alternative.

@Applicable in the case of candidates mentioned under categories (i) and (ii) above. N.B. Under Col. 1 above, the serial numbers of candidates of all the three categories shall be given consecutively and not separately for each category.]

---

1. Subs. by Notifn. No. S.O. 558(E), dated 9/8/96.



# Follow Up Steps After Scrutiny

## Note:

- ✓ Two copies of the list of validly nominated candidates should be sent to the Chief Electoral Officer by the next available post or by Fax/E-mail or by special messenger.
- ✓ One copy of the list along with an English translation should be forwarded to the Election Commission.
- ✓ The list of validly nominated candidates should be sent by you immediately on the very day on which scrutiny of all nomination papers is completed, so that it may reach the Commission before the last date for the withdrawal of candidatures.

# Do's during Scrutiny of Nominations



## Do's

- ✓ The RO has to be guided by his/her own judgement, based on the position of law and applicable rulings, without any apparent outside influence.
- ✓ Give reasonable opportunity and time for resolving a particular objection or deficiency. If specifically requested by a candidate/ agent, time may be granted for replying to objection, by adjourning scrutiny.
- ✓ Clarify all doubts through Legal Division of the Election Commission much before the start of scrutiny.
- ✓ Give benefit of doubt to the candidate in case of doubt.

# Don'ts during Scrutiny of Nominations



## Don'ts

- ✓ Under no circumstances should the RO be in telephonic consultation during the scrutiny.
- ✓ Not giving reasonable opportunity.
- ✓ Perceived non- application of mind by RO.
- ✓ Wrongful rejection of a nomination.
- ✓ No special treatment for any candidate.



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# WITHDRAWAL OF NOMINATION



# Introduction

**Validly nominated candidate may withdraw his candidature by giving a notice in the prescribed Form (Form-5 appended to 1961-Rules) to that effect up to 3:00 pm on the last date fixed for withdrawal of candidatures in the programme notification. Notice in any other form shall not be taken cognizance of.**

**Commission has clarified that candidatures may be withdrawn on any intervening day during normal working hours of the Office of RO and not necessarily upto 3.00 pm on those days.**

**No provision for retirement from contest after last date fixed for withdrawals;**



# How is notice of withdrawal given by candidate

**How to give**

- In form -5, Signed by the candidate.
- To be submitted only in person by-
  - The candidate.
  - Any of his proposers.
  - Election agent of the candidate.
- Between working hours and latest by 3 pm on the last date for withdrawal.

**Whom to give**

- Proposers, or election agent can submit withdrawal notice only along with a written authorization letter from the candidate authorizing the proposer or the election agent to submit the notice.
- To be submitted to RO/ARO mentioned in Public notice.



# How is notice of withdrawal given by candidate

**Till when to give**

- **before 3 o'clock in the afternoon of the last date fixed for such withdrawal.**
- **Not on public holiday.**
- **On any intervening day during normal working hours of the Office of RO and not necessarily upto 3.00 pm on those days.**
- **Any withdrawal after the last hour is invalid and has no legal effect.**



# Steps to follow once form-5 is received

**NOTE: A VALID WITHDRAWAL CANNOT BE CANCELLED & IS IRREVOCABLE.**

Check the validly received withdrawal in [form-5](#).

Handover the filled detachable receipt towards the end of the form to the person who delivers the notice of withdrawal.

Fill in the other particulars in the notice of withdrawal below the signature of the candidate as a record of withdrawal for the RO.

A Valid notice of withdrawal has to be published as notice thereof in [Form 6](#) on RO notice board.

# Instructions on drawing list of contesting candidates.

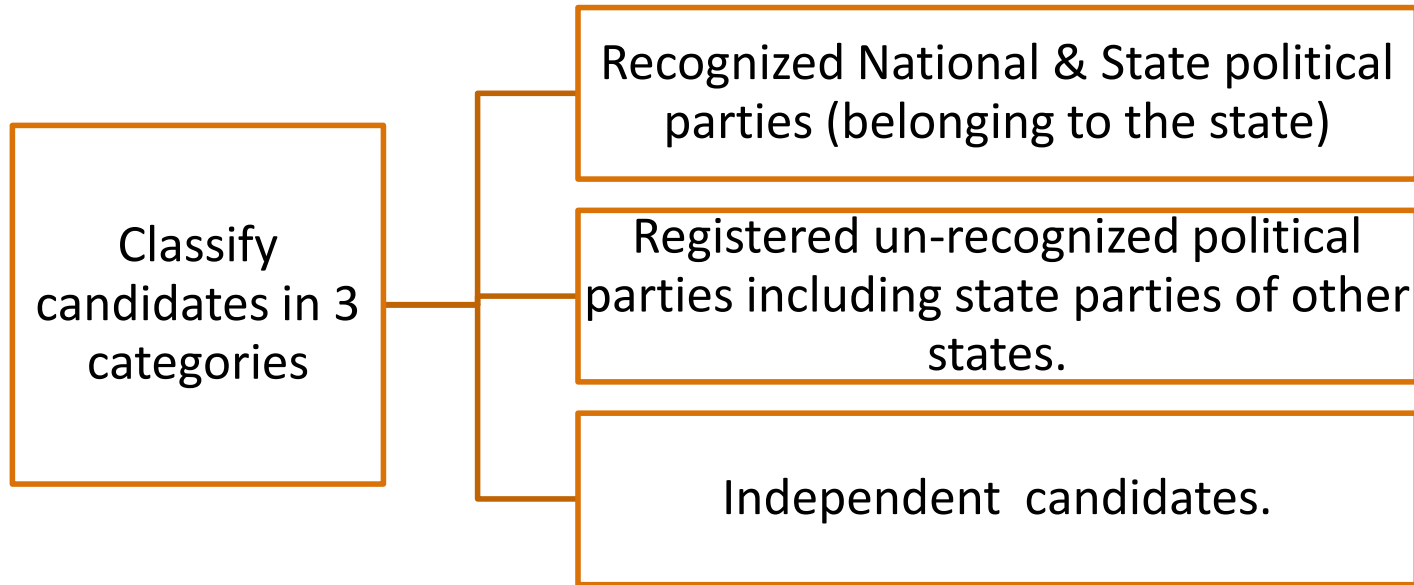


- ✓ Allotment of symbols has to be made before drawing the list of contesting candidates. Such list is prepared in [Form 7A](#)
- ✓ At an election to House of Parliament, the list is published in the Gazette of India and is also re-published in the official gazette of state concerned.
- ✓ For any election to a state legislature, it is published in the official Gazette of the State concerned.
- ✓ Copy of the list is to be furnished to each of the contesting candidates besides displaying it in the notice board and copies sent to Election Commission of India and CEO.
- ✓ Copy is also required to be displayed outside Polling Stations on the day of poll.

# Instructions on drawing list of contesting candidates.



## Step 1: Classification of candidates.



# Instructions on drawing list of contesting candidates.



## **Step 2: Arrangement of names in alphabetical order of names shall be made in each category separately; but serial numbers of names shall be run-on.**

- ✓ List is to be prepared in the language(s) specified in the Commission's direction dated 16-09-2008 for Assembly Constituencies and direction dated 06-02-2009 for Parliamentary Elections
- ✓ Such determination shall be made with reference to the first letter of the name of the candidate as given by him in his nomination paper irrespective of whether the name given is the proper name or surname. Initials prefixed to a name shall be ignored.
- ✓ Election Commission has directed that in such cases, for distinguishing the names, "S/o-,D/o-,W/o- " shall be added to the name of the candidates concerned. In such case the arrangement of names of such candidates will be with reference to the distinguishing names of the candidates if in same category.

# Instructions on drawing list of contesting candidates.



## Other Clarifications:

- ✓ No objection to the addition of any honorific, academic, hereditary, professional or any other title to the name of a candidate,
- ✓ However, such title should on no account be taken into consideration in the arrangement of names in alphabetical order.
- ✓ The Commission has directed that photographs of candidates shall also be printed against their names in Form-7A. [\(see ECI letter No. 576/3/2017/SDR/ dated 18th October 2017\)](#)
- ✓ Category headings should not appear on the ballot papers.



# Preparation of list of contesting candidates.

## Allot symbols first

- Allotment of symbols has to be made before drawing the list of contesting candidates

## Prepare in form 7A

- In Form 7A.

## Arrangement of names

- To be in accordance with the instructions as mentioned in the previous section.

## Publishing of the list

- For election to House of Parliament -the Gazette of India and is also re-published in the official gazette of state concerned.
- For election to a state legislature-official Gazette of the State concerned.

# Candidate Permitted To Show His Name by Which Popularly Known



- ✓ Normally, the name of each candidate in the list of validly nominated candidates shall be shown as it appears in his nomination paper (Rule 8(2), 1961-Rules).
- ✓ If a candidate considers that his name is incorrectly spelt or is otherwise incorrectly shown in his nomination paper or is different from the name by which he is popularly known, he may furnish in writing to the RO, the proper form and spelling of his name and the RO shall, if satisfied as to the genuineness of the request, make the necessary correction or alteration in the name of the candidate in the list of validly nominated candidates and also adopt that form and spelling in the list of contesting candidates.

