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AN ALTERNATIVE METHOD OF ELECTION

PART IX

SUMMARY OF RECOMMENDATIONS

LAW COMMISSION OF INDIA

ONE HUNDRED SEVENTIETH REPORT

ON

REFORM OF THE ELECTORAL LAWS

MAY, 1999

D.O. No.6(3)(35)/95-LC(LS) 29/05/99/09.06.99

Dear Shri Ram Jethmalani,

I am forwarding herewith the 170th report on the "Reform of the Electoral Laws."

2. The Ministry of Law, Justice and Company Affairs, Government of India had addressed a letter dated 2/11/95, requesting the then Law Commission to undertake a comprehensive study of the measures required to expedite the hearing of the election petitions. On 3rd August, 1998, a reminder was sent to and received by the present Law Commission. Even some time before the receipt of the letter dated 3rd August, 1998, the Commission had suo motu undertaken a thorough review of the Representation of the People Act, 1951 including provisions relating to hearing of election petitions. The underlying objective was to make the electoral process more fair, transparent and equitable. The effort was also to reduce the several distortions and evils that had crept into the Indian electoral system, to identify the areas where the legal provisions required strenthening and improvement and to suggest the requisite measures in that behalf. Accordingly, the Law Commission prepared a working paper, to which three draft Bills were also enclosed. One Bill pertained to amending the Constitution of India, the other for amending the Representation of People Act, 1951 and the third to amend the Indian Penal Code.

3. The salient features of the working paper included inter-alia, introduction of List System, Amendment to the Tenth Schedule to the Constitution of India, curtailing the expenditure on elections, amendment of section 8 of the

Representation of the People Act, enhancement of punishment for electoral offences, measures to ensure expenditious disposal of election petitions by the High Court, amendment of section 97 (1) of the R.P. Act, 1951.

4. The working paper prepared by the Law Commission was communicated to all the recognised political parties, both at the national and state level, the Houses of Parliament, the State Legislatures, to the High Court, Bar Associations, Election Commission, prominent media personalities, associations and organisations interested in electoral reforms and many other persons. A large number of responses were received from parties, persons, organisations, associations and individuals. The Law Commission also held four seminars to elicit informed opinion and views of the political parties and responsible members of the public. The first seminar was held on 14th November, 1998 at the India International Centre, the second seminar was held at Thiruvananthapuram, the third seminar was held at Bangalore in the premises of the National Law School of India University and finally a National Seminar on Electoral Reforms was held at New Delhi on 23rd-24th January, 1999 at Vigyan Bhavan, in association with the Bar Council of India. Many eminent personalities including the Hon'ble Prime Minister participated in the said seminar and projected their views.

5. After thoroughly analysing the views obtained from various quarters, the Commission has prepared this report on electoral reforms. The report recommends various measures which are essential to make our electoral system more representative, fair and transparent, to strengthen our democracy, to arrest and reverse the prcess of proliferation and splintering of political parties and to introduce stability in our governance. With a view to achieve the said objectives, we have suggested inclusion of a chapter regulating the formation and functioning of political parties, particularly with a view to ensure internal democracy. The Commission has examined in-depth the necessity of introducing the List System in the country and has made recommendations accordingly. The law of defections contained in the Tenth Schedule to the Constitution has also been revised; it is now proposed that a pre-election front/coalition of political parites should be treated as a "political party" for the purposes of the Tenth Schedule. The Commission has also suggested that any political party which receives less than 5% of the total valid votes cast in the general election to the Lok Sabha or to a State Legislative Assembly, as the case may be, shall not be entitled to any seat in the Lok Sabha/Legislative Assembly, even if it wins any seat(s). The Commission has also opined that the time is now ripe for barring indepndent candidates from contesting elections for Lok Sabha and Legislative Assemblies and has made recommendations accordingly. The reasons for these several measures have been stated elaborately in our Report.

6. The Commission has also reiterated its proposal to delete Explanation-I to section 77(1) of the R.P. Act, 1951, which has been strongly criticised in several judgements of the Supreme Court and all discerning persons. We have also recommended enactment of provisions requiring the political parties to maintain accounts, have them audited and file them before the election Commission. On State Funding of political parties, the Commission has reiterated the recommendations in the Inderjit Gupta Committee report subject to certain reservations set out in paragraph 4.3.4. of our Report. Similarly provisions are in vogue in several other democratic countries.

7. The Commission has also recommended that in case of electoral offences and certain other serious offences, framing of a charge by the Court should itslef be a ground of disqualification in addition to conviction. It has reiterated several other proposals set out in working paper except with regard to raising deposits in the case of independent candidates. The raising of deposits for independents is unnecessary in view of our other recommendations to bar the independents altogether and permitting only political parties (whether recognised or not) to contest elections subject to the requirement of obtaining 5% of the total valid votes cast to enable them to get a seat in Lok Sabha/State Assembly.

8. The Commission has, with a view to check false complaints, proposed to amend the relevant provisions of the Criminal Procedure Code.

9. In the interest of transparency, we have also suggested provisions making it obligatory upon every candidate to declare the assets possessed by him or her or by his/her spouse and dependent relations and the particulars regarding criminal cases pending against him/her, in the nomination paper itself.

10. We have also suggested measures for ensuring stability of governments. One of the measures suggested is a new rule, Rule 198A in the Rules of Procedure and Conduct of Business in Lok Sabha. We have stressed the necessity of having one election once in five years for Lok Sabha as well as State Assemblies and made some suggestions in that behalf.

11. We have also set out the desirability of adopting the rule requiring that ony a candidate obtaining 50%+1 votes will be declared elected and the holding of a "run-off" election wherever necessary. The concept of negative vote also has been discussed and recommended for consideration.

12. The Commission is of the considered view that there is urgent and crying necessity to implement the afore-mentioned measures to reform the electoral system and to strengthen the democracy in our country.

With regards,

Yours sincerely,

(B.P. JEEVAN REDDY)

Shri Ram Jethmalani,
Minister for Law, Justice &
Company Affairs,
Shastri Bhavan,
New Delhi.

PART I
Background of Electoral Reforms
CHAPTER I
INTRODUCTION

1.1.1. The preamble to be Constitution of India declares that the people of India have resolved to constitute India into a sovereign democratic republic with the four-fold objective, namely, to secure to all its citizens, justice social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and of opportunity and to promote among them all fraternity, assuring the dignity of the individual. As would be evident from the provisions in Part V and Part VI of the Constitution, we have established for ourselves a parliamentary form of government patterned on the British model. In a parliamentary democracy, there is no formal separation between the Parliament and the political executive (Council of Ministers). The political executive is a part and parcel of the Parliament and is drawn from it. The party or the group of parties which has a majority in the lower House or which enjoys the confidence of the lower House, is invited by the President to form the government. In other words, in a parliamentary democracy, the political executive is not elected as such by the people. Even the President, the titular Head of the State is not elected by the people directly but by the Members of the Parliament and the State Legislatures. It is for this reason that the Supreme Court has held repeatedly even before the enactment of the Constitution (Forty-Second) Amendment Act, 1976, in Ram Jawaya Kapur v. State of Punjab (AIR 1955 SC 549) and in Samsher Singh v. State of Punjab (AIR 1974 SC 2192) that the position of the President under our Constitution is akin to the British Monarch. In other words, he is a constitutional head of the State. The real governing power vests in the political executive. Similar is the position in the States. The system obtaining in this country is wholly different from the one obtaining in the United States of America where the executive, namely, the President is elected directly by the people just as the Legislature (Congress) is elected by the people directly in a separate election. In such a system of government, the governing power is distributed between

the President and the Congress and the political executive is not drawn from the Legislature whereas in a parliamentary form of government like ours, the political executive (Council of Ministers) is drawn from Parliament and is answerable to the Parliament for exercise of its powers.

1.1.2. Whether in a parliamentary form of government or a Presidential form, indeed in every democracy, the process of election should be free, fair and equitable. Fortunately, our Constitution and the Representation of the People Act, 1950 and Representation of the People Act, 1951 to seek to provide for a free and fair election but problems have been arising in this regard on account of division in our polity on the basis of religion, caste, language, region and race. [Free and fair elections are the very foundation of democratic institutions (P.R. Belagali v. B.D. Jatti, AIR 1971 SC 1348; Indira Nehru Gandhi v. Raj Narain, AIR 1975 SC 2299; and Mohinder Singh Gill v. The Chief Election Commissioner, AIR 1978 SC 851)]. However there has been a steady deterioration in the standards, practices and pronouncements of the political class, which fights the elections. Money-power, muscle-power, corrupt practices and unfair means are being freely employed to win the elections. Over the years, several measures have been taken by Parliament to amend the laws relating to elections with a view to check the aforementioned forces. This report, which has been prepared after extensive consultations, is a step in the said process. It is hoped that Parliament will take prompt action to give them legislative imprimatur.

CHAPTER II
Relevant Legislative Provisions

1.2.1. Part XV of the Constitution deals with elections. It contains six articles viz., articles 324 to 329. Article 324 declares that the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under the Constitution, shall be vested in the Election Commission. Article 325 declares that there shall be one general electoral roll for every parliamentary constituency for election to either House of Parliament or to the House or either either House of the Legislature of a State and that no person shall be ineligible for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, race, caste, sex or any of them. This article read with article 326 confers a right upon every citizen of this country to be included in the electoral roll provided he has completed 18 years of age on the specified date and is not otherwise disqualified under any of the provisions of the Constitution or any law made by Parliament or the appropriate Legislature. Article 327 empowers Parliament to provide by law with respect to all matters relating to,

or in connection with, elections to either House of Parliament or to the Houses of either House of the Legislature of a State including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due constitution of such House or Houses. This power, the article says clearly, can be exercised by Parliament from time to time subject to the provisions of the Constitution. Article 328 confers a similar power upon the Legislature of a State in so far as a provision in that behalf is not made by Parliament. Article 329 creates a bar to interference by courts in electoral matters. Clause (a) declares that the validity of any law relating to the delimitation of the constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 327 or 328 shall not be called in question in any court. Clause (b) declares that no election to either House of Parliament or to the House or either House of Legislature of a State shall be called in question except by an election petition presented to prescribed authority and in the prescribed manner.

1.2.2. Pursuant to article 325 to 327, Parliament has enacted the Representation of the People Act, 1950 and Representation of the People Act, 1951 (besides certain other minor enactments and orders) which cover the entire gamut of elections to Parliament and State Legislatures.

CHAPTER III
Background of the subject undertaken and Commission's Working Paper

1.3.1. It appears that in 1995, the Government of India in the Ministry of Law, Justice and Company Affairs had addressed a letter dated 2.11.1995 requesting the then Law Commission to undertake a comprehensive study of the measures required to expedite the hearing of the election petitions. The present Law Commission (15th Law Commission) which was constituted towards the end of November 1997 came to know of the said letter much later i.e. on receipt of a letter from the Minister for Law, Justice and Company Affairs dated 3rd August 1998 asking for a report on the above subject at an early date. As a matter of fact, some time before the receipt of the said letter, the present Law Commission had, suo motu, embarked upon a thorough review of the Representation of the People Act, 1951 including provisions relating to hearing of election petitions. The study was undertaken with a view to making the electoral process more fair, transparent and equitable. The effort was also to reduce, if not curtail, the several distortions and evils that had crept into the India electoral system, to identify the areas where the legal provisions required strengthening and improvement and to suggest the requisite measures in that behalf. Accordingly, the Law Commission prepared a working paper (Annexure-B) to which were enclosed three draft Bills, one for amending the Constitution of India, the other for amending the Representation of People Act, 1951 and the

third to amend the Indian Penal Code. While preparing the working paper and the accompanying Bills, the Law Commission took into consideration the Bill which was prepared in 1990 by the late Shri Dinesh Goswami, the then Minister for Law, Justice and Company Affairs, based on a consensus arrived at between all the political parties. Indeed, we took the said Bill as the starting point and suggested various other measures which in our opinion were called for to achieve the aforementioned objectives. We also took into account a brochure published by the Election Commission of India containing various suggestions for amending the Representation of the People Act, 1951 Notice was also taken of several decisions of the Supreme Court on various provisions of the Representation of the People Act, 1951 hereinafter referred to as the R.P.Act. The salient features of the working paper were the following:

1.3.2. Introduction of the List System. The Law Commission took note of the fact that the `first-past-the-post' system prevailing in our country had given rise to several inequities and distortions in our electoral process particularly on account of the multiplicity of the political parties. There are certain States in India where there are three or four recognised political parties, more or less evenly balanced. In such a situation what is happening is that the winning candidate is receiving, in many cases, 30% or less of the valid votes cast. The remaining 70% or more votes polled (cast in favour of the defeated candidates including independents) are practically going waste, without representation, and without a voice in the representative bodies, namely, Parliament and the State Legislatures. It was thought advisable to provide a voice and a representation to the wasted votes which indeed very often constituted a majority of the total votes cast.

1.3.2.1. Another consideration in this behalf was that the first-past-the-post (FPP) system now in vogue is not yielding a correct picture of the voter preferences. In other words, there is no commensurality between the total votes cast in a State or in the country, as the case may be, and the seats obtained by the parties. To be more precise, what is happening is that a political party which has received, say, 32% of the total votes case in the country is obtaining 70% of the seats in Parliament, whereas another political party which has polled, say, 29% of the votes, is getting 25% of the seats in Parliament. A `swing' of 2 to 3 per cent votes is resulting in a huge difference in the number of seats won.

1.3.3.2. There was yet another situation where a political party is polling a substantial chunk of votes cast in a given State in parliamentary elections but is not able to get a single seat in the Parliament from that State.

1.3.2.3. With a view to rectifying and redressing the aforementioned distortions and inequities, the Law Commission was of the provisional opinion that introducing

a List System may serve to redress the aforementioned distortions, at least to a partial extent. For this purpose, we looked to the electoral system obtaining in certain other countries including Germany where a mixed system (FPP and list system) is in force. In Germany, part of the seats are filled on the basis of FPP system whereunder the members are elected from territorial constituencies and the remaining members are chosen from the lists put forward by the political parties. We did not however think it advisable to import the German system whole-hog for it was found to be extremely complicated and difficult of operation in a country like ours where a sizeable chunk of population is illiterate and is not able to operate such a complicated electoral system.

1.3.2.4. We thought of finding a system more suited to our genius and to the conditions prevailing in our country. Though it would have been advisable to suggest that 50% of the number of members in Lok Sabha or Legislative Assemblies of the States should be filled on the basis of list system, we pegged it at 25%, not only as a starting point, but also with a view not to give room for growth of, or encouragement to, caste-based political parties. We did not wish to encourage in any manner the caste-based political parties or the voting patterns based on caste considerations.

1.3.2.5. Accordingly, it was suggested that in the Lok Sabha as well as in the State Legislative Assemblies, the present strength should be increased by 25% of the existing strength which increased strength should be filled on the basis of list system. The list system was to be confined only to recognised political parties (RPP). There would be no separate vote nor a separate election for the members to be chosen under the list system.

1.3.2.6. It was suggested that each recognised political party should put forward its list of candidates, which will be received, scrutinised and valid list published along with the nominations for elections from the territorial constituencies. It was suggested that for this purpose, `territorial units' be designated; so far as the bigger States are concerned, each State shall be a territorial unit but in the case of small States, they should either be clubbed with an adjacent bigger State or be clubbed together to form a territorial unit. (This idea of territorial units was suggested to be adopted only in the case of parliamentary general elections and not in the case of elections to the State Legislatures.) At the end of polling and counting of votes for the territorial constituencies, the Election Commission, it was suggested, should tabulate votes polled by each RPP in a given State/territorial unit and the seats meant to be filled up under the list system be distributed among the RPPs in proportion to the votes polled by them. For achieving the said purpose, it was found necessary to amend not only the Representation of the People Act, 1951 but the Constitution of India itself in the first instance. Accordingly, the

suggested amendments both to the Constitution of India and the Representation of People Act, 1951 were shown in the Bills accompanying the working paper.

1.3.2.7. Another connected suggestion was to delete article 331 of the Constitution which empowers the President to nominate two members of Anglo-Indian community to the Lok Sabha. It was explained that this provision which may have been good when the Constitution was enacted, has become irrelevant with the substantial fall in the number of Anglo-Indians over the years and in the light of the miniscule number of this community obtaining today.

1.3.3. Amendment to the Tenth Schedule to the Constitution. The Tenth Schedule to the Constitution was inserted by the Constitution (Fifty-second Amendment) Act, 1985. The Schedule provides for disqualification of a member of Parliament of a State Legislature in two situations, namely (a) if he voluntarily gives up his membership of political party on whose ticket he was elected and (b) if he votes or abstains from voting, without prior permission of the party, in such House contrary to any direction issued by the political party on whose ticket he has been elected and such voting or abstention has not been condoned by such political party within 15 days from the date of voting of abstention. The Schedule however introduced in paragraph 3 thereof the concept of `split'. In short, the paragraph provided that if not less than 1/3rd members of the legislature party defect, the disqualification provided in paragraph 2 shall not operate. Paragraph 4 provided that the rule of disqualification in paragraph 2 shall not apply where two or more political parties merge. Paragraph 5 provided an exemption in favour of Speaker/Deputy Speaker of Chairman/Deputy Chairman, as the case may be, from the operation of paragraph 2. Paragraph 6 provided that in case of dispute on the question of disqualification on the ground of defection, the same shall be decided by the Speaker or the Chairman of the House concerned. Paragraph 7 barred the jurisdiction of the courts in respect of matters connected with the disqualification of a member of a House under the said Schedule. (This paragraph has, however, been declared unconstitutional by the Supreme Court in Kihota v. Zachilhu (AIR 1993 SC 412). Paragraph 6 provided for rules to be made to carry out the objects of the Schedule.

1.3.3.1. The experience of this country with the Tenth Schedule since its introduction has not been happy. It has led to innumerable abuses and undesirable practices. While the idea of disqualification on the basis of defection was a right one, the provision relating to `split' has been abused beyond recall. It was accordingly suggested by us that paragraphs 3 and 4 should go altogether with the result that paragraph 2 alone remains (along with the exemptions in paragraph 5). The underlying idea was that a person elected on the ticket of a political party should remain with it during the life of the House or leave the

House. It was also suggested by the Law Commission that the decision on the question of disqualification under the said Schedule should be entrusted to the President (in the case of Parliament) and to the Governor (in the case of State Legislature) who shall render their decision in accordance with the opinion of the Election Commission which shall be consulted in that behalf.

1.3.3.2. For achieving the said objective, necessary amendments to the Tenth Schedule to the Constitution were appended to the working paper. We are also proposing herein amendments to articles 102(1) and 191(1) of the Constitution which are necessary to give effect to our recommendations. The amendments in articles 102(1) and 191(1) are to the following effect:-

(1) In clause (1) of article 102, after sub-clause (e), the following sub-clause (f), shall be inserted before the Explanation -

"(f) if he is disqualified for being a member of either House of Parliament under the Tenth Schedule."

(2) Clause (2) to article 102 shall be deleted.

Similarly, in article 191(1), sub-clause (f) as follows shall be added after sub-clause (e) but before the Explanation:-

"if he is disqualified for being a member of Legislative Assembly or Legislative Council of a State under the Tenth Schedule"

(2) Clause (2) to article 102 shall be deleted.

1.3.4. Curtailing the expenditure on elections. The next major proposal put forward by the Law Commission pertained to reducing the expenditure on elections and also to regulate the receipts and expenditure by the political parties. The issue of State funding was also considered in this context. The first proposal in this behalf was to delete Explanation 1 to section 77 of the Representation of the People Act, 1951. Besides the abuse inherent in the said Explanation, it was pointed out that the necessity of deleting the Explanation had been pointed out by the Supreme Court in several decisions including C.Narayan Swami v. C.K.Jaffar Sheriff [1994 Supp. (3) SCC 170] and Gadakh Yashwantrao Kanakarrao v. Balasaheb Vikhe Patil [1994 (1) SCC 682]. It was pointed out in these decisions that the corrupt practice of incurring or authorising of expenditure in contravention of sub-section (6) of section 123 has lost its significance and utility with the introduction of Explanation 1 to section 77. It was further pointed out by the court that the Explanation violates the spirit of the Act and a hope was expressed that the Parliament would delete the said Explanation as early as possible to remove the impression that the

enactment and retention of the same was deliberate and was inspired by motives which could not be said to be genuine, democratic or sufficiently justifiable. The Law Commission had also referred in extenso in its working paper to the decision of Supreme Court in Kanwarlal Gupta v. Amarnath Chawla (1975 (3) SCC 646), to get over which decision indeed, Explanation 1 was enacted. The suggestion of the Law Commission was that deletion of Explanation 1 would bring the legal position in conformity with the ruling in Kanwarlal Gupta's case.

1.3.4.1.The second suggestion in this behalf was to introduce provisions making it obligatory upon the political parties to maintain regular accounts clearly and fully recording therein all amounts received by them and all expenditure incurred, as is the legal requirement in Germany. It was further suggested that the said accounts should be duly got audited at the end of each year and the audited accounts submitted to the Election Commission before the prescribed date every year. Election Commission was required to publish the said accounts for public information. This proposal was made to introduce an element of transparency and openness in the financial matters of the political parties and is backed by the judgment of the Supreme Court in Gajanan Bapat v. Dattaji Meghe (1995 SCC 347). The said decision emphasised the desirability and necessity of the political parties maintaining true and correct account of their receipts and expenditure including the disclosure of the sources of receipt. It was pointed out in the decision that this was essential to ensure the purity of elections and to prevent money from influencing the outcome of elections. It was pointed out by the Law Commission in its working paper that the aforesaid provisions in conjunction with the provisions contained in section 29A, would advance the objective of ensuring purity of elections by preventing the money-power, in particular black money-power and money collected from suspect sources from influencing the elections.

1.3.4.2. The third proposal in this behalf pertained to State funding. On this aspect, we merely reproduced the provisions contained in the Bill prepared by the then Law Minister, late Shri Dinesh Goswami in 1990 since they were based upon a consensus among the political parties, inviting at the same time the response of all concerned and informed citizenry to the said proposal.

1.3.5. Amendment of section 8 and enhancement of punishment for electoral offences. The next major proposal put forward in the working paper prepared and circulated by the Law Commission pertained to amendment of section 8 and of sections 127(1), 134B(2), 135(1), 136(2) and insertion of a new section 126A in the Act. It was also suggested that punishments prescribed by several sections in chapter IXA of the Indian Penal Code 1860 should be enhanced. All the above sections in the Act as well as the Indian Penal Code are election offences and quite serious too. The main purpose behind the suggested amendments was to provide (a)

that framing of charges by the court should by itself be a ground for disqualifying a person from being a candidate for election and (b) to enhance the punishments provided for election offences contained in the Representation of People Act, 1951 and chapter IXA of the Indian Penal Code so as to attract the procedure prescribed in the Criminal Procedure Code for trial of warrant cases. It may be remembered that framing of charges is obligatory in the warrant cases but not in summons cases. (In the case of offences triable according to the procedure prescribed for trial of summons cases, framing of charges lies within the discretion of the court and is not obligatory.) The above proposal was put forward for the reason that persons indulging in election offences are usually persons powerful in political field and who command money and muscle-power with the result that no witness comes forward to depose against them. Since no independent witness comes forward to depose against such persons, the prosecution launched against them inevitably ends in discharge or acquittal, as the case may be. Indeed, a similar proposal was also put forward sometime ago by the Election Commission too. It may be clarified that the aforesaid amendment was proposed only in sub-section (1) of section 8 and not in other sub-sections of section 8.

1.3.6. Other proposals. The other proposals contained in the working paper pertained to (a) enhancing the deposit in the case of independent candidates and candidates of unrecognised political parties. This substantial increase was suggested with a view to discourage independents and non-serious candidates from contesting elections thereby making the elections cumbersome, expensive and unmanageable - indeed, farcical in some cases; (b) steps designed to ensure expeditious disposal of election petitions by the High Court. The Law Commission did not agree with the suggestion of the Law Ministry to entrust the trial of election petitions to special tribunals instead of the High Courts. It was pointed out in the working paper that such an experiment was undertaken earlier and was given up as a failure and that only thereafter was the trial of election petitions entrusted to High Courts; (c) amendment of section 97(1) of the Act in the light of the decision of the Supreme Court in Bhagmal v. Prabhu Ram (AIR 1985 SCC 150) and (d) certain other amendments set out in the working paper.

CHAPTER IV
German Law on Political Parties

Whether by design or by omission, our Constitution does not provide for the constitution and working of the political parties, though they are at the heart of a parliamentary democracy. A parliamentary democracy without political parties is inconceivable. Yet the Constitution (except the Tenth Schedule which was inserted only in the year 1985) does not even speak of political parties whereas article 21 of the German Constitution (Basic Law for the Federal Republic of Germany, 1949), which Constitution was

also enacted almost simultaneously with our Constitution, provides for the establishment and working of the political parties. The Article reads thus:

"Article 21 (Parties)

(1) The parties shall help form the political will of the people. They may be freely established. Their internal organisation shall conform to democratic principles. They shall publicly account for the sources and use of their funds and for their assets.

