

**POLITICAL FINANCING
AND
ELECTORAL REFORMS IN INDIA**

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MASTER OF PHILOSOPHY

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C E R T I F I C A T E

Certified that the dissertation entitled "POLITICAL FINANCING AND ELECTORAL REFORMS IN INDIA" submitted by PRIY RANJAN SINHA is an original work and has not been previously submitted for any degree at this or any other University.

We recommend that this dissertation be presented before the examiners for consideration of the degree of Master of Philosophy.

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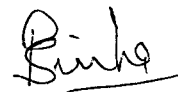
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INTRODUCTION

The adoption of the democratic form of government after independence, was the realization of the ideals and aspirations of the millions who participated in the struggle for independence from colonial rule. It was the beginning of a new era, characterized by a high sense of optimism and confidence. New goals of democracy, socialism and secularism, were set up and institutional arrangements were made for the realization of these goals. The political scene during 50's was marked by this idealistic nature of every thing.

But soon this idealist atmosphere proved to be a utopia. The real politics was based on the twin pillars of opportunism and scramble for power. For a political party survival and the conquest of power became the sole consideration, which compelled it to make use of the advantages, mostly unfair, generated by the lop sided socio-economic structure. Thus, emerged a tread in which the Money factor is intimately involved with the rising or falling fortunes of political parties. The relationship between money and politics is governed by the principles of bargaining where the self-interests of the contracting parties play the upper most role. This situation leads to

the subversion of government to the economic interests of the investors. Here the proverb 'who pays the piper call the tune' is realised. As Mr. S. L. Shakhdar put it:

The functioning and working of political parties may become eroded and influenced by outside interests, thereby creating captive polities. It creates a tendency among the candidates and parties to subvert the interests of those who wield money power and are prepared to pay any price for shaping the policies of the government to serve their vested interest.(1)

This is one aspect of the picture which explains the phenomenon of captive polities. The other aspect of the picture is the electoral aspect of democracy. Election is closely related to democracy. It is the election which decides who is going to govern the country for five years. At this stage, compromises of interests and equations of relationships, are made. Thus, the give and take relationship starts at this stage, which dominates the scene in post election period. In this sense, election may be said to be the starting point of distortions in the democratic structure. The situation is that:

1. Shakhdar, S.L., "framework for electoral reforms" Mainstream, 11 Oct., 1980, p. 12.

Electioneering has tended to become in itself a big business. Candidates and political parties with access to big money seek to acquire an advantage over the rivals not so well placed. This has contributed in no small measure towards curbing and distorting the expression of popular will and vitiating the democratic process.(2)

Thus, the flow of money in politics weakens democracy at its very root. Its role at the time of election is significant in two senses. On the one hand, the chances of persons having meager resources, to win the election and represent the will of the people sincerely, are small, while on the other hand, parties are bound to serve the interests of the investors as their money plays an important role in winning the election.

Thus, electoral arrangements create a situation which have their repercussions on politics at a later stage. The policies and activities of the party in power are guided by the interests of the few at the cost of the interests of the many. Politics becomes the hand maid of the few. The very spirit of democracy: government of the people, by the people and for the people, gets murdered.

2. "Poll. financing" Editorial in Indian Express (New Delhi), 23rd Feb. 1977.

Against this back grand, this work is a modest attempt to analyse the various aspects of democratic distortions at the level of electoral politics, because compromises between different interests and equations of relations made before or at the time of election play a significant and often decisive role in policy-making by the party in power. It involves three aspects of crucial importance. The donation to political parties, the expences during election and various corrupt practices, prevalent at the time of election. All there three tend to give advantage, mostly unfair, to the party in power at the cost of other political parties, a situation which is contradictory to the spirit of democracy, based on giving equal access to every one, irrespective of the resources at one's command. This is just a beginning where the discriminating tendencies originate. The situation becomes more complex when after election the party in power, functions with the motivation of personal-interest as its objective of getting another term in the next elections becomes the guiding principle. As a result, efforts are made in order to fulfill the promises made at the time of election. In this process, all other interests except the personal interests are sacrificed. This vitiates the very spirit of democracy.

This dissertation contains three section in order to maintain clarity in the course of the analysis. It is important, at first, to define the nature of the subject under study. The first section is an effort in this direction. It attempts to point out the problems inherent in political financing. This involves the question of the role of money in politics, how it plays a decisive role in shaping the functioning of democracy in India'. The answer to this question has been given with the help of the views of election commission and the judicial pronouncements made from time to time.

After the statement of the problem it becomes necessary to know whether any effort has been made to control it and if efforts have been made, to what extent success has been achieved? Section two attempts to provide some answer to these questions. It deals with the evolution of the statutory position from time to time. The section contains three chapters which cover the various aspects of election. Chapter three deals with the legal provisions relating to money factor in election. This is directly related to the financing of political parties and increasing cost of the election, which diminishes the chances of persons or parties having meager resources to win the elections. Besides money factor, various corrupt practices are also prevalent at the

time of election. They cover the area within the easy access of the party in power. Misuse of government machinery and various unfair means give an advantageous position to the ruling party in comparison with other political parties. The legal provisions relating to this have been analysed in chapter four. Chapter five deals with a different aspect: the codes of conduct issued by the Election commission from time to time. It is a sort of direction and instructions to the political parties. It covers everything related to election. But there is no legal sanction behind it. So in this sense it is merely in the nature of appeal to political parties.

In the second section, an attempt has been made to analyse the legal provisions from different perspectives and to find out the actual nature of these provisions and their limitations. The limitation gives an indication of the incapability of the provisions to cope with the existing realities. Once again the problems are raised. But this section differs from section one in one sense. While in section one, problems raised are in the nature of general observations by Election commission and Judicial pronouncements, the problems raised in this section are specific and analysed from legal point of view. Thus, the technical nature of the problems are dealt in this section.

The section three is entirely different in nature from other two sections. While section one and two deals with the problematic part of the subject, this final section is concerned with an entirely different issue - the question of reforms. It is a much debated subject, various proposals for electoral reforms have come out from time to time from different sources. In order to bring a sort of systematization, the section contains two chapters. While chapter six deals with the proposals given Official commissions - Election Commission and Law Commission, the chapter seven attempts to cover other proposals. Further, only those aspects of electoral reforms have been given attention which tend to reduce the role of Money at the time of election and free politics from the control of big money.

PART I

PROBLEMS AND ISSUES

The successful functioning of democracy, depends, to a great extent, on free and fair election because this is the time when political recruitment is made. If a person or association gets unfair advantages over others at the time of election, the spirit of democracy cannot survive for long. The distortions at this level have a tendency to create a situation where there is every chance for politics to become the hand-maid of the few. In this situation, it becomes very easy for persons or parties to have a seat in the parliament, while the persons or parties having meagre resources find themselves in a handicapped position. As a result, the interest of the small man is not properly reflected in parliament. This has a wider implication in the sense that the policies of the party in power, are bound to be coloured by the interests of the few.

Various practices work at the time of election and distort the democratic fabric of the policy. Money power and the misuse of authority, are most important among such practices. They separated by a very thin line are interrelated and together have a far reaching repercussions on electoral verdict. From time to time concerns were expressed over these practices from different quarters and their disastrous role has been clearly recognized.