# Candidate Permitted To Show His Name by Which Popularly Known



- ✓ Request for correction or alteration must be made to the RO before preparation of the list of contesting candidates.
- ✓ Any request after this not to be entertained.
- ✓ Further, in order to be satisfied about the genuineness of the request, he can require the candidate to produce such evidence in support of the request as may be considered appropriate by him.

# Follow Up Steps After Preparation Of The List Of Contesting Candidates.



## Distribution

- Copy of the list is to be furnished to each of the contesting candidate.
- Design of the symbol allotted to the candidate also to be given to the candidate concerned.

## Display of Form 7A

- At the notice board
- Outside Polling Stations on the day of poll.

## Official distribution

- Copies sent to Election Commission of India and CEO.

# Exercise...



- Bishweshar Prasad AAP
- A.K. Singh Independent
- Karam Sihoria INC
- Trishla Devi TMC
- Amrit Pal Jain Independent
- Archana Singh Shiv Sena
- A.K. Barodia Independent
- Pratap Kumar BJP
- S. Sharma JD (United)



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# ALLOTMENT OF SYMBOLS



# Introduction

**Allotment of symbols to candidates is governed by the Election Symbols (Reservation and Allotment) Order, 1968.**

- ✓ **Choice of symbols made by a candidate (other than a candidate set up by a National or State Party) in the nomination paper first delivered to RO is considered whether that nomination paper is accepted or rejected during scrutiny.**
- ✓ **No choice of symbols made by him in subsequent nomination paper is of any value.**
- ✓ **There are different rules for candidates of different categories.**

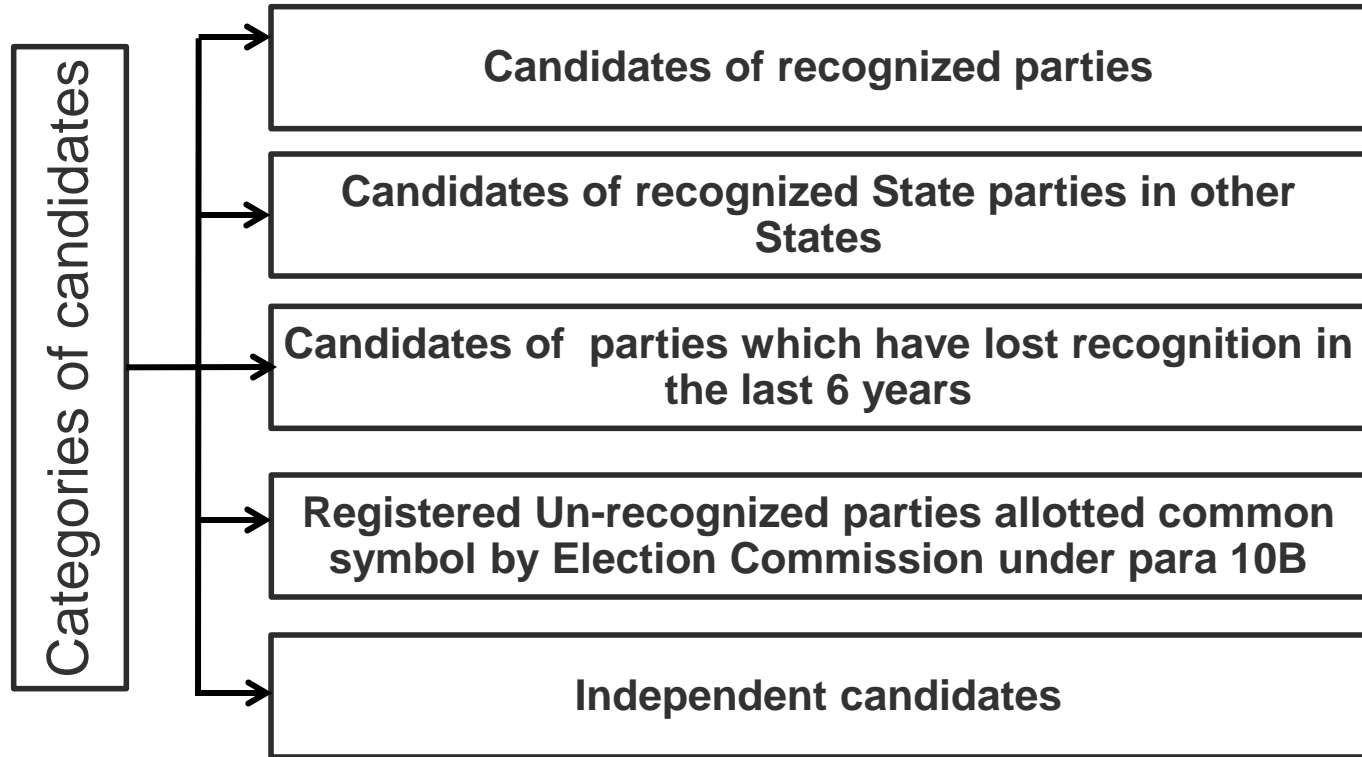


# Terminologies Explained

- ✓ **'Political party'** means a party registered with ECI under section 29A of the RP Act, 1951;
- ✓ **'Recognized National political party'** means a party recognized as national party by ECI under Symbols Order, 1968.
- ✓ **'Recognized State political party'** means a party recognized as State party (in the state concerned) by ECI under Symbols Order, 1968.
- ✓ **'Registered-Unrecognized party'**: A political party registered with ECI under Section 29A of the RP Act, 1951 and which is not recognised by ECI as national or State party is a registered –unrecognized party.
- ✓ **Please note:**
  - ✓ A State party recognized in other State and not recognized in the state where elections are being conducted is a **registered-unrecognized party** in the concerned state.
- ✓ **Independent candidate** means candidates not set up by any political party.

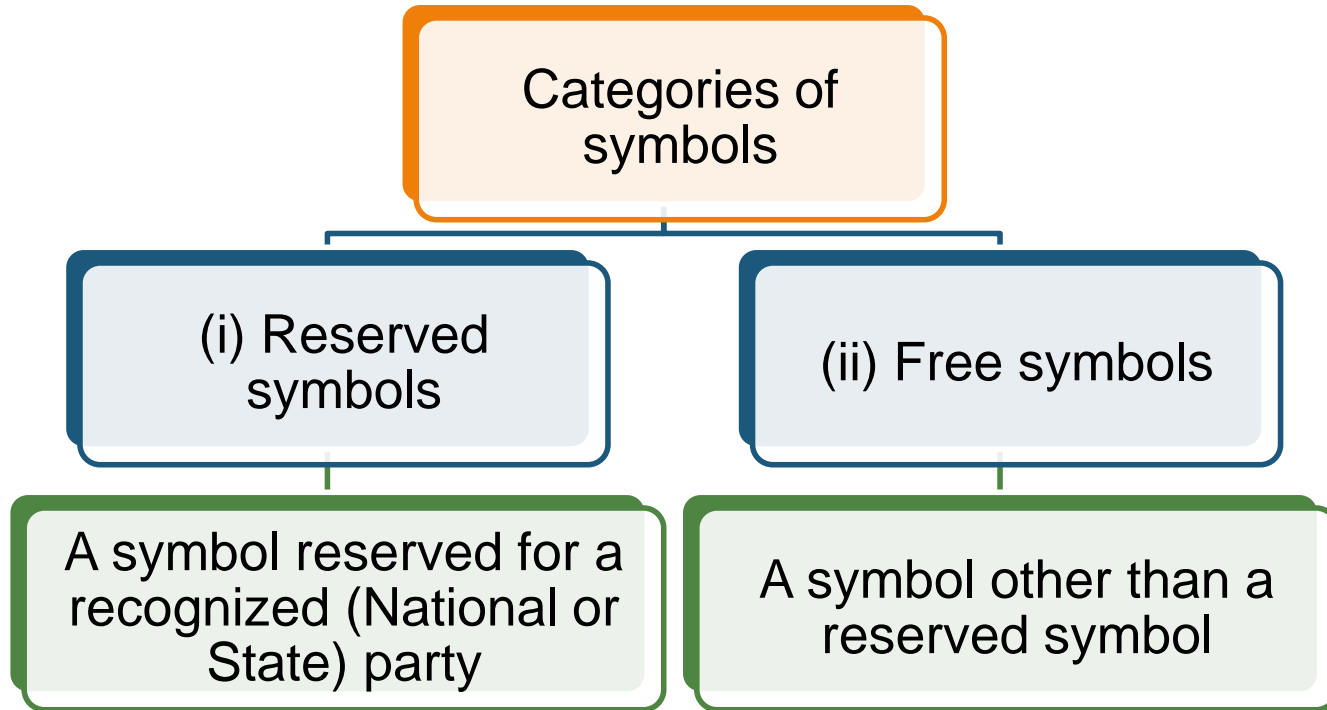


# Categories of Candidates for Symbol Allotment





# The Concept of Symbols



# Allotment of Symbols to candidates of recognized parties



- ✓ Candidates set up by recognized national and state political parties to get only the symbols reserved for those parties;
- ✓ The manner of setting up of candidates by political parties already explained.
- ✓ Declaration by candidate and Form A & B by the Party.