(2) Parties which by reason of their aims or the conduct of their adherents seek to impair or do away with the free democratic basic order of threaten the existence of the Federal Republic of Germany shall be unconstitutional. The Federal Constitutional Court shall rule on the question of unconstitutionality.

(3) Details shall be the subject of federal laws."

1.4.1.1. Pursuant to article 21(3), the German Parliament has enacted the `Law on Political Parties' in the year 1967, which has been amended from time to time. Section 1 of the Law sets out "General Provisions". Article 1 which deals with the constitutional status and functions of the parties, reads thus:

"Article 1. Constitutional Status and Functions of the Parties.

(1) Political parties form a constitutionally integral part of a free and democratic system of government. Their free and continuous participation in the formation of the political will of the people enables them to discharge the public tasks which are incumbent upon them pursuant to the Basic law (Grundgestez)) and which they undertake to fulfil to the best of their ability.

(2) The parties shall participate in the formation of the political will of the people in all fields of public life, in particular by:
bringing their influence to bear on the shaping of public opinion; inspiring and furthering political education;
promoting an active participation by individual citizens in political life; training talented people to assume public responsibilities;
participating in Federal, Land and Local Government elections by nominating candidates;
exercising an influence on political trends in parliament and the government;
initiating their defined political aims in the national decision-making processes; and
ensuring continuous, vital links between the people

and the public authorities.

(3) The parties shall define their aims in the form of political manifestos.

(4) The parties shall use their funds exclusively for the fulfilment of their obligations under the Basic Law and this Law."

1.4.1.2. Article 2 defines the expression "Political Party". It reads thus:

"Article 2. Definition of the term "Political Party".

(1) Parties are associations of citizens who set out to influence either permanently or for a lengthy period of time, the formation of political opinions at Federal or Land level and to participate in the representation of the people in the Federal Parliament (Bundestag) or regional parliaments (Landtage) provided that they offer sufficient guarantee of the sincerity of their aims in the general character of their circumstances and attendant conditions, particularly in regard to the size and strength of their organisation, the number of registered members and their public image. party members may only be natural persons.

(2) An organisation loses its legal status as a party if it has not participated for a period of six years in either a Federal election or a Landtag election with electoral proposals of its own.

(3) Political organisations are not deemed to be parties if;

1. most of their members or the members of their executive committees are foreigners; or
2. the registered seat of business is located outside the purview of the present Law."

1.4.1.3. Article 3 empowers the political parties to institute legal proceedings in their own name and similarly be sued in their own name.

1.4.1.4. article 4 provides that the name of a party must be clearly distinguishable from that of other existing parties and that this rule is also applicable to acronyms. In election campaigns and the elections, only the registered name or acronym may be used.

1.4.1.5. Article 5 provides for equal treatment of all the political parties. It reads as under:

"Article 5. Equality of Treatment.

(1) Where a public authority provides facilities or

other public services for use by a party, it must accord equal treatment to all other parties. The scale of such facilities and services may be graduated to conform with the importance of the parties to the minimum extent needed for the achievement of their aims. The importance of a party is judged in particular from the results of previous elections for central or regional government. In the case of a party represented in the Bundestag by a parliamentary party, the significance accorded to it must amount to at least half that granted to any other party.

(2) As regards the granting of public services in connection with an election para (1) applies only for the duration of the election campaign to parties which have submitted election proposals.

(3) The public services referred to in para 1 may be made dependent upon certain preconditions which all parties have to fulfil.

(4) Section IV shall remain unaffected."

1.4.1.6. Section II deals with internal organisation of the political parties. Article 6 is of great significance and may be set out in full:

"Article 6. Statutes and Programme.

(1) A party must have written statutes (articles of association) and a written programme. Regional organisations conduct their affairs on the basis of their own statutes provided that the statutes of their immediately superior regional organisation do not contain any provisions bearing on this matter.

(2) The Statutes must contain provisions on:

1. The name and acronym (if used), the registered seat and the activities of the party.
2. The admission and resignation of members.
3. The rights and duties of members.
4. Admissible disciplinary measures against members and their exclusion from the party (Article 10, paras 3 to 5).
5. Admissible disciplinary measures against regional organisations.
6. The general organisation of the party.
7. Composition and powers of the executive committee and other organs.
8. matters which may only be decided upon by a meeting of members ad representatives pursuant to No.9.
9. The preconditions, form and time limit for convening meetings of members and representatives and the official recording of resolutions.
10. Regional organisations and organs which are authorised to submit or sign election proposals for

elections to parliaments inasmuch as three are no relevant legal provisions.

11. An overall vote by members and the procedure to be adopted when the party or a regional organisation or to merge with another party or parties pursuant to Article 9, para 3. The result of the overall vote determine whether the resolution is confirmed, amended or rescinded.

12. The form and content of a financial structure which satisfies the rules of Section V of this Law.

(3) The executive committee informs the Federal Returning Officer of:

1. The party's statutes and programme.

2. The names of the members of the executive committee of the party and its regional organisations together with their duties.

3. The dissolution of the party or a regional organisation. Amendments to sentence 1(1) and (2) above must be notified by 31 December of the given calender year. The relevant documents are held by the Federal Returning Officer and made available to the public for perusal and inspection. On request, copies of the documents are provided free of charge.

(4) Parties whose organisation is restricted to the territory of a Land are governed by the provisions set out in the present Law for parties as a whole."

1.4.1.7. Article 7 deals with the organisation of political parties both at the national and regional level.

1.4.1.8. Article 8 provides that the members' meeting and the executive committee shall constitute the essential organs of the party and its regional organisations and for other allied matters.

1.4.1.9. Article 9 provides for constitution of members' assemblies and delegates assemblies and the rights of the members in that behalf.

1.4.1.10. Article 10 empowers the political parties to decide on the admission of new members. It says that no justification need be given for refusing an application for membership. It further declares that members of the party and the representatives in the party bodies have equal voting rights. The party can frame statutes providing for disciplinary action against members and other matters specified therein.

1.4.1.11. Article 11 provides that every political party shall elect an executive committee at least every second calender year and that the committee must consist of at least three members. It also deals with the powers of the executive committee and its duties.

1.4.1.12. Article 12 provides for constitution of general

party committees and other incidental matters.

1.4.1.13. Article 13 provides for composition of delegates' assemblies.

1.4.1.14. Article 14 provides for arbitration in case of a dispute between the members or between the party and members or between the party ad regional organisations, as the case may be.

1.4.1.15. Article 15 deals with the process of decision-making in party organs. It reads thus:

"Article 15. Decision-Making in Party Organs.

(1) The party organs adopt their resolutions on the basis of a simple majority vote inasmuch as a higher majority vote is not stipulated by law or by the statutes.

(2) The ballots for members of the executive committee and representatives to delegates' assemblies as well as to the bodies of higher level regional organisations are secret. Voting at other elections is not secret unless voters object when asked to confirm such procedure.

(3) The statutory provisions governing the submission of motions must be such as to ensure the democratic forming of opinions and in particular adequate discussion of the proposals put forward by minorities. At the delegates' assemblies of higher level regional organisations, at least the representatives of the regional organisations at the next two lower levels must be granted the right to introduce motions. No commitment to the resolutions of other bodies is permissible at elections and polls."

1.4.1.16. Article 16 deals with dissolution and/or termination of the subordinate regional organisations.

1.4.1.17. Section III contains only one article, namely, article 17. It says that "candidates for election to Parliament must be chosen by secret ballot. The nomination procedure is governed by the election laws and the party statutes."

1.4.1.18. Section IV containing articles 18 to 22 deals with public financing of political parties whereas Section V obliges the political parties to maintain and publish their accounts regularly. Article 23 needs to be set out in full:

"Article 23. Statutory obligation to Publish Accounts.

(1) The executive committee of the party shall make

a public statement of the origins and the use of funds received by its party within a calendar year (accounting year) as well as of the assets of the party in a statement of accounts.

(2) The statement of accounts must be scrutinised by a certified auditor or auditing company in accordance with articles 29 to 31. In the case of parties who do not meet the requirements of article 18, para 4, first sentence, the statement of accounts may be scrutinised by a chartered accountant. It must be submitted by 30 September of the year following the accounting year to the President of the German Bundestag and be circulated by the latter as a Bundestag paper. The President of the German Bundestag can extend the limit by up to a maximum of three months in extenuating circumstances. The party statement of accounts shall be submitted for discussion to the federal party convention following its publication.

(3) The President of the German Bundestag shall examine whether the statement of accounts is in accordance with the regulations of Section V. The result of the scrutiny shall be recorded in the report in accordance with para 5.

(4) The President of the German Bundestag may not determine a party's allocation of public funds under articles 18 and 19 so long as a statement of accounts in accordance with the provisions of Section V is still outstanding. Payments under article 18 shall be based on the statement of accounts to be submitted for the preceding year, payments under article 20 on the statement of accounts submitted for the preceding year. If a party fails to submit the report by 31 December of the following year it shall forfeit its claim to public funds: allocations and disbursements to the other parties shall remain unaffected.

(5) The President of the German Bundestag shall submit annually to the German Bundestag a report on the state of party finances and on the statements of accounts of the parties. The report shall be circulated as a Bundestag paper."

1.4.1.19. Article 23(a) prohibits the political parties from obtaining donations illegally. It also provides that in case the political party fails to publish the statement of accounts as provided by article 25(2), it shall forfeit public funding in an amount double the amount illegally obtained or not published in accordance with article 25(2). It also sets out the meaning of `illegal donations'. Article 24 specifies what should the statement of income and expenditure contain. It mentions the several items which must necessarily be included and shown in such a statement. Broadly speaking it must disclose full

particulars in the specified form, of income received, sources from which received, expenditure incurred on various items and its net assets.

1.4.1.20. Article 25 deals with donations to political parties. It says that political parties are entitled to accept donations except from the sources specified therein. The sources which are so excluded are political foundations and parliamentary groups, corporate bodies, religious and charitable associations of persons and so on.

1.4.1.21. Article 26 defines the expression "income". Article 28 creates a statutory obligation upon the political parties to "keep books in respect of their accountable income and expenditure and of their assets". The article further provides that the accounts "shall be kept in accordance with the principles of orderly accounting and with regard for the purpose of the present law. Accounts shall be preserved for five years..."

1.4.1.22. Article 29 provides for auditing of the statement of accounts while article 30 makes it obligatory that the statement of accounts shall contain an audit certificate in the prescribed manner. Article 31 deals with the appointment of auditors.

1.4.1.23. Sections VI and VII deal with implementation of bans on unconstitutional parties and final provisions, which are not relevant for our purpose and need not be referred to.

1.4.2. Though our Constitution was also framed between the years 1946 to 1949 (i.e., approximately at the same time when the German Constitution was drawn), it is rather inexplicable why our Constituent Assembly did not think it appropriate to make provisions governing the political parties on the lines contained in the German Constitution. It may be mentioned even at this stage that though this aspect did not figure in the suggestions contained in the working paper prepared by the Law Commission in September 1998 and circulated among the political parties and the members of the public, the same has assumed considerable significance in the course of debate at the several seminars held by the Law Commission in this behalf and has also been suggested in several responses received by the Law Commission in response to the working paper.

PART II
Views of Political Parties and Interested Persons obtained in Seminar

2.1 The working paper prepared by the Law Commission was communicated to all the recognised political parties, both at the national and State level, the Houses of Parliament, the State Legislatures, to the High courts, bar associations, Election Commission, prominent media personalities, associations and organisations interested in

electoral reform and many other public-minded persons. A large number of responses have been received from parties, persons, organisations, associations and individuals which have been duly collated. In addition to circulating the working paper, the Law Commission also held four seminars to elicit informed opinions and views of the political parties and the responsible members of the public. The first seminar was held on 14th November 1998 at the India International Centre. It was a one-day seminar comprising two sessions. The morning session was devoted to introduction of list system and amendment of Tenth Schedule while the second session was devoted to proposals for curtailing expenditure on elections and the measures to curb the entry and influence of criminal elements. Certain political parties viz., BJP, CPI(M), CPI, DMK and Shiromani Akali Dal were represented by their spokesmen S/Shri Jana Krishnamurthy, Sitaram Yechury, A.B. Bardhan, T.R. Balu and Manjeet Singh Khera, respectively. Shri Shivraj Patil, MP (former Speaker of Lok Sabha) and Shri Kapil Sibal, MP (a senior advocate) who are members of Congress-I, also participated but in their individual capacity. Besides the above, senior journalists S/Shri H.K.Dua, C.R. Irani, Inderjit, N.Ram and S.Sahay and senior advocates Shri Shanti Bhushan (former Minister for Law, Government of India), Shri Soli Sorabjee (Attorney General), Shri Rajinder Sachhar (former Chief Justice Delhi High Court), Shri T.R.Andhyarujina (former Solicitor General of India), Shri P.P.Rao, Shri Jitender Sharma and Shri M.C.Bhandare participated. Shri Ram Jethmalani, the Hon'ble Minister for Urban Development participated in both the sessions. Dr.K.C.Sivaramakrishnan, from the Centre for Policy Research, New Delhi, Shri V.K.Samayak, President, Voters' Forum, New Delhi, and Shri N.N.Vohra, Director, India International Centre, also participated. The participants put forward several valuable suggestions, observations and comments all of which have been duly recorded in the minutes of the seminar prepared by the Law Commission.

2.2 The second seminar was held at Thiruvananthapuram in the auditorium of the Bar Council of Kerala. Several senior advocates and members of Bar Council of Kerala participated therein which was also addressed by Shri Justice V.R.Krishna Iyer, former Judge Supreme Court of India and an eminent public figure. The minutes of this seminar have also been prepared by the Law Commission.

2.3 The third seminar was held at Bangalore in the premises of the National Law School of India University. Several academicians and professors of law participated in this seminar. The minutes of this seminar have also been prepared by the Law Commission.

2.4 Finally, a National Seminar on Electoral Reforms was held, at New Delhi on 23-24th January, 1999 at Vigyan Bhawan, in association with the Bar Council of India. It was inaugurated by the Hon'ble Prime Minister of India Shri Atal Bihari Vajpayee and was presided over by the then Minister for Law, Justice & Company Affairs Dr.M.Thambi

Durai. Shri Justice M.N. Venkatachaliah, Chairperson, National Human Rights Commission was the Chief Guest at the inaugural session which was addressed by the Chairman and Members of the Law Commission and of the Bar Council of India. In his inaugural address, the Prime Minister of India supported the proposals of the Law Commission with respect to introduction of list system, amendment of the Tenth Schedule to the Constitution and amendments to curtail the expenditure on elections and regulation of receipts and expenditure by the political parties. With respect to list system, however, the Hon'ble Prime Minister opined that the suggestions in that behalf may required deeper consideration. So far as the amendment of section 8 of the Act is concerned, the Hon'ble Prime Minister expressed his agreement while clarifying that mere filing of charges should not be the basis for disqualification. The then Law Minister expressed the anxiety of the Government to bring about reform of electoral law in the interest of a transparent, fair and clean electoral process. Shri Justice M.N.Venkatachaliah commended the initiative taken by the Law Commission in the matter of electoral reform and called for serious and prompt legislative action by Parliament to remove the distortions and defects in the system.

2.5 The National Seminar was divided into five working sessions besides the inaugural and the valedictory sessions. The first session dealt with the amendment of Tenth Schedule to the Constitution. It was presided over by Shri I.K.Gujral, former Prime Minister of India and the main speakers were Shri Shivraj Patil, former Speaker of Lok Sabha and Shri Justice V.R. Krishna Iyer. The second session was presided over by Shri S.Jaipal Reddy, MP (Janata Dal). This session was devoted to introduction of list system. The main speakers were Shri Justice B.P.Jeevan Reddy, Chairman, Law Commission of India, Dr.N.M.Ghatate, Member, Law Commission of India and Shri D.V. Subba Rao, Member, Bar Council of India. The third session on the morning of 24th January was devoted to curtailing of election expenditure and regulation of income and expenditure of political parties. This session was to be presided over by Shri Inderjit Gupta, MP (former Home Minister) but on account of the delay in the flights, he could not reach Delhi in time. Shri Somnath Chaterjee, MP [CPI(M)] presided over this session. The main speaker at this session was Shri K.K.Venugopal, senior advocate. The next session pertained to the problems concerning hung Parliament. It was presided over by Shri Arun Mishra, Chairman, Bar Council of India and the main speakers were Shri K.L.Sharma, Vice President of BJP, Shri Justice K.N.Saikia, former Judge Supreme Court of India and Shri T.P.Singh, senior advocate and Member, bar Council of India. The last session discussed the criminalisation of politics including the proposed amendment of section 8 of the Act. It was presided over by Shri P.A.Sangma, MP (former Speaker of Lok Sabha). The main speakers at this session were Shri Dileep Padgaonker, Executive Editor, The Times of India and Shri V.R.Reddy, senior advocate and

former Additional Solicitor General of India.

2.6. In all the above sessions, a large number of persons from political parties, Bar Council of India, bar associations and other public bodies and organisations also spoke.

2.7. The concluding/valedictory session was presided over by Shri George Fernandes, the Hon'ble Defence Minister. The valedictory address was delivered by Shri Justice V.R.Krishna Iyer, former Judge, Supreme Court of India.

2.8. The entire proceedings of this two-day National Seminar were tape recorded.

2.9. The Law Commission has looked into the vast amount of literature on the subject of electoral reforms, in particular, the opinions expressed therein touching the issues considered in this Report.

PART III
Analysis of views and Commission's Conclusions

CHAPTER I
Necessity for providing law relating to internal democracy within political parties

3.1.1. On a consideration of the various views expressed in the four seminars aforesaid and the vast number of responses received by us, we have come to the conclusion that for successful implementation of any of the aforesaid proposals, or for that matter for bringing a sense of discipline and order into the working of our political system and in the conduct of elections, it is necessary to provide by law for the formation, functioning, income and expenditure and the internal working of the recognised political parties both at the national and State level. The necessity of such a requirement was stressed by Shri S.Jaipal Reddy, MP (a former Minister for Information and Broadcasting), by Shri Manjit Singh Khera (representing SAD), by Dr. N.L. Mitra, Director, National Law School of India University, and several other participants in the seminars held by the law Commission. To the same effect was the view expressed by Shri Santosh Sharma, IAS (retd.) and president of "People First". As pointed out in chapter four of Part one, the German Constitution, which was enacted practically at the same time as our Constitution, expressly provides for formation and functioning of the political parties. Article 21 which has been set out in the said chapter says that the political parties shall help form the political will of the people, that political parties can be freely established and that their internal organisation shall conform to democratic principles. It further says that the political parties should publicly account for the sources and use of their funds and for their assets. Article 21 further provides that political parties which by reason of their aims or the conduct of their adherents seek to impair or do away with the free

democratic basic order or threaten the existence of the Federal Republic of Germany shall be unconstitutional and that the Federal Constitutional Court shall rule upon the question of unconstitutionality. Clause (3) of Article 21 provides that the details in this behalf shall be provided by federal laws. Accordingly, on 24th July 1967, the law on Political Parties was enacted. We have already referred to the relevant provisions of this Law in chapter four of Part One.

3.1.1.1. Shri Rajni Kothari while dealing with powers of internal democracy in the Congress Party, said this:

> "The `Congress system' has to learn to bear more strains and deal with more problems but it has also to become more of a `system' than it at present is. After March, 1967, it will need to consider further steps towards its own institutionalisation in the resolution of disputes, in the conduct of internal elections, in organising party intelligence and research, in policy-decison making, in the party's own federal relations, in party-government communications, and above all in regard to the whole process of selection of candidates for different types of elections and especially for the General Elections." (Centre for the Study of Developing Societies, Context of Electoral Change in India, General Elections, 1967, page3).

3.1.2. With a view to introduce and ensure internal democracy in the functioning of political parties, to make their working transparent and open and to ensure that the political parties become effective instruments of achieving the constitutional goals set out in the Preamble and Parts III and IV of the Constitution of India, it is necessary to regulate by law their formation and functioning. In this connection, reference can be had to the law laid down in the nine-judge Constitution Bench of the Supreme Court in S.R.Bommai v. Union of India (1994 (3) SCC1). Explaining the concept of secularism implicit in the constitutional provisions, the Court made the following observations at page 236:

> "Inspired by the Indian tradition of tolerance and fraternity, for whose sake, the greatest son of Modern India, Mahatma Gandhi, laid down his life and seeking to redeem the promise of religious neutrality held forth by the Congress Party, the Founding Fathers proceeded to create a State, secular in its outlook and egalitarian in its action... if any party or organisation seeks to fight the elections on the basis of plank which has the proximate effect of eroding the secular philosophy of the Constitution it would certainly be guilty of following an unconstitutional course of action.... if the Constitution requires the

State to be secular in thought and action, the same requirement attaches to political parties as well."

3.1.2.1. On the parity of the above reasoning, it must be said that if democracy and accountability constitute the core of our constitutional system, the same concepts must also apply to and bind the political parties which are integral to parliamentary democracy. It is the political parties that form the government, man the Parliament and run the governance of the country. It is therefore, necessary to introduce internal democracy, financial transparency and accountability in the working of the political parties. A political party which does not respect democratic principles in its internal working cannot be exposed to respect those principles in the governance of the country. It cannot be dictatorship internally and democratic in its functioning outside.

3.1.3. Conclusion.- Keeping the aforesaid considerations in mind, we recommend that a new part, Part II-A, entitled `Organisation of Political Parties and matters incidental thereto' be introduced/inserted in the Act, containing the undermentioned sections:

3.1.3.1. In view of reiteration of our proposal to repeal section 11 and 11B of the Representation of People Act, 1951 as stated under paragraphs 6.1.1 and 6.2 of part VI infra, the existing section 11-A entitled "Disqualifications arising out of conviction and corrupt practices" which will fall under Chapter IV, shall be renumbered as Section 11. Consequently, the following sections proposed to be inserted under part II-A shall be numbered as Section 11-A to 11-H.

PART II-A
Organisation of Political Parties and matters incidental thereto

Section 11-A: (1)Political parties can be freely formed by the citizens of this country. The political parties shall form a constitutionally integral part of free and democratic system of Government.

(2) Each political party shall frame its constitution defining its aims and objects and providing for matters specified in section 11A. The aims and objects of a political party shall not be inconsistent with any of the provisions of the Constitution of India.

(3) A political party shall strive towards, and utilize its funds exclusively for, the fulfilment of its aims and objects and the goals and ideals set out in the Constitution of India.

(4)(a) A political party shall apply for registration with the Election Commission of India.

(b) Every such application shall be made, -

(i) if the association or body is in existence at the commencement of the Representation of the People and other Allied Laws (Amendment) Act, 1999 (__of 1999), within sixty days next following such commencement;

(ii) if the association or body is formed after such commencement, within thirty days next following the date of its formation.

(c) Every application under sub-section (4) shall be signed by the chief executive officer of the association or body (whether such chief executive officer is known as Secretary or by any other designation) and presented to the Secretary to the Commission or sent to such Secretary by registered post.

(d) Every such application shall contain the following particulars, namely: -

(i) the name of the association or body;

(ii) the State in which its head office is situated;

(iii) the address to which letters and other communications meant for it should be sent;

(iv) the names of its president, secretary, treasurer and other office-bearers;

(v) the numerical strength of its members, and if there are categories of its members, the numerical strength in each category;

(vi) whether it has any local units; if so, at what levels;

(vii) whether it is represented by any member or members in either House of Parliament or of any State Legislature; if so, the number of such member or members.

(viii) a declaration that the applicant has complied with and shall continue to comply with the requirements of this chapter.

(e) The application under sub-section (4) shall be accompanied by a copy of the memorandum or rules and regulations of the association or body, by whatever name called, and such memorandum or rules and regulations shall contain a specific provision that the association or body shall bear true faith and allegiance to the Constitution of India as by law established, and to the principles of socialism, secularism and democracy, and would uphold the sovereignty, unity and integrity of India.

(f) The Commission may call for such other particulars as it may deem fit from the association or body.

(g) After considering all the particulars as aforesaid in its possession and any other necessary and relevant factors and after giving the representatives of the association or body reasonable opportunity of being heard, the Commission shall decide either to register the association or body as a political party for the purposes of this Part, or not so to register it; and the Commission shall communicate its decision to the association or body:

Provided that no association or body shall be registered as political party under this sub-section unless the memorandum or rules and regulations of such association or body conform to the provisions of clause (e).

(h) The decision of the Commission shall be final.

(i) After an association or body has been registered as a political party as aforesaid, any change in its name, head office, office bearers, address or in any other material matters shall be communicated to the Commission without delay.

(5) Only a political party registered with Election Commission of India, and whose registration is not cancelled under this Act, shall be entitled to contest elections whether to Lok Sabha or that of Legislative Assembly.

Section 11-B: (1) A political party may sue and may be sued in its own name. A political party shall be competent to hold and dispose of properties.