The present section attempts to analyse the various aspects of these practices and to find out the problems and issues related to these practices. The section contains two chapters. The first is concerned with the view expressed by Election Commission from time to time, while section two deals with judicial pronouncements.

Chapter: 1

ELECTION COMMISSION'S VIEWS

In order to ensure free and fair elections of the representatives of the people at all levels, an independent Election Commission was set up under Article 324 of the Constitution which tells about the works of Election Commission as:

The superintendence, direction and control of the electoral rolls for, and the conduct of all elections to parliament and to the legislature of every state and of elections to the offices of president and vice-president held under this Constitution, including the appointment of election tribunals for the decision of the doubts and disputes arising out of or in connection with elections to parliament and to the legislatures of the state.(1)

Thus, Election Commission has a great responsibility of ensuring a free and fair election. It is an important job because Elections are vital parts of democracy and facilitate the transfer of the government and power smoothly without any sort of violence. The spirit of democracy -- the government of the people, by the people and for the people - - depends to a great extent on the nature of the working of Election Commission. If the Election Commission fails to

1. India, Ministry of Law, Justice and Company Affairs, Manual of Election Law (New Delhi, GOI Press, 1984), p.12

achieve its purpose, that is the conduct of free and fair election, there is every possibility of democratic fabric to become distorted.

Election Commission has another important role to play besides the conduct of free and fair election. After every general election, the Commission publishes an elaborate report on various aspects of election. The report usually contains two parts: statistical and narrative. While the statistical part deals with the factual aspect of election, the narrative part makes an analytical study of these facts. Although there is no provision in law requiring preparation of a report on the elections, it has become a practice, a sort of convention which is very difficult to break. In this role, the Commission acts as expert and gives advice to government on various aspects of election. So these two roles when combined give a sort of importance to Election Commission making it a vital part of the democratic fabric.

The Commission expressed its satisfaction over the conduct of the first general election, 1952. The reason behind this was probably that the election on adult franchise was a new experiment and the whole affair was seen with and a high sense of optimism. In its report, the Election Commission observed that:

The successful completion of the general elections in India can be said to constitute an important land mark in the history of democracy. Never before has such a vast electorate gone to the polls. The future of the democratic way of life in India depended very largely on the success of the experiment as also. On the extent to which these elections could evoke public enthusiasm and satisfaction. Unless elections are free and fair, public faith in the verdict of the ballot box necessarily suffers and to that extent there is a failure of democracy. Looking back on what has been achieved during the first general elections in India, it can be confidently claimed that the elections were free and fair.(2)

Despite this optimism and a great sense of satisfaction, the Commission pointed out a lacuna in the legal provisions relating to return of election expenses in the sense that the failure to lodge a return of election expenses has not been made a corrupt practice or a illegal practice. This gives a wider scope to the defaulter to escape from the restriction of legal provisions. Despite this, the atmosphere during first general election was ideal one conducive to democratic spirit.

But the whole atmosphere of satisfaction and optimism changed for worse in 1957 when second general election was held. The germs of real politics emerged on the surface and started to play their role at the time of election. The

2. India, Election Commission, Report on the First General Elections in India, 1951-52 (New Delhi, GOI, press, 1955), p.208.

1956 amendments to the Representation of the people Act, 1951, contributed to this trend. The Election Commission in its report observed that: The amendments to the Representation of the People Act made in 1956 insofar as the account of election expenses is concerned have rendered the entire scheme of the act on this subject practically nugatory. Too many loopholes have been left in the law with the result that a candidate can easily evade the objectives of the law if he is so inclined.³

Thus, the incapability of the legal provisions to check the flow of money at the time of election was recognized by the Election Commission as early as 1957. Two defects in legal provisions were recognized by the Election Commission: the limiting of the period of accounting to the interval between the date of the publication of the notification calling for the election and the date of the declaration of the result; and exclusion of the expenses incurred by political parties and other associations from the account of the candidate. These two defects gave a free-hand to a candidate to spend as much as he can without any breach of law. The limitation of the legal provisions to effectively check the expenses at the time of election was clearly exposed. The system of

3. India, Election Commission, Report on Second General Election India, 1957 (New Delhi, GOI Press, 1958), p.187.

filing of the return of election expenses proved to be a failure. The purpose which it intended to pursue seemed to be lost. This was made clear by Election Commission:

The insistence on all candidates maintaining and rendering proper accounts of their election expenses is, after all, only the means to an end and not an end in itself. Actually, the legal bar against candidates spending more than the prescribed limit has an object in view, that of discounting the unfair advantage which candidates with ample financial resources at their command would otherwise enjoy. (4)

However, the actual nature of the situation was realized by Election Commission when in the same report it further stated that:

Although it is agreed on all hands that the heavy expenditure now incurred by parties and candidates on their election campaign is most undesirable, it is not easy to find practical effective and generally acceptable methods which would make them spend less.⁵

Thus, it manifested a mood of despair and helplessness on the part of the Election Commission to deal with the situation effectively. The flow of money at the time of election intensified day by day in the lack of effective legal provisions. It created a sort of unquality at the

4. India, Election Commission, Report on the Third General Elections in India (New Delhi, GOI, press, 1965), p.121.

5. Ibid., p.121.

level of political recruitment. The persons with moderate means have a very little chance of success in the electoral contest, where affluent persons definitely enjoy an advantageous position. In this situation, it is very easy for few persons to control the political process by getting seats in the parliament. The irony is that in this situation, the position of Election Commission is merely that of passive watcher. But there was hope against hope. Taking a different line after seeing the incapability of the legal provisions to control the situation, the Election Commission observed:

Mere law is not enough. The two safeguards on which democracy must rely are law and opinion. Therefore, in addition to the proposals for amending the law, public opinion also must have to be aroused and awakened.(6)

It was altogether a new approach in the sense that mobilization of opinion rather any sort of legal restriction was thought to be more effective and farreaching in repercussions. It was the realization of the growing consciousness among the people. The assumption behind this approach was that in a democracy the fear of public opinion is more effective in preventing a person from committing any political crime and not sticking to the values of the society. It was an ideal and novel way to deal with the harsh realities of the political life.

6. India, Election Commission, Report on Mid-term General Elections in India, 1968-69 (New Delhi, GOI press, 1970), p.152

In the background of the incapability of the legal provisions to effectively deal with the situation, suggestions have been made from different quarters to scrape the legal provisions relating to election expenses as they fail to serve any purpose and remain merely as decorative pieces. The stand of the Election Commission on this approach was very clear. There was a dangerous element inherent in this approach as the Election Commission observed:

The scrapping of legal provisions from the election law, will be a very dangerous thing and will wide open the flood gates of corruption and spell disaster for democracy in this country. It will have an effect of driving out every candidate with meagre or moderate means from the election arena. That should never hapen in a democracy.(7)

This view of Election Commission was correct in all respects. The scrapping of the legal provision is not goving to serve any purpose. Actually, in the lack of any provision having legal sanction, a free hard will be given to affluent persons to spend as much as possible at the time of election. In this situation, persons with moderate means are bound to suffer. There is every possibility of

7. India, Election Commission, Report on the Fifth General Elections in India, 1971-72 (New Delhi, GOI press,1975), p.181.

the whole game of money power at the time of election to become open. The existence of legal provisions at least serve a purpose. They have tendency to influence the people psychologically. It is very difficult for a person to think of breaking any law, though exceptions are also there. But generally, the people are law-abiding. So the presence of the legal provisions have the tendency to make the whole game secret and beneath the surface, which might have been quite open in the lack of any provision.