# Conditions for Recognition



- Para 6A mentions conditions for recognition as State Party
- Para 6B mentions conditions for recognition as National Party

# Conditions for recognition as state party



- State Assembly- 6% of valid votes and 2 members Or 3 % of total seats or 3 seats whichever is more
- House of People- 6% of valid votes and 1 member or at least one member to the House of the People for every 25 members allotted to State
- Secured not less than eight percent of the total valid votes polled in either of the elections

# Conditions for recognition as National party



- The candidates set up by the party, in any four or more States, at the last general election to the House of the People, or to the Legislative Assembly of the State concerned, have secured not less than six percent of the total valid votes polled in each of those States at that general election; and, in addition, it has returned at least four members to the House of the People at the aforesaid last general election from any State or States.



- At the last general election to the House of the People, the party has won at least two percent of the total number of seats in the House of the People, any fraction exceeding half being counted as one; and the party's candidates have been elected to that House from not less than three States;
- The party is recognized as State party in at least four States.

# Allotment of Symbols to candidates of recognized State parties in other States



- ✓ A State party recognized in one State may be a registered-unrecognized party in any other State;
- ✓ If such party sets up candidates in any other State, such candidates can get party's reserved symbol under **para 10**, if :
  - ✓ **Central Office of party applies to ECI for such concession within three days from the date of election notification, giving details of the constituencies concerned; and**
  - ✓ **ECI has no objection to the grant of above concession.**
- ✓ RO shall allot the party's reserved symbol to the abovementioned candidate only if he receives the authorization from ECI, and not otherwise.

# Allotment of Symbols to candidates of parties which have lost recognition



- ✓ It is a party which has lost recognition, within the last six years, as National / State party and is not recognized anywhere.
- ✓ It is treated as an unrecognized party.
- ✓ Such candidates can get party's earlier symbol under **para 10A**, if :
  - ✓ **Central Office of party applies to ECI for such concession within three days from the date of election notification, giving details of the constituencies concerned; and**
  - ✓ **ECI has issued instructions for allotment of the particular symbol to the candidates of that party.**
- ✓ RO shall allot the party's earlier symbol to the abovementioned candidate only if he receives the authorization from ECI, and not otherwise.

# Common symbol for Registered Un-recognized parties



- ✓ Under para -10B of Symbols Order a registered un-recognized party can apply to ECI for allotment of common symbol for its candidates from among free symbols
- ✓ Subject to fulfilment of certain conditions, ECI may allot common symbol to such parties
- ✓ If orders are issued by EC for allotting common symbol to candidates of registered un-recognized party, RO shall allot common symbol as per orders of EC.

# Conditions...

- The party sets up candidates at least in 5% (five percent) of the assembly constituencies in the State.
- Intimation of intention to contest elections - six months prior to the date of expiry of the term of the Assembly and latest by five clear days before the date of notification.
- The party shall give the names of ten symbols, in order of preference, from out of the list of free symbols.
- The list containing the serial numbers and names of the constituencies where the party is setting up candidates is submitted to the Commission latest by 5 clear days before the date of notification.

# Allotment of Symbols to candidates of registered un-recognized parties



- ✓ Allotment of symbols to candidates of registered unrecognized political parties other than those mentioned in para-10B above is governed by para 12 of Symbols Order;
- ✓ No symbol is reserved for any registered-unrecognized political party;
- ✓ These candidates have to choose symbols from list of free symbols notified by ECI;
- ✓ Every such candidate can give three options of free symbols, in order of preference;
- ✓ Such preferences indicated in his first nomination paper are to be taken into account, even if that nomination paper is rejected;

# Allotment of Symbols to candidates of registered un-recognized parties-Contd.



- ✓ If such candidate has given option for a particular free symbol as his first preference, he shall be allotted that symbol to the exclusion of all independent candidates;
- ✓ If candidates of more than one un-recognized party have given their first preference for the same free symbol, RO shall decide by lot which of those candidates should be given that free symbol;
- ✓ However, if any of those candidates is, or was, immediately before the election, a sitting MP/MLA, he shall be allotted that symbol without draw of lots;

# Allotment of Symbols to candidates of registered un-recognized parties-Contd.



- ✓ If a candidate does not get his first preference symbol because of draw of lots, his second preference for a symbol shall not be treated now as his first preference, while considering the preferences of other candidates;
- ✓ If a candidate does not get any of the symbols as per his preferences, he shall be allotted a symbol at the end of the allotment process (including the allotment of symbols to the independent candidates) from out of the remaining free symbols available for allotment with the RO.



# Allotment of Symbols to independent candidates

- ✓ Allotment of symbols to independent candidates is also governed by para 12 of Symbols Order;
- ✓ These candidates have to choose symbols from list of free symbols notified by ECI;
- ✓ Every such candidate can give three options of free symbols, in order of preference;
- ✓ Such preferences indicated in his first nomination paper are to be taken into account, even if that nomination paper is rejected;

# Allotment of Symbols to independent candidates-Contd.



- ✓ If such candidate has given option for a particular free symbol as his first preference and no candidate of a registered un-recognized party has opted for that symbol as his first preference, he shall be allotted that symbol to the exclusion of all other candidates;
- ✓ If more than one independent candidates have given their first preference for the same free symbol, RO shall decide by lot which of those candidates should be given that free symbol;

# Allotment of Symbols to independent candidates-Contd.



- ✓ However, if any of those candidates is, or was, immediately before the election, a sitting MP/MLA, he shall be allotted that symbol without draw of lots, provided that he contested the earlier election on that very symbol;
- ✓ If a candidate does not get his first preference symbol because of draw of lots, his second preference for a symbol shall not be treated now as his first preference, while considering the preferences of other candidates;

# Allotment of Symbols to independent candidates-Contd.



- ✓ If a candidate does not get any of the symbols as per his preferences, he shall be allotted a symbol at the end of the allotment process (including the allotment of symbols to the independent candidates) from out of the remaining free symbols available for allotment with the RO.



# Exercise-

- RP-1 (Ex-MLA)- Almirah, calculator, electric pole
- RP-2 – Almirah, TV, diesel pump
- RP-3- TV, Flute, Apple
- Ind-1- Belt, Gas Stove, Door bell
- Ind-2- (Ex-MLA sym-cake) Cake, Grapes, cube
- Ind-3- TV, Calculator, diamond
- Ind-4- Box, Cake, Apple
- Ind-5- Cake, Gas stove, flute
- Ind-6 (Ex-MLA symbol- sun) Box, Chess board, belt



Thank  
you





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# MODEL CODE OF CONDUCT

# What is MCC...

- The MCC is a set of guidelines issued by the Election Commission to regulate political parties and candidates prior to elections, to ensure free and fair elections. These are a set of norms evolved with the consensus of political parties and enforced by the ECI.
- This is in keeping with Article 324 of the Constitution, which gives the Election Commission the power to supervise elections to the Parliament and state legislatures.
- The MCC is operational from the date that the election schedule is announced till the date that results are announced.

# Objectives..

- Free and fair elections.
- To provide a level playing field for all parties and contesting candidates during the elections.
- Regulate conduct of political parties, candidates, electors and Election machinery.
- Increases credibility & Confidence among stakeholders.
- Helps avoiding misuse of Government machinery.
- To prevent the electoral offences, malpractices and corrupt practices such as impersonation, bribing and inducement of voters, threat and intimidation to the voters

# Legal Status..

- MCC is not enforceable by law. However, certain provisions of the MCC have corresponding provisions in statutes such as IPC 1860, CrPC 1973 and RPA 1951.
- The following malpractices mentioned in MCC are listed as 'corrupt practices' and 'electoral offences' in the IPC and the RPA, 1951:-
  - ✓ Indulgence in any activity which may aggravate existing differences or create mutual hatred or cause tension between different castes and communities, religious or linguistic- a corrupt practice under Section 123 (3A) of RPA,1951.

- ✓ Appeal to caste or communal feeling for securing votes and use of places of worship as forum for election propaganda- both a corrupt practice and an electoral offence under Section 123 (3) and Section 125 of RPA ,1951, respectively.
- ✓ Bribery to voters- both a corrupt practice and an electoral offence under Section 123 (1) of RPA, 1951 and Section 171B of IPC, respectively.
- ✓ Intimidation of voters- an electoral offence under Section 135A (C) of RPA, 1951.
- ✓ Impersonation of voters- an electoral offence under Section 171D of IPC.
- ✓ Canvassing within 100 meters of polling stations- an electoral offence under Section 130 of RPA, 1951.

- ✓ Holding of public meetings during the period of 48 hours ending with the hour fixed for the close of the poll - an electoral offence under Section 126 (1) of RPA, 1951.
- ✓ Transport and conveyance of voters to and from polling stations - both a corrupt practice and an electoral offence under S 123 (5) and S 133 of RPA, 1951, respectively.
- ✓ Creating obstruction in or breaking up meetings and processions of one political party by workers of other parties OR creating disturbances at public meetings of one political party by workers or sympathizers of other political parties by putting questions orally or in writing or by distributing leaflets of their own party OR taking out processions by one party along places at which meetings are held by another party OR removing posters of one party by workers of another party is an electoral offence under S 127 of RPA, 1951.
- ✓ Serving or distributing liquor on polling day and during the forty eight hours preceding it- an electoral offence under S 135 (c) of RPA, 1951.

