

CHAPTER XXX

SUMMARY OF RECOMMENDATIONS

The Commission has made a number of recommendations in regard to diverse matters in the earlier Chapters of this Report. These recommendations may be classified under two broad heads, namely, (a) recommendations for amendments to the election law and (b) other recommendations of a general and administrative nature. For the sake of convenience and ready reference the important recommendations are re-capitulated below:—

(a) *Recommendations for amendments to the election law.*

1. Further disturbances to the existing constituencies should be avoided as far as practicable so that the present constituencies which were carefully delimited on the basis of the actual population figures by an independent and impartial high-level body may not require to have their boundaries revised afresh except only for very special and compelling reasons, e.g., the growth of new large cities and towns or large movements of population. The future law of delimitation of constituencies should provide that even when any such revision becomes unavoidable, it should leave as many of the present constituencies undisturbed as may be practicable (Chapter VII). Future delimitation of Constituencies.

2. The number of seats allotted to a district should not be lightly disturbed even if strict arithmetical calculations on the basis of population might call for a change (Chapter VII).

3. It is desirable to continue two-member constituencies until such time that the system of reservation of seats itself disappears. The Commission is not in favour of reserving seats in single-member constituencies in every case. (Chapter VII). Reservation of seats in single-member constituencies.

4. The maximum number of nomination papers an individual candidate may present should be restricted by law to four only. (Chapter XII). Maximum number of nomination papers for a candidate.

5. The provisions of section 55A of the Representation of the People Act, 1951, which permits a contesting candidate to retire after the last date of withdrawal of candidatures until 10 days before the commencement of the poll should be deleted. (Chapter XV). Retirement of candidates.

6. If the provision for the retirement of candidates is not deleted the law should be amended so as to require that if the person presenting a notice of retirement is not personally known to the Returning Officer, he must be identified before the Returning Officer by some one personally known to the latter. (Chapter XV).

- Withdrawal of candidature. 7. A similar amendment should also be made in respect of notices of withdrawal of candidatures under section 37 of the Representation of the People Act, 1951. (Chapter XV).
- Commission's discretion in ordering fresh poll. 8. The Commission should be vested with greater discretion in ordering a fresh poll. (Chapter XVII).
- Refund of deposit for challenging the identity of a voter. 9. The deposit payable by a candidate or his election or polling agent when he challenges the identity of a person claiming to be a particular voter is at present refunded at the end of the poll if it has not been ordered to be forfeited. The Commission recommends that where refundable, the deposit should be refunded immediately and not at the end of the poll and the Rules may be suitably amended in this regard. (Chapter XVII).
- Extension of postal ballot. 10. A provision should be made so as to enable a transferred Government servant to vote by postal ballot. (Chapter XVII).
- Multiplicity of candidates. 11. Undue multiplicity of candidates is undesirable and confusing; effective checks should be devised to curb light-hearted participation in electoral contests, such as,
- (a) the repeal of section 55A of the Representation of the People Act, 1951;
 - (b) the amendment of section 158 of the Representation of the People Act, 1951, so as to require a candidate to poll one-fifth of the valid votes instead of one-sixth (or one-tenth instead of one-twelfth in a constituency in which two members are to be elected) before he is considered to be entitled to a refund of the deposit made by him; and
 - (c) increasing the amount of the deposit payable by a candidate. As this measure is likely to cause genuine hardship to candidates with moderate means who may all the same be serious, it should be adopted only as a last resort if the measures recommended in (a) and (b) have failed to check the present undesirable multiplicity of candidates. (Chapter XX).
- Clarification of section 158 of the Representation of the People Act, 1951. 12. Sub-section (4) of section 158 of the Representation of the People Act, 1951, should be clarified in respect of elections in a Council constituency. (Chapter XX).
- Constitutional difficulty experienced in the Presidential and Vice-Presidential elections. 13. In view of the fact that the snow-bound constituencies are not likely to be able to take part in the elections of the President and the Vice-President in the foreseeable future, some provision may be made to enable the outgoing members representing these constituencies to vote at the Presidential and Vice-Presidential elections as if they continue for this purpose to be duly elected members of the respective Houses of Legislature, notwithstanding the fact that the Houses may have been dissolved or have completed their terms. In the Commission's opinion such a solution

would be fairer and less anomalous than the present position in which several constituencies are deprived practically permanently of the right and privilege of participating in the elections to these high offices. (Chapter XXI).

14. The Commission is of the opinion that the maximum scales of election expenditure prescribed by law are too low. The recently amended provisions of the law in this regard as they stand do not appear to serve any useful purpose whatsoever.

Account of election expenses and the legal maximum of such expenses.