In the background of the recognition of the role of money power at time of election, Election Commission talked about a different thing, a sort of innovation. As it is difficult to lessen the increasing and decisive role of money power at the time of election, why the parties and persons with moderate means should suffer at the hands of the resourceful and affluent political parties and persons? The answer to this problem was found in a device known commonly as the 'state funding of elections'. In this regard, the Election Commission observed:

The law relating to election expenses has been designed with a view to curbing the influence of money power on elections and to ensure that even a candidate with moderate means could contest in election with a fair chance of success at the poll. But in actual working elections have become an expensive affair and beyond the reach of an ordinary man. That is why a growing demand is being made that the government should bear a

part of the election expenses of candidates from out of the public exchaquer. The Commission endorsed the above demand.(8)

It is a good approach to remove the inequal chances of success at the time of election. The money power plays an important role at the time of election, though some other factors also play equally important and some time decisive role at the time of election. But it cannot be denied that the money power can and in fact does influence the cause of election. In this situation, the persons with moderate means are bound to suffer. The system of state funding by giving some amount of money or facilities to the eligible candidates makes an attempt to reduce the inequalities at the time of election. From time to time, Election Commission has reiterates its views on this but nothing concrete has been achieved so far.

Money power is only one aspect of picture. The picture is complete only when other factors such as the concept practices and misuse of government machinery are taken into consideration. These practices too have a far reaching repercussions. They are complimentary to money power. Election Commission is also conscious of the roles which

8. India, Election Commission, Report on the General Elections to the House of the People and the Legislative Assemblies, 1979-80 and Vice-Presidential Election 1971, (Jaipur, GOI press, 1980) p.159.

these can play at the time of election. It was realised by the Commission that these may prove an obstacle in the smooth functioning of democracy. But nothing much can be done as the Commission observed:

The law has provided ample safeguards against evil and corrupt practices. But parties and candidates and their agents sometimes do not hesitate to indulge in them in disregard of the law. If men are set on wrong doing, no law, no court, no police, no election commission or no election machinery can stop them from doing so.(9)

Actually, it is very difficult to control the corrupt practices at the time of election because of the impossibility of proving such practices at a later stage. If one is inclined to indulge in such practices, the legal restrictions are of no use and a totally different approach - appeal to the conscience of the people - is inevitable.

The situation regarding the misuse of the government machinery by the party in power is more pathetic. The entire law on the aspect of abuse of government machinery is inadequate. Election Commission has made an effort to control the situation by the issue of the model code of conduct from time to time. But the lack of any legal sanction behind them makes the whole issue useless. As the Commission observed:

9. India, Election Commission, Report on the Fifth General Elections in India, 1971-72 (New Delhi, GOI press) 1972), p.192.

The violation of the provisions of the model code should be treated as a corrupt practice. Some of the items as envisaged in the model code of conduct may be incorporated as corrupt practices or electoral offences in the Representation of the People Act, 1971. (10)

In fact, the whole scene as the Election Commission observes is far from satisfactory. The menace of the money power and corrupt practices at the time of election, is on the increase, which gives a severe blow to the democratic fabric of the Indian polity. Some sorts of the major changes in the statutory position are the needs and the demands of the situation.

10. India, Election Commission, Second Annual Report for 1984 (New Delhi, GOI press, 1984) p.43.

CHAPTER : 2

JUDICIAL PRONOUNCEMENTS

The independent judiciary is an important aspect of the democratic frame-work. It controls the executive from taking a dictatorial attitude. As a guardian of the constitution, it keeps a sort of vigilant attitude over the functioning of the executive as well as legislators, and intervenes at a time when there is a danger to the basic structure of the constitution. The judiciary also deals with the question of election.

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The Constitution vested the jurisdiction to settle election disputes in Election Commission which exercises it through ad hoc tribunals. The Constitution expressly interdicted the courts for tampering with electoral matters. But once the proceedings are instituted by presenting a petition, the high court is competent to issue writs of certiorari against the respondents by virtue of its supervisory power. The courts have superintending and supervisory jurisdiction. The S. 105 of the Representation of the People Act, 1951, says:

Every order of the tribunal made under this Act, shall be final and conclusive do not oust jurisdiction of the court to issue appropriate writs.(11)

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11. India, Ministry of Law, Justice and Company Affairs, Manual Election Law, (GOI Press, 1984), N.D., p. 122.

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Thus the courts deal with election petitions which cover the various aspects of electioneering. The judicial pronouncements from time to time express the views of an expert or specialist on the subject. It is an observation from technical point of view, though a broader perspective or to be precise the analysis of the cases in a broader context may also be found.

Election petitions usually revolve around the charge of corrupt practices that the candidates have faced. An analysis of the judicial pronouncements in this connection provides a clear insight of the various aspects of this phenomenon. In one case, the Supreme Court observed:

"An allegation of corrupt practice must be proved as strictly as a criminal charge and the principle of preponderance of probabilities would not apply into corrupt practices envisaged by the act because if this test is not applied a very serious prejudice would be caused to the elected candidate who may be disqualified for a period of six years from fighting any election which will adversely affect the electoral process."(12)

Thus, a sort of technical perfection is needed in an election petition and a thorough observation of the subject is expected from the court. This creates a problem. It is not an easy job to prove a charge of the corrupt practice.

12. AIR 1984 SC 1161.

It is almost next to impossible. So in order to provide a legal safeguards to a person, this judgement, though without any intention, gives a wide scope to defaulter to escape from the legal restrictions. As a result, the basic cause is sacrificed for the sake of legality.

There is another aspect of the subject which is related with the conduct of ministers during or immediately before the election. There is always a danger of the announcement of some favourable policies or some acts of relief measures with a view to influence the people in favour of a particular party or candidate. It is grave danger to the very spirit of the democracy. In this situation, the parties in opposition are bound to suffer at the hands of the party in power at the time of election. The position of the judiciary in this regard is not very satisfactory. In its judgement, the Supreme Court observed that:

"Where a person sanctioned certain payments as a minister before he was a candidate at the election in question, for the purpose of gaining popularity in certain villages, with an eye to his ultimate candidature from the constituency which included those villages it cannot be said that his action amounted to gift, offer or promise by him as a candidate at the election in question so as to amount to the corrupt practice of bribery under CP 91) of Section 123 of the Act."(13)

This observation of the Supreme Court is favourable to party in power. It is always possible for a person in power

13. AIR 1980 SC 701

to use his position in order to influence the election by making policy announcement or declaration of some relief measures before his nomination. It popularizes the idea of constituency development programme in the ruling circle and creates for opposition a disadvantageous position. Though it is usually accepted that in the background of the growing consciousness among the people, it is not possible to buy a vote by giving any facility, yet it cannot be denied that it is not a healthy sign and distorts the very spirit of the democracy.

