CHAPTER IV

RETURNING OFFICER AND HIS FUNCTIONS.
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The Returning Officers are appointed by the Election Commission in consultation with the Government of the State in which the constituency is situated and in which the election is to take place. The same officer can be appointed as Returning Officer for more than one constituency. Every Local authority in a State is required to make available to the Returning Officer, such staff as may be necessary for the performance of any duty in connection with the election. In the course of the debate on the Representation of People Bill, 1951, Prof. Ranga suggested that the application of Returning Officers from outside the province in which they were required to work. He said, "I would like the Election Commission and the Selection Committee to consider the possibility of obtaining Returning Officers from other province. The Provincial Officers, if they are appointed as Returning Officers, are likely to be under the influence of Provincial Government."

The suggestion, if accepted, would have resulted in much unnecessary expense and administrative inconvenience. A Returning Officer from another State would not have an intimate knowledge of the constituency which he would be called upon to manage. The independence of the Returning Officer is assured by placing him directly under the authority of the Election Commission. Moreover, one could have stringent and complex election laws but the manner of the conduct of the elections depends upon the character of the people, the candidates and the election staff.

The Election Commission may appoint one or more persons to assist the Returning Officer in discharging his proper duties.¹

Every such Officer shall, subject to the control of the Returning Officer, be competent to perform all or any of the functions of the Returning Officer which relate to scrutiny of nominations unless the Returning Officer is unavoidably prevented from performing the said function.²

The general duties of the Returning Officer at any election are to undertake all the responsibility of successfully conducting the election in accordance with

2. Section 22(1), Ibid.
the manner laid down in the rules and regulations. The duties include the giving of notice of an intended election, receipt and scrutiny of nomination papers, publication of valid nominations, publication of list showing the polling stations, appointment of Presiding and Polling Officers, counting of votes, reporting or results and receiving returns of election expenses. Thus the Returning Officer is the pivot of the electoral wheel of the constituency.

Qualification and Disqualification for Membership.

(1) Qualifications for Membership of Parliament.

According to the Article 84, Section 4, of the Representation of People Act, 1951, to be qualified to fill a seat in the Lok Sabha, a person should be —

(a) a citizen of India;
(b) not less than twentyfive years of age;
(c) an elector for any parliamentary constituency.

For seats reserved for the Scheduled Castes and Scheduled Tribes, the following further qualifications are necessary:

(a) For a Scheduled Caste seat in any State.

(b) For a Scheduled Tribe seat in any State (other than autonomous districts of Assam).

(c) For a Scheduled Tribe Seat in the autonomous districts of Assam.

(d) For a Scheduled Tribe seat in the Union territory of the Laccadive, Minicoy and Amindivi Islands.

Qualifications for Membership of the Council of States.

According to the Article 84, substituted by the Adaptation of Laws (No. 2) Order, 1956, for Section 3.

( A person shall not be qualified to be chosen as a representative of any State, or Union territory in the Council of States unless he is an elector for a Parliamentary constituency in that state or territory ).

1. The words and brackets '(other than the States of Jammu and Kashmir)' omitted by Act 47 of 1966, s. 17.
Qualifications for Membership of a Legislative Assembly.

According to the Article 173 Section 5 of the Representation of People Act, 1951, to be qualified to fill a seat in a State Legislative Assembly, a person should be:

(a) a citizen of India;
(b) not less than twentyfive years of age;
(c) an elector for any Assembly constituency in that State.

For a seat reserved for the Scheduled Castes or the Scheduled Tribes, the candidate has to be a member of such caste or tribe, as the case may be, belonging to that State.

In the case of a seat reserved for the autonomous districts of Assam, other than a seat the constituency for which comprises the cantonment and municipality of Shillong, the candidate should be a member of a tribe belonging to any of these districts and a voter in a constituency in which such seat or any other seat is reserved for that district.

Qualifications for Membership of a Legislative Council.

According to the Article 173 - Section 6 of the Representation of People Act, 1951:

(1) A person shall not be qualified to be chosen to fill a seat in the Legislative Council of a State to be filled by election unless he is an elector for any Assembly constituency in that State.

(2) A person shall not be qualified to be chosen to fill a seat in the Legislative Council of a State to be filled by nomination by the Government unless he is ordinarily resident in the State.

Scheduled Caste/Scheduled Tribe candidate eligible for non-reserved seat.

According to the Article 173 Section 55 of the Representation of People Act, 1951:

A member of the Scheduled Castes or of the Scheduled Tribes is not disqualified to hold a seat not reserved for members of those castes or tribes, if he is otherwise qualified to hold such seat.

Oath/affirmation by candidate.

As regards qualifications of candidates, the

1. The words 'or the Rajpramukh, as the case may be' omitted by the Adaptation of Laws (No.2) Order, 1956.
Constitutional Amendment made in 1963 requires to be noticed. Article 84 and 173 of the Constitution were then amended to provide that a person standing for election to Parliament or to a State Legislature must make and subscribe before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out in the Third Schedule to the Constitution. The oath is to the effect that he will bear true faith and allegiance to the Constitution of India as by Law established and that he will uphold the sovereignty and integrity of India. In pursuance of these two Articles of the Constitution, the Commission authorised the Returning Officer and the Assistant Returning Officer for each Constituency as the persons before whom the oath may be taken and signed by the candidate standing for election from that constituency. Since even a person confined in a prison or detained in a detention camp is not debarred from being nominated as a candidate, the commission also authorized the superintendents of prison and commandants of detention camps to administer the oath.

Disqualifications.

According to the Article 102 and Article 191 of the Constitution:

I. A person who holds any office of profit under the Government of India or of a State Government is disqualified for membership of the Parliament and of a State Legislature. Parliament and State Legislatures have however been given power to exempt by law holders of certain offices from the disqualification.

An "Office of profit under Government" may broadly speaking, include any office under Government to which an emolument is attached. Thus, no Government employee of any category may stand as a candidate. But the office of a Minister (including the Minister of State and a Deputy Minister) whether at the Centre or in a State is not deemed to be an office of profit under Government for this purpose. A person who merely draws a pension from Government is not disqualified.

The Parliament (Prevention of Disqualification) Act, 1959, has declared that the holders of certain offices will not be disqualified for membership of Parliament.

These include:

(i) any office held by a Minister, Minister of State or Deputy Minister for the Union or for any State, whether ex-officio or by name;

(ii) the office of Chief Whip, Deputy Chief Whip or Whip in Parliament or of a Parliamentary Secretary;

(iii) the office of a member of any force raised or maintained under the National Cadet Corps Act, 1948, the Territorial Army Act, 1948 or the Reserve and Auxiliary Air Forces Act, 1952;

(iv) the office of a member of a Home Guard constituted under any Law for the time being in force in any State;

(v) the office of Sheriff in the city of Bombay, Calcutta or Madras;

(vi) the office of Chairman or member of the Syndicate, Senate, Executive Committee, Council or Court of a University or any other body connected with a University;

(vii) the office of a member of any delegation or mission sent outside India by the Government for any special purpose;

(viii) the office of village revenue officer, whether called a lambarder, malguzar, patel, dāshmukh, or by any other name, whose duty

is to collect land revenue and who is
remunerated by a share of, or commission
on, the amount of land revenue collected
by him; but who does not discharge any
police functions.

Members of a Committee temporarily set up to
advise Government or any other authority on a matter of
public importance or to make an inquiry into any such
matter will not also be a disqualification, if such
membership does not entitle its holder to any
remuneration other than compensatory allowance. This
last category is defined in Clause(i) of Section 3 of
the Parliament (Prevention of Disqualification) Act,
1959.

The State Legislatures also have passed similar
laws declaring certain offices not to be offices of
profit for the purpose of their membership. The
following are the laws passed by the Uttar Pradesh
Legislature from time to time declaring the under-
mencioned posts not to be offices of profit for the
purpose of their membership:

(i) The Uttar Pradesh Parliamentary Secretaries
(U.P. Act 2 of 1950).

No person shall by reason only of his holding
the office of Parliamentary Secretary in Uttar Pradesh

Govt. of India, Ministry of Law Publication.
being an office of profit under the Government of Uttar Pradesh be disqualified for being chosen as, or for being, a member of the Uttar Pradesh Legislature.


Prevention of disqualification for membership for the State Legislature in certain cases — whereas doubts have been expressed regarding offices hereinafter mentioned being offices of profit:

Now, therefore, for the removal of doubts it is hereby declared that the —

(a) honorary offices for advising the State Government,
(b) honorary offices for the performance of any special duty, or
(c) offices of the Chairman or Members of a Committee appointed by the State Government or Central Government, shall not disqualify and shall be deemed never to have disqualified the holders thereof for being Members of the State Legislature constituted under Article 382 of the Constitution of India.

Provided the holders of the offices aforesaid have been in receipt merely of compensatory allowance in accordance with any general or special order applicable thereto.

(iii) The Uttar Pradesh State Legislature Members Prevention of Disqualification Act, 1952
(U.P. Act 4 of 1952)

2 (1) It is hereby declared that the following offices under the State Government shall not disqualify and shall be deemed never to have disqualified the holders thereof for being chosen as or for being members of Uttar Pradesh Legislature:

(a) the office of Chairman or member of any committee or board appointed by or under the orders of the Government of India or of the State Government, including any committee or board constituted or established by or under any enactment or rule

3 Provide that the holder is in receipt merely of compensatory allowance in accordance with any general or special order applicable thereto;

2. S.2 re-numbered as sub-section(1) of that Section by U.P. Act 13 of 1952, S.4.
3. Ins., ibid.
4. The words 'held for any period not extending beyond the 30th day of June, 1952, omitted by S.4, ibid.'
(b) the office of Lombardar mentioned in Section 45 of the Uttar Pradesh Land Revenue Act, 1901 (U.P. Act 1 of 1901);

(c) the offices of Pradhan, Sarroh, Malguzar in Kumaun Division, Village-Siana in Jaunsar Bawar pargana of Dehradun district and Supardar in the portion of Mirzapur district, south of the Kaimur Range.

1. Every order referred to in Clause (a) of Sub-Section (1), unless it is an order allowing the holder to draw travelling allowance or daily allowance at rates not extending those applicable to members for attending meetings of the Uttar Pradesh State Legislature, shall be laid for not less than three days before the Legislative Assembly as soon as may be after appointment has been made and shall be subject to such modification as the said Assembly may make during the session in which it is so laid; the modification shall take effect from the date it is so made.

Determination of questions arising after the commencement of the Act.

Any question arising for the commencement of this Act as to any office being an office of profit under the State Government shall be determined as if the provisions of the Act had been in force at all material dates.

Repeal - The Uttar Pradesh State Legislature Members Prevention of Disqualification Ordinance, 1951 (U.P. Ordinance 4 of 1951) is hereby repealed and provisions of Sections 6 and 24 of the Uttar Pradesh General Clauses Act, 1904 (U.P. Act 1 of 1904) shall apply to it as if it had been an enactment repealed by an Uttar Pradesh Act.

(iv) **Extracts for the Uttar Pradesh State Legislature Members (Prevention of Disqualification) (Second) Act, 1952.**
(U.P. Act 13 of 1952)

It shall come into force at once.

**Definition:** In this Act unless there is any thing repugnant in the subject or context, "compensatory allowance" means travelling allowance, daily allowance, house rent allowance, or conveyance allowance including conveyance provided and maintained at State expense.

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Prevention of disqualification for membership of the State Legislature

It is hereby declared that a person shall not be disqualified for being chosen as, or for being member of Uttar Pradesh State Legislature by reason merely of the fact that he holds any of the following offices; that is to say,

1. (1) the office of a Minister of State or a Deputy Minister of the Government of Uttar Pradesh; or
   (2) an office which is not a whole time office and is not remunerated either by salary or fees.

Repeal of the Uttar Pradesh Ordinance No. 4 of 1952

The Uttar Pradesh State Legislature Members
Prevention of Disqualification (Amendment) Ordinance, 1952 shall be and hereby repealed.

(v) The Uttar Pradesh State Legislature Members

It shall come into force at once.

It is hereby declared that a person shall not be disqualified for being chosen as, or for being member of Uttar Pradesh State Legislature by reason of the fact

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that he is enrolled in the Territorial Army under the Territorial Army Act, 1948, or in the National Cadet Corps under the National Cadet Corps Act, 1948.


It shall come into force at once.

It is hereby declared that a person shall not be deemed never to have been disqualified for being chosen as, and for being, a member of the Uttar Pradesh Legislative Assembly or the Uttar Pradesh Legislative Council by reason that he is agent, or holds other like office under the Government of India or the Government of Uttar Pradesh for the purpose of effecting sales of, or collecting subscriptions towards National Plan Certificates for such commission as the Government of India may have fixed in that behalf, or without that commission.