If an effective check cannot be devised and enforced so as to prevent candidates from spending too lavishly, it would be preferable to delete the present provisions altogether. It would, however, be sufficient for the time being to restore largely the original provisions of the Act and the Rules which were in force before the 1956 amendments. Such amendments may be incorporated therein as would make the procedure in this respect less cumbersome but more effective. The legal maximum of election expenses may, for instance, be revised liberally to higher figures and all expenditure incurred on behalf of a candidate by his party or by his well-wishers with his constructive consent may be made accountable. The procedure for disqualifying a candidate for failure to submit his account of election expenses duly and for removing such disqualification is too involved and cumbersome and could be simplified materially by providing that a candidate would incur disqualification only after the Commission has called for and considered his explanation, if any, for the default and rejected it. Where the Commission has accepted the explanation there should be no disqualification in law and no need to notify the same. The law as it stands prescribes a procedure which is dilatory and wasteful and involves a good deal of unnecessary formalities. (Chapter XXII).

15. The scope of section 103 of the Representation of the People Act, 1951 may be extended and it may be specifically provided that whenever a tribunal or a High Court pronounces an order declaring an election to be void, intimation thereof shall be sent immediately by the tribunal or the Court to the Election Commission, the Speaker or the Chairman of the House concerned and to the Chief Electoral Officer of the State. A copy of the full judgement may follow thereafter as soon as may be convenient. (Chapter XXIII).

Prompt report by election tribunal or Superior Court of an order declaring an election to be void.

16. It should be provided that an appeal from the order of an election tribunal should lie direct to the Supreme Court instead of to the High Court in every case where the member of the election tribunal is a retired High Court Judge. (Chapter XXIII).

Appeals to lie before Supreme Court direct where the tribunal is constituted with a retired High Court Judge.

- Reference of election petition to tribunal before receipt of formal return of service of notices on respondents. 17. For the avoidance of doubt the word "then" occurring in sub-section (1) of section 86 of the Representation of the People Act, 1951, should be deleted and the reference of an election petition to a tribunal should be made independent of the service of notices upon the respondents. (Chapter XXIII).
- Substitution of petitioner in case of default. 18. Where a petitioner in an election petition fails to appear at any stage during the trial of the petition or defaults in prosecuting the petition for any reason it should be provided that the tribunal should not be required automatically to dismiss the petition for default but should have the power to order any other person to be substituted as the petitioner, if that person might himself have presented the petition. (Chapter XXIII).
- Minor corrupt practices. 19. Provisions regarding minor corrupt practices and illegal practices which were penalised by the original Act have been removed altogether from the Statute Book. This has no doubt simplified the law but has had undesirable consequences as well. For instance, personation at an election is no longer a corrupt practice although it continues to be an offence under Chapter IX A of the Indian Penal Code. The result is that even if personation has been proved to have been practised on a fairly large scale in favour of a returned candidate his election can no longer be challenged on that ground. This anomaly should be removed. (Chapter XXIII).
- Major corrupt practices. 20. In the interests of keeping the entire body of public servants impartial and immune from political influences the Commission would recommend that the provisions of the original Act in this regard should be restored and a candidate should be penalised for obtaining the assistance of any Government servant without distinction of status or category. Pseudo-Government servants like village officers who are not village accountants may, however, be excluded from the ban. (Chapter XXIII)
- Definition of contesting candidate. 21. The term "contesting candidate" should be precisely and authoritatively defined in the Act itself. (Chapter XXIII).
- Appointment of retired District Judges to election tribunals. 22. In order to avoid delay in the disposal of election petitions the law should be amended so as to restore the original provision which made available to the Commission the services of competent retired District Judges for appointment as members of election tribunals. (Chapter XXIII).
- Supply of copies of petitions. 23. A new rule should be added making the supply of copies of election petitions a statutory requirement. Every petitioner, should be required to enclose with his petition one spare copy of the petition for service on each of the respondents and 3 additional copies for the Commission's use. (Chapter XXIII).

24. In respect of a reference made by the President or a Governor to the Election Commission, respectively under article 103 or article 192 of the Constitution, neither the Constitution nor the Representation of the People Act prescribes the procedure to be followed by the Commission, nor has the Commission been given the powers of an ordinary court of law for securing the material evidence which would enable it to tender a satisfactory opinion in the matter. The law should be amended so as to give the Commission the necessary legal powers—

Powers of the Commission in references under articles 103 and 192 of the Constitution.

- (i) to compel the production of documents and the attendance of witnesses, and
- (ii) if necessary, to have the evidence of a witness recorded on commission by an officer of the Commission or by some other person nominated by it. (Chapter XXIV).