(2) The name of a political party must be clearly distinguishable from that of any existing political party and shall be subject to approval by the Election Commission. In election campaigns and in elections, only the registered name or its acronym, as may have been approved by the Election Commission, alone shall be used.

(3) Political parties can be formed both at the national level as well as at the State level.

Section 11-C: The constitution of a political party shall provide for the following matters:-

(a) name of the political party and acronym (if used) and the aims and objectives of the party;

(b) procedure for admission, expulsion and resignation by the members;

(c) rights, duties and obligations of the members;

(d) grounds on which and the procedure according to which disciplinary action can be taken against the members;

(e) the general organisation of the party including the formation of State, regional, district, block and village level units;

(f) composition and powers of the executive committee (by whatever name it is called) and other organs of the party;

(g) the manner in which the general body meetings can be requisitioned and conducted and the procedure for requisitioning and holding conventions to decide questions of continuance, merger and other such fundamental organisational matters;

(h) the form and content of the financial structure of the party consistent with the provisions of this part.

Section 11-D: The executive committee of a political party shall be elected. Its term shall not exceed three years. Well before the expiry of the term, steps shall be taken for electing a new executive committee. It shall be open to the executive committee to constitute a sub-committee (by whatever name called) to carry out the business of the executive committee and to carry on regular and urgent executive committee business. The members of the sub-committee shall be elected by the members of the executive committee.

Section 11-E: A political party and its organs shall adopt their resolutions on the basis of a simple majority vote. The voting shall be by secret ballot.

Section 11-F: The candidates for contesting elections to the Parliament or the Legislative Assembly of the States shall be selected by the executive committee of the political party on the basis of the recommendations and resolutions passed by the concerned local party units.

Section 11-G: (1) It shall be the duty of the executive committee to take appropriate steps to ensure compliance with the provisions of this chapter including holding of elections at all levels. The executive committee of a political party shall hold elections of national and State levels in the presence of the observers to be nominated by the Election Commission of India. Where considered necessary, the Election Commission may also send its observers at elections to be held at other national and state levels.

(2) The executive committee of a political party shall maintain regular accounts of the amounts received by the party, its income and expenditure, have them audited and submit the same to the Election Commission as required by section 78-A of this Act.

(3) A political party shall be entitled to accept donations except from the following sources:-

(a) donations from political foundations or foreign governments or organisations or associations registered outside the territory of India or non-governmental organisations which are in receipt of foreign funds or from any other association, organisation, group which is in receipt of foreign funds or from a foreign national.

(b) donations from corporate bodies and companies except in accordance with the provisions of the Companies Act, 1956.

Section 11-H: The Election Commission shall be competent to inquire, either suo motu or on information received into allegation of non-compliance of any of these provisions of this chapter. If on due inquiry, the Election Commission is satisfied that there has been non-compliance of any of the provisions of this chapter by any political party, the Commission shall call upon the party to rectify the non-compliance within the period prescribed by the Election Commission. In case, the non-compliance continues even after the period so prescribed, it shall be open to the Election Commission to impose such punishment on the political party as it may deem appropriate in circumstances of the case including levy of the penalty of Rs.10,000/- per day for each day of non-compliance and withdrawal of registration of the party.

Section 11-I: Where a public authority provides facilities or offers public services for use to a political party, it must accord equal treatment to all. The scale of such facilities and services may be graduated to conform to the importance of the parties subject to the minimum extent needed for the achievement of their aims. The importance of a party shall be decided on the basis of the results of immediately previous election to Parliament or State Legislative Assembly, as the case may be. The granting of public services shall be only in connection with and for the duration of the election campaign period. For the purposes of this section, the election campaign period shall be deemed to commence 14 days prior to the commencement of the poll in a State.

(Rules made under the Act can provide the requisite details on the pattern of the provisions of the German Law on Political Parties, 1967).

3.1.4. In view of the above provisions, Part IV-A of the Act, containing section 29-A shall be deleted. The substance of section 29-A has been incorporated in section 11-A.

CHAPTER II
Analysis of views and conclusions

regarding the List System

3.2.1. In this chapter we shall deal with the concept of list system in addition to the existing `first-past-the post (FPP) system' which was proposed in our working paper. The reasons for introducing this system have been set out in chapter three of part one of this report as well as in the working paper. In the seminars conducted by the Law Commission and in the responses received pursuant to the circulation of working paper, various views have been expressed which we shall discuss hereinbelow.

3.2.2. Shri S. Jaipal Reddy who presided over the second session of the National Seminar on 23rd January 1999 opposed the introduction of list system altogether while conceding that the list system is certainly more representative. He opined that that alone should not be the objective of the elections. According to him, the list system was likely to lead to proliferation of political parties. In a society which is indeed a "society of minorities", this system, he said, would not promote the national interest. He also pointed out that in the list system, the umbilical cord between the constituency and the candidate is absent. He pointed out that list system was preferred in countries with homogenous societies and was not suited to a country like India whose society was the most heterogenous in the world, divided as it was on the grounds of religion, caste, language, region, race and so on. Even if the list system was introduced, he said, it should not be confirmed to recognised political parties as suggested by the Law Commission. He gave the example of Telugu Desam Party in Andhra Pradesh, which was formed just about nine months before the elections to the Legislative Assembly in Andhra Pradesh and yet swept the polls in 1983. He suggested that all the registered political parties should be allowed top participate in the election held on the basis of list system. Mr. Jaipal Reddy also pointed out several merits of the existing FPP system. According to him, the FPP system had the merit of reducing the number of political parties. The present proliferation of political parties in this country is taking place in spite of the FPP system, he said. According to him, the FPP system led to stability by eliminating smaller parties. According to him, there must necessarily be an intimate connection between the candidate and the constituency. Mr. Jaipal Reddy also pointed out that there should be a rule that for obtaining any seat under the list system, a political party must obtain certain prescribed minimum percentage of votes and in this connection, referred to the position obtaining in Greece and Germany - particularly in the latter country. Unless a political party got a particular specified percentage of votes in the parliamentary or assembly elections, it should not get any seats, he suggested. He commended such a rule to be adopted in case the list system was to be adopted.

3.2.2.1. The views of Mr. Jaipal Reddy were supported by Shri D.V. Subba Rao, Member, Bar Council of India and Shri Margabandhu, MP and Chairman, Tamil Nadu Bar Council. Mr. Margabandhu opined that such a system would benefit the money bags and would be unable to reflect regional interests and aspirations. Views to the same effect were expressed by Shri Kapil Sibal, MP (Congress-I) at the seminar held on 14th November 1998. Shri Ram Jethmalani, the Hon'ble Minister for Urban Development, purporting to express his personal views, opposed the list system. He said that Rajya Sabha is already there to serve the purpose behind the list system. He further opined that introduction of list system would give rise to two classes of MPs - one elected directly and the other elected according to list system. He referred to Lord Jenkin's report published some time in October-November in U.K. (reference to this report was also made by Dr. S.C. Jain, Member Secretary of Law Commission in his initial remarks at the seminar held on 14th November, 1998) which recommended alternative vote plus system. He suggested that the existing FPP system could be replaced by a single transferable vote. List system, he said, would help in entrenching coalitions.

3.2.3. Shri Jana Krishnamurthy, Vice President of the BJP opined in the seminar held on 14th November, 1998 that there was a danger of the list system encouraging casteist and communal tendencies and is likely to promote caste-based and relation based political parties. He pointed out that introduction of such a system would lead to several small parties putting up their candidates in several constituencies with the hope that the totality of the votes polled by them would yield some seats under the List system, which they would not have got under the FPP system.

3.2.4. On the other hand, several political parties, individuals and organisations supported the list system. In particular, the two Communist parties, the DMK and the Shiromani Akali Dal supported the introduction of the list system wholeheartedly. Indeed, it was suggested by Shri Sitaram Yechury (representing the CPM), Shri T.R. Balu (representing the DMK) and Shri Manjeet Singh Khera (representing Shiromani Akali Dal) that the number of seats to be filed according to list system should be raised to 50% of the existing strength of Lok Sabha and the Legislative Assemblies, instead of restricting it to 25% as suggested by the Law Commission. Shri M.S. Khera opined that the apprehension that the list system would encourage casteist tendencies was misplaced. List system was also strongly supported by Shri H.K. Dua, senior journalist who too wanted the strength of members to be elected on this basis raised to 50%. According to him, the Law Commission's proposal was a definite improvement over the existing electoral scene. Shri A.B. Bardhan (CPI) strongly commended the list system. According to him it was overdue. He said that prominent campaigners for the political parties were usually tied up in campaigns for

their parties all over the country and could not devote adequate attention to their particular constituency. The list system would help such persons to become members of Lok Sabha/State Legislature. He pointed out that such a system was working quite well in Germany and Japan. He sought to allay the apprehension that criminals and money bags were likely to get into Parliament/Legislatures through this method. Shri Rajinder Sachhar, senior advocate and former Chief Justice of Delhi High Court supported the list system but he did not agree with the concept of territorial units. He suggested that list system should be implemented on all-India basis. Shri Inderjit, senior journalist, Shri N. Ram, senior journalist and Editor, Frontline, Shri C.R. Irani, Editor, The Statesman and Shri V.K. Samayak, President, `Voters Forum Foundation of India', New Delhi, and Shri S. Sahay, senior journalist not only supported the list suystem but wanted it to be raised to 50% of the existing strength instead of the suggested 25%. Another senior advocate, Shri Jitendra Sharma supported the idea but suggested that it should be operated on all-India basis. This, he said, was necessary to curb casteism and communalism.

3.2.5. In connection with the carving of territorial units, one of the participants Shri Shivaramakrishnan pointed out that if the latest census was made the basis, then the southern States, in particular Kerala, would be adversely affected. He pointed out that because of better implementation of family planning programmes, their population growth has slowed down while the rate of growth in the northern States like U.P. and Bihar remained more of less unaffected. If in such a situation, the latest census was made the basis for redrawing the territorial constituencies or territorial units, the southern States would stand to lose substantially. It would really amount to punishing them for successful implementation of family planning programmes. Facts and figures were cited in support of such an argument. It was stated that with a view to allaying this apprehension, it should be provided that 1971 cansus shall be the basis of drawing up territorial units. Indeed, such a provision already existed in clause (3) of article 81 of the Constitution. Since we are accepting their plea, it is not necessary to cite the facts and figures in support of the said plea.

3.2.6. We may also refer to the views expressed by several persons and organisations who communicated their views in response to our working paper. Shri Arun Jaitley (senior advocate), Rajasthan Legislative Assembly Secretariat, Shri P.V. Namjoshi, Delhi Bhartiya Grammin Mahila Sangh, Shri C.K. Jain (former Secretary-General, Lok Sabha), Hill States People's Democratic Party, Meghalaya, Registrar High Court of M.P., Jabalpur,. opposed the list system. Some others, namely , CPI(M), Shri R.S. Narula, retired Chief Justice of Punjab and Haryana High Court and Manipur People's Party, agreed with the proposal to introduce the list system. Shri R.S.

Narula suggested that the list system should be the only method by which the totality of Members of Lok Sabha and Legislative Assemblies should be elected. Several other individuals expressed varying views which need not be specifically referred to herein.

3.2.6.1. The fact of `wasting' away of the votes cast in the FPP system has also been recognised in other parts of the world. Thus in the response of the Electoral Reform Society to the Commission on Local Government and the Scottish Parliament, (July, 1998), it has been mentioned inter alia, that the FPP system distorted the expressed wishes of those who actually voted by observing thus:-

"Local Democracy"

Question 2

One of the reasons for poor turnouts at local government election is that the votes of large numbers of electors will not count, either within their local constituency or in the overall composition of the Council. Until this has been corrected, changing administrative arrangements will only have a limited effect.

The magnitude of this problem is not often appreciated. For example, in the local authority elections in April, 1995 in Edinburgh, 49% of those who actually voted cast a vote that had no effect in securing the election of any representative as they were for losing candidates. It is common in all first-past-the-post (FPTP) elections for between 30% and 60% of the votes cast to be 'wasted' in this way. In circumstances where they know that one party holds a seat with a large majority, many electors are discouraged from turning out to vote."

"The results of the local authority elections in April, 1995 show well the extent to which the present FPTP voting system distorts the expressed wishes of those who actually vote. In the city of Glasgow Council, Labour, with 61% of the votes, took 77 of the 83 seats, i.e. 93%. There were also serious distortions among the smaller parties in this election: the Conservatives with 7% of the votes, took 3 seats, while the SNP gained only 1 seat despite having 23% of the votes."

3.2.6.2. The Report of the Independent Commission on the voting System ("Jenkins Report") summarises the Main Electoral Systems in the world. These include

i) First Past the Post (FPTP)
ii) The Alternative Vote (AV)
iii) Supplementary vote (SU)
iv) Second Ballot

v) List Systems
vi) Single Transferable Vote (STV)
vii) Mixed Systems: the Additional member System (including AV or SV Top-up) and Parallel Systems (AMS)

3.2.6.3. The terms of reference of the said Commission given in December, 1997, was to recommend the `best alternative system' or combination of systems to the existing commonly-called `First Past the Post' system of election to the Westminister Parliament. In doing this, it was asked to take into account four not entirely compatible `requirements'. They were: i) broad proportionality; (ii) the need for stable government; (iii) an extention of voter choice, and (iv) the maintenance of a link between MPs and geographical constituencies.

3.2.6.4. The Commission set out the basis of fair election viz., to the concept of `fairness' in electoral outcomes, the place of political parties; and the role of Members of Parliament.

3.2.6.4A. It emphasises that fairness to voters is the first essential. A primary duty underlying an electoral system is to represent the wishes of the electorate as effectively as possible. The Commission observes that the major fault of the First past the Post in this context is that it distorts the desires of the voters. It emphasises that the fact that voters do not get the representation they want is more important than that the parties do not get the seats to which they think they are entitled.

3.2.6.5. After going through the problems/advantages/disadvantages of the existing First Past the Post system, the said Commission recommended, inter alia as under:

> "The best alternative for Britain to the existing First Past the Post system is a two-vote mixed system which can be described as either limited AMS or AV Top-up. The majority of MPs (80 to 85%) would continue to be elected on an individual constituency basis, with the remainder elected on a corrective Top-up basis which would significantly reduce the disproportionality and the geographical divisiveness which are inherent in FPTP. But it cannot be denied that democracy postulates the working out of a system which is best suited to the peculiar needs of the country."

3.2.6.6. It appears that a committee appointed to suggest electoral reforms in Spain, prepared the following summary on an overview of the elctoral systems obtaining in various countries.

"Summary of Electoral System Types

There are hundreds of electoral systems currently in use and many more permutations on each form, but for the sake of simplicity we have categorised electoral systems into three broad families:

.the plurality-majority,
.the semi-propotional, and
.the proportional.

Within these three we have ten "sub-families".

.First Past the Post (FPTP),
.the Block Vote (BV),
.the Alternative Vote (AV), and
.the Two-Round System (TRS) are all plurality-majority systems.
.Parallel systems,
.the Limited Vote (LV) and
.the Single Non-Transferable Vote (SNTV) are semi-proportional systems.
.List PR,
.Mixed Member Proportional (MMP), and the Single Transferable Vote (STV) are all proportional systems.

Every one of the 212 parliamentary electoral systems listed in The Global Distribution of Electoral Systems can be categorised under one of these ten headings, and this family tree, though rooted in long-established conventions, is the first to take account of all the electoral systems used for parliamentary elections in the world today, regardless of wider questions of democracy and legitimacy. We hope it offers a clear and concise guide to the choice among them.

The most common way to look at electoral systems is to group them by how closely they translate national votes won into parliamentary seats won; that is, how proportional they are. To do this, one needs to look at both the vote-seat relationship and the level of wasted votes, For example, South Africa used a classically proportional electoral system for its first democratic elections of 1994, and with 62.65% of the popular vote the African National Congress (ANC) won 63% of the national seats (see South Africa: Election Systems and Conflict Management). The electoral system was highly proportional, and the number of wasted votes (i.e., those which were cast for parties which did not win seats in the Assembly) was only 0.8% of the total. In direct contrast the year before, in the neighbouring nation of Lesotho, a classically majoritarian First Past the Post (FPTP) electoral system had resulted in the Basotho Congress Party winning every seat in the 65 member parliament with 75% of the popular vote; there was no parliamentary opposition at all, and the 25% of electors who voted for other parties were completely unrepresented. This result was mirrored in Djibouti's

Block Vote election of 1992 when all 65 parliamentary seats were won by the Rasemblement Populaire pour le progr s with 75% of the vote.

However, under some circumstances, non-proportional electoral systems (such as FPTP) can accidentally give rise to relatively proportional overall results. This was the case in a third Southern African country, Malwai, in 1994. In that election the leading party, the United Democratic Front won 48% of the seats with 46% of the votes, the Malawaian Congress Party won 32% of the seats with 34% of the votes, and the Alliance for Democracy won 20% of the seats with 19% of the votes. The overall level of proportionality was high, but the clue to the fact that this was not inherently a proportional system, and so cannot be categorized as such, was that the wasted votes still amounted to almost one-quarter of all votes cast."

3.2.6.7. There may varied electoral systems prevalent in the world but many may not suit conditions in our society. On a threadbare analysis of various systems, we feel that a combination of FPP and the list systems as detailed in this report may best meet out needs.

3.2.7. Accordingly, the Law Commission is of the opinion that the list system should be introduced as suggested by it for the reasons assigned hereinbefore. The main objections against this system are two-fold: (a) that it will lead to and encourage casteist and communal voting patterns and would lead to proliferation of caste based and religion based political parties and (b) that under the list system, the umbilical cord between the voters in the constituency and the MPs/MLAs is missing. In our opinion both the said objections are not well-founded. We shall deal with both of them hereinbelow.

3.2.8. So far as the objection that the list system would lead to casteist and communal voting patterns and caste-based and religion-based political parties is concerned, the apprehension on this score can be allayed by providing that the votes polled by such candidate whose deposit has been forfeited under sub-section (4) of section 158 of the Act shall not be taken into consideration while tabulating the votes for the purpose of choosing the members on the basis of the list system. It may be noticed that according to sub-section (4) of section 158 of the Representation of the People Act, 1951 the deposit made by a candidate who "is not elected and the number of valid votes polled by him does not exceed one-sixth of the total number of valid votes polled by all the candidates" is liable to be forfeited. In other words, if any candidate polls less than 16.25% of the valid votes polled, his security deposit is liable to be forfeited. If it is provided that the votes polled by candidates whose security deposit has been forfeited under the aforesaid provision shall not be taken into account for the purpose of list system, the apprehension that list system would lead to

proliferation of caste-based and religion-based political parties or that it would result in encouraging or promoting casteist or communal voting pattern would not survive.

3.2.8.1. Secondly, it must be noted - and it needs to be emphasised - that according to the proposal put forward by the Law Commission, it is not as if each voter is given two votes, one to be cast in favour of the candidate from the concerned territorial constituency and the other in favour of the list put forward by a recognised political party. There is only one vote given to the voter and that is cast by the voter keeping in mind both the candidate from the concerned territorial constituency as well as the persons included in the list put forward by that RPP. Primarily, the vote will be in favour of the direct candidate contesting from the concerned territorial constituency and it is only secondarily that the said vote is also taken into account for the purpose of list system as well.

3.2.8.2. We may also mention that notwithstanding the present FPP system, there has been an unmanageable and unhealthy proliferation of political parties and that in the Twelfth Lok Sabha, there were as many as 30 or more political parties, some of them having only one member. The proliferation of political parties appears to be mainly inspired by regional, caste, religious/communal and linguistic considerations, besides the personality clashes between the leaders of a given political party. Very often splits take place in political parties not on the basis of any ideological differences (as was the case in the case of split in the Communist Party of India in 1964 giving rise to two parties namely CPI and CPI-M) but mainly on account of personality clashes and personal rivalries and ambitions. While it would not be in good taste to refer to specific instances in support of this view, the fact is there for all to see. May be ours is still a young democracy. 50 years in the life of a democratic nation is not too long. We can only hope that with the passage of time there will be polarisation among the political parties on the basis of ideologies and that the voters would also realise that voting for small parties is not in the ultimate interest of the nation.

3.2.8.3 In fact, the proliferation of political parties can be checked to a large extent and the process of polarisation accelerated substantially, if a new provision is made in the Act to the effect that any political party which obtains less than 5% of the total valid votes cast in the country (in the case of Parliament) and in the concerned State (in the case of Legislative Assembly) shall not be allowed any representation in the Lok Sabha or in the concerned Legislative Assembly, as the case may be.

3.2.8.4 Such a provision is in vogue in Germany and has helped in checking the proliferation of political parties. Article 6(6) of the Federal Electoral Laws says: "In distributing the seats among the Land lists, only such

parties be taken into consideration as have obtained at least five per cent of the valid second votes cast in the electoral area or have won a seat in at least three constituencies." In other words, a party must poll at least five per cent of the second votes in the entire country or must have won at least in three constituency seats on the basis of the first votes. As a matter of fact, since the elections for Bundestag in 1957, the qualifying parties have been (1) the Christian Democratic Union of Germany (CDU), (2) the Social Democratic Party of Germany (SPD), (3) the Christian Social Union (CSU), which put up candidates in Bavaria only and (4) the Free Democratic Party (FDP). The Greens were represented in Bundestag for the first time following the Bundestag election in 1983. In the first all German general elections in 1990 (after the reunification of Germany), however, they were able to win seats in the Bundestag only as members of the list coalition (Alliance 90/Greens) with the Party Alliance 90 which was successful in the new federal states. This requirement has thus prevented the proliferation of political parties, splintering of political parties and has led to polarisation.

3.2.8.5 Such a provision is a crying necessity in India today where the process of splintering of parties is increasing with every general election which is not based on any ideological differences but lust for power. Appropriate provision to this effect is being set out in this Report.

3.2.9 With respect to the objection that in the case of a list system there is no umbilical cord between voter and the MP/MLA, this is devoid of any substance. Apart from the fact that such a mixed system is in vogue in many countries (e.g. in Germany), the merit of the list system lies in the fact that for the members chosen under the list system, the entire territorial unit/State/nation is the constituency. In fact, there have been several instances where powerful politicians like Prime Ministers and Chief Ministers have been `nursing' their particular constituency with the result that the development in that particular constitutuency is far ahead of the development in the adjacent and other constituencies in the region or the State. "Nursing" the constituency does not mean this. It means attending to, representing and fighting for the interests of the voters in all fora and not to corrupt them with the aid of public funds. It is indeed a case of misuse of authority and of public money. It is not a good idea that one particular constituency should be rewarded unduly merely because the Prime Minister or the Chief Minister happens to contest from that constituency.

3.2.10. The other merit in the list system apart from those set out in chapter III of Part I is that important leaders of the political parties can be included in the list put forward by that political party and those leaders can devote their energies in campaigning for the party throughout the State instead of expending a good amount of

their energies on the particular constituency from which they are contesting. In fact the list system would provide an opportunity for inclusion of important leaders with high character and reputation and technocrats and experts in finance and economics. The apprehension that the criminal elements and money bags would be included in such a list is unfounded inasmuch as no political party would dare include criminal elements and/or money bags in such a list, since it would also reflect negatively upon its candidates in the direct election from the territorial constituencies.

3.2.11. With respect to the objection that Rajya Sabha or for that matter, Legislative Councils in whichever States they exist - serve the purpose and satisfy the objective underlying the list system, it must be stated that the criticism is not well-founded. Take Rajya Sabha, its members are elected by the members of the Legislative Assemblies of various States in the Union (Except twelve members who are nominated). In other words, those very MLAs, who are more often than not elected on a minority of the votes cast in the given State, elect the members of Rajya Sabha. The members so elected neither represent the wasted votes (as explained hereinabove) no rectify and redress the imbalance between the votes received and seats won by a political party. Rajya Sabha is indeed a reflection of the composition of State Legislative Assemblies; it is repetition of the same inequitable FPP system. None of the distortions, to remove which list system has been proposed, are answered by the Rajya Sabha or the Legislative Councils. There is equally no merit in the objection that the introduction of list system would give rise to two classes of MPs/MLAs. Such a dual system is in vogue in several countries and is functioning satisfactorily.

3.2.11.1. In its Report on "Electoral Reforms", 1974 the Tarkunde Committee (appointed by Shri Jaya Prakash Narayan on behalf of the citizen for Democracy had also recommended the adoption of `mixed system' i.e. German Model of Electoral system.

3.2.12. There remains the question whether the list system should be limited to 25% or raised to 50% of the existing strength of Lok Sabha and of each of the State Legislative Assemblies. We had also debated this aspect while preparing the working paper but we limited the strength to be filled on this basis to 25% of the existing strength for the reason that by adopting the 50% rule, the strength of Lok Sabha would rise to almost 826. May be that this number is not excessive considering the population and territorial extent of this country, but what was apprehended was that an Assembly of 826 members would be unmanageable. Yet another consideration was that since the list system is being introduced for the first time on an experimental basis, we may start with 25% and if it proves beneficial it can be raised to 50% and if the experience proves counter-productive, it can be abandoned.