It shall come into force at once.

It is hereby declared that the office of a member of the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948 of any Board or Committee or Council constituted under and in accordance with the said Act shall not disqualify the holder thereof for being chosen as, or for being a member of the Uttar Pradesh Legislature.

(viii) \textbf{The Uttar Pradesh State Legislature Members (Life Insurance) (Prevention of Disqualification) Act, 1956. (U.P. Act 35 of 1956)}

It shall come into force at once.

It is hereby declared that no person who holds an office of profit under an insurer, the management of whose controlled business has vested in the Central Government under the Life Insurance (Emergency Provisions) Act, 1956, shall be disqualified or ever to have been disqualified for being chosen as, or being, a member of either House of the Uttar Pradesh Legislature.

(ix) \textbf{The Uttar Pradesh State Legislature Members (Prevention of Disqualification) Supplementary Act, 1956. (U.P. Act 3 of 1957)}

It shall come into force at once.

2. Ibid. pp. 243 and 244.
It is hereby declared that the following offices shall not disqualify and shall be deemed never to have disqualified the holder thereof for being chosen as, or for being member of the Uttar Pradesh State Legislature

(a) Office of a Minister of State or a Deputy Minister or a Parliamentary Secretary or Parliamentary Under Secretary under the Government of India.

(b) Office of the Deputy Chief Whips of the Parliament; and

membership of the Auxiliary Air Force or the Air Defence Reserve under the Reserve and Auxillary Air Defence Act, 1952.

II. A person of unsound mind and who stands so declared by a competent court; an undischarged insolvent; and a person who is not a citizen of India, or has voluntarily acquired the citizenship of a foreign state, or is under acknowledgement of allegiance or adherence to a foreign State, are disqualified for membership of Parliament or of a State Legislature.

1. Cl. (b) omitted by U.P. Act 5 of 1960, S.2.

2. Cls. (c) and (d) re-lettered as Cls. (b) and (c) by S.2. Ibid.

III. Certain further disqualifications have been imposed by law for specific offences and on other grounds, the duration of the disqualification varying in each case (Please see pages 130 to 133).

**Power to remove or reduce disqualification** - According to the Section 11 of Representation of People Act, 1951, the Election Commission may, for reasons to be recorded, remove or reduce the period of any of the disqualifications mentioned under III above.

**Decision on questions as to disqualifications** - According to the Article 103 and Article 192 of Constitution, if any question arises whether a member has become subject to any of the disqualifications, the question shall be referred for decision, in the case of a member of Parliament, to the President, and in the case of a member of a State Legislature, to the Governor of the State. The President or the Governor of the State, as the case may be, shall obtain the opinion of the Election Commission on the question and act according to such opinion.

In conducting enquiries as to disqualifications that may be referred to it, the Election Commission, may, in appropriate cases, assume to itself the powers of a civil court while trying a suit under the Civil
Procedure Code, 1908, in certain respects. (Details of the procedure are given in Sections 146, 146A, 146B and 146C of the Representation of Peoples Act, 1951.)

<table>
<thead>
<tr>
<th>Offence/other ground</th>
<th>Duration of disqualification</th>
</tr>
</thead>
<tbody>
<tr>
<td>s. 8, R.P. Act, 1951 as amended by s. 5 of the Criminal and Election Laws Amendment Act, 1969.</td>
<td>6 years from the date of conviction.</td>
</tr>
<tr>
<td>(1) Conviction of an offence punishable under Section 153A or Section 171E or Section 171F of sub-section (2) or sub-section (3) of Section 505 of the Indian Penal Code, or under Section 125 or Section 135 or Section 136(2)(a) of the Representation of People Act, 1951.</td>
<td>In the case of a sitting member, the disqualification shall not take effect until three months after the date of conviction, or if an appeal or application for revision is brought in respect of the conviction or sentence, until its disposal by the court.</td>
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</table>

1 Section 153A I.P.C., relates to promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony; Section 171E relates to the offence of bribery; Section 171F relates to the offence of undue influence or personation at any election; and Section 505(2) and (3) to statements creating or promoting enmity, hatred or ill-will between different religions, racial, language, or regional groups or castes or communities. Section 125 of R.P.A., 1951 relates to the offences of promoting enmity between classes in connection with election; Section 135 relates to the offence of removal of ballot papers from polling stations; and Section 136(2)(a) relates to electoral offences by certain election officers.
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<tr>
<th>Offence/other ground</th>
<th>Duration from the disqualification</th>
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<tbody>
<tr>
<td>(ii) Conviction for any offence and sentence for not less than two years' imprisonment</td>
<td>From the date of conviction and to continue for a further period of 5 years after release.</td>
</tr>
<tr>
<td>(iii) Conviction for the contravention of any law providing for the prevention of holding or profiteering or of adulteration of food or drugs and sentence for not less than six months</td>
<td>From the date of conviction and to continue for a further period of 5 years after release.</td>
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<tr>
<td>s. 8A, R.P. Act, 1951</td>
<td>Ditto</td>
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<tr>
<td>(iv) Corrupt practice proved in an election petition</td>
<td>6 years from the date of the order on the petition.</td>
</tr>
<tr>
<td>s. 9, R.P. Act, 1951</td>
<td>5 years from the date of dismissal.</td>
</tr>
<tr>
<td>(v) Dismissal from Government service for corruption or disloyalty to the State</td>
<td>A certificate issued by the Election Commission is nonclusive proof of the offence.</td>
</tr>
<tr>
<td>Offence/other ground</td>
<td>Duration of disqualification</td>
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<tr>
<td>s. 9A, (vi) If there subsists a contract entered into by a person in the course of his trade or business with the appropriate Government for the supply of goods to or for the execution of any works undertaken by that Government.</td>
<td>For so long as the contract subsists.</td>
</tr>
</tbody>
</table>

"Appropriate Government" means in the case of a disqualification for Parliament, the Central Government, and in the case of a State Legislature the State Government.

Where a person entering into a contract with Government has fully performed his part of the contract, the contract shall be deemed not to subsist by reason only of the fact that the Government has not performed its part of the contract either wholly or in part.

s. 10, R.P. (vii) Holding the offices of managing agent, manager or secretary of any company or corporation (other than cooperative society) in the capital of which the appropriate Government has not less than 25 percent share. | For so long as he holds the office. |
<table>
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<tr>
<th>Offence/other ground</th>
<th>Duration of disqualification</th>
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</thead>
<tbody>
<tr>
<td>(viii) Failure to lodge account of election expenses within the time and in the manner</td>
<td>Three years from the date of</td>
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<td>required by Law, if the Election Commission is satisfied that there is no good reason</td>
<td></td>
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<tr>
<td>or justification for the failure.</td>
<td>Election Commission's order</td>
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<td></td>
<td>declaring a person so</td>
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<td>disqualified.</td>
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Whether the candidate comes within the definition of an official, "the source of his pay and the authority which can remove him are important factors, whether the candidate has been enjoyed in such a way as to leave him independent or Government control or not, is the chief determining factor."¹ In Shrimati Hansa Jivraj Mehta vs. Indulbhai B. Amin and others it was held that Shrimati Hansa Mehta was disqualified as she was appointed Vice-Chancellor by the Government of Baroda and could be removed by the same authority.²

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1. Hammond, Indian Candidates and Returning Officer, p.34.
In Guru Govinda Basu vs. Shankari Prasad Ghoshal and others - the Supreme Court held that for holding an office of profit under the Government one need not be in service of Government and there need be no relationship of master and servant. The court said it had "no hesitation in saying that where the several elements, the power to appoint, the power to dismiss, the power to control and give directions as to the manner in which the duties of the office are to be performed and the power to determine the question of remuneration are all present in a given case, then the officer in question holds the office under authority so empowered." In the court's opinion, it was not necessary that all these factors must co-exist and each must show subordination to the Government. The circumstances that the source from which the remuneration is paid is not from public revenue is a natural factor not decisive of the question.

Shri Guru Govind Basu, the appellant in this case, who had been elected to the Lok Sabha in 1962, was a chartered accountant and a partner of a firm of auditors which acted as auditor of two companies, namely the Durgapur Projects Limited and the Hindustan Steel Limited on payment of certain remuneration. After an examination
of the relevant provisions of the Indian Companies Act, 1956, the court found that so far as these two companies were concerned, the appellant was appointed an auditor by the Central Government; he was removable by the Central Government; and the Comptroller and Auditor General of India exercised full control over him. The court also further found that his remuneration was fixed by the Central Government though it was paid by the company. Both companies in question were Government companies.

Nomination of candidates for election - Any person may be nominated as a candidate for election to fill a seat if he is qualified to be chosen to fill that seat under the provision of the constitution and this act or under the provisions of the Government of Union Territories Act, 1963, as the case may be.

Presentation of Nomination paper and requirements for a valid nomination.

Any person enrolled in the electoral roll of Parliamentary constituency in the State for the time

2. The words 'in any constituency' omitted by Act 27 of 1956, S. 15.
4. Ins. by Act 20 of 1963, S.57 and Sch.II.
being in force and who does not fulfill any of the disqualifications enumerated hereinbefore, may be nominated as a candidate for the election in any aforesaid constituency in the State or any other State. But to become eligible for the election in the Legislative Assembly of the State one must be registered in the electoral roll of that Assembly constituency of the State. A candidate can fill one or more nomination papers but each of such papers must be proposed by different persons. According to the amended Law neither the presence of the seconder nor an election agent is compulsory at the time of filling the nomination paper, but the candidate, if he desires, can appoint an election agent at the time of filling the nomination or at any subsequent time. Thus the appointment of the agent is not obligatory and is completely at the will of the candidate.

The Law relating to the nomination of candidates contained in Sections 32 to 38 of the Representation of the People Act, 1951, was amended have to be stated in the nomination paper.

Where a candidate is a voter in a different constituency, he has to produce before the Returning Officer, at the time of scrutiny either a copy of the electoral roll in which he is registered or a certified
copy of the relevant entries relating to him in the electoral rolls. To avoid any question on this account, it is advisable to file, along with the nomination paper, a certified copy of the entries in the electoral roll. This can be obtained by applying well in time to the Electoral Registration Officer of the constituency where the candidate is registered.

Printed nomination forms may be obtained from the Returning Officer. Manuscript, typewritten, cyclostyled or privately printed forms may also be used, provided that they are exact copies of the prescribed form.

Notice of Nominations and the time and place for their scrutiny.

Simultaneously with the notification calling an election, the Returning Officer of every constituency issues a public notice stating the place where the nomination papers may be obtained, the place where and the officer to whom they may be delivered, the time and place of scrutiny, the procedure for withdrawal, and the date and time of poll. 1

A candidate or his proposer, but no one else, may present the nomination paper on the very day of the notification calling upon the constituency to elect or

on any of the seven days following that day. No nomination paper will be received on a public holiday.

The nomination paper must be presented to the Returning Officer or to the Assistant Returning Officer at his office between 11 A.M. and 3 P.M. and to no one else.

A candidate has to make and subscribe an oath or affirmation before the Returning Officer or any person authorised in this behalf by the Election Commission.

**Notification Regarding Oath/Affirmation.**

Election Commission of India Notification No. S.O. 111, dated the 18th March, 1968.

1. In pursuance of Clause(a) of Article 84 and Clause(a) of Article 173 of the Constitution of India and in supersession of its notification No. 3/3/66, dated the 25th April, 1967, the Election Commission hereby authorises -

   (i) the Returning Officer concerned and all the Assistant Returning Officers subordinate to him,

   (ii) all stipendiary presidency magistrates and all stipendiary magistrates of the first class, and

   (iii) all district judges and all persons belonging to the judicial service of a State other than district judges.

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2. Notwithstanding anything contained in paragraph 1, in pursuance of clause(a) of the said Article 84 and clause(a) of the said Article 173, the Election Commission hereby also authorises as the person before whom the candidate may make and subscribe the said oath or affirmation:

(a) where the candidate is confined in a prison, the superintendent of the prison;

(b) where the candidate is under preventive detention, the commandant of the detention camp;

(c) where the candidate is confined to bed in a hospital or elsewhere owing to illness or any other cause, the Medical Superintendent Incharge of the Hospital or the Medical practitioner attending on him;

(d) where the candidate is out of India, the diplomatic or consular representative of India in the country where the candidate happens to be or any person authorised by such diplomatic or consular representative;

(e) where the candidate is for any other reason unable to appear, or prevented from appearing before the Returning Officer concerned or any Assistant Returning Officer as aforesaid, any other person nominated by the Election Commission on application made to it in this behalf.
During the general elections, two cases came to the notice of the Election Commission where a candidate being confined to the bed in a hospital, was unable to go to the Returning Officer of the constituency and take the oath. In one case, where the Returning Officer's headquarter was near the hospital, the commission instructed the Returning Officer to administer the oath to the candidate in the hospital. The other case, however, was brought to the notice of the Election Commission at very late stage and, since the constituency also was at a great distance from the hospital, it was not possible to make any provision for administering the oath. After the completion of the general elections the commission notified that in the case of any candidate confined to bed in a hospital or elsewhere owing to illness, the Medical Superintendent in-charge of the hospital or the Medical practitioner attending on him could administer the oath and send the necessary intimation to the Returning Officer.¹

The form of oath/affirmation is as follows:

I, A.B., having been nominated a candidate to fill a seat in the House of the People (or in the Legislative Assembly) do swear in the name of God solemnly affirm

that I will bear true faith and allegiance to the constitution of India as by Law established and that I will uphold the sovereignty and integrity of India.

