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The Representation of the People Act : Part II

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This is Part II of the TTP in continuation of **Part I** of TTP on The Representation of the People Acts.

The Representation of the People Act (RPA), 1951

- **Key Provisions**

- It regulates the **actual conduct of elections** and by-elections.
- It provides administrative **machinery** for conducting elections.
- It deals with the **registration of political parties**.
- It specifies the **qualifications and disqualifications for membership** of the Houses.
- It provides provisions to **curb corrupt practices** and **other offences**.
- It lays down the procedure for settling **doubts and disputes arising out of elections**.

- **Qualification for Contesting Elections in India**

The Parliament has laid down the following **qualifications** (for contesting election) in the RPA, 1951:

- A person must be an **elector in the constituency**.
- The person must be a member of a **Scheduled Caste or Scheduled Tribe** in **any state/UTs** if he/she wants to contest a **seat reserved** for them.
- **The minimum age** for becoming an MLA/MPs (Lok Sabha) is **25 years**.

At the panchayat and municipality levels, the minimum age limit for contesting elections is **21 years**.

- **Right to Vote**
 - Apart from **Article 326** of the Constitution (that guarantees the right to vote to every citizen above the age of 18 years, unless disqualified by any law), **Section 62** of the RPA,1951 also ensures that every person **who is in the electoral roll of that constituency is entitled to vote.**
 - One person can vote at **one constituency only** and **only for one time** in a particular election.
 - If a person is confined in a **prison**, whether under a **sentence of imprisonment** or transportation, then he is **not** eligible for voting, however, in the case of **preventive custody**, he can vote.
 - In 2014, the ECI had said that the person under **preventive custody** had the right to vote, but **not under-trials** and **convicts.**
 - However, the Act allows those serving sentences **less than 2 years** to **contest elections** from prison.
- **NOTA Option:** None of the Above was introduced in the ballot papers/ Electronic Voting Machine (EVMs) in General Election to the State Assemblies in **2013.**
- **VVPAT: Voter Verifiable Paper Audit Trail** is an independent system attached with the EVMs that allows voters to verify that their votes are cast as intended. It was introduced in **2013**, after the SC allowed the ECI for the 'requirement of free and fair elections' in its verdict in the **People's Union for Civil Liberties vs. Union of India** case (2013).
- **Provisions Related to Political Parties:** Every association or body in order to become a political party must be **registered with the ECI** whose decision regarding registration will be **final.**
 - Registered political parties, in course of time, can get recognition as '**State Party**' or **National Party**'.
 - **Change in name and address** of a **registered political party** must be communicated to the ECI.
 - The ECI **can not derecognise** a party.
- **Voluntary Contributions**
 - Voluntary contributions by any person or company within India (other than a government company) can be accepted by the registered political party.
 - A company can donate any amount of money to any political party.
 - There is no obligation of the company to report such donations in its profit and loss account.
 - It is **mandatory** for the political parties to submit to the ECI a list of donations they received above **Rs. 2,000.**
 - Political parties cannot receive more than Rs 2000 as **cash donations.**
 - **Now**, political parties are eligible to accept contributions from **foreign companies** defined under the **Foreign Contribution (Regulation) Act, 2010.**

- **Declaration of Assets and Liabilities**

- Individuals contesting elections have to file an **affidavit**, declaring their criminal records, assets & liabilities and educational qualification.
- **After getting elected**, MPs are required to file a declaration of assets and liabilities with the Speaker of Lok Sabha and the Chairman of Rajya Sabha.
- These declarations have to be made by MPs **within 90 days** of taking their seats in Parliament.

- **Right to Information**

Candidates need to furnish information **whether** he/she is accused of any offence **punishable with imprisonment of 2 years or more** in a pending case or has been convicted of an offence.

- **Voting Through Postal Ballot**

Any class of person can be notified by the ECI in consultation with the concerned government which can give their votes by postal ballot.

- **Section 126 of the RPA, 1951**

- **48 hours before the polling ends or concludes**, displaying of any election matter by **television or similar apparatus** in a constituency is prohibited.
- Section 126 is **not** applicable to the **print media**, news portals and **social media**

Section **126A prohibits the** conduct of **exit poll** and **dissemination of its results** during the period mentioned.

- **Ceiling on Expenditure**

A candidate contesting polls in large states can spend up to Rs 70 lakh in the Lok Sabha election and Rs 28 lakh in an Assembly election.

- **Counting of Votes**

- At every election where a poll is taken, the votes are counted by, or under the supervision of the **Returning Officer (RO)**, and contesting candidate, his election agent and his counting agents.
- **Destruction**, loss, damage or **tampering** of ballot papers at the time of counting **must be reported by the RO to the ECI**.

- **Corrupt Practices**

- **All** government or non-government **officials** are included within the **scope** of corrupt practices.
- **Bribery**: Any gift/offer/promise or gratification to any person as a motive or reward.
- **Undue Influence**: Any direct or indirect interference/attempt to interfere on the part of the candidate with the free exercise of any electoral right.
- The **publication by a candidate** any statement of fact which is **false** in relation to the personal character/conduct of any candidate
- **The hiring or procuring** of any vehicle by a candidate of any elector **to or from any polling station**.