3.2.13. With respect to the suggestion that the list system should not be confined to the recognised political parties, it must be said that acceptance of this plea would indeed lead to proliferation of political parties, which is admittedly not in the interest of a successnful democracy. The singular example of Telugu Desam in Adhra Pradesh in 1982-83 cannot be made the basis for adopting a system which will make the operation of the list system cumbersome and which may indeed prove counter productive.

3.2.14. There is one more aspect to be considered. Certain participants in the seminar and certain responses received by the Law Commission suggest that the concept of `territorial unit' put forward by the Law Commission in this context should be given up and the entire country should be treated as one unit for the purpose of choosing the members according to list system. The main purpose behind this suggestion was elimination of small parties and to prevent the proliferation of political parties, as also to exclude splinter parties and thereby ensuring that Parliament functioned properly and the government was stable - the very same object underlying the requirement of 5% vote. May be that this objective can be achieved by the provision now being suggested by us that any political party which receives less than 5% of the total valid votes cast in the general election to the Lok Sabha or State Legislative Assembly, as the case may be, shall not be entitled to any seats in the Lok Sabha/Legislative Assembly. But, it would be consistent with our other recommendations and the spirit of this Report if the concept of territorial units put forward by us earlier in the working paper is given up. Our objective in doing so is to drive the smaller parties into pre-election fronts/coalitions. May be, these smaller parties may fight, wherever they like, on their own symbol but they will have to become a part of one or the other pre-election front which is proposed to be treated as a political party for the purpose of the Tenth Schedule. In such a coalition/front, there is bound to be adjustment/appointment of seats and voters will be voting for the candidate of a constituent party keeping in mind the constituents of the coalition front.

3.2.15. Conclusions - Accordingly, we have decided to drop our proposal with respect to territorial units which means that the entire country will be the unit for purposes of the list system while reiterating our proposals put forward in the working paper in this behalf. (The relevant provisions in the Bill are modified accordingly).

3.2.15.1. Though we are dropping the proposal with respect to territorial units, we do hereby affirm that the distribution of seats in Lok Sabha among the States, as set out in the First Schedule to the Representation of the People Act, 1950, should be frozen for another 25 years. For this purpose, it would be necessary to amend the proviso to clause (3) of article 81 of the Constitution by substituting the figure "2025" for the figure "2000". [The

reason behind this proposal is the one put forward by Shri Shivaramakrishnan of Centre for Policy Research, referred to in para 3.2.5.]

3.2.15.2. Further, another proviso (i.e.second proviso) may be added after the existing proviso in section 78F as proposed in the Representation of the People Act, 1951 in the following words: "Provided further that the votes received by a recognised political party which do not exceed one-sixth of the total number of valid votes polled in a constituency shall be ignored for the purpose of this section."

3.2.15.3. A new section, section 65A shall be inserted in Chapter V of Part V of the Representation of the People Act, 1951 to the following effect:

"65A(1) Any political party, whether recognised or not, which obtains less than 5% of the total valid votes cast in the election to the House of the People shall not be entitled to any seat in the House of the People.

(2) Any political party, whether recognised or not, which obtains less than 5% of the total valid votes cast in the election to the Legislative Assembly of a State shall not be entitled to any seat in the Legislative Assembly.

(3) For the purposes of sub-sections (1) and (2), the relevant date shall be the date on which the notification contemplated by section 73 of this Act is issued.

(4) Any constituency which has elected the candidate of a political party which is deprived of a seat in the House of People or in legislative Assembly on account of the requirement in sub-section (1) and (2), as the case may be, shall be represented by the candidate of a political party which has obtained the next highest votes provided that his political party obtains 5% of the total valid votes cast in that election and that he has not lost the security deposit.

(5) The requirements in sub-sections (1) to (3) shall not apply in the case of a bye-election.

CHAPTER - III
Debarring of Independent Candidates to Contest Lok Sabha Elections

3.3.1. A Perusal of the statistics regarding the number of independent candidates who contested Elections to the Twelfth Lok Sabha shows that out of 1915 independent candidates, only 6 candidates were elected. This reveals that slightly more than 0.3% independent candidates could only win seats contested by them. The Indrajit Gupta

Committee Report on State Funding of Elections projects figures relating to independent candidates who contested the earlier Parliamentary Elections as follows:-

> "8.2 ... out of 1900 independent candidates who contested the last parliamentary elections in 1998, only 6 (0.65%) (sic.) succeeded to win and 1883 lost their security deposit. Likewise, out of 10,635 independent candidates, who contested the 1996 parliamentary election, only 9 (0.08%) of such candidates won and 10,603 (99.70%) forfeited their deposits. Similar was the fate of independents contesting the last round of assembly elections in four States/National Capital Territory of Delhi in November, 1998 where only 19 (0.99%) out of 1910 independents could reach the post. The records would further show that most of these independents were also really not independent but rebels of certain established parties and who were supported by rival parties."

3.3.2. In Dhartipakar v. Rajiv Gandhi, AIR 1987 SC 1577, the Supreme Court recommended to parliament to devise ways and means to meet the onslaught of independent candidates who are not serious about their business.

3.3.3. Past experience shows that many independent candidates contested Lok Sabha elections in a casual manner or for oblique reasons. In many cases their security deposits were forfeited. One of the resultant effects of independents contesting the Lok Sabha seats is that the ballot paper becomes unmanageably large. Non-seriousness of some of the independent candidates is exemplified in the case of one of the BJP candidates, namely, Shri V.K.Malhotra, against whom quite a few persons of the same name "V.K.Malhotra" stood as independent candidates from the same constituency in Delhi during Lok Sabha elections in order to mislead the masses. Such practices are meant to confuse people and make them cast their vote in favour of a candidate whom they never intended to vote.

3.3.4. In order to eliminate the problem altogether, and consistently with our recommendation regarding the requirement of 5% votes set out in para 3.2.15.3., it is considered appropriate to debar independent candidates as their participation in the elections has in no way contributed to strengthening of Indian democracy.

3.3.5. It is understood that 650 political parties are currently registered with the Election Commission of India (Times of India dated 6th may, 1999), whether recognised or not. By virtue of proposed new section 65A(1), a party would not get a seat in the House of the People if it gets less than 5% of the total valid votes cast in elections to that House. This objective will be frustrated if independents are not barred from contesting, for, small splinter parties will not then take risk of contesting elections for fear of not being able to obtain 5% or more

of the total valid votes cast in the said election to the House of the People. Candidates of such splinter parties would then safely prefer to contest as independent candidates. The barring of independent candidates will, therefore, be consistent with our recommendation to introduce a provision requiring receipt of minimum percentage of votes by the RPP to be able to get seats in the Lok Sabha.

3.3.6. Conclusions.- In Law Commission's view, the time is now ripe for debarring independent candidates from contesting Lok Sabha and Legislative Assembly elections.

3.3.6.1. Any person proposing to contest Lok Sabha election can always form a political party and contest elections but its entitlement to any seat in Lok Sabha will be subject to the condition that it obtains not less than 5% of the total valid votes cast in the election to Lok Sabha. Therefore, it cannot be legitimately argued that our proposal would tend to interfere with democratic or political processes.

3.3.7. Accordingly, it is recommended that a new sub-section, namely, sub-section (1) be introduced in section 4 of this Act, as suggested hereinbelow, and the existing provision shall be renumbered as sub-section (2).

The proposed sub-section (1) shall read as follows:-

"(1) Only the political parties registered with the Election Commission under section 11(4) shall be entitled to put forward candidates to fill a seat in the House of the People."

Similarly, section 5 of the Act should also be amended by introducing the following sub-section (1):-

"(1) Only the political parties registered with the Election Commission under section 11(4) shall be entitled to put forward candidates to fill a seat in the Legislative Assembly."

The existing provisions of section 5 shall be renumbered as sub-section (2).

CHAPTER IV
Analysis of views and conclusions regarding amendments to the Tenth Schedule to the Constitution

3.4.1. In this chapter the amendments proposed by us in the working paper to the Tenth Schedule to the Constitution have been considered. So far as the proposal to delete paragraph 3 of the Tenth Schedule is concerned, there has been unanimous support (including that of the Prime Minister of India) to this proposal, in all the seminars, except the lone voice of Shri S.Jaipal Reddy, MP. He

submitted that in the light of the fact that there is no internal democracy in the political parties today and also because the internal structures of political parties had not been satisfactorily established so far, splits could not be barred. He opined that every split was not undesirable. In this connection, he referred to the split in the CPI in 1964. He also referred to the fact that splits had taken place in the socialist party in the past as well as in the Congress party (in 1969 and 1978). Shri Reddy opined that democracy was inherently an untidy business and that in such a situation, the banning of splits (as well as mergers) would amount to interfering with the political processes and growth of political pluralism. In the responses received pursuant to the circulation of the working paper, the Janata Party has also not agreed with this proposal. There has been no other dissenting view.

3.4.1.1. We are of the opinion that the objections raised by Shri Jaipal Reddy are really without any substance. By banning the splits, the ongoing political process, or the pluralism in the society is not being arrested. As we had made clear in our working paper, once the Parliament is dissolved, there can be splits, mergers, formation of new parties and so on. Moreover, even during the life of a Lok Sabha or State Legislative Assembly, as the case may be, political process can go on. There can be mergers, splits and formation of new political parties but they shall not be reflected in the House. So far as the House is concerned, there shall be no splits in a political party and if any member violated paragraph 2 of the Tenth Schedule, he will stand disqualified. Indeed, the Tenth Schedule deals with and governs only the membership of the House and the splits and mergers among the members of the political parties in the House. It does not purport to govern or regulate the political processes outside the House. So far as the internal democracy and internal structures of a party are concerned, we agree that they should be strengthened. It is for this very reason that we have recommended in Chapter one of Part three insertion of a Chapter in the Act governing and regulating the functioning of the political parties. Those provisions must also be implemented along with the changes in the Tenth Schedule.

3.4.2 In connection with this issue, some of the participants in the seminar raised a connected issue. Their views can be stated thus: the deletion of paragraph 3 tends to strengthen the control of the majority over the political party. The minority will be left with no voice. The freedom of speech, which is so essential for the successful functioning of democracy and of the Parliament/State Legislature, will come to an end. On every conceivable occasion, whip is being issued by the party leadership, leaving no room for dissent. It would be appropriate if it is provided that a whip shall be issued only on occasions when the voting is likely to affect the existence or continuance of the government and not on all

and sundry occasions. Let us deal with the views aforesaid.

3.4.3. Firstly, it may be mentioned that a democracy and particularly a parliamentary democracy without political parties is inconceivable. One can just imagine what will happen if 300 independents are elected in Lok Sabha. The political parties are inseparable from a parliamentary form of government. In S.R. Bommai v. Union of India, the Supreme Court observed:

> "..One cannot conceive of a democratic form of Government without the political parties. They are part of the political system and constitutional scheme. Nay, they are integral to the governance of a democratic society."

3.4.4 Necessity for abiding by the whip - In such a case, the endeavour should be to strengthen the political parties by providing for internal democracy and internal structures rather than to weaken them. Inasmuch as we are recommending in this report insertion of a new chapter governing the political parties(including the provisions ensuring internal democracy, internal structures and transparency in the conduct of its affairs), there should be no objection to strengthening of the political parties so that they will of majority prevails in a political party. Freedom of speech is undoubtedly precious but when a person becomes a member of the political party, accepts its ticket and fights and succeeds on that ticket, he renders himself subject to the discipline and control of the party. It should also be noticed that when a person applies for the ticket of a political party, he knows, and is expected to know, about the leadership, internal working, policies and programmes of the party. He must also reckon with the fact that in future, the leadership may change, policies and programmes may change and so on. If he, with his eyes open, applies for and obtains the ticket and contests and wins on that basis, he cannot plead later that he does not agree with the leadership or policies of the party. Any difference of opinion, he must ventilate and fight within the party. The membership of House does not become his private property nor can he trade in it. It is a trust and he is in the members of a trustee. He cannot also say that he will take advantage of the name and facilities of a political party, fight the election on the ticket of that party and succeed, but he will not be subject to the discipline of the political party. This is simply unthinkable besides being unethical and immoral. He has to abide by the party discipline within the House. He may fight within the party to have his point of view or policies adopted by the party but once the party takes a decision one way or the other and issues the whip, he shall have to abide by it or resign and go out. It would equally be unethical and immoral for him to vote against the whip and then resign.

3.4.5. We may mention that in a system of government like

that of the USA, there is no occasion, generally speaking, of issuance of a whip. The vote in Congress does not and cannot affect the continuance of the government. In recent days, we have witnessed (in the case of impeachment of President Clinton) several members of Republican Party voting against their party line and in favour of the President.

3.4.6. Desirability of issuing the whip in specific situation only. - So far as the issuance of the whip is concerned, it is not governed by any law. Neither the Rules framed under the Tenth Schedule nor the Rules of Procedure and Conduct of Business in the Lok Sabha/Council of States provide for or regulate the issuance of whip. It appears to be a matter within the discretion and judgment of each political party. In such a situation, we can only point out the desirability aspect and nothing more. It is undoubtedly desirable that whip is issued only when the voting in the House affects the continuance of the government and not on each and every occasion. Such a course would safeguard both the party discipline and the freedom of speech and expression of the members.

3.4.7 Conclusions regarding amendments to the Tenth Schedule - So far as the deletion of paragraph 4 (merger) is concerned, we are of the opinion that this paragraph should also go in the interest of maintenance of proper political standards in the Houses and also to minimise the complications arising on that account. Paragraph 4 says inter alia that a member of a House shall not be disqualified under paragraph 2(1) where his original political party merges with another political party has not accepted the merger and have opted to function as a separate group. In such a case, it is provided that such group shall be deemed to be a political party to which he belongs for the purpose of paragraph 2(1) and it shall be deemed to be his original political party for the purpose of this sub-paragraph, this provision in sub-paragraph (1) of paragraph 4 is likely to lead to several complications and unnecessary disputes. Accordingly, we reiterate our proposal to delete paragraph 4 as well. The other allied provisions in Tenth Schedule, which become unnecessary as a result of deletion of paragraphs 3 and 4, have necessarily got to be deleted. Secondly, in view of the proposed deletion of paragraphs 3 and 4, the definition of the expression "original political party" may be dropped and in its place, the following definition should be inserted:

(c) "political party" in relation to a member of a House, means the political party on whose ticket that member was elected and where such political party is a part of a front or a coalition formed before a general election for contesting such election, such front or coalition,

Provided that the Election Commission is informed in writing by all the constituent parties in the front/coalition before the

commencement of the poll that such a front/coalition has been formed".

This definition is suggested in the interest of stability of government (see part VII of this report).

PART IV

CONTROL OF ELECTION EXPENSES

This part deals with - (A) the proposal to delete Explanation 1 to section 77 of the Act (B) insertion of Part VA containing section 78A (providing for maintenance of accounts and their auditing etc., by recognised political parties) and (c) State Funding i.e. section 78B and Section 78C.

CHAPTER - I

The proposal to delete Explanation I to section 77

4.1.1. Section 77 which occurs in Chapter VIII of Part V of the Act, entitled "Election Expenses", is applicable only to the elections to the Lok Sabha and the Legislative Assembly of a State. As originally enacted, it provided that "Every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by election agent between the date of publication of the notification calling the election and the date of the declaration of result thereof, both dates inclusive." The words "all expenditure in connection with the election incurred or authorised by him or by his election agent" fell for consideration of the Supreme Court in Kanwarlal Gupta v. Amar Nath Chawla (1975) 3 SCC 646. The court, in the first instance, referred to sub-section (6) of section 123 of the Act which says that " the incurring of authorising of expenditure in contravention of section 77" is a corrupt practice which disqualifies the person from contesting the elections for the next six years. After referring to the language of section 77, they observed that where the expenditure was authorised by the candidate or by his election agent expressly, there was no difficulty in determining the meaning of the aforesaid words, but, the court observed, difficulty arose where the expenditure was incurred not by the candidate but by the political party which had sponsored him or by his friends and supporters. The court posed the question "Can the limit on the expenditure be evaded by the candidate by not spending any money of his own but leaving it to the political party or his friends and supporters to spend an amount far in excess of the limit?" and then proceeded to ascertain the object and purpose underlying section 77. The court observed:

> "The object of the provision limiting the expenditure is two-fold. In the first place, it should be open to any individual or any political

party howsoever small, to be able to contest an election on a footing of equality with any other individual or political party, howsoever rich and well financed it may be, and no individual or political party should be able to secure an advantage over others by reason of its superior financial strength."

4.1.1.1. The court then observed that money plays an important part inasmuch as the paraphernalia required in an election campaign can not be obtained except with the aid of funds. Money is absolutely necessary for fighting an election. The court further observed that the requirement of the constitution was full and effective participation of all citizen in the political process and to have an equal voice in the election of the members of the legislatures. It is the purpose of law, the court observed, to effectuate the above objective and to ensure that every candidate and every citizen participated in the election process of a footing of equality. The next objective behind the said provision, the court said, was limiting the expenditure on elections so as to eliminate, as far as possible, the influence of big money in the electoral process. If there were no limit on expenditure, political parties would resort to collection of contributions which would naturally come only from the rich and affluent sections of the society. The court then stressed the pernicious influence of big money in derailing the democratic process and referred in this connection to the evils of big money influence on elections which had come to light in the USA. The court opined that the aforesaid background should inform the court in the interpretation of section 77 of the Act and then made the following pertinent observations:

"Now, if a candidate were to be subject to the limitation of the ceiling, but the political party sponsoring him or his friends and supporters were to be free to spend as much as they like in connection with his election, the object of imposing the ceiling would be completely frustrated and the beneficial provision enacted in the interest of purity and genuineness of the democratic process would be wholly emasculated. The mischief sought to be remedied and the evil sought to be suppressed would enter the political arena with redoubled force and vitiate the political life of the country. The great democratic ideal of social, economic and political justice and equality of status and opportunity enshrined in the Preamble of our Constitution would remain merely a distant dream eluding our grasp. The legislators could never have intended that what the individual candidate cannot do, the political party sponsoring him or his friend and supporters should be free to do. That is why the legislators wise interdicted not only the incurring but also the authorising of excessive expenditure by a candidate. When the political party sponsoring a

candidate incurs expenditure in connection with his election, as distinguished from expenditure on general propaganda, and the candidate knowingly takes advantage of it, or participates in the programme or activity or fails to disavow the expenditure or consents to it or acquiesces in it, it would be reasonable to infer, save in special circumstances, that he impliedly authorised the political party to incur such expenditure and he cannot escape the rigour of the ceiling by saying that he has not incurred the expenditure, but his political party has done so. A party candidate does not stand apart from his political party and if the political party does not want the candidate to incur the disqualification, it must exercise control over the expenditure which may be incurred by it directly to promote the poll prospects of the candidate. The same proposition must also hold good in case of expenditure incurred by friends and supporters directly in connection with the election of the candidate. This is the only reasonable interpretation of the provision which would carry out its object and intendment and suppress the mischief and advance the remedy by purifying our election process and ridding it of the pernicious and baneful influence of big money. This is in fact what the law in England has achieved. There, every person on pain of criminal penalty, is required to obtain authority from the candidate before incurring any political expenditure on his behalf. The candidate is given complete discretion in authorising expenditure up to his limit. If expenditure made with the knowledge and approval of the candidate exceeds the limit or if the candidate makes a false report of the expenditure after the election, he is subject not only to criminal penalties, but also to having his election voided."(Italics added).

4.1.1.2. The court then referred to the earlier decisions of the court supporting the construction bases upon section 77 by them.

4.1.2. The Law Commission of India is of the opinion that the decision in Kanwarlal Gupta's case rightly and correctly interprets section 77. Indeed, it does more. Besides furnishing the rationale for such a provision, it also points out the desirability and necessity of having such a provision to ensure free and fair elections and to keep out the money-power.

4.1.3. Unfortunately, however, soon after the above judgment, the President of India issued an Ordinance amending the section 77 by inserting Explanation 1 in sub-section (1) of section 77. Subsequently, Amendment Act 58 of 1974 was enacted in terms of the said Ordinance and was given retrospective effect on and from October 19, 1974. Explanation I so inserted reads as follows -

Explanation 1 - Notwithstanding any judgment, order or decision of any Court to the contrary, any expenditure incurred or authorised in connection with the election of a candidate by a political party or by any other association or body of persons or by any individual (other than the candidate or his election agent) shall not be deemed to be, and shall not ever be deemed to have been, expenditure in connection with the election incurred or authorised by the candidate or by his election agent for the purposes of this sub-section.

Provided that nothing contained in this Explanation shall affect -

(a) any judgment, order or decision of the Supreme Court whereby the election of a candidate to the House of the People or to the Legislative Assembly of a State has been declared void or set aside before the commencement of the Representation of the People (Amendment) Ordinance, 1974 (Ord. 13 or 1974);

(b) any judgment, order or decision of a High Court whereby the election of any such candidate has been declared void or set aside before the commencement of the said Ordinance if no appeal has been preferred to the Supreme Court against such judgment, order or decision of the High Court before such commencement and the period of limitation for filing such appeal has expired before such commencement."

4.1.3.1. By a subsequent Amendment Act, (Act 40 of 1975), the words "the date of publication of the notification calling the election" in section 77(1) were substituted by the words "the date on which he has been nominated". Explanation III was also inserted in sub-section (1) of section 77.

4.1.3.2. The aforesaid amendments have the effect of nullifying the object and purpose underlying section 77(1) read with section 123(6) of the Act. The amendments create an escape clause and have provided an easy way of circumventing the legal requirement. Not only the political party which has sponsored the candidate, but the friends, relatives and supporters of a candidate can spend any amount on the election of the candidate and yet all the amount would not fall within the expenditure incurred by the candidate or his agent. The validity of Explanation I was challenged before the Supreme Court in P.Nallappa Thampy v. Union of India (AIR 1985 SC 1133) but the challenge failed. It may perhaps be appropriate to point out that upholding the constitutional validity means affirmation of the legislative power and of the provision

not being violative of the constitutional limitations. It in no way amounts to a pronouncements upon the desirability or necessity of such a provision.

4.1.4. More than one decision of the Supreme Court has pointed out the undesirability of the said Explanation, the mischief inherent in it and stressed the need to delete the same. It would be sufficient to cite two decisions of the Supreme Court, namely C.Narayanaswamy v. C.K. Jaffer Sharief (1994 (Supp) 3 SCC 170) and Gadakh Yashwantrao Kankarrao v. Balasaheb Vikhe Patil (1994(1) SCC 682. The observations in the first mentioned decisions are to the following effect.

> "As the law stands in India today anybody including a smuggler, criminal or any other anti-social element may spend any amount over the election of any candidate in whom such person is interested, for which no account is to be maintained or to be furnished and any such expenditure shall not be deemed to have been expenditure in connection with the election, incurred or authorised by the candidate or by his election agent for the purpose of sub-section (1) of Section 77, so as to amount to a corrupt practice within the meaning of sub-section (1) of section 77, so as to amount to a corrupt practice within the meaning of sub-section (6) of section 123. It is true that with the rise in the costs of the mode of publicity for support of the candidate concerned, the individual candidates cannot fight the election without proper funds. At the same time it cannot be accepted that such funds should come form hidden sources which are not available for public scrutiny. According to us, sub-section (6) of section 123 declaring "incurring of authorising of expenditure in contravention of section 77" a corrupt practice has lost its significance and utility with the introduction of the Explanation-I aforesaid which encourages corruption by underhand methods. If the call for "purity of elections" is not be reduced to a lip service or a slogan, then the persons investing funds, in furtherance of the prospect of the election of a candidate must be identified and located. The candidate should not be allowed to plead ignorance about the persons who have made contributions and investments for the success of the candidate concerned at the election. But this has to be taken care of by Parliament.

4.1.4.1. Similarly, in the latter decision, it was observed:

> "The existing law does not measure up to the existing realities. The ceiling on expenditure is fixed only in respect of the expenditure incurred or authorised by the candidate himself but the

expenditure incurred by the party or anyone else in his election campaign is safely outside the net of legal sanction. The spirit of the provision suffers violation through the escape route. The prescription of ceiling on expenditure by a candidate is a mere eye-wash and no practical check on election expenses for which it was enacted to attain a meaningful democracy. This lacuna in the law is, however, for the Parliament to fill lest the impression is reinforced that its retention is deliberate for the convenience of everyone. If this be not feasible, it may be advisable to omit the provision to prevent the resort to indirect methods for its circumvention and subvervision of the law, accepting without any qualm the role of money power in the elections. This provision has ceased to be even a fig leaf to hide the reality."

4.1.5. It is a matter of regret that so far no action has been taken by the Parliament in the light of the observations of the Supreme Court.