This oath or affirmation is to be made after the candidate has been nominated but in any case before the date of scrutiny of nomination. A candidate making his oath/affirmation before any authorized person other than the Returning Officer must keep in his possession sufficient evidence of his having done so in order to be able to meet any objection at the time of scrutiny.

**Deposits.**

1. A candidate shall not be deemed to be duly nominated for election from a constituency unless he deposits or causes to be deposited

   (a) in the case of an election from a Parliamentary constituency, a sum of five hundred rupees or where the candidate is a member of a Schedule Caste or Scheduled Tribe, a sum of two hundred and fifty rupees.

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1. Substituted by Act 27 of 1956, S.17, for sub-section(1).
(b) in the case of an election from an Assembly or Council constituency, a sum of two hundred and fifty rupees or where the candidate is a member of a Scheduled Caste or Scheduled Tribe, a sum of one hundred and twenty-five rupees.

Provided that where a candidate has been nominated by more than one nomination paper for election in the same constituency, not more than one deposit shall be required of him under this sub-section.

(2) Any sum required to be deposited under sub-section(1) shall not be deemed to have been deposited under that sub-section unless at the time of delivery of nomination paper under sub-section(1) of section 33, the candidate has either deposited or caused to be deposited that sum with the Returning Officer in cash or enclosed with the nomination paper a receipt showing that the sum has been deposited by him or on his behalf in the Reserve Bank of India or in a Government Treasury.

A candidate must, however, make separate deposits in respect of each constituency in case he contests more than one constituency.

1. The word 'and' and cl. (c) omitted by S.18 for sub-section(1).
The deposit will be refunded if the candidate is elected or has obtained more than \( \frac{4}{6} \) of the total number of valid votes polled in the constituency. In other cases, the deposit will be forfeited.

The following Table-3 gives a clear picture of the number of contesting candidates, the number of candidates who forfeited deposits and the amount forfeited in all the four General Elections to the House of People.

The amount of security deposit by each candidate is Rupees five hundred and by each Scheduled Caste and Scheduled Tribe candidate it is Rupees two hundred and fifty.

**Table - 3**

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of contesting candidates.</th>
<th>Number of candidates forfeiting deposits.</th>
<th>Amount forfeited (in rupees)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1952</td>
<td>1,874</td>
<td>748</td>
<td>40,150</td>
</tr>
<tr>
<td>1957</td>
<td>1,594</td>
<td>496</td>
<td>222,000</td>
</tr>
<tr>
<td>1962</td>
<td>1,985</td>
<td>856</td>
<td>386,750</td>
</tr>
<tr>
<td>1967</td>
<td>2,369</td>
<td>1,204</td>
<td>530,200</td>
</tr>
</tbody>
</table>

1. India Goes to the Polls, Publication Division, Ministry of Information and Broadcasting, Govt. of India, Table-14.
If a candidate was a contesting candidate in more than one constituency for same House of a Legislature, he is entitled to the refund of only one deposit. If however, he was contesting an Assembly seat and a Lok Sabha Seat simultaneously, he would get a refund of the deposits made in both, provided that he obtains more than one-sixth of the total number of valid votes polled in each constituency. The deposit is intended to ensure that the candidate is a serious contestant.

Scrutiny.

According to the Section 36, R.P.Act, 1951, on the day fixed for scrutiny, the candidate, his election agent, his proposer and one other person authorized by the candidate will be allowed to examine the nomination papers of all the candidates filed with the Returning Officer. If an objection is raised to any nomination paper, the Returning Officer will hold a summary enquiry and record his decision in writing either accepting or rejecting the nomination paper, giving reasons for such decision. A candidate to whose nomination objection has been taken may ask for time to rebut it, and the Law provides that time may be given for such rebutted until

the next day or the day following. No nomination paper can be rejected on the ground of any defect which is not of a substantial character. Thus no nomination paper can be rejected for any mistake or error of a technical or clerical nature.

The grounds on which the nomination papers are rejected by the Returning Officer are as follows:

(a) "the candidate is clearly not qualified in Law to be a member of the legislature concerned, or

(b) the candidate is clearly disqualified in Law to be such a member, (This question of qualification or disqualification is determined with reference to the date fixed for the scrutiny of nominations),

or

(c) the nomination paper has not been delivered in time,

(The nomination paper is delivered after 3 P.M. on the last day for making nominations or before 11 A.M. on the day of notification calling on the constituency to elect.), or

(d) the nomination paper has been delivered to the Returning Officer or to the Assistant Returning Officer by a person other than the candidate himself or his proposer, or

---

(e) the nomination paper has not been delivered at the place specified in the public notice issued by the Returning Officer, or

(f) the nomination paper has been delivered to a person other than the Returning Officer, or any of his Assistant Returning Officer, or

(g) the nomination paper is not substantially in the prescribed form, or

(h) the nomination paper has not been signed by the candidate and his proposer, or

(i) the proper deposit has not been made by the candidate in accordance with Section 34 of the Representation of People Act, 1951."

An important amendment was made in Section 36(2)(a) of the Act which provides for the rejection of the nomination of a candidate in the event of his being found to be not qualified or to be disqualified under the relevant provisions of the constitution or the law. As no particular date was mentioned in the section, it became a matter for argument as to how the Returning Officer should decide the question. The amendment made it clear that the question of disqualification or lack of qualification was to be decided with reference to the date fixed for the scrutiny of nominations.¹

Another clarification made in the proviso to Section 36(5) was that the adjournment of scrutiny proceedings by a day or two as provided therein could be given, not only where an objection is raised by or on behalf of another candidate but also when it is raised *suo moto* by the Returning Officer.¹

**Returning Officer and Allotment of Symbols to candidates.**

The Returning Officers were given the following directions by the Election Commission during the Second General Elections regarding the procedure to be followed with regard to the allotment of symbols to the contesting candidates.²

**Election in which one seat to be filled.**

(a) "The Returning Officer shall first allot to the official candidate set up by each recognised political party the symbol reserved for the party."

(b) If a recognised party has set up more candidates, than one for the seat, none of them shall be treated as the official candidate of the party or allotted the symbol reserved for the party.


All such candidates shall be treated as independent candidates and allotted free symbols, that is, symbols not reserved for any party recognised in the State.

(c) After the official candidates of all the recognised parties have been thus allotted their respective party symbols, the Returning Officer shall proceed to allot symbols to the remaining contesting candidates. In doing so, he shall allot the symbols of the first choice to every such candidate provided that such choice is not inconsistent with any of the restrictions which apply nor clashes with the first choice of symbols made by any other candidate.

(d) After candidates have thus been allotted symbols according to their first choice as far as possible, the Returning Officer shall proceed to allot symbols to the remaining candidates if any. Some of them would be candidates whose first choice of symbols is not inconsistent with the aforesaid restrictions but clashes with that of any other remaining candidate. Each symbol in respect of which there is a clash shall be allotted to one of the contesting candidates by lot.
(e) Candidates who cannot be allotted the symbols of their first choice either because it is inconsistent with the restrictions imposed by commission or by virtue of the operation of Clause (3) or (4) shall be respectively allotted the symbols of their second choice subject to the provisions of Law.

(f) If any candidate has failed to get symbol under any of the foregoing clauses, the Returning Officer shall allot to him the symbol of his third choice subject to the provision of Law.

(g) If there are other candidates to whom symbols have not been allotted under any of the foregoing clauses, they shall be allotted symbols at the Returning Officer's discretion.

Election in which two seats are to be filled.

In case of reserved seats, the recognised parties are entitled to set up official candidates for each seats. In two-member constituencies, the Returning Officers were directed to follow the procedure laid down by the election commission. They are as follows:

---
(1) "If a recognised party has set up only one
contesting candidate, the symbol reserved for 
the party shall be allotted to that candidate.

(2) If a recognised party has set up two candidates
including at least one candidate belonging to a
Scheduled Caste or Scheduled Tribe, as the case
may be, the symbol reserved for the party shall be
allotted to both such candidates with the only
difference that the symbol allotted to the
Scheduled Caste or Scheduled Tribe candidate of
the party, as the case may be, shall be the
particular symbol enclosed within a thick black
circle.

(3) If a recognised party has set up more candidates
than one for the unreserved seats, all of them
shall be treated as independent candidates and
allotted free symbols. If two candidates are
set up by a party and both of them belong to
Scheduled Caste or Scheduled Tribe, as the case
may be, they shall be allotted the symbol reserved
for the party, one of them (to be selected by
agreement, by lot) being allotted the particular
symbol enclosed within a thick black circle.

(4) If more than two candidates are set up by a
recognised party but one of them belongs to a
a scheduled caste or scheduled tribe as the case be, the latter candidate shall be allotted the bare party symbol while the others shall be allotted free symbols and treated as independent candidates.

(5) If more than two candidates are set up by a party and more than one of them belong to the Scheduled Castes, or Scheduled Tribes, as the case may be, all the candidates of that party shall be allotted free symbols and treated as independent candidates.

(6) All other candidates to whom symbols have not been allotted under any of the foregoing clauses shall be allotted symbols according to the procedure laid down in clause (3) to (7) of the Procedures laid down above for the filling of one seat.

The Returning Officers, sometimes, at the time of allotment of symbols to the candidates, face certain difficulties in recognising the official candidates of the parties because of the mere fact that they are supplied with the complete information which results in heart-burning. In order to avoid above mentioned difficulty the Election Commission laid down the following
procedure to be followed by the Returning Officers with regard to the adoption of official candidate in a constituency. 1

(1) "Each recognised party shall intimate in advance to the Chief Electoral Officer of the State the name or the names of the person or persons who have been authorised by the party to convey its final decision as to which of the contesting candidate at an election are to be treated as its official candidates in the different constituencies. The Chief Electoral Officer shall inform the Returning Officers accordingly.

(2) Each change subsequently made by a party in this respect shall be forthwith communicated to the Chief Electoral Officer and the Returning Officer of the constituency concerned.

(3) Specimen signatures of the person or persons so authorised shall be forwarded by the party to the Chief Electoral Officer and the Returning Officer of every constituency.

(4) When an election takes place in a constituency the person or persons so authorised shall communicate to the Chief Electoral Officer and the Returning Officer of the constituency the name or the names of the official

candidates at such elections. Such intimation must reach the Returning Officer before the last date of withdrawal of candidatures in order to ensure that the official candidate or candidates of that party may be allotted the party symbol. If the communication does not reach the Returning Officer before that date, every candidate claiming to have been set up by the party shall be allotted a free symbol."

The Election Commission, by the amendment in Law, has given the revisary authority in case of wrong and illegal allotment of symbols by the Returning Officers. During the Second General Elections in India, the Election Commission revised the allotment of symbols on the candidates request. But in this regard the satisfaction of the Returning Officer, about the question of the official candidate, was taken into consideration by the Election Commission. In Uttar Pradesh there were as many as thirtythree such cases occurred at the time of Second General Elections, in India.

**Political Parties and Symbols.**

There is at present no law regulating the formation and functioning of political parties in India. The fundamental right to form associations which is guaranteed by article 19 of the Constitution, remains unfettered although
under Clause(4) of the Article it is open to Parliament to make a law imposing reasonable restrictions on the exercise of the right in the interest of the sovereignty and integrity of India or public order or morality. The Representation of People Act do not refer to political parties even from the electoral point of view. 1

Before the First General Elections as many as 29 parties had asked for recognition as national parties and many more as State parties. Taking a liberal view, the commission recognised 14 of the former as national parties and reserved distinctive symbols for their candidates in all the States. 59 parties were similarly recognised in particular specified States.

After the First General Elections were over, it was possible to assess more accurately the electoral strength of each of these parties. The yard-stick adopted by the Commission was that the party's candidates must have polled at least 3 percent of the total valid votes polled at the parliamentary elections to secure recognition as a national party, and the same minimum percentage at the assembly elections in a State to secure recognition as a State party in that State.