Similarly, on the ground of providing a sort of technical perfection, the whole scheme of filing of returns of election expenses, too, have suffered a set back. In one case the Supreme Court observed:

"It is not sufficient for the petitioner to prove merely that the expenditure more than the prescribed limit had been incurred in connection with the election, he must go further and prove that the excess expenditure was incurred with the consent or under the authority of the returned candidate or his election agent.(14)

This observation creates a problem for the person who makes a complaint against the expenditure incurred in the excess of the prescribed limit. It is not easy to prove that a particular expenditure is incurred with the consent

14. Shivalal, Supreme Court on Elections, New Delhi Election Archives (ND), 1973, p.135.

of the candidate or his election agent. If it is not proved, the complaint has no meaning and the defaulter has every chance of escape. It cannot be denied that this approach safeguards a person from harassments at the hands of his opponents, but at the same time, it creates a situation where serious and right complaints may be rejected in the lack of a solid proof being capable of satisfying the legal niceties.

Regarding the exclusion of the expenses incurred by political parties and associations in connection with the election of a candidate, from the return of election expenses of that candidate, the Supreme Court very rightly observed that:

"The limit on the expenditure cannot be evaded by the candidate by not spending any money of his own but leaving it to the political party or his friends and supporters to spend an amount far in excess of the limit. The object of the provision limiting the expenditure is two fold: Firstly, it should be open to any candidate or any political party, howsoever, small, to be able to contest an election on a footing of equality with any other candidate or political party howsoever rich and well financed it may be. The other object of the limiting expenditure is to eliminate, as far as possible, the influence of big money in the electoral process."(15)

Thus, the corrupting role of money power at the time of election was recognized by the court. In this regard, the

15. AIR 1975, SC, 308.

court further observed that:

"The small men's chance is the essence of the Indian democracy, and that would be stultified if large contributions from rich and affluent individuals or groups are not divorced from the electoral process. (16)

Thus, the firmly held view in this judgement was that the expenses incurred by political parties and association in connection with the election, should also be included in the return of election expenses of the concerned candidate. If it is not done, the very purpose of putting a maximum prescribed limit will be frustrated because the political parties will come to rescue of the candidate. In this situation, it is very easy for the few affluent persons to have a decisive voice in the political process and then the common interest or to be precise the interest of the common man is bounded to suffer. it was not at least, the intention of the constitution makers who had a high sense of idealism.

Clearly related to this aspect, is the aspect of financing of political parties by the companies. Actually, it is a sort of bargaining where the mutual interests of the

16. Ibid., 309

contracting parties play a decisive role. While a company or a business concern obliges a political party by giving donation which creates an advantageous position for the party at the time of election, the party makes a promise of future profits for the company. In this regard the Supreme Court observed:

Any attempt on the part of any one to finance a political party is likely to contaminate the very spirit of democracy. Democracy would be vitiated if the results were to be arrived at not on their merits but money played a part in bringing about those decisions. The forms and trappings of democracy may continue, but the spirit underlying democratic institution would disappear.(17)

Thus, the Supreme Court saw in political financing a grave danger to the very spirit of the democracy. It has the tendency to bring down politics to the level of the professional activity rather than that of any ideological commitment. In this situation, the meaning of the political activity is changed. The political activity instead of being means to some higher ends become in itself ends and the whole energy is directed towards that. In the race for power, all sorts of commitments are sacrificed and what remains only is the commitment to the money bags. This is bound to influence the policy making process of the party in power, a situation which is just contradictory to the true spirit of the democracy.

17. AIR 1958 Bombay, 155.

PART II

CHANGING STATUTORY POSITION

The present section deals with the changing statutory position regarding election. The proper conduct of election is the basic requirement of a democracy because at this stage the political recruitment is made. So in order to regulate the whole affairs, some sorts of restraints and control on the behaviour of the political parties and the candidates during election and the general procedure of the election, are required. Laws are formulated exactly for this purpose.

Indian Constitution does not make any arrangement regarding the conduct of election. The members in the Constituent Assembly thought it better to leave the whole issue at the disposal of the parliament. In order to cover the various aspects of the elections, Parliament made three main Acts: The Representation of the People Act, 1950; the Representation of the People Act, 1951, and Conduct of Election Rules, 1961. In order to deal with the changing situation, various amendments have been made in these Acts according to the need and demand of the situation from time to time. So there are constant efforts on the part of the government to maintain the relevance and effectiveness of these Acts. But the irony of the situation is that the efforts of the government have produced the contrary results, thus making legal provisions irrelevant and

ineffective. How and why this happened? This section attempts to provide the answers of these questions.

This section contains three chapters: The Chapter three deals with ceilings, donations, and regulation of expenses, that is money aspet of the election. The Chapter four concerned with the corrupt practices, while the chapter five discusses the codes of conduct.

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CHAPTER : 3

FINANCING OF ELECTIONS

The increasing role of money power in Indian politics, causing various types of distortions there, has attracted all those who are conscious of creating a value-based politics. The pressures from different quarters compelled the government to create various legal impediments in order to check the flow of money into the arena of politics. Efforts have been made at two levels in order to separate the money from politics. At the first level, comes the matter of donation to political parties by the companies. At this level, begins the relationship between big money and politics, resulting in the emergence of captive politics, the interest of big money being predominant over other interests. So by putting an effective check at this level, the beginning of a relationship between the two, based on the profit oriented interest, is brought under control. At the second level, comes the time of election when political recruitment is made. At this level, the role of money power creates a situation, characterized by the unequal chances of success, the balance being inclined in the favour of those having more financial resources. The laws and regulations at this level reduce the expenses of campaigning, thus

giving equal opportunity to every one, irrespective of the resources which one has under his command.

(1) Legal Provisions Regarding Donations:

Regarding donations to political parties, various amendments have been made in the Companies Act from time to time. There was no specific mention of the companies' rights of giving donations for political purposes. The memorandum of association of some of the companies might have permitted them to make contributions to political parties. But by and large, this was not so. Apparently, no need was felt to alter the memoranda for this purpose. The Companies Act, 1956, as originally enacted, did not contain any provisions regarding political donations by companies. But in the changed situation by the time of second general election in 1957, marked by the increasing pressures for political donations, the companies were compelled to amend their memoranda of association permitting them to contribute to political parties. This naturally led them to apply to high courts for such alternations, thus giving a chance to the courts to examine the whole matter in depth.

In 1957, one of the companies, Tata Iron and Steel Co. (Ltd) applied to the Bombay High Court for altering the Object clauses of its Memorandum of association so as to

acquire the power to contribute to the funds of political parties. The application was allowed because there was no legal impediment to its acceptance. But the Justice M.C. Chagla, feeling considerable uneasiness of mind and risking feeling of heart at this development observed:

Nothing could be more corruptive in a democracy than to permit industrial or commercial concerns to contribute funds to a political party. It is nothing short of buying over the party so that the party should pursue a policy which would be in the interest of the commercial and industrial concerns which make contributions to the political parties. If this was permissible, the policies are bound to be coloured by the extraneous considerations introduced by big business financing political parties.(1)

Being helpless in view of the permissive state of law, Justice Chagla made an appeal to parliament to see in this respect. In a similar case of Indian Iron and Steel Co. (Ltd)., Calcutta High Court, while allowing the alteration in view of the position of law, pointed out the dangers posed in such cases.

But the appeals made by the court could not influence the legal provisions, made by the government in this regard. Law was amended to provide to the contrary and section 293A was added to the Companies Act by amendment Act 65 of 1960:

1. AIR 1958 Bombay, 155

- (1) Notwithstanding anything contained in S. 293, neither a company in general meeting nor its board of directions shall after the commencement of the Companies (Amendment) Act, 1960, contribute -
- (a) to any political party, or
 - (b) for any political purpose to any individual or body

any amount or amounts or aggregate of which will, in any financial year, exceed 25,000 Rs. or 5% of its average net profits as determined in accordance with the provisions of S.349 and 350 during the three financial years, immediately preceding, whichever is greater.