Any person/political party having a grievance in relation to any of above malpractices may take legal recourse under relevant laws mentioned above.

- ✓ The general perception about 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.
- ✓ Further, ECI 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.

# Supreme Court on MCC

- The Apex Court has also held that Article 324 gives plenary power to ECI.
- 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.
- In *S. Subramaniam Balaji* case, the Supreme Court held that the ECI, in order to ensure level playing field between the contesting parties and candidates in elections and also in order to see that the purity of election process does not get vitiated, has been issuing instructions under MCC. The fountainhead of the powers under which the ECI issues these orders is Article 324 of the Constitution.

# General Conduct

- (1) No party or candidate shall involve in any activity which may aggravate existing differences or create mutual hatred or cause tension between different castes and communities, religious or linguistic.
- (2) Criticism of other political parties, when made, shall be confined to their policies and programme, past record and work. Parties and Candidates shall refrain from criticism of all aspects of private life, not connected with the public activities of the leaders or workers of other parties. Criticism of other parties or their workers based on unverified allegations or distortion shall be avoided.
- (3) There shall be no appeal to caste or communal feelings for securing votes. Mosques, Churches, Temples or other places of worship shall not be used as forum for election propaganda.

(4) All parties and candidates shall avoid scrupulously all activities which are “corrupt practices” and offences under the election law, such as bribing of voters, intimidation of voters, impersonation of voters, canvassing within 100 meters of polling stations, holding public meetings during the period of 48 hours ending with the hour fixed for the close of the poll, and the transport and conveyance of voters to and from polling station.

(5) The right of every individual for peaceful and undisturbed home-life shall be respected, however much the political parties or candidates may resent his political opinions or activities. Organising demonstrations or picketing before the houses of individuals by way of protesting against their opinions or activities shall not be resorted to under any circumstances.

(6) No political party or candidate shall permit its or his followers to make use of any individual's land, building, compound wall etc., without his permission for erecting flag-staffs, suspending banners, pasting notices, writing slogans etc.

(7) Political parties and candidates shall ensure that their supporters do not create obstructions in or break up meetings and processions organised by other parties. Workers or sympathisers of one political party shall not create disturbances at public meetings organised by another political party by putting questions orally or in writing or by distributing leaflets of their own party. Processions shall not be taken out by one party along places at which meetings are held by another party. Posters issued by one party shall not be removed by workers of another party.

# Meetings

(1) The party or candidate shall inform the local police authorities of the venue and time any proposed meeting Well in time so as to enable the police to make necessary arrangements for controlling traffic and maintaining peace and order.

(2) A Party or candidate shall ascertain in advance if there is any restrictive or prohibitory order in force in the place proposed for the meeting if such orders exist, they shall be followed strictly. If any exemption is required from such orders, it shall be applied for and obtained well in time.

(3) If permission or license is to be obtained for the use of loudspeakers or any other facility in connection with any proposed meeting, the party or candidate shall apply to the authority concerned well in advance and obtain such permission or license.

(4) Organisers of a meeting shall invariably seek the assistance of the police on duty for dealing with persons disturbing a meeting or otherwise attempting to create disorder. Organisers themselves shall not take action against such persons.

# Procession

(1) A Party or candidate organizing a procession shall decide beforehand the time and place of the starting of the procession, the route to be followed and the time and place at which the procession will terminate. There shall ordinarily be no deviation from the programme.

(2) The organisers shall give advance intimation to the local police authorities of the programme so as to enable the latter to make necessary arrangements.

(3) The organisers shall ascertain if any restrictive orders are in force in the localities through which the procession has to pass, and shall comply with the restrictions unless exempted specially by the competent authority. Any traffic regulations or restrictions shall also be carefully adhered to.

(4) The organisers shall take steps in advance to arrange for passage of the procession so that there is no block or hindrance to traffic. If the procession is very long, it shall be organised in segments of suitable lengths, so that at convenient intervals, especially at points where the procession has to pass road junctions, the passage of held up traffic could be allowed by stages thus avoiding heavy traffic congestion.

(5) Processions shall be so regulated as to keep as much to the right of the road as possible and the direction and advice of the police on duty shall be strictly complied with.

(6) If two or more political parties or candidates propose to take processions over the same route or parts thereof at about the same time, the organisers shall establish contact well in advance and decide upon the measures to be taken to see that the processions do not clash or cause hindrance to traffic. The assistance of the local police shall be availed of for arriving at a satisfactory arrangement. For this purpose the parties shall contact the police at the earliest opportunity.

(7) The political parties or candidates shall exercise control to the maximum extent possible in the matter of processionists carrying articles which may be put to misuse by undesirable elements especially in moments of excitement.

(8) The carrying of effigies purporting to represent member of other political parties or their leaders, burning such effigies in public and such other forms demonstration shall not be countenanced by any political party or candidate

# Polling Day

All Political parties and candidates shall –

- (i) co-operate with the officers on election duty to ensure peaceful and orderly polling and complete freedom to the voters to exercise their franchise without being subjected to any annoyance or obstruction.
- (ii) supply to their authorized workers suitable badges or identity cards.
- (iii) agree that the identity slip supplied by them to voters shall be on plain (white) paper and shall not contain any symbol, name of the candidate or the name of the party;
- (iv) refrain from serving or distributing liquor on polling day and during the forty eight hours preceding it.

(v) not allow unnecessary crowd to be collected near the camps set up by the political parties and candidates near the polling booths so as to avoid Confrontation and tension among workers and sympathizers of the parties and the candidate.

(vi) ensure that the candidate's camps shall be simple .The shall not display any posters, flags, symbols or any other propaganda material. No eatable shall be served or crowd allowed at the camps and

(vii) co-operate with the authorities in complying with the restrictions to be imposed on the plying of vehicles on the polling day and obtain permits for them which should be displayed prominently on those vehicles.

# Polling Booth

- Excepting the voters, no one without a valid pass from the Election Commission shall enter the polling booths

# Observers

- The Election Commission is appointing Observers. If the candidates or their agents have any specific complaint or problem regarding the conduct of elections they may bring the same to the notice of the Observer.

# Party in Power

The party in power whether at the Centre or in the State or States concerned, shall ensure that no cause is given for any complaint that it has used its official position for the purposes of its election campaign and in particular –

- (i) (a) The Ministers shall not combine their official visit with electioneering work and shall not also make use of official machinery or personnel during the electioneering work.
- (b) Government transport including official air-crafts, vehicles, machinery and personnel shall not be used for furtherance of the interest of the party in power;

(ii) Public places such as maidens etc., for holding election meetings, and use of helipads for air-flights in connection with elections shall not be monopolized by itself. Other parties and candidates shall be allowed the use of such places and facilities on the same terms and conditions on which they are used by the party in power;

(iii) Rest houses, dark bungalows or other Government accommodation shall not be monopolized by the party in power or its candidates and such accommodation shall be allowed to be used by other parties and candidates in a fair manner but no party or candidate shall use or be allowed to use such accommodation (including premises appertaining thereto) as a campaign office or for holding any public meeting for the purposes of election propaganda;

(iv) Issue of advertisement at the cost of public exchequer in the newspapers and other media and the misuse of official mass media during the election period for partisan coverage of political news and publicity regarding achievements with a view to furthering the prospects of the party in power shall be scrupulously avoided.

(v) Ministers and other authorities shall not sanction grants/payments out of discretionary funds from the time elections are announced by the Commission; and

(vi) From the time elections are announced by Commission, Ministers and other authorities shall not –

- (a) announce any financial grants in any form or promises thereof; or
- (b) (except civil servants) lay foundation stones etc. of projects or schemes of any kind; or
- (c) make any promise of construction of roads, provision of drinking water facilities etc.; or
- (d) make any ad-hoc appointments in Government, Public Undertakings etc. which may have the effect of influencing the voters in favor of the party in power

(vii) Ministers of Central or State Government shall not enter any polling station or place of counting except in their capacity as a candidate or voter or authorized agent.

# Guidelines on Election Manifesto

(i) The election manifesto shall not contain anything repugnant to the ideals and principles enshrined in the Constitution and further that it shall be consistent with the letter and spirit of other provisions of Model Code of Conduct.

(ii) The Directive Principles of State Policy enshrined in the Constitution enjoin upon the State to frame various welfare measures for the citizens and therefore there can be no objection to the promise of such welfare in election manifesto. However, political parties should avoid making those promises which are likely to vitiate the purity of the election process or exert undue influence on the voters in exercising their franchise.

(iii) In the interest of transparency, level playing field and credibility of promises, it is expected that manifesto also reflect the rationale for the promises and broadly indicate the ways and means to meet the financial requirement for it. Trust of voters should be sought only on those promises which are possible to be fulfilled.