As a result, the Indian National Congress, the Praja Socialist Party, the Communist Party of India and the Bhartiya Jan Sangh were recognised as National parties and 19 others as State parties. Most of the latter were recognised only in one State. The Kam Rajya Parishad and the Hindu Mahasabha were found to have sufficient electoral support in six States and four States, respectively, and were recognised in those States.¹

Soon after the Second General Elections in 1957 the list was again revised on the same basis. Four parties continued to be recognised as National parties, which meant that a particular symbol was reserved for allotment to the candidates of that party at any parliamentary or assembly election anywhere in India. 15 parties were recognised most of them only in one State, and a few in two or three States, as State parties. Here again, recognition in a State secured a reserved symbol for the party's candidates at assembly elections, as well as parliamentary elections, in that State.²

This method of distinguishing between National and State parties by taking into account only the votes polled in parliamentary election in the former case and in assembly elections in the latter case, was not very

² Ibid.
Satisfactory. Since recognition in this manner was equally for the purpose of allotting symbols at parliamentary elections and assembly elections, it was somewhat illogical. It was possible for a party securing 3 percent of the votes polled in parliamentary elections to obtain recognition in every State even if it did not contest any Lok Sabha seat in some States. Such recognition was extended to all Legislative Assemblies without reference to the party’s performance at the general elections to each of those assemblies. The party might not have contested even a single assembly seat in some States, but on the strength of a minimum electoral support at Parliamentary elections in a few other States it became entitled to recognition in every State. The commission therefore considered that it would be more realistic and rational to recognise parties Statewise after taking into account the electoral support each party had in a State in parliamentary elections as well as assembly elections.1

Certain changes in the party position which had taken place in the Second General Elections required to be taken into account. The All India

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Scheduled Caste Federation dissolved itself in 1958 and replaced by the Republican Party of India. After the due enquiry, the successor party was recognised in Maharashtra and Punjab.¹

The Swatantra Party represented to the Commission that, although recently formed, it should be recognised for the allotment of symbols in all the States on the basis of its strength in the various legislatures, its primary membership, the number of branches it had set up, the strength of its organisation, etc. It was obviously not possible to apply to new parties the test of a minimum electoral support at the polls but the commission felt that it was desirable to find some other ad hoc basis for adjudging their claim to recognition. In the case of Swatantra party, the commission was satisfied that the Janta Party in Bihar, the Indian National Democratic Congress in Madras and the United Independent Front in Himachal Pradesh, all recognised parties, had merged themselves in the Swatantra Party. It had a substantial following in the State Legislature of Andhra Pradesh and Uttar Pradesh and had been recognised as a group by the speakers of the respective Legislative Assemblies. In Gujarat Assembly also,

8 members who between them had polled more than 3 percent of the total votes polled in the Gujarat area, then belonged to that party. The commission accordingly decided to recognise the Swatantra Party in these six States, and as a consequence, to withdraw recognition from the Janta Party in Bihar and the United Independent Front in Himachal Pradesh.  

In the result, the undermentioned 16 parties were recognised for the purpose of allotting reserved symbols to their candidates at parliamentary and assembly elections in the States and Union Territories as specified in the following Table-4.

**Table - 4**

<table>
<thead>
<tr>
<th>Name of Party</th>
<th>States and Union Territories in which recognised</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Congress</td>
<td>All States and Union Territories.</td>
</tr>
<tr>
<td>2. Praja Socialist</td>
<td>All except Punjab, Rajasthan and Tripura.</td>
</tr>
<tr>
<td>3. Communist</td>
<td>All except Madhya Pradesh, Mysore, and Himachal Pradesh.</td>
</tr>
</tbody>
</table>

---

2. Ibid. pp. 29, Table-6.
<table>
<thead>
<tr>
<th>Name of Party</th>
<th>States and Union Territories in which recognised</th>
</tr>
</thead>
<tbody>
<tr>
<td>5. Socialist</td>
<td>Andhra Pradesh, Bihar, Madhya Pradesh, Rajasthan, Uttar Pradesh, and Mainpur.</td>
</tr>
<tr>
<td>7. Hindu Mahasabha</td>
<td>Madhya Pradesh, West Bengal and Delhi.</td>
</tr>
<tr>
<td>8. Ram Rajya Parishad</td>
<td>Madhya Pradesh and Rajasthan.</td>
</tr>
<tr>
<td>9. Republican</td>
<td>Maharashtra and Punjab</td>
</tr>
<tr>
<td>10. Jharkhand</td>
<td>Bihar</td>
</tr>
<tr>
<td>11. Muslim League</td>
<td>Kerala</td>
</tr>
<tr>
<td>12. Dravida Munnetra Kazhagam</td>
<td>Madras</td>
</tr>
<tr>
<td>13. Peasants' and Workers'</td>
<td>Maharashtra</td>
</tr>
<tr>
<td>14. Gantantra Parishad</td>
<td>Orissa</td>
</tr>
<tr>
<td>15. Akali Dal</td>
<td>Punjab</td>
</tr>
<tr>
<td>16. Forward Block</td>
<td>West Bengal</td>
</tr>
</tbody>
</table>

All these parties, except Akali Dal and of course Swatantra continued to have their old reserved symbols. The symbol "hand" was allotted to Akali Dal. The five pointed star was the symbol chosen by the Swatantra Party, but its representation that in Bihar it should be allowed to retain the Janata Party's symbol.
of bicycle for its first general election was accepted by the commission.

The symbols of the undermentioned 9 parties were accordingly included in the list of free symbols available in the States mentioned against each party:

<table>
<thead>
<tr>
<th>1. Praja Socialist</th>
<th>Punjab, Rajasthan &amp; Tripura.</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Communist</td>
<td>Madhya Pradesh, Mysore and Himachal Pradesh.</td>
</tr>
<tr>
<td>4. Socialist</td>
<td>Assam, Gujarat, Kerala, Madras, Maharashtra, Mysore, Orissa, Punjab, West Bengal and Delhi.</td>
</tr>
<tr>
<td>5. Swatantra</td>
<td>Assam, Kerala, Madhya Pradesh, Maharashtra, Mysore, Orissa, Punjab, Rajasthan, and West Bengal.</td>
</tr>
<tr>
<td>8. Republican</td>
<td>Andhra Pradesh, Gujarat, Madras, Madhya Pradesh, Mysore, Uttar Pradesh, Delhi, and Himachal Pradesh.</td>
</tr>
</tbody>
</table>

Although listed together with free symbols the allotment of a party symbol in any of the specified States was subject to the following restrictions:

(a) if the party set up a candidate in the constituency (whether parliamentary or assembly) he should be allotted the party symbol in preference to all other candidates;

(b) if the party set up a candidate in a parliamentary constituency, the symbol should not be allotted to any candidate in any of the assembly constituencies comprised within that parliamentary constituency unless that candidate also belonged to the same party;

(c) if the party set up a candidate in an assembly constituency, the symbol should not be allotted to any candidate in the parliamentary constituency comprising that assembly constituency unless that candidate also belonged to the same party.

These restrictions ensured that a partially recognised party setting up candidates; only in a few parliamentary and assembly constituencies in a State practically secured the party symbol for its candidates.

Besides the symbols reserved either wholly or partially for the 16 recognised parties, 9 other completely free symbols were provided for the use of

independent candidates. All the 25 symbols as they appeared on the aballot papers are reproduced on the page number 494.

At the General Elections of 1962, the Commission felt that the time had come to increase the minimum from 3 percent to 4 percent of the total valid votes cast in the State either at the parliamentary elections or at the assembly elections would be eligible for recognition in that State. A party would only be given credit for the votes secured by those candidates who were sponsored by it and who openly contest the elections on the party tickets.

On the 16th December, 1961, the Commission issued a circular letter to all recognised political parties in the country and following it by a press note, detailing the manner of sponsoring candidates by political parties. The procedure to be adopted by them was as follows:

(1) The party should intimate to the Chief Electoral Officer of the State by the 10th January, 1962, the names of persons who had been authorised by the party to convey its final decision as to its approved candidates at the elections in that State. It was suggested that not more than two or three candidates

2. Ibid.
3. Ibid. pp. 32.
such persons should be authorised by the party for this purpose and wherever more than one person was authorised in the State, the Districts or areas assigned to each of them should be clearly mentioned.

(2) Facsimile signatures of each of the person so authorised should be sent by the party to the Chief Electoral Officer and the Returning Officer for each of the constituencies which it proposed to sponsor candidates.

(3) Any subsequent change in the person authorised should be similarly intimated to the Chief Electoral Officer and the Returning Officers concerned.

(4) A complete list of the approved candidates along with the names of the substitute candidates who would be set up in the event of the approved candidates' nomination being rejected should reach the Chief Electoral Officer and the Returning Officers concerned sufficiency in advance of the last date for the withdrawal of the candidature. Changes in the list would, however, be permitted at a time before that date. This list should clearly indicate who was the approved candidate and who was the substitute candidate. In the absence of this information if the substitute candidate refused or failed to withdraw in time, two candidates officially
sponsored by the party would remain in the field and the Returning Officer would not allot the party symbol to either of them and both of them would have to be treated as non-party candidates and allotted free symbols. The commission also made it clear that the Returning Officer would allot the symbol reserved for the party to the approved candidate and a free symbol to the substitute candidate even where both of them remained in the field if he had been authoritatively informed by the party before 3 P.M. on the last date of the withdrawal of the candidatures as to who was the approved candidate of the party and who was the substitute candidate. In other words it should not be left to the Returning Officer to decide as to who was the approved candidate and who was the substitute candidate. A similar procedure was prescribed for unrecognised parties.

If the name of the same person was intimated by two political parties as their approved candidate, the Returning Officer was required to decide his party affiliation on the choice of the symbol given by him and to allot accordingly. Where candidate whose name had been intimated by a political party as its approved candidate did not ask for the party symbol, the Returning Officer was asked to assume that he did not wish to stand as a candidate of that party and should
not allot the party symbol to him. 1

On an analysis of the votes polled by the party candidates at the general elections of 1962, it was found that the following 14 parties had secured not less than 4 percent of the valid votes polled and were accordingly eligible for a reserved symbol in the States and Union Territories as shown in the following Table-5: 2

<table>
<thead>
<tr>
<th>Name of Party</th>
<th>States and the Union Territories in which recognised</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Indian National Congress</td>
<td>All States and Union Territories.</td>
</tr>
<tr>
<td>2. Communist Party</td>
<td>Andhra Pradesh, Assam, Bihar, Kerala, Madras, Maharashtra, Orissa, Punjab, Rajasthan, West Bengal, and Tripura.</td>
</tr>
<tr>
<td>3. Praja Socialist Party</td>
<td>Assam, Bihar, Gujarat, Kerala, Madhya Pradesh, Maharashtra, Mysore, Orissa, and Uttar Pradesh.</td>
</tr>
<tr>
<td>4. Swatantra Party</td>
<td>Andhra Pradesh, Bihar, Gujarat, Madras, Mysore, Orissa, Rajasthan, and Himachal Pradesh.</td>
</tr>
<tr>
<td>7. Socialist Party</td>
<td>Uttar Pradesh, and Manipur.</td>
</tr>
</tbody>
</table>

2. Ibid, pp.33-34, Table-7, Govt. publication.
<table>
<thead>
<tr>
<th>Name of Party</th>
<th>States and the Union Territories in which recognised</th>
</tr>
</thead>
<tbody>
<tr>
<td>8. All Party Hill Leaders' Conference</td>
<td>Assam</td>
</tr>
<tr>
<td>9. Jharkhand Party</td>
<td>Bihar</td>
</tr>
<tr>
<td>10. Muslim League</td>
<td>Kerala</td>
</tr>
<tr>
<td>11. Dravida Munnetra Kazhagam</td>
<td>Madras</td>
</tr>
<tr>
<td>12. Peasants &amp; Workers' Party</td>
<td>Maharashtra</td>
</tr>
<tr>
<td>13. Akali Dal</td>
<td>Punjab</td>
</tr>
<tr>
<td>14. Forward Bloc</td>
<td>West Bengal</td>
</tr>
</tbody>
</table>

The results further showed that the partial recognition of some of the parties in a few States by including their symbols among the free symbols and making them available for their candidates did not help those parties at all except in the case of the Swantantra Party. The votes gathered by the candidates set up by these parties in those States did not add up to anything appreciable. There appeared to be no point in continuing the system of partial recognition and it was withdrawn by the Commission in September, 1962.

Two important changes took place in 1964 among the larger and well established political parties. First came the split in the Communist Party of India. It appeared to the Commission that the new party which eventually came to be known as the Communist Party of India (Marxist) had a substantial following in the State of Andhra Pradesh, Kerala and West Bengal. The party was accordingly recognised in these three States and allotted the reserved symbol of hammer and sickle with a star. The Communist Party of India, however, continued to be recognised in these and other States as before with its old symbol of ears of corn and sickle.