4.1.6. In the year 1990, the then Law Minister, late Shri Dinesh Goswami, had prepared a draft amendment Bill, based upon the consensus of all the political parties. The said bill provided inter alia for deletion of the Explanation I to section 77(1). Though provisions in the said bill have been given statutory shape by the Parliament by enacting Act 21 of 1976, the particular provision in the bill providing for deletion of Explanation I to section 77 was not enacted.

Shri Som Nath Chatterjee, M.P., presided over the session devoted to Election Expenses and State Funding at the National Seminar held on 24th January, 1999. He stressed the necessity of free and fair elections for a successful democracy but regretted that over the last few decades money power, muscle power and black money had been troubling this nation. There is a feeling among the people that some political parties are getting unfair advantage in the elections because of their having larger financial sources. For this reason, good persons were not able to contest, he said, Shri K.K. Venugopal, Senior Advocate, Supreme Court, and an expert on constitutional law, who was the keynote speaker at the said seminar put forward certain very pertinent ideas which may be referred to hereinbelow.

4.1.6.1. In the very scheme of things and as pointed out by the Supreme Court in its various decisions, the bulk of the funds contributed to political parties would come only from business houses, corporate groups and companies. Such a situation sends a clear message from the political parties to big business houses and to powerful corporations that their future financial well being will depend upon the extent to which they extend financial support to the political party. Indeed most business houses already know where their interest lies and they make their contributions accordingly to that political party which is likely to

advance their interest more. Indeed ensure of knowing which party will come to power, they very often contribute to all the major political parties. Very often these payments are made in black money. Section 293A of the Companies Act, 1965, as inserted in 1969, imposed a ban on the companies making contributions to any political party or for any political person or for any political purpose. Unfortunately, this ban was lifted in 1985 by amending the Act. Under the present provision, a company is permitted to contribute amounts to a political party or for a political purpose to any person provided that the amount does not exceed five per cent of its average net profits. In the case of an Indian company of a multinational stature or in the case of any big business group, five per cent would mean a mind-boggling figure. As far back as 1957, Chagla C.J. pointed out the danger inherent in permitting the companies to make contributions to political parties (Koticha's case(1957) 27 Company Cases 604). He warned that "it is a danger which may grow apace and which may ultimately overwhelm and even throttle democracy in the country". As a matter of fact, an attempt made in 1976 to remove the ban imposed by Section 293A (as initially enacted) failed. It is amusing to note the 'Statement of Objects and Reasons' appended to the bill prepared in 1976. It stated that the ban was proposed to be lifted "with a view to permit the corporate sector to play a legitimate role within the defined norms in the functioning of our democracy!" Mr. Venugopal raised an interesting question of law in this behalf. He said that according to section 7 of the Prevention of Corruption Act 1988, "whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain for any person, for himself or for any other person, any gratification whatever, other than the legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in exercise of his official functions, favour or disfavour to any person or for render or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall, be punishable...". A Member of Parliament or a Member of Legislature is a public servant. A candidate contesting an election to Parliament or Legislative Assembly is a person who is expecting to be a public servant. If he becomes a public servant and then a minister, or even otherwise if it is found at any time in future that he has returned the favour of being funded by a business house or a company, directly through himself or any other person for rendering any service with the Central Government or any State Government etc., he would be guilty of the aforesaid offence of corruption for which a mandatory imprisonment of not less than 6 months is provided which may extend to 5 years. After the decision of the Supreme Court in the case of A.R. Antulayl(AIR 1984 SC 718), he said, it is open today even for a private

individual to file a criminal complaint under the Prevention of Corruption Act.

4.1.6.2. We endorse the views of Shri K.K. Venugopal in their entirety.

4.1.7. Shri Shiv Raj Patil, M.P., and a former Speaker, Lok Sabha, also stressed the necessity of curbing the influence of money power in elections.

4.1.8. It must be mentioned at this stage that the above proposal was opposed by Shri Kapil Sibal, M.P. Indeed he was the only dissenting voice. The reason given by him was that the suggested removal of ban on donations by companies would encourage the parties and persons to act behind the curtain and that influence of black money would be more whereas under the existing system the funding of political parties by companies is open. We are of the opinion that the reason given is hardly acceptable and runs against the uniform authority of the Supreme Court and the unanimous opinion of all other participants including Shri Ram Jethmalani, Union Minister, Shri P.P. Rao, Senior Advocate, Shri C.R. Irani (Editor, The Statesman) and several other intellectuals.

4.1.9. It is in the above circumstances that the Law Commission of India had suggested in its working paper that the said Explanation be deleted. In the seminars held and in the responses received by the Commission, unanimous support has been given to the proposal of the law Commission. There has been no dissenting voice, except of Shri Kapil Sibal, as mentioned hereinabove. Accordingly, we reiterate our proposals along with the substitution of definition of "original political party" by the new definition of "political party".

4.1.10. In this connection, it is necessary to refer to the Report of the Indrajit Gupta Committee appointed by the Government of India to go into the question of State Funding and Election Expenses. So far as deletion of Explanation I in section 77(1) is concerned, the committee has not made any specific recommendation (vide para 10 of Chapter VI). The Report says that though some parties were in favour of deletion of the Explanation, certain other parties did not agree to it. It is not clear in what circumstances and for what reasons the political parties, which had supported the said deletion in 1989-90 (on the basis of which the 1990 Bill aforementioned provided for such deletion) have now turned round and are opposing the deletion. It is difficult to perceive any justifiable reason behind the said opposition when everyone is agreed that the objective of electoral process is to obtain a free and fair ascertainment of the will of the people. The Law Commission hopes and trusts that in the interest of a healthy parliamentary democracy, those political parties, which are now opposed to the said deletion, will reconsider and revise their opinion and support the said deletion as indeed they had done in the years 1989-1990.

CHAPTER II

Insertion of Section 78A (Maintenance, audit and publication of accounts by political parties)

4.2.1. This proposal drew unanimous approval from all the participants at the seminars as well as from several persons, parties and organisations which responded to the Law Commission's working paper. There was no dissenting voice. On the contrary, Shri K.K. Venugopal, Senior Advocate, observed that while the Law Commission has rightly recommended the introduction of section 78A, it had not provided for the consequences of non-compliance with the said provision or for the consequences that flowed if it was found that any false statement had been made in the accounts submitted by a political party. He stressed the necessity of publication of such accounts by the Election Commission which would enable any individual or party to point out the falsity of any of the particulars in the accounts. In this connection, he referred to section 13A of the Income Tax Act which was inserted on 1.4.1979. The said section provides that the income received by a political party under the head "Income from house property" or "income from other sources" or "any income by way of voluntary contributions received by it from any person" shall not be included in the total income of the previous year of such political party provided that (a) such political party keeps and maintains such books of accounts and other documents as would enable the assessing officer to property deduce its income therefrom; (b) in respect of each such voluntary contribution in excess of ten thousand rupees, such political party keeps and maintains a record of such contribution and the name and address of the person who has made such contribution and (c) the accounts of such political party are audited by an accountant as defined in the Explanation below sub section (2) of section 288 of the said Act. The explanation appended to the section says that for the purpose of the said section "political party" means an association or body of individual citizens of India registered with the Election Commission of India as apolitical party under paragraph 3 of the Election Symbols (Reservation and Allotment) Order 1968 and includes a political party deemed to be registered with that Commission under provision to sub paragraph (2) of that paragraph. (It, however, appears that para 3 of the said Symbols Order has been omitted by Notification No. OM 21(E) dated 23.2.1992 with effect from 25.3.1992) Mr. K.K. Venugopal pointed out that until Shri H.D. Shourie of the "Common Cause" filed a Public Interest Petition in the Supreme Court(the decision in which case is reported in 1996 (2) SCC 752) the said provision was not being followed by the parties or enforced by the Income Tax Department. As a matter of fact, except the two Communist parties and two other political parties, no other political party had

complied with the said section nor did they file their return of income stating that they had complied with the three conditions specified in the said section. Mr. Venugopal was of the opinion that such a failure would attract penalty provided by section 276-CC of the Income Tax Act. Mr. Venugopal further pointed out that even though the Supreme Court directed in the aforementioned decision that the Secretary to the Ministry of Finance should conduct an investigation and inquiry against each of the defaulting political parties and initiate necessary action against them according to law, no action whatsoever appears to have been taken so far nor any party or person had been prosecuted. All this proves the old adage that "some men are more equal than others". While a small income-tax payer who fails to file his return is prosecuted and penalised, the political parties which are in receipt of huge funds which they spend on elections and other occasions are not being touched. The parties too do not appear to have realised that if they themselves do not follow the law, not only it sets a bad example to others, they will not have the face to tell others to abide by law.

4.2.3. The necessity of such a requirement was indeed emphasised by the Supreme Court in its recent decision in Gajanan Bapat v. Dattaji Meghe (1995 (5) SCC 347) where it observed pertinently as under:

> "We wish, however, to point out that though the practice followed by political parties in not maintaining accounts of receipts of the sale of coupons and donations as well as the expenditure incurred in connection with the election of its candidate appears to be a reality but it certainly is not a good practice. It leaves a lot of scope for spoiling the purity of election by money influence. Even if the traders and business men do not desire their names to be published in view of the explanation of the witnesses, nothing prevents the political party and particularly a national party from maintaining its own accounts to show total receipts and expenditure incurred, so that there could be some accountability. The practice being followed as per the evidence introduces the possibility of receipts of money from the candidate himself or his election agent for being spent for furtherance of his election, without getting directly exposed, thereby defeating the real intention behind Explanation 1 to section 77 of the Act. It is, therefore, appropriate for the legislature or the Election Commission to intervene and prescribe by Rules the requirements of maintaining true and correct account of the receipt and expenditure by the political parties by disclosing the sources of receipts as well. Unless this is done, the possibility of purity of election being soiled by money influence cannot really be ruled out. The political parties must disclose as to how much amount was collected by it and from whom and the manner in which it was spent so that the court is in a position to determine "whose

money was actually spent" through the hands of the party. It is equally necessary for an election petitioner to produce better type of evidence to satisfy court as to "whose money it was" that was being spent through the party. Vague allegations and discrepant evidence may only create a doubt but then the charge of corrupt practice cannot be held to be proved on mere lurking suspicion or doubts. However, undesirable and objectionable the practice might be, the fact remains that the evidence led by the election petitioners in this case doe not establish the charge levelled by them at all."

4.2.4. We have already pointed out hereinbefore the provisions of the German Law on Political Parties of 1967, Section V whereof creates a statutory obligation upon all the political parties to maintain clear and correct accounts, have them audited and submit the same to the President of the German Bundestag. These accounts are directed to be circulated by the Bundstag as "Bundstag Papers". The Law further requires that the Bundstag shall examine whether the statement of accounts is in accordance with the requirements of the said law and that the result of such scrutiny shall be recorded in the report in accordance with the paragraph 5 of the said article (article 23). The German law provides in great detail the particulars which such accounts should contain including the sources from which amounts are received and the items upon which expenditure has been incurred. It is absolutely essential that there should be a law on the same lines. Rules can be made elaborating and elucidating the requirements in the proposed section 78A in the light of and keeping in mind the several provisions in the said German Law.

4.2.5. This proposal was also supported by Shri P.P. Rao, Senior Advocate, Shri N. Ram(Editor, Frontline) and Shri C.R. Irani (Editior, The Statesman), Shri Inderjit, Senior Journalist, Shri Shivraj V. Patil(former Speaker, Lok Sabha), Dr. K.L. Shivaramakrishnan(Centre for Policy Research) and Shri H.K. Dua, senior journalist, among others. Even in the responses received by various persons and organisations pursuant to the circulation of the 'working paper', there has been no dissenting voice.

4.2.6. Accordingly, the Law Commission reiterates that a new section as proposed in the working paper (section 78A) should be inserted in the R.P.Act of 1951. It is further recommended that the provision as suggested should be numbered as sub-section (1) and sub-sections (2), (3) and (4) as proposed hereinafter should also be inserted in the said section.

(2) A political party which does not comply with any of the requirements of sub-section (1) shall be liable to pay a penalty of Rs. 10,000/- for each day of non-compliance and so long as the non-compliance continues.

If such default continues beyond the period of 60 days, the Election Commission may de-recognise the political party after affording a reasonable opportunity to show cause.

(3) If the Election Commission finds on verification, undertaken whether suo motu or on information received, that the statement of accounts filed under sub-section (1) is false in any particular, the Election Commission shall levy such penalty upon the political party, as it may deem appropriate besides initiating criminal prosecution as provided under law.

(4) Any orders passed under sub-sections (2) or (3) shall be directed to be published in the press and other media, for public information."

CHAPTER III

State Funding

4.3.1. This part of chapter relates to proposal for state funding of elections put forward in the working paper. The working paper had reiterated the proposals contained in the Dinesh Goswami Bill of 1990 which, as has been stated herein before, was based upon the consensus of all the political parties.

4.3.2. It is necessary at the outset to refer to Inderjit Gupta Committee which was appointed by the Parliament to got into the question of state funding. The Committee has also recommended partial state funding of political parties more or less on the lines of the Dinesh Goswami Bill 1990.

4.3.3. Views of participants in seminars considered. Shri Som Nath Chatterjee, who presided over the session devoted to 'Election Expenses and State Funding' in the National Seminar held on 24.1.1999 supported the idea of state funding. (Hew as a member of the said Committee.) Mr. Chatterjee referred to a 1971 Parliamentary Committee known as 'Jagannadha Rao Committee' of which S/Shri. Atal Bihari Vajpayee and L.K. Advani were members besides himself, which Committee had also recommended state funding. He referred to the deliberations of the Committee appointed by Shri Jayaprakash Narayan, provisions of Dinesh Goswami Bill and to the recommendations and resolutions of the Inter-Parliamentary Council (at which all parliamentarians were represented), held in May 1994. All of them recommended the idea of state funding. Mr. Chatterjee referred in some detail to the contents of the Inderjit Gupta Committee Report recommending partial state funding of the recognised political parties; both at the national and state levels. The recommendations made, he said, were designed to meet the unavoidable expenditure required to be incurred by each political party though it may not satisfy their total requirements. Such a course, he said, will

help the bona fide candidates. He also expressed himself in favour restrictions being placed upon ostentatious expenditure on elections including on cut-outs, banners, arches, public meetings and so on. According to him, the proposals of the Inderjit Gupta Committee Report represent a good beginning though they do not exclude private funding of the political parties. He also supported the idea of creating a state fund, as recommended by the Inderjit Gupta Committee. This fund should have a reserve of six hundred crores. The said amount, he said, was fixed keeping in mind the rate of rupees ten per elector. Mr. Chatterjee also stressed the importance and necessity of vigilance by public, media and all other organisations interested in public welfare.

4.3.3.1. Shri K.K. Venugopal, senior Advocate, was also of the opinion that time had come for seriously considering the state funding of elections. He referred to the fact that in several countries such a practice was in vogue. He pointed out that in no case, money as such should be paid to the candidate or to a political party. Only certain material, which was necessary for every political party to convey its message and its programme to the electorate should be provided. If the state funding was in the shape of cash, he opined, millions of candidates would come forward to contest elections only for the sake of money. He also referred in this connection to the practice in England where free television time was made available by BBC and by independent television companies. Postal communication was also accessible free of charge to the candidates. Council halls are made available for holding the meetings. The cost of printing and compiling of the registers were all paid by the State. He then referred to the French electoral system which he said is the most generous in this respect. Money is not given there directly by the state but pamphlets, leaflets, posters, handbills and other publicity material including election manifestos and statements are printed by the state machinery at the specific request of the candidate. Vehicles including oil and petrol are provided by the State. Help was extended to the candidate to organise public meetings and public address systems. Radio time and television time was also made available to a candidate free of cost. Turning to India, Mr. Venugopal said that the problems confronting the country were very acute and that election funding on a major scale could not be undertaken at the cost of poverty, primary education, primary health care, population control, clean drinking water, creation of employment and so on. He opined that any deprivation in these areas would negate the very socialist democratic foundation of the nation. While commending the proposals of the Law Commission in this behalf, he referred to France again where, with a view to preventing a large number of independent candidates from taking advantage of state funding, it has been provided that every candidate receiving State funding shall execute a bond and also furnish a bank guarantee for the financial support extended to him so that in case he got less that 8 per cent of the

total votes polled, he would forfeit his bond and money would be recovered from the guarantor. He was of the opinion that such a provision should be made in the Indian law also, if state funding was to be provided. Such a course, he submitted would prevent a host of candidates appearing on the electoral scene and, at the same time, would render great service to democracy by providing a level playing field to all the persons who genuinely desired to serve the nation as representatives of the people. He submitted that the existing professional politicians alone could not represent the people and that it was necessary to bring into existence a new generation of educated individuals who desired to serve the country.

4.3.3.2. One of the participants suggested that it should be open to private individuals and other bodies to make contributions to the Election Fund and that contributions thereto should be exempt from income-tax. While some of the participants wanted the State funding to be restricted to recognised political parties(RPPs), some others suggested that it should be extended to all the candidates. As a matter of fact, there was a sharp division of opinion, in this session, on this question.

4.3.3.3. At the seminar held on 14th November, 1998 too, these proposals had elicited mixed response.

At the Banagalore seminar, some of the participants suggested that if the state funding was to be introduced, it must be made conditional upon internal democracy being assured within the political party. To the same effect were the opinions expressed at the Thiruvananthapuram seminar. In the responses received to the working paper, differing opinions were expressed. While some members agreed with by the opponents of this proposal is that such a course would place an unwanted burden on the public exchequer and that unless other proposals relating to maintenance of accounts etc., were also given effect to, state funding should not be resorted to.

4.3.4. Conclusions - After considering views expressed by the participants in the seminars and by various persons and organisations in their responses and after perusing relevant literature on the subject, the Law Commission is of the opinion that in the present circumstances only partial state funding could be contemplated more as a first step towards total state funding but it is absolutely essential before the idea of state funding (whether partial or total) is resorted, the provisions suggested in this report relating to political parties (including the provisions ensuring internal democracy, internal structures) and maintenance of accounts, their auditing and submission to Election Commission are implemented. In other words, the implementation of the provisions recommended in Chapter one Part three should be a pre-condition to the implementation of the provisions relating to partial state funding set out in the working paper in the Law Commission (partial funding, as already

stated, has also been recommended by the Inderjit Gupta Committee). If without such pre-conditions, state funding, even if partial is resorted to, it would not serve the purpose underlying the idea of state funding. The idea of state funding is to eliminate the influence of money power and also to eliminate the influence of money power and also to eliminate corporate funding, black money support and raising of funds in the name of elections by the parties and their leaders. The state funding, without the aforesaid pre-conditions, would merely become another source of funds for the political parties and candidates at the cost of public exchequer. We are, therefore, of the opinion that the proposals relating to state funding containted in the Inderjit Gupta Committee Report should be implemented only after or simultaneously with the implementation of the provisions contained in this Report relating to political parties viz., deletion of Explanation 1 to Section 77, maintenance of accounts and their submission etc. and the provisions governing the functioning of political parties contained in chapters I and II of Part IV and chapter I of Part III. The state funding, even if partial, should never be resorted to unless the other provisions mentioned aforesaid are implemented lest the very idea may prove counter-productive and may defeat the very object underlying the idea of state funding of elections.

4.3.5. It is desirable that total state funding should be introduced but on the condition that political parties are barred from raising funds from any other source. In this chapter, we have proceeded on the assumption that only partial instead of total state funding is feasible in the prevailing economic conditions in the country.

4.3.6. In the Inderjit Gupta Committee report on State Funding of Elections also, it has been recommended -

" 6.14 The committee, therefore, sees full justification constitutional, legal as well as on ground of public interest, for grant of State subvention to political parties, so as to establish such conditions where even the parties with modest financial resources may be able to compete with those who have superior financial resources, on a level with a fair chance of success at the hustings."

The committee also emphasised that such funds could not be doled out to independent candidates and that such of the registered parties as had secured recognition as national and State parties under the Symbols Order on the manifest demonstration of their popular support among the electorate for State sunvention. We concur with the suggestion.

4.3.6.1. On the issue as to whether full or partial State funding should be admissible, the said Committee further observed:

"Para 9.1. Given the budgetary constraints and financial stringencies being faced currently by the country, compounded by the recent economic sanctions imposed by certain foreign countries, sparing or diverting from the meagre financial resources of the country at this juncture, huge funds that may be required to provide full State funding to political parties will neither be advisable nor feasible. A harmonious balance has to be struck. Therefore, to being (sic) (read instead "begin") with political parties may have to contend with only partial funding by the State."

The Committee further recommended that for the present, only part of the financial burden of political parties may be shifted to the State. This should be so done that it provides them relief not only in carrying out their electoral activities and meeting partly the cost of essential items of electioneering campaigns of their candidates but also helps them partially in the current administration of their day to day functioning during non-election period.

4.3.6.2. The Committee recommended that, to begin with, State subvention may be given only in kind, in the form of certain facilities to the recognised political parties and their candidates.

4.3.6.3. The Committee underlined the need to curb the mounting expenses of parties and candidates and ostentatious show of money power by them, by placing reasonable restrictions by law in respect of all or any of the following matters:

(i) Wall writings;
(ii) Display of cut-outs, hoardings, banners;
(iii) Hoisting of flags (except at party offices, party offices, public meetings and other specified places);
(iv) Use of more than a specified number of vehicles for election campaigns and fro processions;
(v) Announcements or publicity by more than a specified number of moving vehicles;
(vi) Holding of public meetings beyond the specified hours;
(v) Display of posters at places, other than those specified by the district/electoral authorities.

4.3.7. We reiterate all the recommendations made in the Indrajit Gupta Committee Report subject to the reservations made in para 4.3.4. So far as the Explanation I to section 77 (1) of the Representation of the Peoples Act 1951 is concerned, we have already recommended its deletion.

4.3.8. As a post-script, we may also refer to the report of the Committee on Standards in Public Life (the Neill

Committee: Cmd. 4057) submitted on October 13, 1998 by that Committee to the Government of the United Kingdom. They have made several proposals, inter-alia, for regulating the election expenditure as well as for making auditing and accounting rules for political parties. The proposals are generally aimed at encouraging (i) more openness about the sources and use of party funds; and (ii) greater public confidence that individuals and organisations were not buying influence with political parties.

PART V

Proposal regarding framing of charges by courts as a new ground for disqualification

5.1. In the working paper, the Law Commission had suggested amendment of Section 8 of the R.P. Act. Section 8 provides for disqualification on conviction for certain offences. It has four sub-sections. Sub-section (1) sets out certain specific offences, the conviction under which shall disquality the candidate for a period of six years from the date of such conviction. Sub-section (2) refers to certain offences subject-wise and says that any person convicted for such offences and sentenced to imprisonment for not less than six months, shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since he is released. Sub-section (3) is in the nature of a 'residuary' provision. It says that a person convicted of any offence and sentenced to imprisonment for not less than 2 years (other than an offence referred to in sub-section (1) or sub-section (2) shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since he is released. Sub-section (4) provides that disqualification falling under sub-section (1), 92) and (3) shall not take effect in the case of a person, who, on the date of conviction is a member of Parliament or the Legislature of a State until three months have elapsed from that date or, if within that period an appeal or application for revision is brought in respect of the conviction or sentence, until that appeal or application is disposed of by the court. (It is not necessary to refer to the provisions of the Explanation appended to the section). The Law Commission had proposed that in respect of offences provided in sub-section (1) (except the offence mentioned in clause (b) of sub-section (1), a mere framing of charge should serve as a disqualification. This provision was sought to be made in addition to existing provision which provides for disqualification arising on account of conviction. The reason for this proposal was that most of the offences mentioned in sub-section (1) are either election offences or serious offences affecting the society and that the persons committing these offences are mostly persons having

political clout and influence. Very often these elements are supported by unsocial persons or groups of persons, with the result that no independent witness is prepared to come forward to depose against such persons. In such a situation, it is providing extremely difficult to obtain conviction of these persons. It was suggested that inasmuch as charge were framed by a court on the basis of the material placed before it by the prosecution including the material disclosed by the charge-sheet, providing for disqualification on the ground of framing of the charge-sheet would be neither unjust nor unreasonable or arbitrary.

5.1.1. The Law Commission further suggested that several election offences mentioned in the Act as well as in the Indian Penal Code provided for ridiculously inadequate punishment. We had expressed the opinion that several electoral offences contained in the R.P. Act and in the IPC were of a serious nature and, therefore, suggested that all these offences should provide for punishment upto three years or more. The detailed proposals have been detailed in the working paper.