- (2) Every company shall disclose in its profit and loss account any amount or amounts contributed by it under sub.S. (1) to any political party or for any political purposes to any individual or body during the financial year to which that account relates, giving particulars of the total amount contributed and the name of the party, body or individual to which or to whom such amount has been contributed.
- (3) If a company makes default in complying with the provisions of the sub S. [2], the company and every officer of the company, who is in default, shall be punishable with fine which may extend to five thousand rupees.(2)

But the Act as an effective check on political donations by the companies proved to be a myth. The flow of money into the bags of political parties intensified day by day. The existence of huge money being contributed to the political parties by the companies was recognized by the Santhanam Committee's report on prevention of corruption in 1962 in its report, the committee commended:

2. India, Ministry of Law, Justice and Company Affairs, Acts of Parliament (New Delhi, GOI Press, 1971) p.745.

In Indian conditions, the companies should not be allowed to participate in politics through their donations. Nothing but a total ban on all donations by incorporated bodies to political parties and purposes will clear the atmosphere.(3)

The matter to ban the political donations by the companies was raised in parliament when Mr Madhu Limaye moved a private Member's Bill in this regard in November 1967. The legislators expressed their great concerns over the issue during debate. Everybody agreed to separate the money from politics by banning political donations. This was thought to be the only way to remove distortions in the democratic process of the country. The sentiments of the parliament was well expressed by Mr F.A. Ahmad, then Minister of Industrial Development, International Trade and Company Affairs, who declared:

A time has come when a decision should be taken by all parties concerned that political donation from the companies should not be taken for the purpose of elections.(4)

However, on the assurance given by the government, private member's bill was withdrawn.

3. India, Ministry of Home Affairs, Report of the Committee on Prevention of Corruption, GOI Press, New Delhi, 1962, p. 24.

4. India, Lok Sabha Debates, Vol. IX, No.4, 16 Nov. 1967, Lok Sabha Secretariat, New Delhi, p. 1257.

In pursuance of the assurance given earlier by the Minister, the government moved the Companies Amendment Bill, 1969. Moving the Bill, the Minister Industrial Development, International Trade and Company Affairs, Mr F.A. Ahmad said:

In this bill there are provisions which will make it impossible for a company to make any contribution to political parties. This move will be in the interests of the country and will help to clear public behaviour. All kinds of suspicions and doubts are now raised. The ban to give donations to political parties will remove such doubts and it will be better both for the government benches and also others, to feel that public life is clear and the means by which a company or anyone who has something to do with these companies can have any influence over political activity or elections.(5)

While there was agreement on the context of the bill, the motive of the ruling party, namely the Congress, was sharply criticized in the parliament. The interests of the party rather any sense of moral responsibility for the reforms was thought to be the main motive behind the bill. A biased approach being in favour of the ruling party was seen. The provisions in the company laws, i.e. the power of the companies to give donations to political parties or for political purposes, had benefited the Congress party. By taking advantage of its position the party was able to

5. India, Lok Sabha Debates, No.55, Vol. XXIX, 7 May, 1969, Lok Sabha Secretariat, New Delhi, p. 244.

collect a huge amount of money from the companies. It enjoyed a sort of monopoly having no rivals in this field. But the situation changed during mid-60s. Its monopolistic position was eclipsed by the emergence of other political parties namely the Jan Sangh and Swatantra party, as the attractive field for the companies to invest their money. These parties started receiving contributions from the business houses and some became the competitors of the Congress party in the race to collect more and more money. Unnerved by this changed situation, the Congress party taking advantage of the situation brought forward a bill seeking to ban political donations by the companies.

From another angle, too, the bill was found to have drawbacks. There was an opinion that bill had limited purposes. It did not cover the whole matter and something was left. During debate in parliament, Sri Surendranath Dwivedy pointed out that:

As far as the bill is concerned it had a very limited purpose for which we wanted there should be a regular ban. There are trusts, partnerships, societies which are not covered by this bill but which are also as important in the business world as any company. If the government were sincere that this evil should be removed from the body politic of the country, the approach should not have been so haphazard."(6)

6. India, Lok Sabha Debates, No.60, Vol. XXIX, 14 May 1969, Lok Sabha Secretariat, New Delhi, p. 202.

Despite of these drawbacks, the companies Amendment Bill, 1969, imposing a total prohibition regarding contribution by the companies to political parties or for political purposes, was a right step in the right direction. Though motivated by the pure self-interest of the ruling party, it was intended to reduce the influence of big money over the political life. It created a barrier in order to stop the flow of money from companies to the political parties, thus, at least, legally separating the big money from politics.

But the companies Amendment Bill, 1969 could not be effective to check the flow of money from companies to the political parties. Attempts were made to evade the ban by seeking advertisements in the souvenirs issued by the political parties. It was a new manner in which funds were collected by the political parties through the sale of advertisement space in party souvenirs to private companies at highly inflated rates. This created a peculiar situation where the legal prohibition on political donations, was successfully defied by the political parties and companies. There continued a flow of money to political parties. A circular was issued by the department of company affairs in Feb. 1970 which sought to define the scope of S. 293 A in the new situation. But it could not do

anything. The game of political financing continued defying all the barriers. In the meantime the concept of political financing underwent a sea-change as commented by Economic Times in its editorial:

The concept of political financing has undergone a sea-change in the recent years. In the distant past fund-raising was a financial operation directly related to elections. More recently, it has tended to become a source of running pressure largely because of increasing political corruption. Consequently, companies are pressurised into making political donations in season and out of season."(7)

Thus, the situation was marked by the incapability of Companies Amendment Bill, 1969, to effectively control the political donations in the guise of the sale of the advertisement space in party souvenirs. In order to cope with the new situation, the government introduced the the Companies Amendment Bill, 1976, in the Lok Sabha seeking to insert S. 293AA to enable companies to make donations to political parties or for political purposes subject to the limit of Rs. 50000 or 5% of the average net profits of the preceding three years, whichever is greater. This was the practical realization of the situation on the part of the government. During emergency, the position of opposition parties weakened to a great extent and once again Congress

7. Editorial, Economic Times (New Delhi), 16 September, 1977.

emerged as the sole recipient of money from business houses. The ban was creating embarrassing situation for the Congress. So the Companies Amendment, 1976, sought to make legal what was earlier illegal. But the bill could not become law because of the dissolution of parliament and the ban on political donations remained.

The problem of political financing was given attention by the Janata party when it came to power in 1977. The emergence of Janata party as the ruling party was the symbol of the victory of democracy over the dictatorial tendencies in Indian polity. So Janata party felt a moral responsibility to clear the political life by separating the money from politics. So the matter was taken in new perspective. On September 25, 1979, an ordinance was promulgated amending S.293(A) of Companies Act placing a total ban on advertisements by companies in souvenirs issued by political parties and also prohibiting contribution in any form either in cash or kind or by the provision of any service by a company to a political party. This ordinance was a major step in the direction of the separation of big money from politics. It tried to cover what was left by the Companies Amendment Bill, 1969. But this ordinance, too, was not re-enacted by parliament and lapsed two months after Mrs Gandhi's return to power in Jan. 1980.