The Commission was informed in July 1964 by the General Secretaries of the Praja Socialist Party (PSP) and of the Socialist Party (SP) that the two parties had merged to form the Samyukta Socialist Party (SSP) and that this United Party had chosen the "hut" (which was the PSP's symbol before the merger) as its election symbol. After making necessary enquiries, the commission notified in October, 1964 its recognition of the SSP in place of PSP and the SP in all the States where either of the latter parties had been previously recognised and the allotment of the "hut" symbol to the new party.

This union, however, was short lived. Early in February, 1965, the Commission was informed that it had come to an end on January 31 when the inaugural meeting of the ad hoc national committee of the party at Varanasi broke up. Twelve leading members of the former PSP withdrew from this meeting with their followers, declared the merger as annulled and decided to revive the units of the PSP immediately at all levels. The party so revived or reformed also decided to adopt the "hut" as its symbol and approached the Commission with a request for its re-allotment to the PSP. This was objected to by the SSP which contended that the revived PSP should be treated as a new party and that in any case, the "hut" symbol allotted to the SSP should not be taken away from it.  

The Commission, after taking into account the strength of the two parties before the merger and after the break-up in the House of the People and the various Legislative Assemblies, came to the conclusion that the revived PSP was practically the same party under almost the same leadership as before and was entitled to be treated on that footing, rather than on the basis that it was an entirely new party. The Commission considered

the PSP's claim to get back its own symbol stronger than the SSP's claim to retain the symbol and accordingly allotted it to the PSP in the States of Bihar, Gujarat, Madhya Pradesh, Maharashtra, Mysore and Orissa. The SSP was found to have sufficient strength only in four States, namely, Uttar Pradesh, Bihar, Kerala and Madhya Pradesh besides the Union Territory of Manipur. The Commission further decided to allot to this party the "tree" symbol which had been previously allotted to the Socialist Party.1

The SSP challenged the decision of the Commission by way of a writ petition and, when it was dismissed summarily by the Punjab High Court, the party took up the matter in appeal to the Supreme Court. In an interesting judgment delivered on September 30, 1966, a Full Bench of the Supreme Court held:2

"If the merger of the PSP and the SP was unsuccessful and before any significant time had passed the PSP had decided to separate, and if all the leaders of the party and almost all its original members decided to quit the amalgamated party, the benefit of its symbol could not be left to the Socialist Party which, in the events that have happened, is bearing the name of the unified party. It is no longer the unified party it was

2. Ibid.
when the name was assumed. Parties have a sentimental attachment for their symbols. The hut was the symbol of PSP and the amalgamated party chose the hut rather than the tree because of the greater success of the PSP at the polls. If disagreement led to a quick break-up before the new party or its symbol could be properly grounded, the reversion to the original position was not only logical but also eminently just. It is clear, therefore, that the Election Commission proceeded along the right lines and reached the right conclusion both legally and in the light of the facts ascertained by it from impartial sources."

Yet recently PSP and SP have announced their merger forming the New Socialist Party. "Top central leaders of the SSP and the PSP announced at a press conference here today that the merger of the two parties stood formalised as from this day. The new party will be known as the Socialist Party."

Mr. Karpooori Thakur will be the chairman, and Mr. M.R. Dandavate, M.P., the general secretary of the new party.

The Socialist Party which came into being today is the amalgam, apart from the SSP and
and the PSP which are the main constituents, of four other groups also; the Indian Socialist Party, and a splinter group each in Bihar, U.P. and West Bengal.

In less than half an hour of the announcement of the merger of the PSP and the SSP by the top central leaders of the two parties, several PSP leaders from Bihar, U.P. and Kerala announced at another press conference that the merger was invalid and unacceptable.

A statement issued by the leaders from these three states, at the end of two-day deliberations here, declared that the PSP would live and function as a separate entity.¹

The question will again arise about the allotment of symbol to this new party in the face of opposition by the splinter groups in the old SP and PSP. There has been also a demand to oust Raj Narain Group from the new party and since this group has a larger number of members in Uttar Pradesh Legislature, there will be a difficulty about the allotment of symbols if they are ousted.

Yet another case of party disunity that came to the notice of the Commission and led to a good deal of controversy before it was split in the Shiromani Akali Dal. At the time of the general elections in

1962 when this party was recognised and the reserved symbol "Hand" was allotted to it, Master Tara Singh was the acknowledged leader of the party. Soon after the elections, the party split into two groups, both calling themselves Shiromani Akali Dal without any qualifying words. They were, however, referred to in the press as the Master Tara Singh Group and the Sant Fateh Singh Group. The dispute was raised before the Commission by the latter group claiming to be the Akali Dal and entitled to the "hand" symbol. The commission found upon inquiry that out of the 15 members of the Punjab Legislative Assembly belonging to the Akali Dal, only 2, or perhaps 3, were with the Master Tara Singh Group and the others were with the Sant Fateh Singh Group. Furthermore, both the groups had contested the elections to the Shiromani Gurudwara Prabandhak Committee held in 1965, at which the Punjab Government had allotted the "hand" symbol to the Shiromani Akali Dal (without any qualification but, in fact, the Master Tara Singh Group) and the symbol "Bow and arrow" to the Shiromani Akali Dal (Sant Fateh Singh Group). The latter group had come out successful at those elections with an overwhelming majority.
After taking all these facts into consideration, the commission decided that both the groups should be recognised with the names Shiromani Akali Dal (Master Tara Singh Group) or Akali Dal (Master Group) for short and Shiromani Akali Dal (Sant Fateh Singh Group) or Akali Dal (Sant Group) for short, and that the "hand" symbol should be reserved for the second. The "bow and arrow" symbol had been withdrawn after the first general elections because of the semi-religious and militant overtones which teer-khamen had to the Sikh community.¹

The Akali Dal (Master Group) challenged this decision of the Commission by means of a writ petition before the Delhi High Court in January, 1967. It claimed that the party should be known as Shiromani Akali Dal without any qualification and that the Sant Group which was only a dissident faction should not be given recognition by the commission. The High Court did not accept either of these contentions. After reviewing the facts and circumstances of the case, it held that the commission was justified in recognising the group led by Sant Fateh Singh as a political party and allotting a reserved symbol to it. It further held that the Commission was right in giving appellations to both in order to distinguish the one from the other for the

purpose of allotting the symbols to their respective candidates.¹

Towards the end of 1964, the All India Congress Committee informed the commission that the Jharkhand Party, which was functioning as a recognised party in Bihar since the first general elections, had merged in the Congress. The Commission ascertained that this party ceased to exist as an opposition party or group in the Bihar Legislative Assembly and that all its members had gone over to the Congress. It was also ascertained from the Parliament Secretariat, that of the three members elected to the House of the People from Bihar on the Jharkhand Party ticket, two had joined the Congress.² Some persons did not join the Congress and the party as such broke up. There were at least three rival groups in the State each claiming to be recognised by the Commission as the Jharkhand Party and entitled to its reserved symbol "Cock". The commission found it impossible to ascertain the relative strength of these groups of the popular support, if any, each of them had. It accordingly decided to withdraw the recognition given to the Jharkhand Party in Bihar and the "Cock" symbol from the list of reserved symbols in the State.³

² Ibid. pp. 32.
³ Ibid.
It may be recalled that the Second General Elections to the Legislative Assembly of Jammu and Kashmir was held in 1962 under the supervision of the Election Commission for the first time. On the basis of the results of that election the commission recognised three political parties in the State, namely, the Jammu and Kashmir National Conference, the Praja Parishad and the Democratic National Conference. The Jammu and Kashmir National Conference was even then functioning as a political party affiliated to the Indian National Congress and had the same election symbol "Two bullocks with yoke on" allotted to it. In September, 1964, this party with the exception of a comparatively small dissident group, decided to ask the Congress to organise its units in the State and join that unit. At about the same time the Praja Parishad formally resolved to merge with the Bhartiya Jan Singh. The Commission accordingly decided to recognise the Indian National Congress and the Bhartiya Jan Sangh as political parties operating in the State and remove the Praja Parishad from the list of recognised parties in the State. As it appeared that the Jammu and Kashmir National Conference continued as a separate political party although in a depleted form, the Commission decided to allot a new reserved symbol "Plough" to it.¹

The State of Nagaland came into existence on December 1, 1963 and a general election to constitute the first Legislative Assembly of the State was held in January 1964. The Commission did not recognise any political party in this new State for the purpose of allotting reserved symbols to party candidates. Six free symbols were specified for the choice of all the candidates contesting the elections. Actually they were contested by the Naga Nationalist Organisation which was the ruling party and the opposition group which called itself the Democratic Party of Nagaland. After the General Elections, both these parties were recognised and allotted reserved symbols. The Democratic party of Nagalani, however, dissolved itself in May 1965 and accordingly the recognition given to it was withdrawn.

Immediately before the General Elections of 1967, the Naga Nationalist Organisation was the only recognised party in the State.

The first general election in the Union Territory of Goa, Daman and Diu was held in December 1963. The commission recognised four political parties, namely, Indian National Congress, Frente Populaire, Maharashtrawadi Gomantak and United Goans, in the Territory and allotted

---

reserved symbols to them. The result of the election showed that all the four parries had sufficient electoral support, the last two having much more than the first two. In 1966, however, the United Goans suffered a split somewhat similar to the split in the Shiromani Akali Dal of Punjab. The commission found it necessary to recognise both the groups and allot reserved symbols to them.¹

Thus on the eve of general elections of 1967, 24 political parties had reserved symbols allotted to them in one or more States and Union Territories, as shown in the following Table-6:²

<table>
<thead>
<tr>
<th>Party</th>
<th>States and Union Territories in which recognised</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Indian National Congress</td>
<td>All States (except Nagaland) and all Union Territories (except Andaman and Nicobar Islands, Chandigarh, Dadra and Nagar Haveli and Laccadive, Minicoy and Amindivi Islands).</td>
</tr>
<tr>
<td>2. Communist Party of India</td>
<td>Andhra Pradesh, Assam, Bihar, Kerala, Madras, Maharashtra, Orissa, Punjab, Rajasthan, West Bengal and Tripura.</td>
</tr>
</tbody>
</table>

2. Ibid, pp. 55-54, Table-9, Govt. publication.
<table>
<thead>
<tr>
<th>Party</th>
<th>States and Union Territories in which recognised</th>
</tr>
</thead>
<tbody>
<tr>
<td>3. Swatantra Party</td>
<td>Andhra Pradesh, Bihar, Gujarat, Madras, Mysore, Orissa, Rajasthan, and Himachal Pradesh</td>
</tr>
<tr>
<td>4. Bharatiya Jan Sangh.</td>
<td>Haryana, Jammu &amp; Kashmir, Madhya Pradesh, Punjab, Rajasthan, Uttar Pradesh, and Delhi</td>
</tr>
<tr>
<td>7. Communist Party of India (Marxist)</td>
<td>Andhra Pradesh, Kerala, West Bengal and Tripura.</td>
</tr>
<tr>
<td>9. All Party Hill Leaders Conference.</td>
<td>Assam</td>
</tr>
<tr>
<td>12. Kerala Congress</td>
<td>Kerala</td>
</tr>
<tr>
<td>13. Muslim League</td>
<td>Kerala</td>
</tr>
<tr>
<td>15. Peasants and Workers Party.</td>
<td>Maharashtra</td>
</tr>
<tr>
<td>Party</td>
<td>States and Union Territories in which recognised</td>
</tr>
<tr>
<td>-------------------------------------------</td>
<td>------------------------------------------------</td>
</tr>
<tr>
<td>16. Naga Nationalist Organisation</td>
<td>Nagaland</td>
</tr>
<tr>
<td>17. Shiromani Akali Dal</td>
<td>Punjab</td>
</tr>
<tr>
<td>(Sant Fateh Singh Group)</td>
<td></td>
</tr>
<tr>
<td>18. Shiromani Akali Dal</td>
<td>Punjab</td>
</tr>
<tr>
<td>(Master Tara Singh Group)</td>
<td></td>
</tr>
<tr>
<td>19. Forward Bloc</td>
<td>West Bengal</td>
</tr>
<tr>
<td>(Sequeira Group)</td>
<td></td>
</tr>
<tr>
<td>22. United Goans</td>
<td>Goa, Daman &amp; Diu.</td>
</tr>
<tr>
<td>(Furtado Group)</td>
<td></td>
</tr>
<tr>
<td>23. Frente Populara</td>
<td>Goa, Daman &amp; Diu.</td>
</tr>
<tr>
<td>24. People's Front</td>
<td>Pondicherry</td>
</tr>
</tbody>
</table>

This large increase in the number of recognised parties from 14 in 1962 (vide Table 5, page 165) to 24 in 1967 is accounted for by the recognition of 8 parties in Jammu & Kashmir, Nagaland, Goa, Daman & Die, and Pondicherry and by the split in the Communist Party and the Akali Dal.