5.2. Views of different persons considered - The proposal to amend sub-section (1) of section 8 as mentioned above was supported by the Hon'ble Prime Minister in his inaugural address at the national seminar while taking care to clarify that mere filing of charges (chargesheet) should not be made a ground of disqualification. Shri P.A. Sangma, former Speaker, Lok Sabha did not express a specific opinion on this issue. He, however, queried what happened if a political party puts up candidates with criminal background? Was it possible to take action against political party, he asked? Shri Dilip Padgaonkar, Editor, Times of India, in his keynote speech at the National Seminar referred to Dr. Radhakrishnan's concern about corruption expressed in 1947 and to Vohra Commttee Report. According to him, a negative process was in progress in India, namely, criminalisation of politics and politicisation of crime. He observed that Indian Society was basically tolerant of human failings and that it respected acquisition of wealth by whatever means. He referred also to facts and figures concerning the increasing criminalisation and the increasing number of crimes committed at every succeeding election. He referred to the increasing electoral malpractices with every passing election. He pointed out that while in 1957, repoll was ordered only in 65 booths, in 1989 it was ordered in 1670 booths. He pointed out that in 1991, in Bihar alone repoll was ordered in 1046 booths and in 2173 booths in 1996. He suggested strong measures to arrest the trend towards criminalisation of politics and elections. Shri V.R. Reddy, Senior Advocate and former Additional Solicitor General extended qualified support to the proposals of the Law Commission in this behalf. According to him, this amendment did not really provide the solution insasmuch as the police was not willing to take action against criminals because of the nexus between politicians and criminals.

5.2.1. Strong opinion were expressed by several participants at the National Seminar about the politicians taking the help of criminals not only at the time of elections but even at other times, as well as to the direct entry of criminals themselves into politics. One of the suggestions was that the antecedents and history as also the assets of each candidate at an election should be published in newspapers before their nomination was accepted.

5.2.2 Certain participants in the seminars at Bangalore and Trivandrum suggested compulsory introduction of electoral voting machines to check the role of criminals at the time of elections. It was also suggested that if a person was convicted of an electoral offence provided in the Act or in the IPC, substantial fines should be imposed upon him which should be in lakhs and commensurate with his capacity.

5.2.3 In the responses received from various persons and organisations pursuant to circulation of our working paper also, there has been a sharp difference of opinion. While some persons opposed the proposal to disqualify the persons on the basis of framing of charges, some others supported it. One of the proposals made by one of the respondents, Shri P.V. Nam Joshi, is that if charges are framed against a candidate, the political party should itself be placed under a statutory obligation to treat him as disqualified from candidature and should not give ticket to him. Shri C.K. Jain, former Secretary-General, Lok Sabha agreed with the Law Commission and suggested that as soon as charges are framed, the person, if already a member of the House, should straightaway stand disqualified. Certain other responses suggested that the disqualification on the ground of framing charges should be restricted only to serious offences like murder, dacoity, theft, rape and other offences involving moral turpitude and offences against the State. Certain other responses suggested inclusion of section 498A (of IPC) in the list of offences mentioned in sub-section (1).

5.2.4 Shri V.R. Krishna Iyer, an eminent jurist and former Judge of the Supreme Court strongly opposed the amendment of section 8. He opined that there should be no short-cuts nor should the State resort to any short-cuts even for achieving desirable goals.

5.2.5 All the persons who opposed the proposed amendment of section 8(1) expressed apprehension that such a provision may be taken advantage of and misused by the party in power and would seek to involve its opponents and leaders of other political parties in criminal cases just on the eve of the elections. While, it is true that the charges are framed by the court, the objectors pointed out, the charges are framed only on the basis of the material placed by the prosecution before the court. By that time, they explained, the version or the case of the accused

would not have come before the court nor the prosecution witnesses would have been cross-examined.

5.2.6 We have also taken notice of the opinion of the Election Commission of India suggesting that framing of charges should form the basis for a disqualification under section 8.

5.3 Analysis of views.- Having given our earnest consideration to the issue, we are of the opinion that the proposal put forward by us should be reiterated and affirmed but with certain changes. The changes we are making are the following: (a) section 8 shall remain as it stands now; (b) the electoral offences and offences having a bearing upon the conduct of elections under sections 153A and 505 IPC and serious offences punishable with death or life imprisonment shall be put in a separate section viz., section 8B. Section 8B (proposed) provides that framing of charges shall be a ground of disqualification but this disqualification shall last only for a period of five years or till the acquittal of the person of those charges, whichever event happens earlier. (In case such person is convicted for any of the offences mentioned in section 8B (proposed) he gets disqualified under section 8). This course we are adopting for the reason that a person committing election offences or serious offences punishable with life imprisonment should be disqualified even if charges are framed against him by the court. It must be remembered in this context that persons committing electoral offences or election related offences are generally influential persons or persons having the backing of influential persons. So far as offences punishable with life imprisonment are concerned, they seriously affect the public and very often involve moral turpitude. In this connection, we feel constrained to make certain remarks about the criminal judicial system of this country which has also become extremely corrupt at certain levels. In several instances, offences are registered merely with a view to pressurise the persons to pay bribes to the investigating agencies and then the case is closed. The real offenders are quite often left untouched either because they are capable of bribing the investigating agencies or able to pressurise them in various well-known ways. So far as the prosecuting agency is concerned, the appointment process of public prosecutors and other prosecutors in criminal courts has also become thoroughly politicised. Appointments are no longer made on the basis of merit but almost exclusively on the basis of political affiliations. It is a common phenomenon in the States to see the public prosecutors and the government advocates changing with every change of government - not merely when a different political party comes into power but also when the incumbent in the office of chief minister changes within the same political party. Such kind of appointments, coupled with frequent changes (leaving short terms at the disposal of the incumbents), is keeping away people with merit from these offices. No advocate with merit and having some work, is prepared to accept these

offices because they have become too precarious and dependent upon the whims and fancies of the political bosses. Efficiency and integrity have both become scarce in many of the holders of these offices. So far as the witnesses are concerned, the inordinate delays in bringing the accused to trial is acting as a damper. Very often witnesses are won over, threatened or otherwise pressurised not to speak the truth. If their evidence is recorded soon after the offence, more often than not, they will speak the truth. But if there is an interval of a year or more which is invariably the case now-a-days - they become weak in their resolve to uphold the truth and succumb to pressures. Lastly, so far as the judges are concerned, the common complaint heard is that inefficiency, and corruption in some cases have both unfortunately made an entry into the hitherto sacred portals of judiciary.

5.3.1 The real fault lies in the fact that the Indian State has become very `soft'. There is no respect for law either in the bureaucracy or among the citizens. Many people indeed take pride and pleasure in violating the law and in boasting of their violations. People appreciate a person who carries on business without paying taxes. His skill is admired, little realising the great harm he is causing to the society. In USA, not paying taxes correctly is immediately visited with a jail term. A few decades ago, a corrupt man was generally timid and afraid of situations where his misdeeds may be talked of or questioned. Today, that is not the situation. Corruption is open and brazen and has the sanction of a section of the public, if not of the public as a whole. Several campaigns and movements for eradicating corruption have not borne fruit. It is necessary to take stringent measures to enforce the law, punish and impose maximum punishments for every violation of offence. To start with, people must be made aware that the law is there to follow and not to flout. Methods must be found and implemented eradicating political interference with the police and administration. The weapon of transfer must be taken away from the hands of political executive. The political executive should be confined to laying down the policies and performance of those functions as are conferred upon it by law. It should have no say in the matter of performance of statutory functions by statutory authorities. Even in the matter of administration of the government, the discretion and judgment of the officers should be respected by the government while taking decisions. At the same time, the anti-corruption laws must be stringently enforced and the trials promptly concluded. One of the measures suggested in this behalf by the Law Commission has been the enactment of a legislation called "The Corrupt Public Servants (Forfeiture of Property) Act" [166th Report of the Law Commission]. The provisions contained in the "Benami Transactions Act" relating to seizure and forfeiture of benami properties should also be enforced without any delay. The Central Vigilance Commissioner has been repeatedly asking for enforcement of the said provisions and also for the enactment of the legislation recommended

by the Law Commission in its 166th Report. Starting with the smallest of the offences like throwing litter in streets, parks and public places and not obeying the traffic rules to major offences like corruption, misappropriation of public funds and dacoity should all merit maximum permissible sentence, as a general rule. It is only by this weapon that respect for law can be inculcated in the society and in the administration. India must get out of this `soft state syndrome'. Otherwise no meaningful development is possible and there can be no improvement in the governance of this country.

5.4 Conclusion.- Accordingly, we recommend that section 8B (as proposed by us and as set out hereinbelow) be enacted.

"8-B. Disqualification on framing of charge for certain offences.- A person against whom charge has been framed under:- (a) section 153A, section 171E, section 171F, section 171G, section 171H, section 171I, sub-section (1) or sub-section (2) of section 376, sub-section (2) or sub-section (3) of section 505 of the Indian Penal Code (45 of 1860); or

(b) sections 10 to 12 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967); or

(c) the penal provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985) except section 27 thereof; or

(d) section 125, section 135, section 135A or sub-section (2) of section 136 of this Act; or

(e) any other offence punishable with imprisonment for life or death under any law,

shall be disqualified for a period of five years from the date of framing the charge, provided he is not acquitted of the said charge before the date of scrutiny notified under section 36 of this Act."

We also reiterate the proposals to enhance the punishment for various electoral offences mentioned in the R.P. Act as well as in the Indian Penal Code. All of them are electoral offences and seriously interfere with a fair electoral process. They foul the electoral stream by letting in all kinds of distortions and evils into the electoral system and finally into our body-politic. The punishments at present provided are totally inadequate and are ridiculously low, hence need to be enhanced.

PART VI
CHAPTER I
Other Proposals in the Working Paper

6.1.1. In this part we shall deal with certain other proposals put forward in Annexure I of our working paper. They are:

(a) Deletion of sections 11 and 11B of the R.P. Act.

(b) Amendment of section 33 of the R.P. Act. By introducing sub-section (7), it was sought to be provided that no person shall be entitled to contest simultaneously from more than one parliamentary constituency or assembly constituency, as the case may be. Similar provision was suggested with respect to the Council of States and Legislative Councils and even in bye-elections.

(c) Amendment of section 34 raising deposits in the case of independent candidates and candidates of unrecognised political parties.

(d) Amendment of section 58A in certain respects.

(e) Amendment of section 62 by inserting a proviso.

(f) Amendment of section 78 reducing the period prescribed for filing the account of election expenses by the contesting candidates from 30 days to 15 days.

(g) Amendment of sections 81, 86 and 87 relating to trial of election petitions.

(h) Amendment of section 97 in the light of the decision of the Supreme Court in Bhag Mal v. Parbhu Ram, AIR 1985 SC 150.

(i) Insertion of new sections 98A and 98B.

(j) Amendment of section 107.

(k) Amendment of section 116A.

(l) Omission of the proviso to sub-section (7) in section 123.

(m) Insertion of a new chapter II in part 7 of the R.P. Act, relating to `Illegal Practices'.

(n) Insertion of section 126A.

(o) Insertion of another proviso to section 151A.

(p) Insertion of new section 162A.

(It may be mentioned that the proposals with respect to enhancing the punishments provided by sections 127, 134B, 135 and 136 of the R.P. Act and by various offences in chapter IXA of the Indian Penal Code, 1860, have already been affirmed and recommendations made to implement the same.)

6.1.2. So far as the proposals under (a) to (p) are concerned, no objection has been taken to any of the said proposals by anyone, except with respect to the proposal to enhance the deposit in the case of independents and candidates of unrecognised political parties (by amending section 34 of the Act). Shri Justice V.R. Krishna Iyer

strongly opposed the said proposal on the ground that such a provision would discourage not only the independents but unrecognised political parties from contesting the elections on an equal footing with the recognised political parties. The Law Commission is, however, unable to agree with the opinion of Justice Iyer, notwithstanding the great respect we have for his views. there have been numerous instances in the past where scores of independents entered the election fray for various oblique reasons. In case of certain constituencies, the number of contesting candidates was anywhere between 30 to 50. The matter had reached ridiculous proportions. The ballot paper had to be as big as a newspaper sheet. Apart from the fact that most of these independent candidates are not serious candidates, the very principle of parliamentary form of government requires that independents should not be encouraged. The facts and figures relating to previous elections to Lok Sabha or, for that matter, to Legislative Assemblies, show that the percentage of independent candidates succeeding is approximately 0.3% in the case of Twelfth Lok Sabha. As stated earlier, in Dhartipakar v. Rajiv Gandhi, AIR 1987 SC 157, the Supreme Court also recommended to Parliament to devise ways and means to meet the onslaught of independent candidates who are not serious about their business. Enhancing the deposits could have been one method by which such independent candidates and candidates of unrecognised political parties could be discouraged from entering the election fray in a lighthearted and casual manner or for oblique reasons. We have, however, gone further and decided to recommend in chapter III of Part III above that independent candidates should be altogether eliminated from the political scene in India and thereby pave the way for meaningful electoral reforms. In such a case, amendment of section 34 as suggested by us is unnecessary.

6.1.3. Conclusion.- Accordingly, we reiterate all our recommendations with respect to the matters mentioned under (a), (b) and (d) to (p) of para 6.1.1., supra. We may mention that the proposal to amend section 34 (raising the deposit in the case of independent candidates) has been dropped by us in view of our other recommendations viz., barring the independent candidates and the requirement of obtaining 5% (of the valid votes cast) by a political party to enable it to obtain a seat in Lok Sabha or in Legislative Assembly.

CHAPTER II
Procedure visualised for prosecution in case of perjury during judicial proceedings

6.2.1. Existing procedure under the Code of Criminal Procedure, 1973:- Under the Code of Criminal Procedure, the relevant provisions can be found under section 195(1)(b), sections 340, 341, 342, 343 and 344. They deal with matters relating to perjury and giving of false evidence before courts during judicial proceedings.

6.2.2. A perusal of section 195(1)(b) shows that offences

under sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and section 228 as well as those falling under section 463, 471, 475, 476 of the IPC, shall not be taken cognizance by a court except on the complaint in writing of that court, or some other court to which that court in subordinate.

6.2.2.1.Section 340 lays down the procedure for initiating the proceedings for prosecuting the persons for the offences mentioned in section 195. This section is intended to be complementary to section 195. Whether, suo motu or on an application by a party, a court being already seized of a matter under section 340(1) may be tentatively of opinion that further action against some party or witness may be necessary in the interest of justice. In such a proceeding, the reasons recorded in the principal case in which a false statement has been made, have a great bearing. Thus in an enquiry under section 340(1), the only question is whether a prima facie case is made out which, if unrebutted, may have reasonable likelihood of establishing the specified offence and whether it is expedient in the interest of justice to take such action. The court concerned may, after holding preliminary enquiry, if any, as it thinks necessary-

(a) record a finding to that effect
(b) make a complaint thereof in writing
(c) send it to a magistrate of the first class having jurisdiction
(d) take sufficient security for the appearance of the accused before such magistrate, or if the alleged offence is non-bailable and the court thinks it necessary so to do, send the accused in custody to such magistrate and
(e) bind over any person to appear and give evidence before such magistrate

6.2.3. Under sub-section (3) of section 340 a complaint made under this section shall be signed -

(a) where the court making the complaint is a High Court, by such officer as the court may appoint;
(b) in any other case, by the presiding officer of the court.

6.2.2.4.Section 343 lays down the procedure to be followed by a magistrate taking cognizance. Under sub-section (1) of section 343, it is provided that a magistrate to whom a complaint is made under section 340 or 341 shall, notwithstanding anything contained in chapter XV, proceed, as far as may be, to deal with the case as if it were instituted on a police report.
(emphasis supplied)

6.2.2.5.Section 344 enacts a summary procedure for trial for giving false evidence where the court does not choose to proceed under section 340 of the CrPC. Under this section before the punishment is imposed, the offender has

to be given a reasonable opportunity of showing cause why he should not be punished for such offence. The maximum punishment laid down is imprisonment upto three months or fine upto Rs.500/- or both.

6.2.2.6. Section 345 lays down procedure in certain cases of contempt.

6.2.3. There is a general tendency on the part of Courts to avoid making complaints even against persons giving false depositions or launching false prosecutions. In our recent report on the Code of Civil Procedure, 1908, while referring to a Supreme Court decision, it was observed that no court can avoid taking action against persons who submit false affidavits in the courts or give false evidence. In order to curb the tendency to give false evidence in judicial proceedings, it is essential that frequent recourse should be taken by courts to the aforesaid provisions so that persons making false depositions or pursuing false prosecutions are deterred from doing so. This object can be achieved if presiding officers of courts are not required to personally file the complaint before the Magistrates of first class. Many times presiding officers avoid taking recourse to the prescribed procedure as they wish to avoid the possibility of their being called as a witness in such proceedings.

6.2.4. Conclusion - In order to remove this unnecessary hurdle, it is essential that the existing provisions under sections 195(1)(b), and 340(3)(b) of CrPC be substituted as follows:-

For section 340(3)(b), the following clause may be substituted:-

"(b) In any other case, by the presiding officer of the Court, or by such ministerial officer as the Court may designate in this behalf".

6.2.5 Accordingly, section 195(1)(b) should also be amended by inserting before the words "or of some other Court" and after the words "except on the complaint in writing of that Court, the following words:-

"or by such ministerial officer as the Court may designate in this behalf".

6.2.6. In view of the proposed insertion of the words stated above, the Court before which the false evidence was given or false prosecution was launched, will be generally relieved of the anxiety that they may possibly be called to give evidence during trial before the Magistrate. Such deposition on behalf of the Court can then be given by such ministerial officer as the Court may designate in this behalf.

6.2.7 Under section 294, no formal proof of certain documents is required. Thus in general the judicial record may be read in evidence as such. The proposed amendments,

it is felt could achieve the object of deterring persons from initiating false prosecutions. These amendments will be particularly appropriate in matters relating to disqualifications under proposed section 8B to guard against abuse of the said provision. In course of time, provisions of CrPC could also be amended on the above lines to deter launching of false cases.

CHAPTER III

Ineligibility of candidates to contest election unless the candidate furnishes the particulars regarding the lawful assets possessed by him, or her, and his or her spouse and dependent relations, and the particulars regarding criminal cases pending against himself or herself.

6.3.1 There has been mounting corruption in all walks of public life. People are generally lured to enter politics or contest elections for getting rich overnight. Before allowing people to enter public life, the public has a right to know the antecedents of such persons. The existing conditions in which people can freely enter the political arena without demur, especially without the electorate knowing about any details of the assets possessed by the candidates are far from satisfactory. It is essential by law to provide that a candidate seeking election shall furnish the details of all his assets (movable/immovable) possessed by him/her, wife/husband, dependent relations, duly supported by an affidavit.

6.3.2 Further, in view of recommendation of the Law Commission for debarring a candidate from contesting an election if charges have been framed against him by a Court in respect of offences mentioned in the proposed section 8B of the Act, it is also necessary for a candidate seeking to contest election for furnish details regarding criminal case, if any, pending against him, including a copy of the FIR/complaint and any order made by the concerned court.

6.3.3 In order to achieve the aforesaid objectives, it is essential to insert a new section 4-A after the existing section 4 of the Representation of the People Act, 1951, as follows:-

"4-A. Qualification for membership of the House of the People, the Council of States, Legislature Assembly of a State or Legislative Council

A person shall not be qualified to file his nomination for contesting any election for a seat in the House of the People, the Council of States, Legislative Assembly or Legislative Council of a State unless he or she files -

(a) a declaration of all his assets (movable/immovable) possessed by him/her, his/her spouse and dependent relations, duly supported by an affidavit, and

(b) a declaration as to whether any charge in respect of any offence referred to in section 8B has been framed against him by any Criminal Court."

6.3.3.1 The consequential changes will be required to be carried out in Forms 2A to 2E prescribed by the Conduct of Election Rules, 1961 to bring these in conformity with the amendments recommended in the Representation of the People Act, 1951. Accordingly, it is recommended that following clauses be inserted as clauses (d) and (e) in forms 2A to 2E. Consequently, the existing clause (d) therein shall be designated as clause (f):

(e) that the statement of assets enclosed to this nomination paper represents the true and correct statement of all the assets, movable and immovable, held/owned by me, my spouse and dependent relations. An affidavit affirming the correctness of the said statement is also appended to this nomination paper.

(f) that no criminal court has framed a charge against me in respect of any of the offences mentioned in section 8B of the Act and that no trial in respect of charges of the said offences is pending,

or

that a charge has been framed against me by the court of _____ in the case No. _____ on _____ (date) in respect of offence(s) punishable under sections _____ mentioned in section 8B and trial is pending against me,

or

that though charge was framed against me by the court of _____ in the case No._____ on _____ (date) in respect of offence(s) punishable under sections _____ mentioned in section 8B, I have since been acquitted of the said charge by order _____ (date) (copy enclosed).

Moreover, the words "that I am contesting this election as an independent candidate" in forms 2A and 2B should be deleted.

PART VII
Need for urgent measures to instil stability in governance and for improving the electoral system

7.1 In this part, we shall deal with (A) measures to instil stability in governance within the existing constitutional system and (B) certain other suggestions for improving the electoral system. Though the proposals in this behalf were not put forward in our working paper, the matters discussed herein have been the subject-matter of intense and widespread public debate and appear to be essential to redress the several weaknesses which have come to light in the recent years in the governance of this

country. We proceed to discuss these issues.

CHAPTER I
Stability in governance

7.1.1 First Measure.- The proliferation of political parties - almost a mushroom growth - over the last few decades, necessitating the formation of coalitions with all their internal contradictions, pulls and pressures, has contributed to instability in the governance. This has to be checked. A parliamentary democracy can be run successfully only if there are two or three parties. U.K. has three parties, U.S.A. only two and Germany has four. Multiplicity of parties is not good for the health of a democracy. The French had bitter experience with `revolving door' coalitions and eventually changed the system. Italy is having the same problem where it is said that over the last 50 years, there have been more than 40 governments. In our own country, we have had an unhappy experience with coalition governments. In the last three years, we have had three governments, all of which fell for reasons inherent in such coalitions. All this brings home the urgency of rectifying this state of affairs. Already, there are strident voices, some of them emanating from very high and reputed quarters, in favour of switch-over to presidential form of government. That is an issue outside the scope of the present report. Herein we are confining ourselves to solutions within the parameters of the existing constitutional system.

7.1.2 Conclusion.- One of the solutions, we have already recommended in chapter II of Part III viz. that any political party which obtains less than 5% of the total valid votes cast in the parliamentary election or a Legislative Assembly election, shall not be entitled to any seats in the Lok Sabha or Legislative Assembly, as the case may be, even if it wins any seat or seats. Such a provision would lead to polarisation among the political parties and to formation of larger political parties by a process of integration or by formation of pre-election fronts. In such a situation, defection of a member of such constituent party of the pre-election front or of the constituent party as a whole from the pre-election front should be treated as defection attracting the provision of the Tenth Schedule to the Constitution.

7.1.3 Second Measure.- Another measure which can be thought of to introduce stability in governance is to amend Rule 198 of Rules of Procedure and Conduct of Business in the Lok Sabha. But before we set out the proposed amendment, it is necessary to notice the relevant context. In a parliamentary form of government, the government has no fixed term. Though its term is co-terminus with the life of the House, it can be defeated or it may fall, on many counts. For example, a defeat on a money bill or a cut motion will, according to conventions established in U.K. and followed in this country would oblige the government to resign. It is indeed a case of rendering

accountability on a daily basis. At any time, the opposition can bring a no-confidence motion and if it is approved by the House, the government has to resign. In view of what has happened at the Centre in 1979, 1990 and in the recent years, it should make us all think of ways to avoid repetition of such situations. In 1999, in particular, the government was defeated on the `confidence motion' moved by the government but no alternate government could be formed, making a general election inevitable within a span of 13 months. It has made us hold parliamentary elections almost every year. It is neither good for the country nor for the political parties. The governance and economy are the first casualties of such a transfiguration. There is a danger that such situations may lead to public disenchantment with the parliamentary form of government. There are already strident voices for changing over to a presidential form of government. We are, however, not going into the question whether a presidential form of government should be introduced by making the necessary changes in the Constitution. We are thinking of solutions within the existing constitutional system, though as we shall indicate presently, it does mean abandoning some of the conventions governing the parliamentary form of government and which are being followed in this country too till now. We must clarify that the proposed amendment to the aforementioned Lok Sabha Rules does not violate any of the constitutional provisions, but it certainly means modification of certain conventions developed in U.K. and followed in our country since 1950. Article 67 of the Basic Law for the Federal Republic of Germany lays down:-

"Article 67 (constructive vote of no confidence):-

(1) The Bundestag may express its lack of confidence in the Federal Chancellor only by electing a successor with the majority of its Members and requesting the Federal President to dismiss the incumbent. The Federal President must comply with the request and appoint the person elected.

(2) Forty-eight hours must elapse between the motion and the vote."

This provision has the objective of ensuring a stable government.

7.1.3.1 In his article in the Hindustan Times dated 13.5.99, page 13, Shri Pran Chopra suggested a few electoral reforms. The first reform he has advocated is the innovation of simultaneous votes of no-confidence in the incumbent and confidence in the alternative. It would eliminate the need for a mid-term poll. He has opined:-

"That a government should seek a vote of confidence is an innovation, but justified by the very circumstances in which that government came into being, on the basis of written commitments of

support, and the written withdrawal of one of them. But the proposed innovation of simultaneous votes of no-confidence in the incumbent and confidence in the alternative would be much safer. It would eliminate the need for a mid-term poll. It would also be more democratic, because it would shift the process of finding an alternative to the place where the process belongs, namely Lok Sabha. It would also restore to the President, in its fullness, his truer and greater function of being the trusted counsellor of the government, with the trust unimpaired by how the successor Prime Minister might have been chosen."