# Some recent statistics.. (as per media reports)

- The Election Commission of India's cVIGIL software application, which allows citizens to directly register complaints, reportedly received 47,393 complaints!
- These complaints of violation of the Model Code of Conduct (MCC) are only related to the Assembly Elections in Uttar Pradesh, Goa, Punjab, Manipur and Uttarakhand held between February 10 and March 7.
- Out of these 40,395 were found to be correct.
- Most of the complaints with EC were on “property defacement, followed by distribution of alcohol, freebies, religious and communal speeches and campaigning during the prohibited periods.

- Around 2,270 First Information Reports (FIRs) were registered across Uttar Pradesh, Punjab, Manipur, Goa and Uttarakhand for violation of the model code of conduct and Covid-19 guidelines. The highest number of FIRs were filed in UP, and out of the 1,700 FIRs filed in UP, 1,236 were for violation of the model code of conduct while 464 were for Covid-19 related violations. Over 300 FIRs were lodged in Uttarakhand for violation of the model code and Covid-19 instructions, 104 in Punjab, 106 in Goa and 26 in Manipur.

# Conduct for Officials

- Any official who meets the Minister on his private visit to the constituency where elections are being held shall be guilty of misconduct under the relevant service rules; and if he happens to be an official mentioned in Section 129 (1) of the Representation of People Act, 1951, he shall also be additionally considered to have violated the statutory provisions of that Section and liable to penal action provided there under.
- There are restrictions on tours / leave of the officers whose spouses are active in Political arena. In such cases, the concerned officers should not leave their HQs either on leave or on tour till the elections are complete.

- No video conferencing should take place between the Chief Ministers of the States, Ministers and other political functionaries of the Union and State Governments and the officials individually or collectively, after the announcement of elections and from the date from which Model Code of Conduct comes into force in a state or the constituency.
- However, in the immediate aftermath of any calamity of significant scale/magnitude, if video- conferencing is considered essential, CM/ Minister concerned may hold video conferencing with officials concerned subject to conditions.

# Transfers of officials

- Immediately on announcement of elections there shall be a total ban on the transfer of all officers/officials connected with the conduct of the election. These include but are not restricted to
  - The Chief Electoral Officer and Additional/Joint/Deputy Chief Electoral Officers;
  - Divisional Commissioners/DEO/RO/ARO & other revenue officers connected with conduct of elections.

- Officers of the Police Department connected with the management of elections like range IGs and DIGs, Senior Superintendents of Police and Superintendents of Police, Sub-divisional level Police Officers like Deputy Superintendents of Police and other Police officers who are deputed to the Commission under section 28A of the Representation of the People Act, 1951;
- Other officers drafted for election work like sector and zonal officers, Transport cell, EVM cell, Poll material procurement & distribution cell, Training cell, Printing Cell etc. Senior officers, who have a role in the management of election in the State, are also covered by this direction.

- The transfer orders issued in respect of the above categories of officers prior to the date of announcement but not implemented till the time when model code came into effect should not be given effect to without obtaining specific permission from the Commission.

# Instructions on Transfer/postings

- **Various instructions on transfer/posting of officers for conduct of free and fair elections. [These instructions are implemented before the announcement of elections that is before MCC comes into force]**
- Officer should not be allowed to continue in the present district if officer is posted in her/his home district or completed three years out of four years in that district.
- Officers/officials against whom Commission has recommended disciplinary action or who have been charged for any lapse in any election or election related work previously may not be assigned any election related duty(ies).
- The Commission further desires that no officer/official against whom a criminal case is pending in any court of law, be associated with the election work or election related duty.

- The transfer orders in respect of officers/officials who are engaged in the electoral rolls revision work shall be implemented only after final publication of electoral rolls.
- The copies of the transfer orders issued under these directions shall be given to the Chief Electoral Officers concerned without fail.
- Any officer who is due to retire within coming six months will be exempted from the purview of the above-mentioned directions of the Commission.
- All the officials of the States/UTs who are on extension of service or re-employed in different capacities will not be associated with any election related work except those with the Office of CEOs.

## Exception relating to transfer/posting during MCC

- Commission has decided that Sector officers are not covered by these transfer orders as their knowledge of the terrain of the area in which they are deployed is essential for effective performance of their duty as sector officers.

# Actions against the officials ..

- During Dec'21, ECI Cautioned Telangana CS & issued warnings to two top officials for violating Model Code of Conduct.
- This was during Legislative Council elections in the State.
- “The Election Commission of India has cautioned the Chief Secretary, Government of Telangana, to exercise due care in the conduct of ongoing biennial elections to the Telangana Legislative Council as expected from the officer of his stature”- ECI Statement.

- The EC also directed the Chief Secretary to issue formal warnings and “displeasure of the Commission” to Municipal Administration and Urban Development Secretary and Special Chief Secretary for MA&UD “for clear violation of MCC”.

- “The said officers had issued a Government of Telangana order dated November 18 for enhancement of honorarium, including conveyance allowance, to Mayors, Chairpersons, Deputy Mayors, Vice-Chairpersons, Corporators, ward members, co-option members of urban local bodies in Telangana, who are precisely the electoral college for elections to the Telangana Legislative Council. The Commission took cognizance of the violations in observing Model Code of Conduct.”

# Instructions related to works

- No fresh release of funds under the Member of Parliament (including Rajya Sabha members) Local Area Development fund shall be made in any part of the country where election is in progress. Similarly no fresh release of funds under the MLAs'/ MLCs' Local Area Development Fund shall be made, if any such scheme is in operation, till the completion of election process.

- No work shall start in respect of which work orders have been issued but the work has actually not started in the field. These works can start only after the completion of election process. However, if a work has actually started, that can continue.
- There shall be no bar to the release of payments for completed work(s) subject to the full satisfaction of the concerned officials.
- Where schemes have been cleared and funds are provided or released and materials procured and reached the site such scheme may be executed as per programme.

- The work which has already been started on ground may be continued.
- No fresh work shall be started till the completion of the elections and
- Tenders are not to be finalized during the period of elections.

# Welfare schemes and governmental works

- Announcement of new projects or programme or concessions or financial grants in any form or promises thereof or laying of foundation stones, etc., which have the effect of influencing the voters in favour of the party in power is prohibited.
- No fresh sanctions for governmental schemes should be made. No fresh release of funds on welfare schemes and works should be made.
- Inauguration by Civil Authority- completed works.

- Commission does not refuse approval for schemes undertaken for tackling emergencies or unforeseen calamities like providing relief to people suffering from drought, floods, pestilences, other natural calamities or welfare measures for the aged, infirm etc. In these matters, however, prior approval of the Commission should be taken and all ostentatious functions should be strictly avoided.

- Development/construction related activities- within 72 hours of announcement of elections, the CEO/DEO shall obtain the following list of works for reference in case of validating any complaint on violation of MCC:
  - (i) List of work which has already been started on ground.
  - (ii) List of fresh work which has not started on ground.

# Relief related works

- Ex-gratia payments and gratuitous relief in the aftermath of a disaster can be given directly to the persons affected at the current rates/scales of assistance presently in force, under intimation to the Commission. No change in the extant and prescribed scales of payments, however, shall be made in the existing rates/scales without prior permission of the Commission.
- Payment directly to the hospitals from CM's/PM's Relief Fund, in lieu of direct cash payment to individual patients (beneficiaries) will be permissible without reference to the Commission.

- Emergent relief works and measures that are aimed to mitigate the hardships, directly and solely, of the persons affected in a disaster may be taken up under intimation to the Commission.
- However, new works that may be necessitated by way of preventive measures to mitigate the likely effects of natural disasters like repair of embankments, water channels etc. can be taken up only with prior permission of the Commission.
- Also, an area shall not be declared drought/flood affected or any such calamity affected without prior approval of the Commission. The extent of area already declared to be calamity-affected cannot be expanded without prior approval of the Commission.

- Regular recruitment/appointment or promotion through the UPSC, State Public Service Commissions or the Staff Selection Commission or any other statutory authority can continue. Recruitments through non-statutory bodies, will require prior clearance of the Commission.
- While starting any work (including any relief work) or developmental activity no formal function shall be held involving any political functionary. As a matter of good practice, normal functions and publicity even with the presence of official functionaries should be kept to the minimum.

# Display of Photographs of eminent personalities

- The photographs of Prime Minister, Chief Ministers, Ministers and other political functionaries should not be displayed. This instruction, however, is not applicable with regard to the images of national leaders, poets, and prominent historical personalities of the past, and the President of India and the Governors.

# Tour of Ministers etc. during MCC

- No minister either of central or state government shall undertake an official visit of any constituency from which elections have been announced by ECI till end of election process
- No minister will summon any election related officer of constituency or state in which any elections have been announced, to a place or office, or guest house outside the aforesaid constituency for any official discussion during the period of elections commencing with the announcement of the elections from such constituency and ending with the completion of election process

- Exception: In case of failure of law and order or occurrence of a natural calamity which requires personal presence of a Minister or Chief Minister for supervision/ review/ relief, he may, in his capacity as in charge of the department concerned, or as a Chief Minister may undertake an official visit to a constituency and summon any election related officers of the constituency to a place outside the constituency.