In 1966 the Commission decided to try out another procedure in order to accommodate all the eight multi-state parties, that is to say, parties recognised in two or more States. The symbol allotment notification was revised to ensure that the candidates sponsored by a multi-state party got the party symbol not only in the States where they were recognised but also in any other State. The number of candidates the party proposed to sponsor Parliament and Assembly election should reach the Chief Electoral Officer by 1st January, 1967.

The implementation of this new provision did not give rise to any difficulty except in Uttar Pradesh as regards the Republican Party of India. This party was recognised only in Maharashtra, Punjab and Himachal Pradesh and so far as the commission was aware, the Republican party which was entitled to set up candidates in any other State under the Commission's notification was the one whose president was Shri B.K. Gaikwad and General Secretary was Shri B.D. Khorbragade. When this necessary information was circulated to the Returning Officers in Uttar Pradesh, one Shri Khem Chandra, describing himself as the General Secretary of the Republican Party of India (U.P.), contended that the

party symbol of "elephant" should be given in Uttar Pradesh only to the candidates sponsored by this party of which Shri Rahat Moulaey was said to be the President. Obviously, this party was different from the one recognised all along as the Republican Party of India. It appeared to be the result of a split in the main party, confined perhaps to the State. Shri Rahat Moulaey, however, obtained on January 17, 1967, three days before the last date for nominations at the general elections, from the Delhi High Court a direction quashing the above mentioned instructions by the Commission to the Returning Officers in the State. The Commission immediately withdrew the instructions and informed all the Returning Officers: The inevitable and unfortunate result was that in a number of constituencies the Returning Officers had no guidance and no authoritative information to decide as between two candidates, both of whom claimed to be sponsored by the Republican Party of India and wanted the "elephant" symbol to be allotted to them. In spite of the unresolved dispute, 168 assembly candidates and 24 parliamentary candidates contested the elections with the "elephant" as their symbol in Uttar Pradesh.

Another relaxation made by the Commission in the symbols allotment notification was in regard to
sitting members of the House of the People or of a State Legislative Assembly who wished to contest the same election on the same "free" symbol they had chosen at the previous election. The method of taking out the lot for the allotment of same "free" symbol applied for by two or more candidates, could not be adhered to. An exception was added to this provision that if one of the candidates was a sitting member of the particular House and had contested the previous election on that free symbol, he should be allotted the symbol in preference to any other independent candidate.

An important change was made in the form of nomination paper requiring a party candidate to declare that he was sponsored at the election by a specified political party. The symbol allotment notification made it clear that in order to secure the party symbol, first a candidate should make this declaration in his nomination paper, secondly, a notice in writing to that effect should be delivered to the Returning Officer not later than 3 P.M. on the last date for the withdrawal of candidature, and thirdly this notice should be signed by the president, secretary, or other office bearer of the party, who has been authorised by the party to send such notices.

2. Ibid.
The commission issued on December 20, 1966, a circular to all the recognised parties detailing the procedure for sponsoring candidates as follows:

(i) The party should by January 3, 1967, intimate to the Chief Electoral Officer of each of the States in which it would be setting up candidates, the names of the persons who have been authorised by the party to convey its final decision as to its approved candidates at the elections in that State. Not more than two or three such persons should be authorised for this purpose and wherever more than one person was authorised in the State, the districts or areas assigned to each of them should be clearly mentioned. The authorization should also be specific in regard to parliamentary constituencies and assembly constituencies.

(ii) Facsimile signatures of each of the persons so authorised should be sent by the party to the Chief Electoral Officer and the Returning Officer of each of the constituencies in which it proposed to sponsor candidates.

(iii) Any subsequent changes in the persons so authorized should be similarly intimated to the Chief Electoral Officer and the Returning Officer concerned.

(iv) A complete list of the approved candidates along with the names of the substitute candidates if any, who would be contesting only in the event of the approved candidates' nomination being rejected, should reach the Chief Electoral Officer and the Returning Officers concerned by the last date for nominations in the State. Changes in the list would, however, be permitted up to 3 P.M. on the last date for the withdrawal of candidatures. This list should clearly indicate who is the approved candidate for the constituency and who is the substitute candidate.

(v) Every candidate sponsored by the party, including a substitute candidate, should make a declaration to that effect in his nomination paper.

(vi) If a substitute candidate has been proposed but refuses or fails to withdraw in time, two candidates officially sponsored by the party will remain in the field. Unless the Returning Officer has been definitely informed as to which of them is the approved candidate, he will not be able to allot the party symbol to either of them and will have to allot free symbols to both of them.

The rules provide that the allotment by the Returning Officer of any symbol to a candidate shall be final except where it is inconsistent with the directions issued by the commission in its symbol allotment.
notification, in which case the Election Commission may revise the allotment. Considering the huge number of candidates in the field, complaints about incorrect or improper allotment of symbols were comparatively very few. It was only in 27 cases that the commission found it necessary to revise the order of the Returning Officer.¹

The Commission had initially provided only 6 free symbols for each State but this proved to be insufficient in 10 States and 4 Union Territories. As many as 9 more free symbols had to be added to the lists in Madhya Pradesh and Maharashtra and 10 to the list in Uttar Pradesh.²

All the party symbols and the free symbols initially notified by the Commission are reproduced on the page 491.

On an analysis of the votes polled by the party candidates at the general elections of 1967, it was found that the following parties had secured not less than 4 percent of the valid votes polled (not less than 4 percent of the valid votes polled (not counting the votes polled by those party candidates who had forfeited their deposits) and were accordingly eligible for a reserved symbol in the States and Union Territories as shown in the following Table-7 :³

2. Ibid. p.38, Govt. publication.
3. Ibid. pp.38, Table-10, Govt. publication.
<table>
<thead>
<tr>
<th>Name of Party</th>
<th>States and Union Territories in which recognised</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Indian National Congress</td>
<td>All States (except Nagaland) and all Union Territories (except Goa, Daman and Die and the Laccadive, Minicoy and Minividi Islands.)</td>
</tr>
<tr>
<td>2. Swatantra Party</td>
<td>Andhra Pradesh, Gujarat, Haryana, Madras, Mysore, Orissa, Rajasthan, Chandigarh, and Himachal Pradesh.</td>
</tr>
<tr>
<td>5. Communist Party of India</td>
<td>Andhra Pradesh, Assam, Bihar, Kerala, Maharashtra, Orissa, Punjab, West Bengal, Manipur and Tripura.</td>
</tr>
<tr>
<td>6. Communist Party of India(Marxist)</td>
<td>Andhra Pradesh, Kerala, Madras, West Bengal, Dadra and Nagar Haveli and Tripura.</td>
</tr>
<tr>
<td>7. Praja Socialist Party</td>
<td>Assam, Bihar, Mysore and Orissa.</td>
</tr>
<tr>
<td>8. All Party Hill Leaders' Conference</td>
<td>Assam.</td>
</tr>
<tr>
<td>Name of Party</td>
<td>States and Union Territories in which recognised</td>
</tr>
<tr>
<td>---------------------------------------</td>
<td>--------------------------------------------------</td>
</tr>
<tr>
<td>10. Kerala Congress</td>
<td>Kerala</td>
</tr>
<tr>
<td>11. Muslim League</td>
<td>Kerala</td>
</tr>
<tr>
<td>13. Republican Party</td>
<td>Maharashtra</td>
</tr>
<tr>
<td>14. Peasants and Workers Party</td>
<td>Maharashtra</td>
</tr>
<tr>
<td>15. Janta Paksha</td>
<td>Mysore</td>
</tr>
<tr>
<td>17. Jana Congress</td>
<td>Orissa</td>
</tr>
<tr>
<td>18. Shiromani Akali Dal</td>
<td>Punjab</td>
</tr>
<tr>
<td>(Sant Fateh Singh Group)</td>
<td></td>
</tr>
<tr>
<td>19. Bengal Congress</td>
<td>West Bengal</td>
</tr>
<tr>
<td>20. Forward Bloc</td>
<td>West Bengal</td>
</tr>
<tr>
<td>21. Maharashtrawadi Gomantak Party</td>
<td>Goa, Daman &amp; Diu</td>
</tr>
<tr>
<td>(Sequeira Group)</td>
<td></td>
</tr>
<tr>
<td>22. United Goans</td>
<td>Goa, Daman &amp; Diu</td>
</tr>
<tr>
<td>(Sequeira Group)</td>
<td></td>
</tr>
<tr>
<td>23. Peoples Front</td>
<td>Pondicherry.</td>
</tr>
</tbody>
</table>
A comparison of the Tables 6 and 7 will show that the Swattra Party lost its recognition in Bihar but gained a footing in Haryana and Chandigarh. The Jan Sangh retained its strength in all the States where it was previously recognised and gained electoral support in Maharashtra and Himachal Pradesh. The Samyukta Socialist Party lost recognition in Madhya Pradesh but secured it in Maharashtra and Orissa. The Communist Party of India lost the electoral support it formerly had in Madras to the Communist Party of India (Marxist). The Praja Socialist Party appeared to have lost heavily in Gujarat, Madhya Pradesh and Maharashtra, where it had sufficient electoral support at the previous General elections. As against this loss, it gained recognition in Assam.

The Republican Party of India lost its status as a multi-state party since at the last general elections it had sufficient electoral support only in Maharashtra. Among the single parties, the Akali Dal (Master Group) in Punjab, the Democratic National Conference in Jammu & Kashmir and the Frente Populare and the United Goans (Furtado Group) in Goa, Dam in and DIU failed to obtain sufficient electoral support.

and consequently their recognition was withdrawn.

Three new parties, namely, Janta Congress in Orissa and Bangla Congress in West Bengal, all of which had been established by dissidents from the Congress party came out with sufficient success at the general elections to secure recognition.¹

Symbols for elections in Parliamentary and Assembly Constituencies:

(1) The conduct of Election Rules, 1961, provides that the Election Commission shall, by notification in the Gazette of India and in the Official Gazette of each State, specify the symbols that may be chosen by candidates at elections in parliamentary or assembly constituencies and the restrictions to which their choice shall be subject. This provision brings political parties into the picture in an indirect way; and pursuant to this, the Commission has been specifying certain symbols as "reserved" and certain others as "free"; the former are reserved for candidates duly sponsored by recognised political parties and the latter are available for allotment to other candidates.

(2) Where at any such election, more nomination papers than one are delivered by or on behalf of a candidate, the declaration as to symbols made in the nomination paper first delivered, and no other declaration as to symbols, shall be taken into consideration under rule 10 even if that nomination paper has been rejected.

A political party, in order to be recognised in a State, is required to fulfil either the conditions specified in (A) or the conditions in (B) below:

(A) That such party

(a) has been engaged in political activity for a continuous period of five years; and
(b) has, at the general election in that State to the House of the People or, as the case may be, to the Legislative Assembly, for the time being in existence and functioning, returned

either (i) at least one member to the House of a People for every twenty-five members of that House or any fraction of that number elected from that State;
or (ii) at least one member to the Legislative Assembly of that State for every thirty members of that Assembly or any fraction of that number;
(B) that the total number of valid votes polled by all the contesting candidates set up by such party at the general election in the State to the House of the People, or, as the case may be, to the Legislative Assembly, for the time being in existence and functioning (excluding the valid votes of each such contesting candidate in the constituency as has not been elected and has not polled at least one-twelfth of the total number of valid votes polled by all the contesting candidates in that constituency) is not less than four percent of the total number of valid votes polled by all the contesting candidates at such general election in the State (including the valid votes of those contesting candidates who have forfeited their deposits.)

The condition in Clause (A) (b) shall not be deemed to have been fulfilled by a political party if a member of the House of the People or the Legislative Assembly of the State becomes a member of that political party after his election to that House or, as the case may be, that Assembly.

All candidates belonging to any recognised political party contesting the elections on a multi-State basis will have the same symbol whether for a parliamentary seat or an assembly seat. In cases where political parties confine their election contests

1. Election Symbols (Reservation and Allotment orders, 1968)
2. Para 6(2) of the Election Symbols (Reservation and Allotment) Order, 1968.
to any particular state, symbols are allotted to their candidates on a State basis. Where a political party recognised in more than one State sets up candidates in any other State or Union territory, the party symbol would be allotted also to those candidates.