- **Promoting Enmity**
 - Any person who promotes or attempts to promote on grounds of **religion, race, caste, community or language, feelings of enmity or hatred** between different classes of citizens of India can be punished with imprisonment for a term which may extend to 3 years.
 - **Prohibition of public meetings** during a period of **48 hours** ending with the hour fixed for the conclusion of the poll.
- **Disqualification of MPs and MLAs**
 - The RPA, 1951 lays down certain rules for disqualification of MPs and MLAs.
 - **Section 8 (3)** of the Act states that if an MP or MLA is convicted for any other crime and is sent to **jail for 2 years or more**, he/ she will be disqualified for **6 years** from the time of release.
 - Even if a person is on **bail** after the conviction and his appeal is pending for disposal, he is disqualified from contesting an election.
 - **Section 8(4)** allowed convicted MPs, MLAs and MLCs to continue in their posts, provided they appealed against their conviction/sentence in higher courts within **3 months** of the date of judgment by the trial court.
 - The **Supreme Court** in July 2013 **struck down** section 8(4) of the RPA, 1951 and declared it **ultra vires** and held that the **disqualification takes place from the date of conviction**.

Significance of the Acts

- **Direct Democracy:** The provision of direct election for every constituency makes the process of **election more democratic** and **participatory** by encouraging and empowering people to play an active role in choosing appropriate candidates.
- **Equal Representation:** The RPA, 1950 provides for delimitation which brings **equality in the process of election** by ensuring roughly an equal number of electors in each constituency.
- **Federalism:** The acts strengthened the federal polity of the country by giving **due representation to each state** in the Parliament.
- **Decriminalizing Indian Politics:** The RPA, 1951 plays the significant role in breaking the politicians, police & criminal nexus (which is one of the greatest threats to the rule of law in India), by prohibiting the entry of persons with a criminal background into the electoral process, thus **decriminalizing Indian politics**.
- **Accountability and Transparency:** The RPA, 1951 provides for the **expenditure monitoring mechanism** which ensures the accountability and transparency of the candidate in the use of public funds or misuse of power for personal benefits.
- **Clean Election:** The RPA, 1951 prohibits corrupt practices like booth capturing, bribery or promoting enmity etc., and ensures the conduct of **free & fair elections** which in turn encourage **political liberalization** and democratization.

- **Legible Political Funding:** The RPA ,1951 provides that only those political parties which are registered under section 29A of the RPA, 1951 are eligible to receive **electoral bonds**, thus providing a mechanism to track the source of **political funding** and ensuring transparency in electoral funding.

Challenges

- **False Disclosures:** Even after the provision of the declaration of assets and liabilities in the RPA act, candidates do not disclose all the assets and provide wrong and incomplete information regarding their assets, liabilities, and income and educational qualifications.
- **The Bureaucratization of Politics:** In spite of the inclusion of several provisions aimed at making the **ECI** as an independent body, it is still **dependent on the Union for financial matters** that paves the way for political parties to manage to get the officers in their favour through money and muscle power.
- **Dual Responsibility of the ECI:** The ECI does **not** have **independent staff** of its own so whenever elections take place, it has to depend upon staff of Central and State Governments hence the **dual responsibility of the administrative staff, to the government for ordinary administration** and to **the ECI** for electoral administration is not conducive to the impartial and efficient functioning of the Commission.
- **Misuse of Government Machinery:** The RPAs **lack clear provisions and guidelines** on the matters related to the misuse of official machinery that gives an **unfair advantage to the ruling party** at the time of elections and leads to the misuse of public funds for furthering the prospects of candidates of a particular party.

The misuse of official machinery takes different forms, such as the issue of advertisements at the cost of government and public exchequer highlighting their achievements, disbursements out of the discretionary funds at the disposal of the ministers, use of government vehicles for canvassing etc.

Way Forward

- **Restriction on Opinion Polls:** By an amendment made to the RPA 1951, conducting and publishing results of exit polls have been prohibited.

There should be a **similar prohibition** or restriction **on opinion polls** also as several manipulated opinion polls could impact the voting pattern.
- **False Declaration as Offense:** The RPA ,1951 should be amended **to include all the items** related to the election disclosure in the **affidavit** and making false declarations in connection with the election to be an offence.
- **Independent ECI:** In order to curb the practice of bureaucratization of politics and to secure complete independence of the Election Commission, its **expenditure should be charged on the Consolidated Fund of India.**

- **De-listing of Valid Electorates:** Parliament must pass a law dealing with the serious problem of delisting of valid electors from electoral rolls because **illiterate electorate** residing in far villages **cannot watch over the publication** of electorate lists.
- **State Funding of Elections:** To **minimise the role of money** in elections, provisions should be made for state funding of elections.

A few government reports have highlighted the prospects of state funding of elections like

- **Indrajit Gupta Committee** on State Funding of Elections (1998)
- **Law Commission Report** on Reform of the Electoral Laws (1999)
- **National Commission** to Review the Working of the Constitution (2001)
- **2nd Administrative Reforms Commission** (2008)

The **powers** of the **ECI** are **enormous** and **all-encompassing** which even exceed the powers of the executive in all election-related issues during the course of the election period. Thereby giving it effective tools in dispensing free and fair elections, the only thing that lacks is will and integrity on the part of responsible officials. The **ECI** should become **more prudent** and **proactive** to ensure the fairness and transparency of the general election and wipe away any doubt regarding its integrity as an esteemed institution.