## Ministers' Visit for campaigning to be treated private

- All arrangements to be made by non-officials and not by government servants during the election meeting by minister and all expenses except those relating to maintenance of law and order to be borne privately.
- Journey undertaken by minister for filing nomination papers and subsequent tours to his constituency should be regarded as being for election purpose.

## Combining of official visit with electioneering is not allowed

- Under no circumstances, political or personal visits of the ministers can be combined with official visits to any other place in India during General election and bye-election.
- Minister travelling for official work should not halt in the constituency or district where model code of conduct is in force and shall not attend to any political work.
- No Pilot car(s), or car (s), with beacon lights or any color or car(s) affixed with siren of any kind making his presence conspicuous shall be used by minister during electioneering visit.

# Private visits for campaigning purpose

- It is open for a minister of the Union or State to make private visits for campaigning purpose using his or her private vehicle(s).
- For such private visits, the official personal staff of the ministers shall not accompany them.
- In a recent decisions, the Commission has allowed the Chief Ministers of the states and the union cabinet ministers to take one personal staff( Non gazetted official) during his visit to states for electioneering. However such officials shall not do any political work for the Ministers.
- The restrictions of one non gazetted staff mentioned is not applicable to the PM.

# Use of official vehicle

- Ministers are entitled to use their official vehicles only for commuting from their official residence to their office for official work provided that such commuting is not combined with any electioneering or any political activity.
- Ministers, whether of the Union or State, shall not combine in any manner their official tours with election work.

- **Photograph of political functionary at official website-** ECI instruction contained in letter No. 437/6/INST/2014-CC&BE dated 20th March, 2014 provides that all references of Ministers, Politicians or political parties available on central/state Government's official website, shall be removed. The CEOs have to take immediate action to remove/hide the photographs of any political functionary from official websites of state department.

# Defacement of Property...

- **Defacement of Government property-** For this purpose a Government premise would include any Government office and the campus wherein the office building is situated. All wall writing, posters/papers or defacement in any other form, cutout/ hoardings, banners, flags etc, on Government property shall be removed within 24 hours from the announcement of elections.

- **Defacement of public property and misuse of public space-** All unauthorized political advertisement, in the form of wall writing/posters/papers of defacement in any other form, cutout/hoardings, banners flags etc. at public property and in public space like railway station, Bus stands, Airports, railway Bridges, Roadways, Govt. Buses, Electric/Telephone poles , municipal/local bodies' buildings etc., shall be removed (within 48 hours) from the announcement of elections by the Commission.

- **Defacement of private property-** All unauthorized political advertisement displayed at private property and subject to local law and court's directions, if any, shall be removed (within 72 hours) from the announcement of elections by the Commission.

# Defacement of Public Places

- (a) No wall writing, pasting of posters/papers or defacement in any other form, or erecting/displaying of cutouts, hoardings, banners, flags etc. shall be permitted on any Government premise (including civil structures therein). For this purpose a Government premise would include any Govt. office and the campus wherein the office building is situated.
- (b) If the local law expressly permits or provides for writing of slogans, displaying poster, etc., or erecting cut-outs, hoardings, banners, political advertisement, etc., in any public place (as against a Govt. premise) on payment or otherwise, this may be allowed strictly in accordance with the relevant provisions of the law and subject to Court orders, if any on this subject. It should be ensured that any such place is not dominated/monopolized by any particular party(ies) or candidate(s). All parties and candidates should be provided equal opportunity in this regard.

- If there is a specifically earmarked place provided for displaying advertisements in a public place, e.g. bill boards, hoardings etc. and if such space is already let out to any agency for further allocation to individual clients, the District Election Officer through the municipal authority concerned, if any, should ensure that all political parties and candidates get equitable opportunity to have access to such advertisement space for election related advertisements during the election period.

# Defacement of Private Places

- In the States where there is no local law on the subject, and subject to the restrictions under the law where there is a law, temporary and easily removable advertisement materials, such as flags and banners may be put up in private premises with the voluntary permission of the occupant.
- If the local law does not expressly permit wall writing, pasting of poster, and similar other permanent/semi-permanent defacement which is not easily removable, the same shall not be resorted to under any circumstances, even on the pretext of having obtained the consent of the owner of the property. This will also apply in the states where there is no local law on the subject of prevention of defacement of property.

- Where the local law expressly permits wall writings and pasting of posters, putting up hoardings, banners, etc. on private premises with the owner's permission, the contesting candidates or the political parties concerned shall obtain prior written permission from the owner of the property and submit photocopies of the same within 3 days to the Returning Officer or an officer designated by him for the purpose.
- Subject to any restrictions under any local law or any court orders in force, the political parties, candidates, their agents, workers and supporters may put up banners, flags, cut-outs, on their own property, provided they do so on their own volition, voluntarily and without any pressure from any party, organization or person, and provided further that these do not cause any inconvenience in any manner to anyone else.







# Instructions regarding Vehicles

- From the date of notification of the election till the completion of election process in any constituency, the district administration shall keep a close watch on the vehicles used by the contesting candidates, persons accompanying the contesting candidates and other party leaders and ensure that the Commission's instructions are not abused.
- A cycle rickshaw is also a vehicle, its expenditure should be accounted in the account of candidate if it is used for campaigning.
- CEO will issue permits for video vans for electioneering by political parties.
- Max number of vehicles allowed in a convoy-10

- The contesting candidates be asked to get the details of all the vehicles that they are using in the election campaign lodged with the District Election Officer or such other officer(s) as may be specifically authorised by the District Election Officer in this behalf before the campaigning commences.
- While conveying the details of the vehicles that are being deployed for election campaign the details of the areas [Tehsil(s)] in which the vehicle would operate, should also be conveyed.
- The details so obtained should be conveyed by District Election Officer to the Election Expenditure Observers.
- The vehicles employed for election campaign as per intimation given by the candidates or their election agents to the District Administration should not be requisitioned by the administration.

- Any vehicle that has not been registered for campaigning with the district administration if found being used for campaigning, shall be deemed to be unauthorized campaigning for the candidate and may attract penal provisions of Chapter IX A of the Indian Penal Code and shall therefore be immediately taken out of the campaigning exercise
- Due permit/License is also required to be obtained which will be displayed on the windscreen of the vehicle in original.
- Loudspeaker permission is also required. Allowed between 6.00 am to 10.00 pm.

# During poll day ..

-  **Hiring/procuring/use of vehicles for free conveyance of voters is corrupt practice**
-  **Each contesting candidate is entitled to one vehicle for own use, one vehicle for election agent and one vehicle for use of his party or workers for entire Assembly Constituency**
-  **Permit for above indicated vehicles will be issued by DM/RO and must affix on the vehicles.**
-  **No vehicle except with permit will be allowed for use**
-  **No vehicle with more than four wheels will be allowed for Candidates/workers/Parties**
-  **Not more than 5 persons including driver will be allowed.**

# Do's

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Ongoing programs, which actually started in the field before the announcement of elections may continue.

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Relief and rehabilitation measures to the people in areas affected by floods, drought, pestilence, and other natural calamities, can commence and continue.

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Grant of cash or medical facilities to terminally or critically ill persons can continue with appropriate approvals.

# Do's

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Public places like maidans must be available impartially to all parties/contesting candidates for holding election meetings. So also use of helipads must be available impartially to all parties/contesting candidates, to ensure a level playing field.

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Criticism of other political parties and candidates should relate to their policies, programme, past record and work.

# Do's

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The right of every individual for peaceful and undisturbed home life should be fully safeguarded.

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The local police authorities should be fully informed of the venue and time of the proposed meetings well in time and all necessary permissions taken.

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If there are any restrictive or prohibitory orders in force in the place of the proposed meeting, they shall be fully respected. Exemption, if necessary, must be applied for and obtained well in time.

# Do's

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Permission must be obtained for the use of loudspeakers or any other such facilities from police/competent authorities for the proposed meetings.

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The assistance of the police should be obtained in dealing with persons disturbing meetings or otherwise creating disorder.

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The time and place of the starting of any procession, the route to be followed and the time and place at which the procession will terminate should be settled in advance and advance permissions obtained from the police/competent authorities.

# Do's

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The existence of any restrictive orders in force in the localities through which the procession has to pass should be ascertained and fully complied with. So also all traffic regulations and other restrictions.

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The passage of the procession must be without hindrance to traffic.

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Co-operation should be extended to all election officials at all times to ensure peaceful and orderly poll.

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All Workers must display badges or identity cards.

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# Do's

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Unofficial identity slips issued to voters shall be on plain (white) paper and not contain any symbol, name of the candidate or name of the party.

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Restrictions on plying of vehicles during the campaign period and on poll day shall be fully obeyed by the candidates/ political parties etc.

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Except voters, candidates and their election/polling agents, only persons with a specific valid authority letter from the Election Commission can enter any polling booth. No functionary however highly placed (e.g. Chief Minister, Minister, MP or MLA etc) is exempt from this condition.

# Do's

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Any complaint or problem regarding the conduct of elections shall be brought to the notice of the observer appointed by the Commission/Returning Officer/Zonal/Sector Magistrate/Election Commission of India.