Some problems are created in the allotment of symbols when there occurs a split in a political party and a dispute consequently arises as to who among the split groups is entitled to the party symbol. The latest case in this connection related to the split in the Congress Party. There were two groups formed, one led by Shri Jagjiwan Ram who continued to be the party in power at the Centre, and the other led by Shri S. Nijalingappa, who after the split, sat in the Opposition in Parliament. Both the groups claimed the symbol "two bullocks with yoke on" allotted to the Indian National Congress. After a detailed inquiry into the claim (including hearing of witnesses and arguments of counsel or interested person on both sides), The Election Commission, applying the test based on the principle of majority, allotted the symbol (two bullocks with yoke on) to the group led by Shri Jagjiwan Ram.

---

1. Shri S. Nijalingappa was the President of the Indian National Congress at the time of the split and continued to be the President of one group.
In holding that for the purposes of the Symbols Order, the group led by Shri Jagjivan Ram is the Indian National Congress for which the symbol (two bullocks with yoke on) has been reserved, the Chief Election Commissioner applied "the highly valuable test, namely the principle of majority". It was his finding that "the group led by Shri Jagjivan Ram has the majority out of the total number of members returned on Congress tickets to the House of Parliament and the majority out of the sum total of the members of all the legislatures returned on Congress tickets, although in the case of some States, the group led by Shri M. J. Akbar has majority in the Legislatures as in the case of Gujarat and Mysore".

An application was filed before the Supreme Court on behalf of the group led by Shri M. J. Akbar against the decision of the Election Commission. After hearing the parties the court ordered that neither party would be entitled, pending the disposal of the appeal, to use, for the purpose of the elections to Parliament and State Legislatures, the symbol of two bullocks with yoke on, which has been reserved for the Indian National Congress and that no effect shall be given to the declaration by the Election Commission that the group led by Shri Jagjivan Ram is the Indian National Congress.

1. The Election Symbols (Reservation and Allotment Order, 1968, Para 15).
The court further held that it would be open to the Election Commission to allot to the two parties separate symbols for the purpose of elections which may take place during the pendency of the appeal.

Consequently on this order, the Election Commission has now allotted the symbol "Charkha being plied by a Women" to the Indian National Congress led by Shri Mijalingappa and the symbol "Calf and cow" to the Indian National Congress led by Shri Jagjivan Ram.

Statistics of Nomination Papers in Uttar Pradesh.

The following Table-8 shows the statistics of the nomination papers during the Second General Elections of 1957, in Uttar Pradesh Legislative Assembly. 1

<table>
<thead>
<tr>
<th>TABLE 8</th>
</tr>
</thead>
</table>

For Contested Seats:

<table>
<thead>
<tr>
<th>Description</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number of seats contested</td>
<td>425</td>
</tr>
<tr>
<td>Total number of seats uncontested</td>
<td>5</td>
</tr>
<tr>
<td>Total number of candidates nominated</td>
<td>2508</td>
</tr>
<tr>
<td>Number of candidates whose nomination papers were rejected</td>
<td>25</td>
</tr>
<tr>
<td>Number of candidates who withdrew</td>
<td>729</td>
</tr>
<tr>
<td>Number of candidates who retired</td>
<td>48</td>
</tr>
<tr>
<td>Number of contesting candidates at poll</td>
<td>1706</td>
</tr>
</tbody>
</table>

For uncontested Election.

Total number of candidates nominated .. 20
Number of candidates whose nominations were rejected .. .. .. 0
Number of candidates withdraw .. .. .. 15
Number of candidates who retired .. .. .. 0
Number of candidates who returned uncontested .. .. .. 5

**TABLE - 9**


<table>
<thead>
<tr>
<th>Name of Party</th>
<th>Number of candidates nominated</th>
<th>No. of candidates contested</th>
<th>No. of candidates tested</th>
<th>No. of candidates rejected or withdrawn</th>
<th>Deposits forfeited</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>(2)</td>
<td>(3)</td>
<td>(4)</td>
<td>(5)</td>
<td>(6)</td>
</tr>
<tr>
<td>Congress</td>
<td>716</td>
<td>286</td>
<td>x</td>
<td>5</td>
<td>281</td>
</tr>
<tr>
<td>P.S.P.</td>
<td>341</td>
<td>78</td>
<td>1</td>
<td>x</td>
<td>44</td>
</tr>
<tr>
<td>Communist</td>
<td>106</td>
<td>15</td>
<td>1</td>
<td>x</td>
<td>9</td>
</tr>
<tr>
<td>Jan Sangh</td>
<td>328</td>
<td>86</td>
<td>7</td>
<td>x</td>
<td>17</td>
</tr>
<tr>
<td>Other Parties</td>
<td>1037</td>
<td>304</td>
<td>39</td>
<td>x</td>
<td>74</td>
</tr>
<tr>
<td>TOTAL</td>
<td>2528</td>
<td>769</td>
<td>48</td>
<td>5</td>
<td>425</td>
</tr>
</tbody>
</table>

The number of candidates who were nominated, for the Third General Elections, 1962, was unexpectedly by large. At the Parliamentary elections, as well as the assembly elections, their number was considerably more than at the general elections of 1957. The number of party candidates, as well as the number of independent candidates, showed an increase. The figures were as follows:

<table>
<thead>
<tr>
<th>Table - 10</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Parliamentary Elections</strong></td>
</tr>
<tr>
<td>1962</td>
</tr>
<tr>
<td>Number of candidates nominated</td>
</tr>
<tr>
<td>Number of nominations rejected</td>
</tr>
<tr>
<td>Number of candidates who withdrew</td>
</tr>
<tr>
<td>Number of candidates returned unopposed</td>
</tr>
<tr>
<td>Number of candidates who retired from contest</td>
</tr>
<tr>
<td>Number of contesting candidates</td>
</tr>
</tbody>
</table>


At the time of General Elections of 1957, there was a provision in the R.P.A. 1951 for the retirement of a candidate from the contest not less than 10 days before the poll. The provision was repealed in 1958 by Parliament on the recommendation of Commission.
The Partywise break up of the number of contesting candidates at the Parliamentary and Assembly Elections in 1962 is given below: ¹

<table>
<thead>
<tr>
<th>Name of Party</th>
<th>Parliamentary Elections</th>
<th>Assembly Elections</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indian National Congress</td>
<td>488</td>
<td>2852</td>
</tr>
<tr>
<td>Bhartiya Jan Sangh</td>
<td>196</td>
<td>1140</td>
</tr>
<tr>
<td>Praja Socialist Party</td>
<td>168</td>
<td>1064</td>
</tr>
<tr>
<td>Swatantra Party</td>
<td>173</td>
<td>1038</td>
</tr>
<tr>
<td>Communist Party of India</td>
<td>137</td>
<td>833</td>
</tr>
<tr>
<td>Socialist Party</td>
<td>107</td>
<td>607</td>
</tr>
<tr>
<td>Other Parties</td>
<td>236</td>
<td>1224</td>
</tr>
<tr>
<td>Independents</td>
<td>480</td>
<td>3838</td>
</tr>
</tbody>
</table>

The number of candidates who were nominated during the general elections of 1967 was 25% more than the number nominated in 1962 and 44% more than the number nominated in 1957. The figures were as follows: ²

### TABLE - 12

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>No. of candidates nominated</td>
<td>➡️</td>
<td>➡️</td>
<td>2281</td>
</tr>
<tr>
<td>No. of nominations rejected</td>
<td>➡️</td>
<td>➡️</td>
<td>44</td>
</tr>
<tr>
<td>No. of candidates who withdrew</td>
<td>➡️</td>
<td>➡️</td>
<td>718</td>
</tr>
<tr>
<td>No. of contesting candidates</td>
<td>➡️</td>
<td>➡️</td>
<td>1519</td>
</tr>
<tr>
<td>No. of Unopposed returns</td>
<td>➡️</td>
<td>➡️</td>
<td>12</td>
</tr>
</tbody>
</table>

### TABLE - 13

<table>
<thead>
<tr>
<th>Assembly Elections</th>
<th>1957</th>
<th>1962</th>
<th>1967</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. of candidates nominated</td>
<td>➡️</td>
<td>➡️</td>
<td>16475</td>
</tr>
<tr>
<td>No. of nominations rejected</td>
<td>➡️</td>
<td>➡️</td>
<td>361</td>
</tr>
<tr>
<td>No. of candidates who withdrew</td>
<td>➡️</td>
<td>➡️</td>
<td>5938</td>
</tr>
<tr>
<td>No. of contesting candidates</td>
<td>➡️</td>
<td>➡️</td>
<td>10176</td>
</tr>
<tr>
<td>No. of Unopposed returns</td>
<td>➡️</td>
<td>➡️</td>
<td>48</td>
</tr>
</tbody>
</table>

The party-wise break-up of the number of contesting candidates at the Parliamentary and Assembly elections in 1962 and 1967 is given in Table-14.

---

### TABLE - 14

<table>
<thead>
<tr>
<th>Name of Party</th>
<th>Number of Candidates at Parliamentary Elections</th>
<th></th>
<th>Number of Candidates at Assembly Elections</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indian National Congress</td>
<td>488</td>
<td>516</td>
<td>2927</td>
</tr>
<tr>
<td>Bhartiya Jan Sangh</td>
<td>196</td>
<td>250</td>
<td>1140</td>
</tr>
<tr>
<td>Swantantra Party</td>
<td>173</td>
<td>179</td>
<td>1038</td>
</tr>
<tr>
<td>Samyukta Socialist Party</td>
<td>107*</td>
<td>122</td>
<td>607*</td>
</tr>
<tr>
<td>Praja Socialist Party</td>
<td>168</td>
<td>109</td>
<td>1070</td>
</tr>
<tr>
<td>Communist Party Of India</td>
<td>137</td>
<td>109</td>
<td>833</td>
</tr>
<tr>
<td>Communist Party of India (Marxist)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Republican Party of India</td>
<td>68</td>
<td>70</td>
<td>123</td>
</tr>
<tr>
<td>Other Parties</td>
<td>168</td>
<td>90</td>
<td>1156</td>
</tr>
<tr>
<td>Independents</td>
<td>480</td>
<td>865</td>
<td>3926</td>
</tr>
</tbody>
</table>

**TOTAL**                        | 1985 | 2369 | 12820 | 16501

---

The candidates according to the parties in 1967 Elections to the House of People (Lok Sabha) in Uttar Pradesh. The three figures in each entry are, in order, the number of candidates sponsored by the party who (1) contested, (2) were elected and (3) forfeited.  


1. India Goes to the Polls, Publication Division, Ministry of Information and Broadcasting, Govt. of India, Figures from Table 3.


<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>38</td>
<td>38-1-32</td>
<td>77-12-22</td>
<td>43-8-19</td>
<td>17-5-9</td>
<td>6-1-5</td>
<td>27-2-19</td>
<td>24-1-16</td>
<td>nil</td>
<td>nil</td>
</tr>
</tbody>
</table>

The number of unopposed returns during the general elections in 1962 was much less than in 1957. Only 3 candidates were elected without contest to the House of the People and 13 to the Legislative Assemblies of States as against 12 and 48, respectively in 1957. All the 16 uncontested candidates belonged to the Indian National Congress. While all the three parliamentary constituencies which sent unopposed returns, were general constituencies, 3 of the assembly constituencies were reserved for the Scheduled Castes, 4 for the Scheduled Tribes and the remaining 6 were general constituencies.¹

The small number of unopposed returns is partly attributable to the fact that the provisions relating to retirement from contest contained in Section 55A of the Representation of the People Act, 1951, had been omitted by the Amending Act of 1958 as recommended by the commission and were therefore not available for candidates in 1962. During the general election in 1957, 4 candidates for Parliament and 9 candidates for three Legislative Assemblies were elected unopposed as a result of such retirement. The commission, however, was of the opinion that the retirement provision was undesirable from several points of view and recommended that it should be repealed by Parliament. Despite the fact that this provision apparently helped in securing a few uncontested returns and in reducing the number of contesting candidates in the field on the date of poll, the commission had no doubt that it was undesirable in principle and rightly repealed by Parliament.\(^1\) In Uttar Pradesh for the House of the People, H.H. Maharaja Manabendra Shah of Tehri Garhwal was the only candidate elected un-opposed in 1962.\(^2\)

In 1967 Elections, there were 515 contested elections to Parliament, and in all except 3 of them, there was a congress candidate. The Jan Sangh put up

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2. Ibid. pp.52, Extract from Table-14.
candidates in nearly one-half, and the Swatantra Party in a little more than one-third, of the constituencies. A noticeable feature was a large increase in the number of independent candidates. Roughly on an average, for every 6 parliamentary constituencies, there were 10 independent, 6 Congress, 3 Jan Sangh and 2 Swatantra candidates and 6 candidates sponsored by the political parties.¹

The plethora of the party and non-party candidates was equally noticeable at the assembly elections. The average number of candidates at a contested election was 4.8. The average was 7.1 in Uttar Pradesh. The number of constituencies in which there were 8 or more contesting candidates was particularly large in Uttar Pradesh (158 out of 425).²

Five candidates were elected without contest to the House of the People as against 3 in the general elections of 1962. Four of them belonged to the Congress and the fifth to the Naga Nationalist Organisation.³

Multiple Elections.