Soon after the emergence of Rajiv Gandhi as Prime Minister, the matter of political donation was given consideration. A mood of openness was prevailing in this regard in ruling party probably because of its overwhelming majority in parliament and the weak and scattered position of the opposition. There was no one in the race of political donations. In the meantime a proposal came from Election Commission in its third annual report, 1985, suggesting to lift the ban on company donations. As a result of all these, the Companies Amendment Bill, 1985, came into being which lifted the ban on companies donation. This bill enabled a company other than a government company or a company in existence for less than three financial years, to contribute to a political party or for political purpose an amount not exceeding 5% of the average net profit of the company during the three immediately preceding financial years. The contribution can be made only by a resolution passed at the meeting of the board of directors. Any payment made in contravention of the above provisions is punishable with fine extending to three times the amount of the contributions made and every officer of the company in default is punishable with imprisonment which may extend to three years and also with fine. Further, every company shall disclose in its profit and loss account the full particulars of such contributions made by it to any

political party or for any political purposes (for details of Act, see Annexure 1).

Introducing the bill, the Minister of Indian and Company Affairs, Mr Veerendra Patil, said:

The companies should be permitted to make political contribution in order to enable the corporate sector to play a legitimate role within the defined norms in the functioning of our democracy."(8)

Mr Veerendra Patil further elaborated the factors which contributed to government decision to bring forward this bill:

Representatives of trade and industry have been equally urging upon the government to reconsider replacement of S.293A by the law which was introduced in 1960 to permit companies to make political contributions subject only to certain ceilings. Companies rightly argue that they are entitled to support a political party which believes in certain amount of freedom and private business. Secondly, many companies felt that they can resist any pressure from any political party for out of the books donations, if they are allowed to contribute by an enabling provisions of the statute, a certain sum which is in their capacity to spend. Thirdly, a company itself functions on the principle of share holders democracy and therefore a ban on political donation in a democratic society is an anachronism."(9)

8. India, Parliamentary Debates, Rajya Sabha, Vol. CXXXIV, No.11, 14 May 1985, Rajya Sabha Secretariat, New Delhi, p. 254.

9. Ibid., p.264.

But the bill was sharply criticized on various grounds inside and outside the parliament. One major lacuna in the bill was in its provision that contribution can be made only by a resolution passed at the meeting of the board of directors. It was contrary to the principle of shareholders democracy. Actually by making board of directors the deciding factor regarding political donation, the bill tends to do injustice with the shareholders who invest their money in a commercial concern without any knowledge of its political orientations, the business interest being predominant. The donation to any political party, in the decision of which they do not have any say, is sheer injustice with those share-holders who differ ideologically from that party.

Further, the Companies Amendment Bill, 1985, which later became an Act, legalised the whole game which was earlier illegal and secret. It tended to create an atmosphere, marked by the emergence of a close relationship between the big money and politics. Now big money will get a legitimate and legal right to influence Indian political parties. This step is just contrary to what is the need of the situation i.e. the separation of money from politics.

Legal Provisions Restricting Election Expenses

Legal provisions at this level are aimed to reduce the expenses incurred by a candidate on his election. Actually massive expenditure on elections incurred by individuals and parties has long been recognised. It prevents the man without adequate resources from succeeding in the elections. Commenting on it, Hanan Ezekiel says:

The high expenditure on elections thus corrupts power at its very source, makes power an instrument of personal aggrandisement rather than of the achievement of National or social goals.(10)

The idea of creating legal barriers at this level is to give fair chance of success to every candidate, irrespective of one's financial resources. These provisions date back to Indian Penal Code, 1980 (Act 45 of 1860):

171.H. Illegal payments in connection with an election:

Whoever without the general or special authority in writing of a candidate incurs or authorises expenses on account of holding any public meeting, or upon any advertisement, circulation or publication or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to five hundred rupees:

10. Hanan Ezekiel, Will Ceiling on Expenses Help Remove Corruption?, Economic Times (New Delhi) 2 Nov. 1980.

Provided that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate.

171. I. Failure to keep election accounts:

Whoever being required by any law for the time being in force or any ruling having the force of law to keep accounts of expenses incurred at or in connection with an election fails to keep such accounts shall be punished with fine which may extend to five hundred rupees. (11)

Some provisions are also in Representation of the People Act, 1951 (43 of 1951). This Act was passed in order to provide for the conduct of elections to parliament and state legislatures, the qualifications and disqualifications for membership of these houses, the corrupt practices and other offences at or in connection with such elections. The part V, and Chapter VIII of this Act deals with the phenomenon of election expenses:

77. Account of election expenses and maximum thereof:

(1) Every candidate at an election either by himself or by his election agent, keep a separate and

11. India, Ministry of Law, Justice and Company Affairs
Manual of Election Law (New Delhi, GOI Press, 1984,
IIInd Diglot ed.) p. 64

correct account of all expenditure in connection with the election incurred or authorized by him or his election agent between the date on which he has been nominated and the date of declaration of the result thereof, both dates inclusive.

- (2) The account shall contain such particulars, as may be prescribed.
- (3) The total of the said expenditure shall not exceed such amount as may be prescribed.

78. Lodging of account with the district election officer:

- (1) Every contesting candidate at an election shall, within thirty days from the date of the election of the returned candidate or if there are more than one returned candidate at the election and the dates of their election are different, the later of those dates, lodge with the district election officer an account of his election expenses which shall be a true copy of the account kept by him or by his election agent under section 77.
- (2) The reference to the district election officer in sub-section (1) shall, in relation to a constituency in a union territory, be construed as a reference to the returning officer for that constituency. (12)

A major step was taken by the government in 1974 when explanation 1 was inserted to the S. 77 of the Representation of the People Act, 1951, by Act 58 of 1974:

Notwithstanding any judgement, order or decision of any court to the contrary, any expenditure incurred or

12. Ibid. p.115.

authorized in connection with the election of a candidate by a political party or by any other association or body of persons or by any individual (other than the candidate or his election agent) shall not be deemed to be or shall not ever be deemed to have been expenditure in connection with the election incurred or authorized by the candidate or his election agent for the purpose of this sub-section.(13)

In the background of this ordinance was the judgement of Supreme Court in the controversial case of Kanwarlal Gupta vs Amarnath Chawla and others. In this case, the Supreme Court observed that:

The limit on the expenditure cannot be evaded by the candidate by not spending any money of his own but leaving it to the political party or his friends or supporters to spend an amount far in excess of the limit.(14)

The judgement created for government a very embarrassing situation, where the only face-saving alternative was the amendment in the Representation of the People Act, 1951 by Act 58 of 1974.

"Notwithstanding any judgement, order or decision of any court to the contrary, any expenditure incurred or authorized in connection with the election of a candidate by a political party or by any other association or body of persons or by any individual (other than the candidate or his election agent) shall not be deemed to be and shall not ever be deemed to

13. n. 11, p.64.