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Directions/orders/instructions of the Election Commission, the Returning Officer, and the District Election Officer shall be obeyed in all matters related to various aspects of election.

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Do leave the constituency after the campaign period is over if you are not a voter or a candidate or candidate's election agent from that constituency.

# Don'ts



**Any and all advertisements at the cost of the public exchequer regarding achievements of the party/Government in power is prohibited.**



**No Minister shall enter any polling station or the place of counting, unless he or she is a candidate or as a voter only for voting.**



**Official work should not at all be mixed with campaigning/electioneering.**

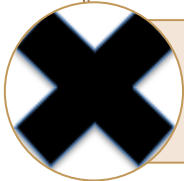


**No inducement, financial or otherwise, shall be offered to the voter.**

# Don'ts



**Race/caste/communal/religious/ language feelings of the electors shall not be appealed to.(Section 125, RP Act 1951)**



**No activity, which may aggravate existing differences or create mutual hatred or cause tension between different castes, communities or religious or linguistic groups shall be attempted.**



**No aspect of the private life, not connected with the public activities, of the leaders or workers of other parties shall be permitted to be criticized.**

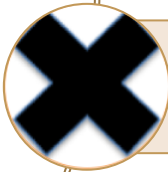
# Don'ts



**Activities which are corrupt practices or electoral offences as per the law (bribery, undue influence, illegal meetings, etc.) are prohibited.**



**Demonstrations or picketing before the houses of individuals by way of protesting against their opinion or activities shall not be resorted to.**

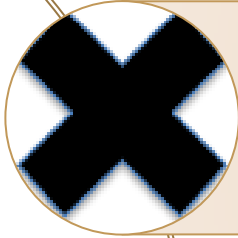


**Other parties or their workers shall not be criticized based on unverified allegations or on distortions.**

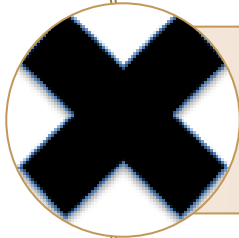


**Temples, Mosques, Churches, Gurudwaras or any place of worship shall not be used as places for election propaganda, including speeches, posters, music etc., on electioneering.**

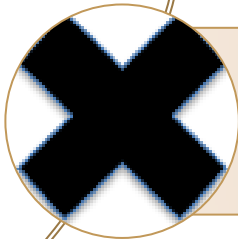
# Don'ts



Subject to the local laws, no one can make use of any individual's land, building, compound wall, vehicles etc. for erecting flag staffs, putting up banners, pasting notices or writing slogans etc. without specific permission of the owner



No disturbances shall be created in public meetings or processions organized by other political parties or candidates. (Section 127, RP Act 1951)

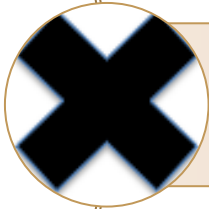


Processions along places at which another party is holding meetings shall not be undertaken.

# Don'ts



**Processionists shall not carry any articles, which are capable of being misused as missiles or weapons.**



**Posters issued by other parties and candidates shall not be removed or defaced.**



**Posters, flags, symbols or any other propaganda material shall not be displayed in the place being used on the day of poll for distribution of identity slips or within 200 meter radius of polling stations.**

# Don'ts

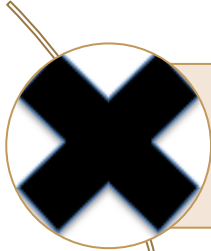


**Loudspeakers whether static or mounted on moving vehicles shall not be used either before 6 a.m. or after 10 p.m. and without the prior written permission of the authorities concerned.**



**No person who has been assessed to be having a security threat and therefore provided official security or who has private security guards for himself, shall be appointed as an election agent or polling agent or counting agent.**

# Don'ts



**Distribution of liquor or bribery in any form is prohibited during elections.**



**On the day of the poll, no person who has been assessed to be having a security threat and therefore given official security shall enter the vicinity of a polling station premise (within 100 meters) with his security personnel.**



**If the person provided with official security happens to be a voter also, then he or she shall restrict his / her movement - accompanied by security personnel, to voting only.**



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# QUALIFICATION & DISQUALIFICATION



# Introduction

**Any person aspiring to be Member of Lok Sabha/ Legislative Assembly, whether by election or by nomination, must be qualified and must not be disqualified under the Constitution or under any law for such membership.**

**Crucial date for determining whether a candidate is qualified or disqualified is not the date of filing nomination paper but the date fixed for the scrutiny of nominations.**

# Constitutional Qualifications

## (Articles 84 and 173 of the Constitution)



The constitutional qualifications as per the **Articles 84 (for becoming a member of Parliament) and 173 (for becoming a member of State Legislative assembly)** of the Constitution are:





# All About Oath or Affirmation

## Purpose of Oath:

The real purpose of this oath or affirmation is that ***the person undertakes to bear true faith and allegiance to the Constitution and uphold the sovereignty and integrity of India.***

## Oath to be made by:

Every candidate has to make and subscribe either an oath in the name of God or a solemn affirmation in the form prescribed for the purpose in the Third Schedule to the Constitution.



# All About Oath or Affirmation-Contd.

## When to be made:

- ✓ Oath or affirmation must be made ***after the nomination paper has been submitted to RO.***
- ✓ It must be made ***before the commencement of the date of scrutiny of nominations***, i.e., latest by mid-night of the date preceding the date of scrutiny.

## Oath or affirmation by a candidate contesting election from more than one constituency :

- ✓ Making and subscribing of requisite oath or affirmation in one constituency is sufficient if the candidate is contesting for the same house.
- ✓ Separate Oath or affirmation is required if candidate is contesting elections both to the House of the People and to a State Legislative Assembly at a simultaneous election.



# All About Oath or Affirmation-Contd.

## **Authorities Before Whom Oath Or Affirmation To Be Made:**

- RO or any of the Assistant ROs of the constituency.
- All stipendiary Magistrates of the first class, District Judges and persons belonging to judicial service of the State.
- Superintendent of the prison if the candidate is confined in a prison.
- Commandant of the detention camp if the candidate is under preventive detention.
- Medical Superintendent/Medical Practitioner attending to the candidate in case candidate is admitted in hospital.



# All About Oath or Affirmation-Contd.

## **Authorities Before Whom Oath Or Affirmation To Be Made:**

- Diplomatic or Consular Representative of India in the country, if the candidate is out of India.
- Any other person nominated by the ECI, on application made to it.

## **Note:**

- 1. Certificate of oath to be given to the candidate without his applying for it.**
- 2. If taken before a different authority-Onus is on candidate to produce Certificate of Oath before the RO**

# Age qualification-[Articles 84(3) and 173(b)]



- ✓ A person shall not be qualified to be chosen to fill a seat in the Lok Sabha/State Legislative Assembly, unless he is of 25 years of age.
- ✓ Age qualification should be fulfilled by the candidate on the date fixed for the scrutiny of nominations [section 36 (2) (a) of 1951-Act].



## Statutory Qualification (Sec. 5)

Qualifications for election to a State Legislative Assembly (section- 5) :

- ✓ In the case of the constituencies reserved for SCs or STs, the candidate should be a member of any of those castes or tribes, and an elector for any Assembly Constituency in the State;
- ✓ In the case of any other constituency in any State should be an elector for any Assembly Constituency in that State.

# Constitutional Disqualifications

## [Articles 102 (1) & 191(1)]



The constitutional disqualifications as per the Articles 102 (1) (for becoming and being a member of Parliament) and 191(1) (for becoming and for being a member of State Legislative assembly) of the Constitution are:

Holding an Office of profit under the Government.

Unsoundness of mind

Un-discharged insolvent.

Non-citizenship of India or acknowledgement of allegiance or adherence to a foreign State.

Any other disqualification prescribed by Parliament.