The constitution provides that no person shall be a member of both Houses of Parliament. It requires Parliament to make provision by law for the vacation by a person who is chosen a member of both Houses of his seat in one House or the other.⁴

Parliament has provided by law that if a person is elected to both Houses of Parliament but has not taken his seat in either House, he should intimate of which of the Houses he wishes to be a member. This intimation must be given by a notice in writing signed by him and delivered to the Secretary to the Election Commission within ten days from the date, or the later of the dates, of such election. His seat in the other House thereupon becomes vacant. If no such intimation is given, his seat in the Rajya Sabha (Council of States) automatically becomes vacant on the expiry of the tenth day. A choice once made in this regard is final and irrevocable.\(^1\)

The date of election of a person to a House of Parliament or of the Legislature of a State is the date on which he was declared elected by the Returning Officer.\(^2\)

If a person who is already a member of the Lok Sabha and has taken his seat in that House is elected to the Rajya Sabha his seat in the Lok Sabha becomes vacant on the date of such election.

If a person who is already a member of the Rajya Sabha and has taken his seat in the House is elected to the Lok Sabha, his seat in the Rajya Sabha becomes vacant on the date of such election.\(^3\)

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2. S.67A, R.P. Act, 1951
If a person is elected to more than one seat in the Lok Sabha or in the same House of Legislature of a State, he is required by Law to resign all but one of such seats within fourteen days from the date of such election. If the dates of his election are different in respect of different seats, he has to tender such resignation within fourteen days from the last of those dates. The resignation must be in writing under his signature and addressed to the Speaker or the Chairman of the House concerned; or, where these offices are vacant, to the Deputy Speaker or the Deputy Chairman of the House, or where these offices also are vacant, to the Election Commission. If he fails to tender such resignation in time, all the seats to which he has been elected will become vacant.

A person cannot simultaneously be a member of Parliament as well as of a House of a State Legislature. If he has been elected both to Parliament and to the Legislature of a State, he is required to resign one of his seats within fourteen days from the date of publication in the Gazette of the State, whichever is later, of the declaration that he has been so elected. If he fails to do so, his seat in Parliament becomes vacant.

A person cannot be a member of both House of the Legislature of a State. If he is elected to both the Houses, he is required to resign his seat in one of the House in the manner laid down by law enacted by the State Legislature. 1

A person cannot simultaneous be a member of the Legislatures of two or more State. If he is elected to the Legislatures of two or more States, he is required to resign his seats in the Legislatures of all the States but one within ten days from the later or the latest of the dates of publication in the official Gazette of such States of the declarations of his election. If he fails to do so, all his seats will become vacant. 2

The member returned by the Kakrajhar (Assam) constituency without opposition lost his seat by an unfortunate failure on his part to appreciate an intricacy of the election law. The Returning Officer for the constituency on January 23, declared Shri Rupnath Brahma to be duly elected under Section 53(2) of the Representation of the People Act, 1951 and this declaration was published by the Central Government on February 10 in the Gazette of India as required by Section 66 of the Act.

1. Art 190(1).

2. Art 190(2) s.3, Prohibition of Simultaneous Membership Rules, 1950.
Shri R. Brahma was at that time a member of the Assam Legislative Assembly which was only dissolved on March 1.

Now, rule 3 of the Prohibition of Simultaneous Membership Rules made by the President under Article 101(2) and 190(2) of the Constitution provide that "the seat of a person who is chosen a member of the Legislatures of two or more States specified in the First Schedule to the Constitution in the Legislatures of all such States shall become vacant, unless he has previously resigned his seat in the Legislatures of all but one of the States, shall be ten days from the later or, as the case may be, the latest of the dates of publication in the Official Gazettes of such States of the declarations that he has been so chosen". Shri R. Brahma was apparently under the erroneous impression that this rule did not apply in his case since he was not standing for re-election to the Legislative Assembly. He consequently did not resign his membership of the then existing Assembly within the prescribed period of 14 days counting from result that his seat in the House of February 10 with the/People became vacant on February 24.

These facts came to the light only after the new House met when the Lok Sabha Secretariat were checking the credentials of new members. It was most unfortunate
that owing to an entirely technical lapse on his part Shri R. Brahma could not take his seat in the House. A bye-election had to be held in the constituency on July 30 at which Shri R. Brahma was again successful although this time after a contest. \(^1\)

**Returning Officer and the Procedure in Contested and Uncontested elections.**

(1) If the number of contesting candidates is more than the number of the seats to be filled, a poll shall be taken. \(^2\)

(2) If the number of such candidates is equal to the number of seats to be filled, the Returning Officer shall forthwith declare all such candidates to be duly elected to fill those seats. \(^3\)

(3) If the number of such candidates is less than the number of seats to be filled, the Returning Officer shall forthwith declare all such candidates to be elected and the Election Commission shall, by notification in the Official Gazette, call upon the constituency or the elected members of the electoral college concerned, as the case may be, to elect a person or persons to fill the remaining seat or seats. \(^4\)

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3. Section 53(2) Ibid.
4. Section 53(3) Ibid.
If, as a result of the subsequent requirement of any candidate from the contest under section 55A of the R.P.A. 1951, the number of the remaining contesting candidates becomes equal to the number of seats to be filled, the Returning Officer shall declare all such candidates to have been duly elected to fill the seats.¹

In a two member constituency unopposed returns would not necessarily be automatic merely because the number of contesting candidates equals the number of seats to be filled.²

**Alternative Cases in Two-member Constituencies.**

The following are the alternatives which cover all possible contingencies in this regard.³

(a) "If, there is only one contesting candidate or only one remains after retirements in a single-member constituency or in a two-member constituency at the election in which one seat only is to be filled, that candidate is declared elected.

(b) If, in a two member constituency, both seats are to be filled at the election, but there is only one contesting candidate, or only one candidate

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3. Ibid.
remains after retirements, that candidate is declared elected to the reserved seat if he is a member of the Scheduled Caste or Schedule Tribe, as the case may be, for whom one of the seats has been reserved. Otherwise, he is declared elected to the un-reserved seat. In either case, a fresh election has to be held for filling the seat left unfilled.

(c) If, in a two member constituency, both seats are to be filled at the election and there are only two contesting candidates or only two remain after retirement, they are both declared elected provided at least one of them belongs to the Scheduled Caste or Scheduled Tribe, as the case may be, for whom one of the seats has been reserved.

If both the remaining candidates belong to the Scheduled Caste or Tribe, as the case may be, it is decided by lot which of them is to be declared elected at the reserve seat. The other candidate is then declared elected to the un-reserved seat.

If neither of the two remaining candidates belong to the Scheduled Castes or Tribes, as the case may be, the election is a contested one, and poll must be taken for electing one of them to the unreserved seat. The reserve seat is left unfilled and a fresh election has to be held for filling it.
Returning Officer and Retirement of Candidates.

Section 55A of R.P.A. 1951 provides for the candidates in election to retire from the election contest. The maximum time allowed by the law for the candidate to retire from the election contest is upto ten days before the date of commencement of the poll. But under the un-amended Act, a contesting candidate has no such right to retire. According to amended Act the contesting candidate has right to retire from the contest on any day not later than ten days before the date of poll in the constituency, or in case there are more than one polling days in the constituency, not later than ten days before the first of the dates fixed for the poll.

A notice on the prescribed form, requesting the Returning Officer to be allowed to retire from the contest, is to be given to the Returning Officer or any Assistant Returning Officer by the candidate between the hours 11 A.M. and 3 P.M. on any day within the prescribed time limit. According to the law the notice of retirement can be given by the candidate himself or by his agent.

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2. Ibid.
authorised by him to the Returning Officer or any Assistant Returning Officer.

The notice of retirement is invalid and is of no effect if:

1. "It has not been delivered less than ten days before the commencement of the poll; or
2. it has not been signed by the candidate himself; or
3. it has not been delivered to any person other than the Returning Officer or any of the Assistant Returning Officer; or
4. it has been delivered at any hour other than between 11 A.M. and 3 A.M. or any day; or
5. it has not been delivered by the candidate in person or by his agent duly authorised in writing to do so."

It becomes the duty of the Returning Officer to make the publicity of the validly retiring candidate by:

(a) "affixing a copy of the notice to the notice board in his office,
(b) supplying a copy of the notice to each of the remaining contesting candidates or his election agent, and

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2. Ibid, pp. 132-133, Govt. pub.
(c) publishing the notice in the official Gazette."

The number of retiring candidates from the Legislative Assembly in Uttar Pradesh was forty-eight in the General Election of 1957.¹

Withdrawal.

A candidate may withdraw from election by a notice in writing delivered to the Returning Officer before 3 P.M. on the last day fixed for the purpose. The notice must be signed by the candidate and delivered either personally by the candidate or by his proposer or by his election agent authorised in this behalf in writing by the candidate. A notice of withdrawal once given will not be allowed to be cancelled.²

List of Contesting candidates.

Immediately after the time for withdrawal, the Returning Officer publishes a list of all the contesting candidates in a constituency. The names in the list are arranged in the alphabetical order.

Uncontested election.

If there is only one duly nominated candidate, the election will be an un-contested one and the Returning Officer will declare that candidate elected immediately after the expiry of the time for the withdrawal of the candidature.³

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² S. 37, R.P. Act, 1951.
³ S. 53, Ibid.
Returning Officer and Scheme of Polling Stations.

The Returning Officer with the approval of the Election Commission, provides polling stations in each and every constituency. While making the final decision on the list of polling stations for the constituencies the Returning Officer takes into consideration the advice tendered by the political parties and the local Members of the Legislature. This naturally resulted in much fewer complaints during second general elections as compared to the first general elections, 1951-52.

Returning Officer and the appointments.

Presiding Officer for each polling stations are appointed by the Returning Officers. The Presiding Officer, according to law is entrusted with the task of general superintendence and control of all polls at the polling stations without any partiality. While appointing a Presiding Officer, the Returning Officer must take into account the administrative capacity, understanding at law points, good social standing, good reputation of integrity, and the confidence of the public at large. Further the Returning Officer appoints Polling Officers to assist the Presiding Officers at

2. Section 26 of the R.P.A. 1951.
every polling stations. The Presiding Officer is empowered, in the absence of the Polling Officer of the Polling station, to appoint any other officer present there as the Polling Officer during absent period of the former and inform the Returning Officer accordingly. Polling clerks are also appointed by the Returning Officers. These polling clerks are to perform the duties like, issuing of identity slips, ballot papers, marking indelible ink and other functions and duties as directed by the Polling Officers at the Polling Stations.

**Returning Officer and Counting of Votes and Declaration of Results.**

During the first general elections the Returning Officer was authorised by law to count the votes. There was no body to assist him with the result great delay was caused. This short-coming was realised and a suitable amendment was made in the law and accordingly, all the Assistant Returning Officers were given the power to share with the Returning Officer in counting during the second General Elections. The votes polled at each constituency are counted by, or under the supervision and direction, of the Returning Officer. He is assisted in this by counting assistants who are appointed by him. No person who had

2. Ibid.
been employed by, or on behalf of, or was otherwise working for, a candidate in or about the election shall be appointed as a counting assistant.\(^1\)

The candidate, his election agent and his counting agents have the right to be present at the counting.\(^2\)

The Returning Officer will give notice in writing at least one week before the date of poll, of the date, time and place of counting to each candidate or his election agent.\(^3\)

**Recording of result**

After the completion of the counting the total number of votes polled by each candidate is recorded in a result sheet (in the prescribed form) and is also announced to those present at the counting.\(^4\)

**Declaration of result.**

When the counting of the votes is finally completed and the Returning Officer has completed and signed the result sheet, he will forthwith declare the candidate who has obtained the largest number of valid votes to be duly elected.\(^5\)

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2. Section 64, R.P. Act, 1951.
Certificate of election.

The Returning Officer will give to every elected candidate a certificate of election. This certificate may be produced before the Secretary of the Lok Sabha or the Secretary of the State Legislative Assembly, as the case may be, of which the candidate is elected a member for the purpose of identification. ¹

Publication of results in Gazette.

The declaration by the Returning Officer of the election of every candidate is published in the Gazette. The Election Commission will publish in the Gazette of India and, as the case may be, in the State Gazettes, consolidated notifications containing the names of all persons elected to the Lok Sabha and to the State Legislative Assemblies. Upon the issue of such notifications, the Lok Sabha and the State Legislative Assemblies are deemed to be duly constituted. ²

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2. Section 73, R.P. Act, 1951.