7.1.3.2 As a matter of fact, similar suggestion has been put forward by several other eminent public figures for ensuring stability of the governments and to avoid mid-term polls before expiry of term of the House.

7.1.4 Conclusion.- In our opinion, a new rule, Rule 198A should be introduced in the Rules of Procedure and Conduct of Business in the Lok Sabha providing that -

"Rule 198-A (1) Once a no-confidence motion is taken up for discussion and voted upon as contemplated by sub-rules (3) and (4) of Rule 198, no fresh motion expressing want of confidence in the Council of Ministers shall be permitted to be made for a period of two years from the date of voting upon such motion.

(2) Once a motion expressing confidence in the Council of Ministers is made pursuant to the direction of the President, no motion expressing want of confidence in such Council of Ministers shall be permitted to be moved for a period of two years.

(3) No leave shall be granted under Rule 198 to a motion expressing want of confidence in the Council of Ministers, unless it is accompanied by a motion expressing confidence in a named individual. Only the motion expressing confidence in a named individual shall be put to vote."

It would be appropriate if similar rule is made by all the Speakers by amending the respective Rules of Procedure governing their Legislative Assemblies.

CHAPTER II
Measures for improving the electoral system

7.2.1 Goal of one election once in five years disrupted. The Constitution provides for a federation. At the Centre, there is a Parliament and in the States there are State Legislatures. To begin with, elections to Lok Sabha and the Legislative Assemblies in the States were being held simultaneously and once in five years. But then slowly and steadily the Lok Sabha elections and the elections to Legislative Assemblies got dissociated for several reasons.

For example, in a case where a State Legislative Assembly is dissolved invoking the power under article 356 of the Constitution well before the expiry of its term, an election has to be held to that Legislative Assembly within the period prescribed. Sometimes it may happen that a particular Chief Minister in a State may advise the Governor to dissolve the Legislative Assembly well before the expiry of its term and if such recommendation is accepted by the Governor and the Assembly is dissolved, a fresh election to that Assembly has to be held within the period prescribed. Unfortunately, till about 1994, there has been a rampant resort to article 356. In some instances, as many as six or more State Governments and Legislative Assemblies were dismissed/dissolved at once, necessitating elections to those Legislative Assemblies soon thereafter. There have also been instances when Lok Sabha was dissolved far ahead of the expiry of its term. It happened on at least four occasions. The result is that the schedule of Lok Sabha elections and the schedule of the elections to Legislative Assemblies has become completely separated. The resulting situation can best be illustrated by setting out the particulars relating to Lok Sabha and the several Legislative Assemblies:

(a) The XIIth Lok Sabha has been dissolved in the month of April 1999 and elections have been notified to take place in September-October, 1999. If so, its term, in the normal course would expire in October 2004.

(b) Elections to the State Assemblies of Mizoram, Delhi, Madhya Pradesh and Rajasthan were held in March 1998 along with the Lok Sabha elections of 1998. Their term will come to an end in March 2003.

(c) The terms of Karnataka and Sikkim Legislative Assemblies will come to an end on 25th December 1999 and 28th December 1999, respectively.

(d) The term of the Legislative Assemblies of Andhra Pradesh, Maharashtra, Manipur, Orissa, Arunachal Pradesh and Bihar is coming to an end in the year 2000 between the months of January to April. To be more precise, the dates of expiry of Legislative Assemblies of the said States are 10th January, 21st March, 21st March, 22nd March, 23rd March and 9th April, 2000 respectively.

(e) The terms of the Legislative Assemblies of Haryana, Tamil Nadu, Kerala, West Bengal, Pondicherry and Assam will come to an end during the months of May and June 2001. To be precise, the dates of expiry are 21st May, 21st May, 28th May, 9th June, 9th June and 11th June, respectively.

(f) The term of the Legislative Assemblies of Punjab, Uttar Pradesh and J & K is coming to an end in the year 2002. To be precise, the dates of expiry of the term of these States are 2nd March, 25th March and 17th October, 2002, respectively. (The term of the J & K Assembly is six years.)

(g) The term of the Legislative Assemblies of Meghalaya, Himachal Pradesh, Gujarat, Nagaland and Tripura are all expiring in the month of March 2003. To be precise, the dates of expiry are 8th March, 14th March, 18th March, 22nd March and 21st March, 2003, respectively.

(h) The Legislative Assembly of Goa was recently dissolved. The Election Commission has now announced that elections to the same will be held on June 4, 1999, which means that its term will expire in June 2004.

7.2.1.1 In other words, we are going to have elections to Legislative Assemblies in each of the next five years, unless of course, the Legislative Assemblies of Karnataka, Sikkim, Andhra Pradesh, Maharashtra, Manipur, Orissa, Arunachal Pradesh and Bihar are dissolved before the expiry of their term and elections to those Legislative Assemblies is held along with the elections to Lok Sabha likely to be held in September-October 1999. Even then, there will be elections to six Legislative Assemblies in 2001, three Legislative Assemblies in 2002, nine Legislative Assemblies in 2003 and one Legislative Assembly (Goa) in 2004. Again in 2004, all things being equal, the elections to Lok Sabha will fall due towards the end of that year. This cycle of elections every year, and in the out of season, should be put an end to. We must go back to the situation where the elections to Lok Sabha and all the Legislative Assemblies are held at once. It is true that we cannot conceive or provide for all the situations and eventualities hat may arise whether on account of the use of article 356 (which of course has come down substantially after the decision of Supreme Court in S.R. Bommai v. Union of India) or for other reasons, yet the holding of a separate election to a Legislative Assembly should be an exception and not the rule. The rule ought to be `one election once in five years for Lok Sabha and all the Legislative Assemblies'.

7.2.2 Conclusion.- Undoubtedly, the desired goal of one election in every five years cannot be achieved overnight in the given circumstances. It has to be achieved in stages. For example, the elections to Legislative Assemblies of Karnataka, Sikkim, Andhra Pradesh, Maharashtra, Manipur, Orissa, Arunachal Pradesh and Bihar should be advanced, by making necessary orders, and be held along with the elections to Lok Sabha in September-October, 1999. The next step ought to be to have the elections to the Legislative Assemblies of Haryana, Tamil Nadu, Kerala, West Bengal, Pondicherry and Assam (where elections are due in May and June, 2001) and to the Legislative Assemblies of Punjab and Uttar Pradesh (where elections are due in March, 2002) simultaneously sometime in May, 2001. Similar adjustments may have to be made in future with a view to achieve the desired goal of one election for Lok Sabha and to all the Legislative Assemblies simultaneously. If all the political parties co-operate, the necessary steps, some of which are indicated hereinabove, can be taken without hurting the interest of any political party. May be, a

constitutional amendment can solve the problem. Such an amendment can also provide for extending or curtailing the term of one or more Legislative Assemblies say for six months or so wherever it is necessary to achieve the said goal. However, if feasible, more appropriate solution may be to hold elections to Lok Sabha/Legislative Assemblies simultaneously but to withhold the results of elections till after the expiry of term of the Legislative Assembly concerned - the interval not exceeding six months. This suggestion was made by the Chief Minister of Karnataka who stated: "the Election Commission could not take unilateral decision but only in consultation with the State Governments concerned on holding simultaneous elections". (The Hindu, 14.5.99, p.5)

In Law Commission's view, the above suggestion needs to be seriously explored.

7.2.3 another associated idea being debated seriously in several fora is how to assure a fixed, unalterable term to Lok Sabha and the Legislative Assemblies. This is of course a major issue which can be considered if and when a review of the Constitution is undertaken. The subject cannot be dealt with within the existing constitutional parameters and hence is not dealt with in this Report.

7.2.4 Use of Electronic Voting Machine Desirable:- The idea of electronic voting machines and identity cards for all voters, initiated by the Election Commission sometime ago, is a highly desirable step. The introduction of these two steps would go to make the election process more simple, transparent and fair. Introduction of electronic voting machines would also dispense with the printing of ballot papers which involves substantial amount of public money and time. The printing of ballot papers can be undertaken only after the list of contesting candidates is published under section 38 of the R.P. Act and printing of crores of ballot papers within a short time, with due secrecy and security, is a major exercise. The introduction of electronic voting machines would enable the Election Commission to dispense with the printing and distribution of ballot papers. It would also help in curtailing the period between the date of publication of the list of contesting candidates (under section 38 of the Act) and the date of polling. The reduction of this period, may be even to one week, would help in reducing the expenditure incurred by the candidates and political parties on election campaign and other incidental expenditure.

PART VIII
An alternative method of election

8.1 In the working paper, we had set out in the Appendix, "An alternative method of election". Such an alternative method of election was suggested by certain eminent persons with long experience in public life. This method goes a long way in ensuring purity of elections,

keeping out criminals and other undesirable elements and also serves to minimise the role and importance of caste and religion. The said method was set out in the working paper as under:

> "the idea is this: (a) no candidate should be declared elected unless he obtains at least 50% of the votes cast; (b) the ballot paper shall contain a column at the end which can be marked by a voter who is not inclined to vote for any of the candidates on the ballot paper, which is called hereinafter as `negative vote'. (A voter can cast a negative vote only when he is not inclined to vote for any of the candidates on the ballot paper); (c) for the purposes of calculating the fifty per cent votes of the votes cast, even the negative votes will be treated as `votes cast'; (d) if no person gets 50% or more votes, then there should be a `run-off' election between the two candidates receiving the highest number of votes; (e) in the run-off election too, there should be a provision for a negative vote and even here there should be a requirement that only that candidate will be declared elected who receives 50% or more of the `votes cast' as explained hereinabove; (f) if no candidate gets 50% or more of the votes cast in the run-off, there should be a fresh election from that constituency."

8.2 Objects of this method.- This method of election is designed to achieve two important objectives viz., (i) to cut down or, at any rate, to curtail the significance and role played by caste factor in the electoral process. There is hardly any constituency in the country where anyone particular caste can command more than 50% of the votes. This means that a candidate has to carry with him several castes and communities, to succeed; (ii) the negative vote is intended to put moral pressure on political parties not to put forward candidates with undesirable record i.e., criminals, corrupt elements and persons with unsavory background.

8.2.1 No doubt this method calls for a run-off and a fresh election in case no candidate obtains 50% or more votes even in the run-off, and in that sense expensive and elaborate, yet it has the merit of compelling the political parties to put forward only good candidates and to eschew bad characters and corrupt elements.

8.3 Illustration of the method.- The idea can be illustrated in the following manner:

8.3.1 Take a constituency where there are one lakh voters. Five candidates contest from that constituency. The total number of valid votes cast in the constituency is 80,000. Ten thousand voters cast negative votes. Only the candidates who obtains 40,000 votes or more out of the 80,000 votes cast can be declared elected. If none of the

five candidates obtains 40,000 votes or more, there should be a run-off between two (of the five candidates) who have polled the highest votes among the five. In the run-off, 70,000 votes are cast, of which 10,000 are negative votes. If one of the candidates obtains 35,000 or more votes, he will be declared elected. Otherwise, there would be a fresh election from that constituency. Even in this fresh election, the very same procedure as set out above will be followed - until some candidate gets 50% or more of the votes cast.

It is obvious that this method of election is relevant to and can be implemented only in the case of direct election from territorial constituencies. It is not applicable to `list system'.

8.4 Views of speakers at the Seminars.- In the seminars held by the Law Commission, particularly in the seminar held on 14th November, 1998 and in the National Seminar held on 23rd and 24th January, 1999, certain speakers commended the idea that only a candidate who got 50%+1 of the total number of valid votes cast in that constituency alone should be declared elected and that in case no candidate got 50%+1 of the valid votes cast, a `run-off' election should be held between the two candidates obtaining the highest number of votes. The merit of such a method of election, they pointed out, was that it would reduce/eliminate the pernicious role played by the caste and religion in elections. So far as the idea of negative votes was concerned, only one or two participants supported it.

8.5 Advantages of the method.- There can be no dispute that the idea and its underlying object are both laudable. Besides, the advantages pointed out above, this method of election also acts as a powerful disincentive against voter intimidation. It would provide an opportunity to the voters to express their disapproval of the bad candidates and the political parties who put them forward. The parties and candidates would also try, in such a situation, to gather a consensus and fight on ideologies and programmes rather than on caste or religious vote banks. There are, however, certain practical difficulties and problems which we must point out, inherent in the above system, particularly in Indian conditions. Before we set out those practical difficulties and problems, however, it is necessary to clarify that the requirement of 50%+1 of the votes and the idea of negative vote, are both distinct ideas. It is true that both can be clubbed together but it is not necessary. The requirement of 50%+1 of the vote can be implemented without implementing the idea of negative vote simultaneously, though the idea of negative vote, as explained in the working paper, cannot be implemented without implementing the idea of 50%+1 vote.

8.6 Practical difficulties and problems.- The elections to Lok Sabha or for that matter Legislative Assemblies in bigger States, are not held on one single date. Elaborate

arrangements have to be made to establish polling booths, to requisition, allocate and transport the personnel to man the polling booths, and the transport and stationing of police and other paramilitary forces for maintaining peace at the time of polling and so on. Because of these factors and considerations, elections to Lok Sabha are held on two or more dates. Elections to Legislative Assemblies of big States are also spread over two dates. Secondly, counting does not take place soon after the polling. Counting begins only after the polling throughout the country (in the case of Lok Sabha) and throughout the State (in the case of a Legislative Assembly) is completed which means that if a run-off election is to be held, fresh ballot paper is to be printed in respect of those constituencies (where the run-off has become necessary) and polling has to be held afresh which means either retaining or rearranging the entire paraphernalia mentioned above including the stationing of Police and other forces to maintain law and order. And if the idea of negative vote is implemented, then a fresh election may become necessary, in case no candidate gets 50%+1 votes even in the run-off.

8.7 If the above practical difficulties and problems can be overcome, the idea of 50%+1 vote - and even the idea of negative vote (as explained hereinabove), can be implemented. We may mention that if electronic voting machines are introduced throughout the country, it will become a little more easier to hold a run-off election inasmuch as it would then be not necessary to print fresh ballot papers showing the names of the two candidates competing in the run-off - or for that matter, for holding a fresh election (in case the idea of negative vote is also given effect to).

8.8 Alternative method mitigates undesirable practices.- Probably, the aforesaid problems arise because of the vastness of the country and lack of requisite standards of behaviour and also or cooperation and understanding among the political parties to ensure a peaceful poll. As a matter of fact, the election offences are not decreasing but are increasing, with every passing election. This is really unfortunate. Even so, we may make every effort to mitigate the undesirable practices and the alternate method of election set out in this chapter is certainly a step in that direction.

8.9 Recommendation.- We accordingly recommend that the government and Parliament may take a decision in the matter on a consideration of all the aforesaid circumstances.

PART IX
SUMMARY OF RECOMMENDATIONS

The following is the summary of the recommendations made in the preceding parts/chapters of the Report:

A: CONSTITUTION OF INDIA:

9.1 With a view to giving effect to our recommendations pertaining to the list system, as suggested in Chapter II of Part III, it is necessary to amend articles 81 and 170 of the Constitution. The proposed amendments are to the following effect:

"Amendment of article 81:

In article 81 of the Constitution, for clause (1) the following clause shall be substituted:

"(1) The House of the People shall consist of:

(a) not more than 530 members to be chosen by direct election from the territorial constituencies in the States;

(b) not more than 20 members to represent the Union territories chosen in such manner as Parliament may by law provide; and

(c) not more than 138 members chosen according to the list system in such manner as Parliament may by law provide.

Provided that the provisions of article 330 shall not apply to the election of the members to be chosen under this clause."

Further Amendment of Article 81:

In the proviso to clause (3) of article 81, the figure "2025" will be substituted for the figure "2000".

Amendment of Article 170:

(a) In article 170 of the Constitution, for clause (1), the following clause shall be substituted:

"(1) The Legislative Assembly of each State shall consist of not more than six hundred, and not less than sixty members chosen both by direct election from territorial constitutencies as well as according to the list system in the State."

(b) After clause (1) in article 170, the following clause shall be inserted:

"(1A) The strength of each Legislative Assembly as at present fixed by the Second Schedule to the Representation of the People Act, 1950, shall be filled by persons chosen by direct election from the Assembly territorial constituencies. In addition thereto, twenty-five per cent of the total membership of the said strength of each Legislative Assembly shall be chosen according to the list system. The membership of each Legislative Assembly shall accordingly stand enchanced by

twenty-five per cent of the existing strength."

(c) After clause (3) in article 170, the following clause shall be inserted :

"(4) The twenty-five per cent seats added to the membership of each Legislative Assembly by clause (1A) of this article shall be chosen in such manner as Parliament may be law provide :

Provided that the provisions of article 330 shall not apply to the seats so added by clause (1A)."

9.2 With a view to giving effect to our recommendations pertaining to amendments of the Tench Schedule (law relating to defections), contained in Chapter IV of Part III, it is necessary to amend the Tenth Schedule to the Constitution as follows :

Amendment of the Tenth Schedule to the Constitution

In the Tenth Schedule to the Constitution :

(a) In paragraph 1, the definition of "Legislature Party" shall be omitted.

(b) A new definition of "political party" shall be inserted in paragraph 1 as follows in place of existing definition in clause (c) :

"(c) "political party" in relation to a member of a House, means the political party on whose ticket that member was elected and where such political party is a part of a front or a coalition formed before a general election for contesting such election, such front or coalition,

Provided that the Election Commission is informed in writing by all the constituent parties in the front/coalition before the commencement of the poll that such a front/coalition has been formed."

(c) In paragraph 2, sub-para (4) shall be omitted.

(d) Paragraphs 3 and 4 shall be omitted.

(e) Paragraphs 6, 7 and 8 shall be omitted.

(Paragraph 3.4.7. and Annexure-I to the working paper).

9.3 For the same purpose and to give effect to the said recommendations, article 102 and 191 may also be amended as follows :

Amendment of article 102:

(a) In clause (1) of article 102, after sub-clause (e), the following sub-clause (f), shall be

inserted before the Explanation -

"(f) if he is disqualified for being a member of either House of Parliament under the Tenth Schedule."

(b) Clause (2) of article 102 shall be deleted.

Amendment of article 191:

(a) In article 191 (1), sub-clause (f) as follows shall be added after subclause (e) but before the Explanation:-

"if he is disqualified for being a member of Legislative Assembly or Legislative Council of a State under the Tenth Schedule."

(b) Clause (2) of article 191 shall be deleted.

9.4. In view of the negligible number of Anglo-Indians now left in India, it is recommended that article 331, which provides for nomination of two members of the Anglo-Indian community by the President of India to the Lok Sabha, be deleted.

(Paragraph 1.3.3.2. and Annexure-I to the working paper).

B: AMENDMENTS TO THE REPRESENTATION OF PEOPLE ACT, 1951

9.5. Sections 11 and 11B of the Act shall be deleted. Consequently, existing section 11A shall be renumbered as section 11.

In view of reiteration of our proposal to repeal sections 11 and 11B of the Representation of People Act, 1951 as stated in paragraphs 6.1.1. and 6.2 of part VI infra, the existing section 11A entitled "Disqualifications arising out of conviction and corrupt practices" which will fall under Chapter IV, shall be renumbered as section 11.

(Paragraph 3.1.3.1.)

9.6. A new part, Part-IIA, entitled `Organisation of Political Parties and matters incidental thereto' be introduced in the Act, for the reasons mentioned in Chapter I of Part III, containing the undermentioned sections :-

PART II-A
Organisation of Political Parties and matters incidental thereto

Section 11A: (1) Political parties can be freely formed by the citizens of this country. The political parties shall form a constitutionally integral part of free and democratic system of Government.

(2) Each political party shall frame its constitution defining its aims and objects and providing for matters specified in section 11A. The aims and objects of a political party shall not be inconsistent with any of the provisions of the Constitution of India.

(3) A political party shall strive towards, and utilise its funds exclusively for, the fulfillment of its aims and objects or goals and ideals set out in the Constitution of India.

(4)(a) A political party shall apply for registration with the Election Commission of India.

(b) Every such application shall be made,-

(i) if the association or body is in existence at the commencement of the Representation of the People and other Allied Laws (Amendment) Act, 1999 (_____ of 1999), within sixty days next following such commencement;

(ii) if the association or body is formed after such commencement, within thirty days next following the date of its formation.

(c) Every application under sub-section (4) shall be signed by the Chief executive officer or the association or body (whether such chief executive officer is known as Secretary or by any other designation) and presented to the Secretary to the Commission or sent to such Secretary by registered post.

(d) Every such application shall contain the following particulars, namely :-

(i) the name of the association or body;

(ii) the State in which its head office is situated;

(iii) the address to which letters and other communications meant for it should be sent;

(iv) the names of its president, secretary, treasurer and other office-bearers;

(v) the numerical strength of its members, and if there is more than one category of its members, the numerical strength in each category;

(vi) whether it has any local units; if so, at what levels;

(vii) whether it is represented by any member or members in either House of parliament or any State Legislature; if so, the number of such member or members.

(viii) a declaration that the applicant has complied with and shall continue to comply with the requirements of this

chapter.

(e) The application under sub-section (4) shall be accompanied by a copy of the memorandum or rules and regulations of the association or body, by whatever name called, and such memorandum or rules and regulations shall contain a specific provision that the association or body shall bear true faith and allegiance to the Constitution of India as by Law established, and to the principles of socialism, secularism and democracy, and would uphold the sovereignty, unity and integrity of India.

(f) The Commission may call for such other particulars as it may deem fit from the association or body.

(g) After considering all the particulars as aforesaid in its possession and any other necessary and relevant factors and after giving the representatives of the association or body reasonable opportunity of being heard, the Commission shall decide either to register the association or body as a political party for the purpose of this Part, or not so to register it; and the Commission shall communicate its decision to the association or body:

Provided that no association or body shall be registered as a political party under this sub-section unless the memorandum or rules and regulations of such association or body conform to the provisions of clause (e).

(h) The decision of the Commission shall be final.

(i) After an association or body has been registered as a political party as aforesaid, any change in its name, head office, office-bearers, address or in any other material matters shall be communicated to the Commission without delay.

(5) Only a political party registered with Election Commission of India, and whose registration is not cancelled under this Act, shall be entitled to contest elections either to Lok Sabha or a Legislative Assembly.

Section 11B: (1) A political party may sue or be sued in its own name. A political party shall be competent to hold and dispose of properties.

(2) The name of a political party must be clearly distinguishable from that of any existing political party and shall be subject to approval by the Election Commission. In election campaigns and in elections, only the registered name or its acronym, as may have been approved by the Election Commission, alone shall be used.

(3) Political parties can be formed both at the national level as well as at the State level.

Section 11C: The constitution of a political party shall

provide for the following matters :-

(a) name of the political party and acronym (if used) and the aims and objectives of the party;

(b) procedure for admission, expulsion and resignation by the members;

(c) rights, duties and obligations of the members;

(d) grounds on which and the procedure according to which disciplinary action can be taken against the members;

(e) the general organization of the party including the formation of State, regional, district, block and village level units;

(f) compostion and powers of the executive committee (by whatever name it is called) and other organs of the party;

(g) the manner in which the general body meetings can be requisitioned and conducted and the procedure for requisitioning and holding conventions to decide questions of continuance, merger and other fundamental organisational matters;

(h) the form and content of financial structure of the party consistent with the provisions of this part.

Section 11D: The executive committee of a political party shall be elected. Its term shall not exceed three years. Well before the expiry of the term, steps shall be taken for electing a new executive committee. It shall be open to the executive committee to constitute a subcommittee (by whatever name called) to carry out the business of the executive committee and to carry on regular and urgent executive committee business. The members of the subcommittee shall be elected by the members of the executive committee.

Section 11E: A political party and its organs shall adopt their resolutions on the basis of a simple majority vote. The voting shall be by secret ballot.

Section 11F: The candidates for contesting elections to Parliament or a Legislative Assembly of the State shall be selected by the executive committee of the political party on the basis of recommendations and resolutions passed by the concerned local party units.

Section 11G: (1) It shall be the duty of the executive committee to take appropriate steps to ensure compliance with the provisions of this chapter including holding of elections at all levels. The executive committee of a political party shall hold elections at national and State levels in the presence of the observers to be nominated by the Election Commission of India. Where considered

necessary, the Election Commission may also send its observers at elections to be held at other than national and state levels.

(2) The executive committee of a political party shall maintain regular accounts of the amounts received by the party, its income and expenditure, have them audited and submit the same to the Election Commission as required by section 78A of this Act.