### Constitutional Disqualifications

# Office of profit under the Government

## [Articles 102 (1a) and 191(1)(a)]



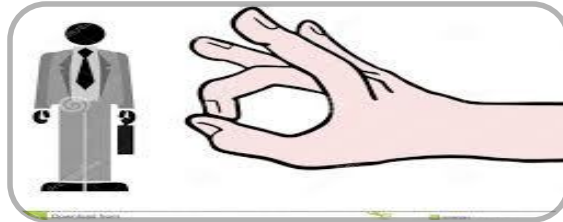
**What does 'Office of profit under the Government' mean?:**

All questions whether a particular person is holding an office of profit under the government or not have to be decided by applying the following tests to the facts and circumstances of each case in the light of Supreme Court decision in **Shivamurthy Swami Inamdar Vs. Agadi Sanganna Andanappa [(1971) 3 SCC 870]** and in several other cases:



### Test-1

*Whether the government makes the appointment*



### Test-2

*Whether the government has the right to remove or dismiss the holder*



### Test-3

*Whether any remuneration is paid*

# Office of profit under the Government [Articles 102 (1a) and 191(1)(a)]



- ✓ **However, Parliament and all State Legislatures have passed Acts removing disqualification in respect of certain offices mentioned therein.**
- ✓ **Please refer to Central/State Act on Removal of Disqualification.**

# Unsoundness of mind

[Articles 102 (1)(b) 191 (1) (b)]:



- ✓ **A person is disqualified if he is of unsound mind and stands so declared by a competent court.**
- ✓ **Mere allegation not sufficient – such person should be so declared by a competent court under the Indian Lunacy Act, 1912/Mental Healthcare Act, 1917.**



# Un-discharged insolvent

## [Articles 102 (1)(c) & 191 (1) (c)]:

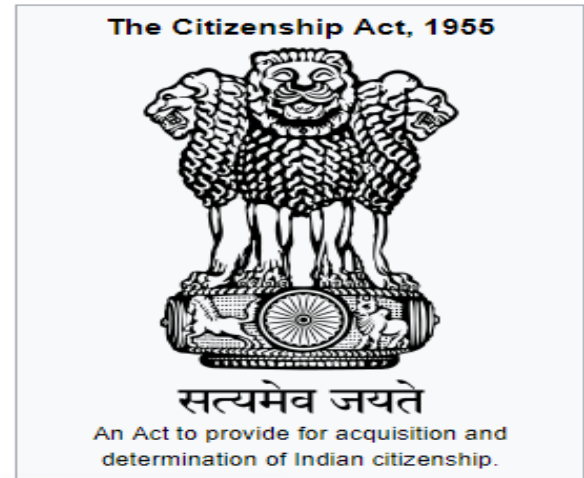


- A person **adjudged insolvent by a competent insolvency court** under the Provincial Insolvency Act, 1920 and **has not been discharged from insolvency** under the provision of that Act, **is disqualified for contesting** an election to Parliament/State Legislature.
- Mere commission of acts of insolvency not a ground for disqualification.
- Disqualification on this account ceases to be operative, if the insolvent is discharged from insolvency by the competent court.

# Non-citizenship of India or acknowledgement of allegiance or adherence to a foreign State [Articles 102(1) (d) and 191 (1) (d)]:



- Citizenship of India a fundamental and essential qualification – additionally a person shall be disqualified for being chosen as, and also for being a Member of Parliament/State Legislature if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State or is under any acknowledgement of allegiance or adherence to a foreign State.

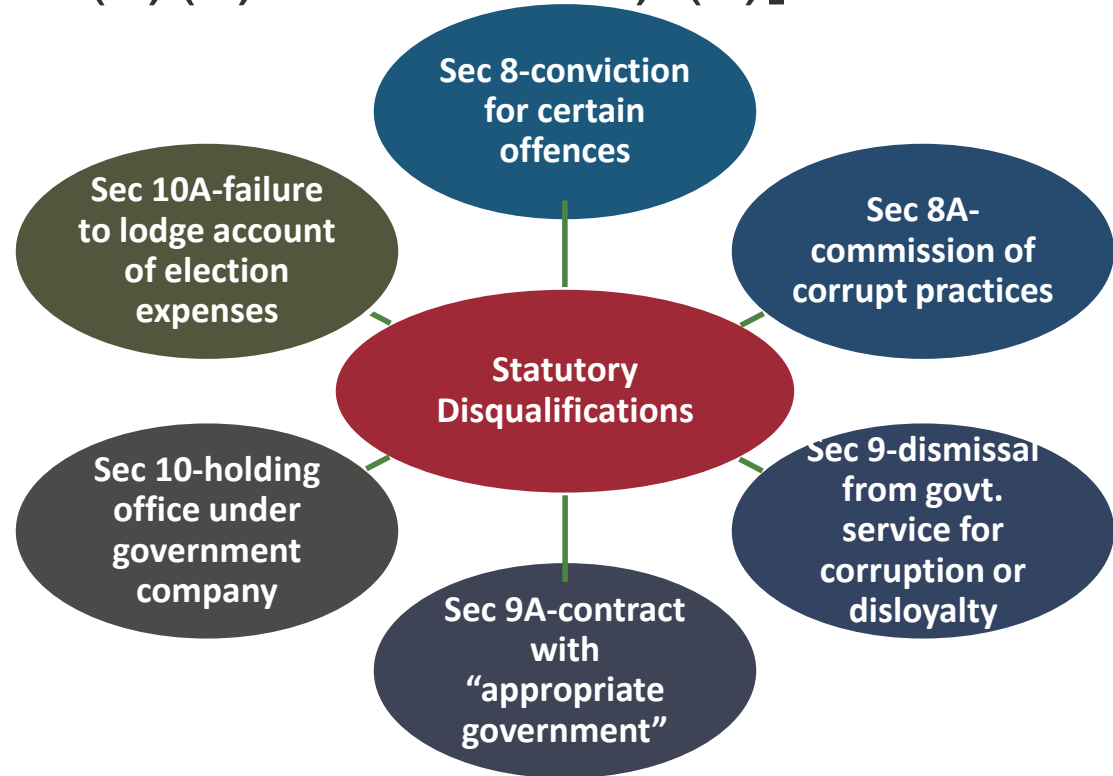


# Statutory disqualifications

## [Articles 102(1)(e) and 191 (1) (e)]



*Parliament is empowered to make statutory laws prescribing disqualifications for membership for both Parliament and State Legislatures.*



# Disqualification on conviction for certain offences (s 8)



- ✓ Section 8 details the offences the conviction for which leads to disqualification.

Conviction by Trial Court attracts disqualification.

Release on bail does not remove disqualification, unless conviction is also stayed during pendency of appeal.

# Disqualification on conviction for certain offences (s 8A)



**Only those persons are disqualified  
whose list is circulated by ECI from time  
to time.**



# Disqualification for dismissal from government service for corruption or disloyalty (s 9)



Dismissal from  
Govt. service

- A candidate dismissed from government service within the last five years must produce a certificate from ECI that he was not dismissed for corruption or disloyalty

Filing of  
certificate

- Such certificate must be filed with the nomination paper
- Otherwise nomination shall be rejected [Section 33(3)]

# Disqualification for contract with appropriate government (s 9A)



**'Appropriate government' means Central Government in the case of election to Parliament, and State Government in the case of election to State Legislature**

**Contract should be subsisting on the date of scrutiny of nominations;**

**Contract should be either for supply of goods to the govt or for execution of works.**

**Contract should be with 'appropriate government';**

# Disqualification for holding office under government company (s 10)



## Who

Who can be disqualified under Sec 10

- Only Secretary, Manager or Managing Agent of government company is disqualified

## What

What is 'Government company'

- 'Government company' means any company, corporation, etc., in which appropriate government has not less than 25% share and **does not** include cooperative society.

## What

What is 'Appropriate Government'

- 'Appropriate government' means Central Government in the case of election to Parliament, and State Government in the case of election to State Legislature.

# Disqualification for failure to lodge account of election expenses (s 10A)



- ✓ Only those persons are disqualified whose list is circulated by ECI from time to time.
- ✓ Disqualification U/s 10A is for specific period of 3 years. Pl. go through the list of disqualified persons in respect of your State carefully.



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# Risks Associated with General Elections

## Risk Matrix for Qualification and Disqualification

<b>Identified Risk</b>	<b>Lack of pre-check</b>	<b>Apparent consultation at scrutiny time</b>
<b>Consequences</b>	Leads to delay at the time of scrutiny	Leads to avoidable complaints
<b>Mitigation Measures/ Action points</b>	Following a prescribed check-list, all nomination forms and accompanying documents like Affidavit, electoral roll extract, caste certificate where needed, security deposit receipt, etc. must be checked after the nomination time closes.	Each and every case of doubt must be got clarified through Legal Division of the ECI much before the start of scrutiny. Under no circumstances should the RO be in telephonic consultation during the scrutiny.

# Risks Associated with General Elections

## Risk Matrix for Qualification and Disqualification

<b>Identified Risk</b>	<b>Not giving reasonable opportunity</b>	<b>Wrongful rejection of a nomination</b>
<b>Consequences</b>	Leads to avoidable election petitions.	Can become a valid ground for setting aside the whole election.
<b>Mitigation Measures/ Action points</b>	Even when the RO is very clear that there is no need to give time for resolving a particular objection or deficiency, it is prudent to give some reasonable opportunity, if specifically requested by a candidate/ agent.	After doing adequate scrutiny and analysis, in case of any doubt, the guiding principle should be to give the benefit of doubt to the candidate, as wrongful acceptance may not vitiate an election, but wrongful rejection can certainly become a ground for challenging the election.

# Risks Associated with General Elections

## Risk Matrix for Qualification and Disqualification

<b>Identified Risk</b>	<b>Perceived non- application of mind</b>
<b>Consequences</b>	Can lead to election petition and also be a ground for doubting the validity of election.
<b>Mitigation Measures/ Action points</b>	<p>The RO may consult the Legal Division of the ECI, or the office of the CEO or the Observer present on the occasion, but he/she must apply his/her own mind on the facts and circumstances of the matter in question and arrive at a reasoned conclusion, with a speaking order, without any mention of such extraneous consultations.</p> <p>The RO has to be guided by his/her own judgement, based on the position of law and applicable rulings, without any apparent influence of outside opinion.</p>



*Thank  
you*