25. In case the recognised political parties continue to fail to make any effective use of the free copies of the draft electoral rolls supplied to them in helping a proper revision of the rolls, such supply should be eventually discontinued. (Chapter XXVII).

Supply of free copies of draft electoral rolls to recognised political parties.

(b) Other recommendations

1. The Chief Electoral Officer should be given an adequate and appropriate secretariat status in the State Government, e.g., that of a Secretary, Joint Secretary or Deputy Secretary. He should be a senior officer of the State Government. Except for a year or so during the general elections there is no objection to his being a part-time officer but in every such case a junior whole-time officer should invariably be made available to him as his Deputy. (Chapter V).

Chief Electoral Officer.

2. For the sake of efficiency and continuity of policy and procedure there should be an officer like the Deputy Chief Electoral Officer who would be more or less permanently attached to the office of the Chief Electoral Officer and be his second-in-command. (Chapter V).

Deputy Chief Electoral Officer.

3. Frequent changes of the Chief Electoral Officer or his Deputy should be avoided as far as practicable. (Chapter V).

Transfer of Chief Electoral Officer and his Deputy.

4. The election machinery in the districts and their sub-divisions should be put on a more satisfactory and well-thought-out basis. A separate nucleus election office with an adequate permanent staff on a whole-time basis should be set up in every district and sub-division. This office should be temporarily but adequately strengthened by additional hands at the time of an election. The District and Sub-divisional Election Officers may normally be part-time officers who must, however, be relieved of most, if not all, of their other duties at the time of an election. (Chapter V).

Election Offices in the districts and sub-divisions.

- Inclusion of Election law and procedure in the syllabus for departmental examinations. 5. The Commission recommends that the most effective method for making Government servants conversant with the election law and procedure would be to include suitable parts of the same in the syllabus for the departmental examinations. (Chapter V).
- Training of Presiding and other election officers. 6. The Presiding and other election officers should be given intensive training in the conduct of the poll by means of polling rehearsals and otherwise. (Chapter VIII).
- Early adoption of candidates by political parties. 7. The political parties in India should select their candidates for the constituencies well in advance of the general elections. (Chapter IX).
- Checking of impersonation. 8. The suggestion made to the Commission that instead of marking the left forefinger of a voter with indelible ink he should be compulsorily vaccinated or revaccinated for small pox before receiving any ballot paper should be considered in consultation with the political parties. A vaccination mark remains fresh and prominent for well over a week and a person who has already voted would not be able to personate another voter for that period. It should be considered whether this check cannot be applied with advantage in the large cities at least where there is greater scope for such impersonation. The Government, the political parties, the general public and the Public Health authorities should give a very earnest consideration to the suggestion and the practicability of adopting it. (Chapter X).
- Minimum staggering of the poll. 9. The poll should be invariably completed in every State in as short a period as the available polling personnel is capable of undertaking such completion. The deployment of the available police force should be adjusted accordingly in spite of any hypothetical risk from the purely police point of view. (Chapter XI).
- Polling day to be a "dry" day. 10. In every locality the polling day should be declared a "dry" day and the sale of alcoholic liquors banned in areas where total prohibition has not been enforced already. (Chapter XVII).
- Discontinuance of lunch interval during the poll. 11. There should be a uniform practice throughout the country in the observance of the lunch interval. The Commission is of the opinion that the provision of a break for lunch in the midst of the poll should be discontinued everywhere. The majority of the States and the Union territories have now decided to do without the interval. The Commission hopes that it will be possible to do so in every State by the time the third general elections are held. (Chapter XVII).
- Polling stations. 12. The Central and State Governments have an extensive programme of construction of school buildings and other public premises, like Community halls, Panchayat ghars, etc. As the periodical holding of elections has come to be a normal and

permanent feature of the nations' life, the Commission would suggest that every such public building which may be constructed in future may be so planned that it may be conveniently used as a polling station at the time of an election. (Chapter XVII).

13. The question of evolving a suitable scheme for making broadcasting facilities of the All India Radio available to the recognised political parties may be again examined in future in consultation with the recognised All-India Political Parties and a way should be found to make available the use of this medium in future general elections in the interest of educating the electorate more adequately and of rousing its active interest in regard to the fundamental issues involved in a general election. The Commission would be glad to make its contribution towards bringing about an agreed solution to the problem if requested to do so. (Chapter XXV).

14. Necessary legislation may ultimately be considered imposing a ban on young persons below the age of 18 years being employed by candidates for participation in active electioneering on partisan lines. For the present, political parties should try to create a convention against minors being employed. (Chapter XXVII).

15. Suitable buildings should be constructed on an austere scale for the purpose of storage and preservation of election materials and records. (Chapter XXVIII).