(3) A political party shall be entitled to accept donations except from the following sources:-

(a) donations from political foundations or foreign governments or organisations or associations registered outside the territory of India or non-governmental organisations which are in receipt of foreign funds or from any other association, organisation, group which is in receipt of foreign funds or from a foreign national.

(b) donations from corporate bodies and companies except in accordance with the provisions of the Companies Act, 1956.

Section 11H: The Election Commission shall be competent to inquire, either suo motu or on information received into allegation of non-compliance of any of the provisions of this chapter. If on due inquiry, the Election Commission is satisfied that there has been non-compliance of any of the provisions of this chapter by any political party, the Commission shall call upon the party to rectify the non-compliance within the period prescribed by the Election Commission. In case, the non-compliance continues even after the period so prescribed, it shall be open to the Election Commission to impose such punishment on the political party as it may deem appropriate in circumstances of the case incldуing levy of the penalty of Rs. 10,000/- per day for each day of non-compliance and withdrawal of registration of the party.

Section 11I: Where a public authority provides facilities or offers public services for use to a political party, it must accord equal treatment to all. The scale of such facilities and services may be graduated to conform to the importance of the parties subject to the minimum extent needed for the achievement of their aims. The importance of a party shall be decided on the basis of the results of immediately previous election to Parliament or State Legislative Assembly, as the case may be. The granting of public services shall be only in connection with and for the duration of the election campaign period. For the purposes of this section, the election campaign period shall be deemed to commence 14 days prior to the commencement of poll in a State.

(Rules made under the Act can provide the requisite details on the pattern of the provisions of the German Law on Political Parties, 1967)."

(Paragraph 3.1.3.1.)

9.7. Part IV-A of the Act, containing section 29A shall be deleted. (The substance of section 29A has been incorporated in section 11A).

(Paragraph 3.1.4.)

9.8. The Law Commission is of the opinion that the list system should be introduced as suggested by it in the working paper, for the reasons stated in Chapter II of Part III but subject to the following modifications :

(a) The Commission decided to drop its proposal with respect to territorial units which means that the entire country will be one unit for the purpose of the List System.

(b) If the votes received by a candidate of a RPP do not exceed one-sixth of the valid votes polled by all the candidates in a given constituency, these shall be excluded from cnonsideration for the purpose of sections 78D to 78F.

Accordingly, it is recommended that a new part, Part V-B, containing sections 78D, 78E and section 78F, as indicated in Annexure-A, be enacted.

(paragraph 3.2.15.)

9.9. Though we are dropping the proposal with respect to territorial units, we do hereby affirm that the distribution of seats in Lok Sabha among the States, as set out in the First Schedule to the Representation of the People Act, 1950, should be frozen for another 25 years. For this purpose, it would be necessary to amend the proviso to clause (3) of article 81 of the Constitution by substituting the figure "2025" for the figure "2000."

(Paragraph 3.2.15.1.)

9.10. With a view to arresting and reversing the process of proliferation and splintering of political parties and with a view to bringing about a polarisation of political process as well as to reducing the number of political parties or pre-election political fronts to three or four parties/fronts - we recommend that a new section, namely, section 65A, be inserted in Chapter V of Part V of the Representation of the People Act, 1951 to the following effect:

"65A (1) Any political party, whether recognised or not, which obtains less than 5% of the total valid votes cast in an election to the House of the People shall not be entitled to any seat in that House.

(2) Any political party, whether recognised or not, which obtains less than 5% of the total valid votes cast in

an election to the Legislative Assembly of a State shall not be entitled to any seat in the Legislative Assembly.

(3) For the purpose of sub-section (1) and (2), the relevant date shall be the date on which the notification contemplated by section 73 of this Act is issued.

(4) Any constituency which has elected the candidate of a political party which is deprived of a seat in the House of the People or in the Legislative Assembly on account of requirement in sub-section (1) or (2), as the case may be, shall be represented by the candidate of a political party which has obtained the next highest votes provided that his political party obtains 5% of the total valid votes cast in that election and that he has not lost the security deposit.

(5) The requirements in sub-section (1) to (3) shall not apply in the case of a bye-election.

(Paragraph 3.2.15.3.)

In this connection, it may be noted that we have proposed a new definition of "political party" in the Tenth Schedule to the Constitution to include a pre-election front or a pre-election coalition which would mean that defection of a constituent party from the front/coalition would be treated as defection leading to the disqualification of all the members of that defecting constituent party. This provision alongwith our recommendation regarding the requirement of five per cent votes (paragraphs 3.2.14. and 3.2.15.3.) would go a long way in polarisation of political parties and processes.

9.11. In Law Commission's view, the time is now ripe for debarring independent candidates from contesting Lok Sabha and Legislative Assembly election. Any person proposing to contest Lok Sabha election can always form a political party and contest elections but its entitlement to any seat in Lok Sabha will be subject to the condition that it obtains not less than 5% of the total valid votes cast in an election to Lok Sabha. Therefore, it cannot be legitimately argued that our proposal tends to interfere with the democratic ethos or political processes.

(Paragraphs 3.3.6. and 3.3.6.1.)

9.12. Accordingly, it is recommended that a new sub-section, namely, sub-section (1) be introduced in section 4 of this Act, as suggested hereinbelow, and the existing provision may be renumbered as sub-section (2).

The proposed sub-section (1) shall read as follows:-

"(1) Only the political parties registered with the Election Commission under section 11(4) shall be entitled to put forward candidates to fill a seat in the House of the People."

Similarly, section 5 of the R.P. Act should also be amended by introducing the following sub-section (1) :-

"(1) Only the political parties registered with the Election Commission under section 11(4) shall be entitled to put forward candidates to fill a seat in the Legislative Assembly."

The existing provisions of section 5 shall be renumbered as sub-section (2).

(Paragraph 3.3.7.)

9.13 Necessity for abiding by the whip:- When a person becomes a member of the political party, accepts its ticket and fights and succeeds on that ticket, he renders himself subject to the discipline and control of the party. It should also be noticed that when a person applies for the ticket of a political party, he knows, and is expected to know, about the leadership, internal working, policies and programmes of the party. He must also reckon with the fact that in future, the leadership may change, policies and programmes may change and so on. If he, with his eyes open, applies for and obtains the ticket and contests and wins on that basis, he cannot please later that he does not agree with the leadership or policies of the party. He must ventilate and fight any difference of opinion within the party. The membership of a House is not his private property nor can he trade in it. It is a trust and he is in the nature of a trustee. He cannot also say that he will take advantage of the name and faclities of a political party, figtht the election on the ticket of that party and succeed, but is free from discipline of the political party. This is simply unthinkable besides being unethical and immoral. He has to abide by the party discipline within the House. He may fight within the party to have his point of view or policies adopted by the party but once the party takes a decision one way or the other and issues the whip, he will have to abide by it or resign and go out. It would be equally unethical and immoral for him to vote against the whip and then resign.

(Paragraph 3.4.4.)

9.14. Desirability of issuing the whip in specific situation only:- So far as the issuance of the whip is concerned, it is not governed by any law. Neither the Rules framed under the Tenth Schedule nor the Rules of Procedure and Conduct of Business in the Lok Sabha/Council of States provide for or regulate the issuance of whip. It appears to be a matter within the discretion and judgement of each political party. In such a situation, we can only point out the desirability aspect and nothing more. It is undoubtedly desirable that whip is issued only when the voting in the House affects the continuance of the government and not on each and every occasion. Such a course would safeguard both the party discipline and the freedom of speech and expression of the members.

(Paragraph 3.4.6.)

9.15. The Law Commission reiterates its proposal to delete Explanation I to section 77 of the R.P. Act and hopes and trusts that in the interest of a healthy parliamentary democracy, those political parties, which are now opposed to the deletion of Explanation I to section 77(1), will reconsider and revise their opinion and support the said deletion as indeed they had done in the years 1989-1990.

(Paragraph 4.1.10.)

9.16. The Law Commission reiterates that a new section as proposed in the working paper (section 78A) should be inserted in the R.P. Act of 1951. It is further recommended that the provision as suggested should be numbered as sub-section (1) and sub-sections (2), (3) and (4) as proposed hereinafter should also be inserted in the said section. Section 78A should now read as follows :

"(1) Each recognised political party shall maintain accounts clearly and fully disclosing the sources of all amounts received by it and clearly and fully disclosing the expenditure incurred by it. The accounts shall be maintained according to the financial year. Within nine months of each financial year, each recognised political party shall submit its accounts, duly audited by an accountant (as defined in the Explanation below sub-section (2) of section 288 of the Income-tax Act, 1961), to the Election Commission. The Election Commission shall publish the said accounts in accordance with such general directions as may be issued by the Election Commission in this behalf. The accounts shall also be open for inspection by the members of the public in the office of the Election Commission and they shall also be entitled to obtain copies of such accounts or any part thereof in accordance with such instructions as the Election Commission may issue in that behalf.

(2) A political party which does not comply with any of the requirements of sub-section (1) shall be liable to pay a penalty of Rs. 10,000/for each day of non-compliance till the non-compliance continues.

If such default continues beyond a period of 60 days, the Election Commission may de-recognise the political party after affording a reasonable opportunity of showing cause.

(3) If the Election Commission finds on verification undertaken whether suo motu or on information received, that the statement of accounts filed under sub-section (1) is false in any particular, the Election Commission shall levy such penalty upon the political party, as it may deem appropriate besides initiating criminal prosecution as provided under law.

(4) Any orders passed under sub-sections (2) or (3) shall be directed to be published in the press and other media, for public information."

(Paragraph 4.2.6.)

9.17. After considering views expressed by the participants in the seminars and by various persons and organisations in their responses and after perusing relevant literature on the subject, the Law Commission is of the opinion that in the present circumstances only partial state funding can be contemplated more as a first step towards total state funding but it is absolutely essential that before the idea of state funding (whether partial or total) is resorted to, the provisions suggested in this report relating to political parties (including the provisions ensuring internal democracy, internal structures) and maintenance of accounts, their auditing and submission to Election Commission are implemented. In other words, the implementation of the provisions recommended in Chapter one Part three should be a pre-condition to the implementation of the provisions relating to partial state funding set out in the working paper in the Law Commission (partial funding, as already stated, has also been recommended by the Inderjit Gupta Committee). If without such pre-conditions, state funding, even if partial is resorted to, it would not serve the purpose underlying the idea of state funding. The proposal for state funding is aimed at eliminating the influence of money power as well as corporate funding, black money support are raising of funds in the name of elections by the parties and their leaders. The state funding, without the aforesaid preconditions, would merely become another source of funds for the political parties and candidates at the cost of public exchequer. We are, therefore, of the opinion that the proposals relating to state funding contained in the Inderjit Gupta Committee Report should be implemented only after or simultaneously with the implementation of the provisions contained in this Report relating to political parties viz., deletion of Explanation 1 to section 77, and incorporation or provisions providing for maintenance of accounts and their submission etc. and the provisions governing the functioning of political parties contained in chapters I and IV of Part IV and Chapter I of Part III. The state fudning, even if partial, should never be resorted to unless the other provisions mentioned aforesaid are implemented lest the very idea may prove counter-productive and may defeat the very object underlying the state funding of elections.

(Paragraph 4.3.4.)

9.18. We reiterate all the recommendations made in the Inderjit Gupta Committee Report subject to the observations made in para 4.3.4. of this Report. Further, the Law commission recommends delettion of Explanation I to section 77 (1) of the Representation of the People Act, 1951.

(Paragraph 4.3.7.)

9.19. Section 8 of the Representation of the People Act,

1951 shall remain as it stands now.
(Paragraph 5.3.)

9.20 We recommend that section 8B (as proposed by us and as set out hereinbelow) be enacted, making the framing of charge (by court) in respect of election offences and certain other serious offences a ground of disqualification:

"8B. Disqualification on framing of charge for certain offences.- A person agaisnt whom charge has been framed under :- (a) section 153A, section 171E, section 171F, section 171G, section 171H, section 171I, sub-section (1) or sub-section (2) of section 376, sub-section (2) or sub-section (3) of section 505 of the Indian Penal Code (45 of 1860) or

(b) Sections 10 to 12 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967): or

(c) the penal provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985) except section 27 thereof; or

(d) Section 125, section 135, section 135A or sub-section (2) of section 136 of this Act; or

(e) any other offence punishable with imprisonment for life or death, under any law, shall be disqualified for a period of five years from the date of framing of the charge, provided that he is not acquitted of the said charge before the date of scrutity notified under section 36 of this Act."

We also reiterate the proposals to enhance the punishment for various electoral offences mentioned in the R.P. Act as well as in the Indian Penal Code. All of them are electoral offences and seriously interfere with a fair electoral process. They foul the electoral stream by letting in all kinds of distortions and evils into the electoral system and finally into our body politic. The punishments at present provided are totally inadequate and are ridiculously low, hence need to be enhanced.
(Paragraph 5.4.)

9.21. We reiterate the following proposals put forward in our working paper (Annexure-B), except the one relating to section 34 (raising of deposit amount in the case of indendent candidates). They are :

(a) Deletion of sections 11 and 11B of the R.P. Act.

(b) Amendment of section 33 of the R.P. Act. By introducing sub-section (7), it was sought to be

provided that no person shall be entitled to contest simultaneously from more than one parliamentary constituency or assembly constituency, as the case may be. Similar provision was suggested with respect to the Council of States and Legislative Councils and even in bye-elections.

(c) Amendement of section 58A in certain respects.

(d) Amendement of section 62 by inserting a proviso.

(e) Amendment of section 78 reducing the period prescribed for filing the account of election expenses by the contesting candidates from 30 days to 15 days.

(f) Amendment of sections 81, 86 and 87 relating to trial of election petitions.

(g) Amendment of section 97 in the light of the decision of the Supreme Court in Bhag Mal v. Parbhu Ram, AIR 1985 SC 150.

(h) Insertion of new sections 98A and 98B.

(i) Amendment of section 107.

(j) Amendment of section 116A.

(k) Omission of the proviso to sub-section (7) in section 123.

(l) Insertion of a new chapter II in part 7 of the R.P. Act, relating to `Illegal Practices.'

(m) Insertion of section 126A.

(n) Insertion of another proviso to section 151A.

(o) Insertion of new section 162A.

(It may be mentioned that the proposals with respect to enhancing the punishments provided by sections 127, 134B, 135 and 136 of the R.P. Act and by various offences in chapter IXA of the Indian Penal Code, 1860, have already been affirmed by us and recommendations made to implement the same).

We may mention that the proposal to amend section 34 (raising the deposit in the case of independent candidates) has been dropped by us in view of our recommendations for barring the independent candidates and the proposal requiring a political party to obtain 5% of the valid votes cast in order to obtain a seat in Lok Sabha

or in Legislative Assembly.
(Paragraphs 6.1.1. and 6.1.3.)

9.22. It is recommended that the existing provisions under section 195 (1) (b), and 340 (3) (b) of Code of Criminal Procedure, 1973 be substitued as follows :-

For clause (b) of section 340(3), the following clause may be substituted :-

"(b) In any other case, by the presiding officer of the Court, or by such ministerial officer as the Court may designate in this behalf."
(Paragraph 6.2.4.)

9.23. Section 195(1)(b) of the Code of Criminal Procedure, 1973 should also be amended by inserting before the words "or of some other Court" and after the words "except on the complaint in writing of that Court, the following words :-

"or by such ministerial officer as the Court may designate in this behalf."

In view of the proposed insertion of the words stated above, the Presiding Officer of the Court before which false evidence was given or false prosecution was launched, will be genrally relived of the anxiety that he may possibly be called to give evidence during trial before the Migistrate. Such depositions on behalf of the Court can then be given by a milnisterial officer.

Under section 294, no formal proof of certain documents is required. Thus in general, the judicial record may be read in evidence as such. The proposed amendments, it is felt could achieve the object of deterring persons from initiating false prosecutions. These amendemnts will be particularly appropriate in matters relating to disqualifications under proposed section 8B to guard against abuse of the said provision. In course of time, provisions of Cr. P.C. could also be amended on the above lines to deter launching of false cases.
(Paragraphs 6.2.5. to 6.2.7.)

9.24. In view of recommendation of the Law Commission for debarring a candidate from contesting an election if charges have been framed against him by a Court in respect of offences mentioned in the proposed section 8-B of the Act, it is also necessary for a candidate seeking to contest election to furnish details regarding criminal case, if any, pending against him, including a copy of the FIR/complaint and any order made by the concerned court.

In order to achieve the aforesaid objectives, and also with a view to introducing transparency and fairness in the working of the system, it is essential to insert a new section 4A after the existing section 4 of the

Representation of the People Act, 1951, as follows :-

"4A. Qualification for membership of the House of the People, the Council of States, Legislature Assembly of a State or Legislative Council.

A person shall not be qualified to file his nomination for contesting any election for a seat in the House of the People, the Council of States Legislature Assembly or Legislative Council of a State unless he or she files -

(a) a declaration of all his assets (moveable/ immovable) possessed by him/her, his/her spouse, dependent relations, duly supported by an affidavit, and

(b) a declaration as to whether any charge in respect of any offence referred to in section 8B has been framed against him by any Criminal Court."

(Paragraphs 6.3.2. and 6.3.3.)

9.25. Consequent upon the introduction of the above provisions it is necessary to amend Forms 2A to 2E, which provide the proforma in which the nomination paper to Lok Sabha, Legislative Assembly, Rajya Sabha and Legislative Council have to be filed. These Forms, prescribed by the Conduct of Election Rules, 1961 may be amended as follows : The existing clause (d), shall be redesignated as clause (f) and before the said clause, clauses (d) and (e) shall be inserted to the following effect :

(d) that the statement of assets enclosed to this nomination paper represents the true and correct statement of all the assets, moveable and immovable, held/owned by me, my spouse and dependent relations. An affidavit affirming the correctness of the said statement is also appended to this nomination paper.

(e) that no criminal court has framed a charge against me in respect of any of the offences mentioned in section 8B of the Act and that no trial in respect of charges of the said offences is pending, or

that a charge has been framed against me by the court of _____ in the case No. _____ on _____ (date) in respect of offence(s) punsihable under sections _____ mentioned in section 8B and trial is pending against me; or

that though charge was framed against me by the court of _____ in the case No. _____ on _____ (date) in respect of offence(s) punsihable under sections _____ mentioned in section 8B, I have since been acquitted of the said chrge by order _____ (date) (copy enclosed).

(Paragraph 6.3.3.1.)

In the light of our recommendation to debar the indepndents, it is necessary to delete the words "that I am contesting this election as an indendent candidate" in Forms 2-A and 2-B.

9.26. For ensuring stability in governance, we have recommended hereinbefore, in chapter II of Part III that any political party which obtains less than 5% of the total valid votes cast in the parliamentary election or a Legislative Assembly election, shall not be entitled to any seats in the Lok Sabha or Legislative Assembly, as the case may be, even if it wins any seat or seats. Such a provision would lead to polarisation among the political parties and to formation of larger political parties by a process of integration or formation of pre-election fronts. We have also recommend the insertion of denifition of "political party" in the Tenth Schedule to include a pre-election front or pre-election coalition. In such a situation, defection of a member of such constituent party of the pre-election front or of the constituent party as a whole from the pre-election front would be treated as defection attracting the provisions of the Tenth Schedule to the Constitution.

(Paragraph 7.1.2.)

9.27. We also recommnd that the Hon'ble Speaker of the Lok Sabha may introduce a new rule, Rule 198A, in the Rules of Procedure and Conduct of Business in the Lok Sabha to the following effect :

Rule 198-A (1) Once a no-confidence motion is taken up for discussion and voted upon as contemplated by sub-rules (3) and (4) of Rule 198, no fresh motion expressing want of confidence in the Council of Ministers shall be permitted to be made for a period of two years from the date of voting upon such motion.

(2) Once a motion expressing confidence in the Council of Minister is made pursuant to the direction of the President, no motion expressing want of confidence in such Council of Ministers shall be permitted to be moved for a period of two years.

(3) No leave shall be granted under Rules 198 to a motion expressing want of confidence in the Council of Ministers, unless it is accompanied by a motion expressing confidence in a named individual.

Both the motions shall be considered and deiscussed simultaneously and voted upon. Each member shall have two votes. Unless the motion expressing confidence in a named individual is passed by a majority, the result of the voting upon the motion expressing want of confidence in the Council of Ministers shall not be given effect to, even when it is passed by a majority.

(Paragraph 7.1.4.)

Similar amendemtns may also be made by the Speakers of Legislative Assemblies in the respective Rules of procedure governing the proceddings in their Legislative Assemblies.

9.28. Use of Election Voting Machine Desirable :- The idea of electronic voting machines and identity cards for all voters, initiated by the Election Commission sometime ago, is a highly desirable step. The introduction of these two steps would go to make the election process more simple, transparent and fair. Introduction of electronic voting machines would also dispense with the printing of ballot papers which involves substantial amount of public money and time. The printing of ballot papers has to be undertaken only after the list of contesting candidates is published under section 38 of the R.P. Act and printing of crores of ballot papers within a short time, with due secrecy and security, is a major exercise. The introduction of electronic voting machines would enable the Election Commission to dispnese with the printing and distribution of ballot papers. It would also help in curtailing the priod between the date of publication of the list of contesting candidates (under section 38 of the Act) and the date of polling. The reduction of this period, may be even to one week, would help in reducing the expenduture incurred by the candidates and political parties on election campaign and other incidental expenditure.

(Paragraph 7.2.4.)

9.29. Alternative method of Election:- In the working paper, we had set out in the Appendix, "An alternative method of election." According to this method of election, no candidate would be declared elected unless he obtained 50%+1 of the valid votes cast in that territotrial constituency. The other idea put forward is the concept of "negative vote." Thse two concepts have been fully explained in the working paper under the heading "An Alternative Method of Election." Such an alternative method of election was suggested by certain eminent persons with long experience in public life. This method goes a long way in ensuring purity of election, keeping out criminals and other undesirable elements and also serves to minimise the role and importance of caste and religion.

In the opinion of the Law Commission, the idea and underlying object are both laudable. Besides the advantages pointed out above, this method of election also acts as a powerful disincentive against voter intimidation. It would provide an opportunity to the voters to express their disapproval of the bad candidates and the political parties who put them forward. The parties and candidates would also try, in such a situtation, to gather a consensus and fight on ideologies and programmes rather than on caste or religious vote banks. There are, however, certain practical difficulties and problems which we must point out, are inherent in the above system, particularly in Indian conditions. Before we set out those practical

difficulties and problems, it is necessary to clarify that the requirement of 50%+1 of the votes and the idea of negative vote, are both distinct ideas. It is true that both can be clubbed together but it is not necessary. The requirement of 50%+1 of the vote can be implemented without implementing the idea of negative vote simultaneously, though the idea of negative vote, as explained in the working paper, cannot be implemented without implementing the idea of 50%+1 vote.

Practical difficulties and problems:- The elections to Lok Sabha or for that matter Legislative Assemblies in bigger states, are not held on one single date. Elaborate arrangements have to be made to establish polling booths, to requsition, allocate and transport the personnel to man the polling booths, and the transfport and stationing of police and other parliamentary forces for maintaining peace at the time of polling and so on. Because of these factors and considerations, elections to Lok Sabha are held on two or more dates. Elections to Legislative Assemblies of big States are also spread over two dates. Secondly, counting does not take place soon after the polling. Counting begins only after the polling thoughout the country (in the case of Lok Sabha) and throughout the State (in the case of a Legislative Assembly) is completed which means that if a run-off election is to be held, fresh ballot paper is required to be printed in respect of those constituencies (where the run-off has become necessary) and polling has to be held afresh which means either retaining or rearranging the entire paraphernalia mentioned above including the stationong of Police and other foces to maintain law and order. And, if the idea of negative vote is implemented, a fresh election may become necessary, in case no candidate gets 50%+1 votes even in the run-off.

(Paragraphs 8.1 and 8.9)

9.30 For the sake of convenience, the Amendemnt Bills, to be introduced in Parliament are appended herewith (Annexure-A). The Amendement Bills incorporate the provisons of the Bills (Annexure-I) annexed with the Working Paper circulated by the Commission (Annexure-B), as well as the recommendations made in the report. In other words, if all the amendments suggested by the Law Commission are accepted by Parliament, the Constitution (.....) Amendemnt Bill, 1999, the Representation of the People and other Allied Laws (Amendment) Bill, 1999, amendemnts to Chapter IXA of the Indian Penal Code, 1860, amendemtns to Chapter XIV and Chapter XXVI of the Code of Criminal Procedure, 1973, amendment to the Forms 2-A to 2-E of the Code of Election Rules, 1961 and amendemnt to the Rules of Procedure and Conduct of Business in the Lok Sabha, would reas as set out in the Annexure-A.

We recommend accordingly,

(MR. JUSTICE B.P. JEEVAN REDDY) (Retd.)
CHAIRMAN

(MS.JUSTICE LEILA SETH)(Retd.) (DR.N.M.GHATATE) (DR.SUBHASH C.JAIN)
MEMBER MEMBER MEMBER
SECRETARY

DATED : 29TH MAY, 1999