14. AIR, 1975, SC 308.

have been expenditure in connection with the election incurred or authorized by the candidate or his election agent for the purpose of this sub-section.(15)

In the background of this Act was the decision taken by Delhi High Court in the controversial case of Kamwarlal Gupta vs Amarnath Chawla and others, which put the government in a very embarrassing situation. In order to save its face, the government of Mrs Gandhi had no alternative but to have the Act passed to this effect. By this Act, a protecting umbrella was provided. It was completely motivated by the naked self-interest of the ruling party. It gave a serious blow to the democratic process in the country. In the first place, by promulgating this Act, the government nullified the judgement of the court and subordinated the judiciary. Thus, it was a set back to the institutional arrangements and a show of the dictatorial temperament. This ordinance was sharply criticized. Though apparently intended to give a definite interpretation to the S. 77 of the Representation of the people Act, 1951, it was motivated by the interest of the ruling party, having the sole aim of providing 'protecting umbrella'. By placing the expenses incurred by political parties or associations in connection with the election of a

15. Ibid., p.115.

candidate beyond the scope of the ceilings, the amendment gave a wide scope to money power to play a decisive role in electoral politics. In this regard, Mr M.R. Meher commented:

This ordinance would enable the candidate to incur any amount of expenditure with impunity so long it is done through an organisation or through another person who may be his friend or his relative. This would make the limit of election expenditure by the candidate nugatory. (16)

Thus, this amendment legalized the unlimited flow of money in electoral politics through political party - a step taken just contrary to the need and demand of the situation. Actually, it made the provision of ceiling on the expenses, incurred by a candidate in connection with his election, meaningless and ineffective.

The situation worsened when explanation 3 was added to the S. 77 of the Representation of People Act, 1951 by Act 40 of 1975:

For the removal of doubt, it is hereby declared that any expenditure incurred in respect of any arrangement made, facilities provided or any other act or thing done by any person in the service of the government and belonging to any of the classes mentioned in clause (7) of section 123 in the discharge or purported to discharge of his official duty as mentioned in the proviso to that clause shall not be deemed to be

16. Meher, M.R. Reducing influence of Money Power in Elections, Financial Express (Bombay), Nov. 10, 1974.

expenditure in connection with the election incurred or authorized by a candidate or by his election agent for the purpose of this sub-section.(17)

This step of the government was also politically motivated. The decision of Allahabad high court against Mrs Indira Gandhi, the Prime Minister, left to the government no alternative but to take some legislative measure in order to nullify the judgement of Allahabad High Court. Thus, explanation 3 was added in the S. 77, which enabled the Supreme Court to reverse the judgement of Allahabad high court, sacrificing the norms and values which form the essence of the democracy. This ordinance completed the process started by the earlier ordinance of 1974, i.e. the process of the legalization of the flow of money in elections. It covered those aspects of this process which were beyond the scope of the earlier ordinance.

Thus, as a result of these amendments, the election laws relating to election expenses became a hoax. The new arrangaemens enabled a candidate to spend a lot of money through political parties and other chanel, in connection his election, without breaking any law. It has made elections costlier day by day. Now a serious candidate

17. n. 11, p. 116.

having a small amount of money, has a very little chance of success. The way to parliament is opened for those only who have money - power, a situation creating various types of distortions in the democratic fabric of Indian polity.

Ceilings:

The ceiling means the maximum amount of expenditure which a candidate can incur in connection with his election. The purposes behind limiting the expenditure by legal provisions are well expressed by Justice Bhagwati:

The object of the provision limiting the expenditure is two-fold: firstly, it should be open to any individual or any political party, however, small, to be able to contest an election on a footing equality. The other objective of the limiting expenditure is to eliminate as far as possible, the influence of big money in the electoral process.(18)

In fact, all democratic countries have made it a general practice to control statutorily the expenditure incurred by a candidate in connection with his election. In India, during debate on the Representation of the People Act, 1951, some members of the parliament pleaded for statutory fixation of the ceiling an expenditure. But the majority of the members were of the view of leaving the

18. AIR, 1975, SC, 308.

matter to be regulated by rules which could be conveniently notified as circumstances required.

The Rule 90 of the conduct of elections rules, 1961, deals with the concept of ceiling:

"(i) The total of the expenditure of which amount is to be kept under S. 77 and which is incurred in connection with an election in any one parliamentary constituency shall not exceed --

- a) Rs.25,000 in the case of a constituency in a state,
- b) Rs.1000 in the case of a constituency in any union territory.

(ii) The total of the expenditure of which account is to be kept under S. 77 and which is incurred in connection with an election in any one assembly constituency shall not exceed the amount specified in respect of that constituency in the following table:

<u>State</u>	<u>Amount Rs.</u>
Andhra Pradesh	7000
Assam	6000
Bihar	8000
Gujarat	8000
Kerala	7000
M.P.	7000

Madras	9000
Maharashtra	8000
Mysore	6000
Orissa	7000
Punjab	7000
Rajasthan	6000
U.P.	6000
West Bengal	7000."19

The various factors such as rising prices, inflation etc. made the ceiling of Rs.25,000 unrealistic and irrelevant. In a number of cases, the election expenses of a candidate exceeded the prescribed limit. In its report on Third General Elections, 1962, Election Commission, observed that --

"The legal provisions relating to election expenses as they are at present are of no use and call for drastic amendments or total repeal. The general impression is that wherever the elections are hotly contested, the really serious candidates have to and do in fact, spend much more than the prescribed maximum amount".(20)

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19. India, Ministry of Law, Justice and Company Affairs, Manual of Election Law (New Delhi, GOI Press, 1971), n 2, p. 341.
20. India Election Commission, Report on Third General Elections in India, p. 124.

Before the Lok Sabha election 1971, the Commission had recommended to the government to raise the permissible limits of election expenditure by candidate. Accepting this recommendation the government notified the new ceilings on expenditure for parliamentary and assembly constituencies on Jan. 17, 1971:

The maximum permissible limit of election expenses had been raised from Rs.25,000 to Rs.35,000 in all states except Orissa (25,000); Jammu and Kashmir (25000); Manipur (17,500); Tripura (17,500); Nagaland (15,000). For Chandigarh and Delhi it was Rs.10,000 each. In the Andaman and Nicobar islands; Pondicherry; Goa, Daman and Diu; Minicoy, Lakshadweep islands and Mizoram, the ceiling was 12500 each. The permissible expenditure for a parliamentary constituency in Dadra and Nagar Haveli has been fixed at Rs.6000. The maximum limits for election expense in assembly constituencies vary from Rs.25000 in Manipur, Tripura, Meghalaya and Pondicherry to 12500 in UP.(21)

But these prescribed limits too could not cope with the situation during 70's when the increase in the overall price structure resulted in the increase in the cost of electioneering. Because of this, such limits were seldom observed. In fact, the limits were so low that they had no relationship with the existing realities. In this regard the Election Commission expressed its grave concerns. In its report on the general elections to the House of the People, 1980, the Commission observed that:

"There is every justification for the upward revision of the limits of election expenses. At the same time,

the limit should be fixed at such reasonably low level as not to defeat the very purpose of fixing a ceiling on election expenses, i.e. curbing the influence of money power in the elections.(22)

After making an estimate of the number of electors and expenses incurred in the general election of 1977 and 1979, the Commission pointed out Rs.100000 as a reasonable maximum limit for a parliamentary constituency where the existing limit was only Rs.35,000. The proposal was accepted by the government and Rule 90 of the conduct of election rules 1961, was amended by the Ministry of Law, Justice and Company Affairs, on 29th November 1979.:

The permissible maximum limit of election expenses for parliamentary constituency was raised to Rs 100000 for all states, except Himachal Pradesh (75,000); Manipur (75000); Jammu and Kashmir (75000); Manipur (75,000); Meghalaya (35,000); Nagaland (75,000); Sikkim (35,000); Tripura (75,000). For Delhi and Pondicherry, it was 50,000 Arunachal Pradesh, Chandigarh, Goa, Daman and Diu, and Mizoram had the limit Rs.35,000 each.(23)

This upward revision of the ceilings was in accordance with the existing realities. But once again the inflatory growth and rising price-structure made it irrelevant. Impossibility of fighting elections within this prescribed

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21. R.P. Bhalla, Elections in India, N.D., S. Chand, 1973, p.314.
 22. India, Election Commission, Report on the General and Vice-Presidential Elections, 1979, pp. 163-165.
 23. n. 13, p.235.

limits was expressed by the political parties. Once again the definition of reasonable limit changed with the changes in the situation. There grew a demand to raise the maximum permissible limit of election expenses in order to give legal relief to the candidates who were finding it very difficult to contest the elections within this prescribed limits. Thus, in order to cope with the changing situation S.90 of the conduct of elections rules, 1961, was amended on 5th September 1984, by notification number S.O. 671(E) whereby:

The maximum permissible limit of election expenses was raised to Rs.1,50,000 with variations in different states, for parliamentary constituency, while in assembly constituencies, it was Rs.50,000 with variations in different states. [For details, please see annexure 2].(24)

Thus, the maximum permissible limit of election expenditure is now reasonable. But it is a hypocritical belief that by prescribing a limit, the menace of money power can be curbed. Infact, the whole scheme of ceilings cannot work perfectly, unless remains Explanation 1 to S.77 of the People Representation Act, 1951, enabling political parties and associations to incur expenditure in connection with the elections without any breach of law. So besides, upward revision of permissible maximum expenditure, some

24. n. 11, p.235.

sorts of concrete effective control on election expenses is also needed. Only then, the purpose of putting ceilings on election expenses, can be realized.

The legal provisions regarding money power are effective only to a limited extent. The statutory position regarding money power in elections, contains many loopholes which give a free hand to candidates and political parties to spend more than that which is prescribed by the legal provisions, and no law is broken in legal terminology. After every general election numerous petitions against candidates are filed, but no one is disqualified. It is an ironical situation which can be removed only by making some drastic changes in the statutory position in respect to money power.

CHAPTER 4

CORRUPT PRACTICES

The democratic fabric of Indian polity, has been distorted, to a great extent; by the prevalence of the corrupt practices at the time of elections. Corrupt practices cover various aspects of elections, such as the misuse of power by the ruling party in order to influence the outcome of elections, the case of bribery, undue influence, use of muscle-power, filing of false returns of election expenses, etc. In fact, corrupt practices are assuming a wider dimensions day by day. The irony of the situation is that the statutory position does not satisfactorily cover the various aspects of corrupt practices with the result that these practices are beyond the scope of effective control. Under the existing electoral laws, the Election Commission has little or no power to deal directly with cases of corrupt practices, which can be challenged only through election petitions filed by a contesting candidate or a voter in the constituency. Further, various amendments in the legal provisions, have worsened the situation. On this aspect, Dr J.K. Chopra comments:

"Provisions regarding minor corrupt practices and illegal practices which were penalised by the original Act have been removed altogether from the statute book.

This has no doubt simplified the law but has undesirable consequences as well. (25)

The statutory position regarding corrupt practices will be dealt with separately under two heads:

Use of Official Machinery:

This aspect of corrupt practices is directly related to the advantages, which the ruling party enjoy over other parties in connection with the election. In one sense, these practices incline the balance in favour of the ruling party. After every elections, the opposition parties complain regarding these practices which usually include: the use of official position to influence voters by making promises on the eve of elections; the use of official machinery; the use of official buildings, and official conveyance.

The statutory position regarding the use of official position in making promises by the declaration of public policy on the eve of elections is very ineffective. There is ample scope for the ruling party to take advantage of it and gain a favourable position in relation to other parties at the time of elections. The legal provisions regarding it in S. 123 (2)(b) of the Representation of the People Act, 1951, make the position very clear:

25. Chopra, J.K., Politics of Electoral Reforms in India, (N.D., Mittal), 1989, p. 176.

"A declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause.(26)

So the legal position is that those actions of the ruling party which are directly intended to interfere with an electoral right, shall be deemed to be a corrupt practice under undue influence. But the experiences show that it is very difficult to differentiate the actions of the ruling party as political motivated with election as the focal point of attraction. In fact, the preparations for electoral contest begin a year before the elections, when every move of the ruling party is calculated on the basis of electoral gain. So at that time, it is next to impossible to prevent the ruling party from declaring such policies having political motive behind them. The situation becomes more complicated when election is near. Efforts have been made by the Election Commission to check this aspect by the issue of code of conduct to be observed by the political parties, including the ruling party from time to time, but the lack of legal sactions behind them, makes the whole exercise futile.

26. n. 11: p. 126.

There is another danger inherent in this form of corrupt practice; the services of the government official for the furtherance of the prospects of the ruling party at the time of elections. The S. 123 (7) deals with this aspect and include in the corrupt practices:

The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or by any other person with the consent of a candidate or his election agent any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, from any person in the service of the government and belonging to any of the following classes, namely:

- a) gazetted officers;
- b) stipendiary Judges and Magistrates;
- c) Members of the armed forces of the Union
- d) Members of the police forces;
- e) Excise officers;
- f) Revenue officers
- g) Such other class of persons in the service of the government as may be prescribed.(27)

These provisions worked satisfactorily till mid-70s without any major amendment. The ruling party hesitated in misusing the government officials at the time of elections.

27. Ibid., p.127.

As the ruling party was not legally in position to take advantages of its power in this respect the electoral contest was fair. A sort of equality in this respect, though not perfectly, existed between the ruling party and the opposition parties. But this situation did not continue for long. The post-Nehru period witnessed various types of distortions in the democratic fabric. The idealism of 1950s and 60s gave way to Machiavellian type of politics where ends rather than means became the slogan. In this situation, every institution was used rather misused for the furtherance of the personal rule of then Prime Minister. The climax of the new situation came, when the elections of Mrs Gandhi was declared null and void on the charge of corruptingly taking the services of Mr Yashpal Kapur, a gazetted officer misusing the government machinery for the furtherance of her election by the judgement of Allahabad High Court. This was a complicated situation creating a sort of constitutional crisis. In order to cope with the new situation, a clause was added in S. 123 (7) of the Representation of the People Act, by Act 40 of 1975:

Where any person in the service of the government and belonging to any of the classes aforesaid, in the discharge or purported discharge of his official duty, makes any arrangements or provides any facilities or does any other act or thing, for, to, or in relation to, any candidate or his agent or any other person acting with the consent of the candidate or his

election agent, (whether by reason of the office held by the candidate or for any other reason), such arrangements, facilities or act or thing shall not be deemed to be assistance for the furtherance of the prospects of that candidate's election.(28)

This politically motivated and face-saving amendment brought a change in the meaning of this whole sub-section in the favour of ruling party. Now, in this changed statutory position, the ruling party is capable of utilizing the services of government officials in furtherance of its election prospects without any breach of law. The whole game relating to this form of corrupt practice, is now legalised by this amendment. The impartiality of the officials is within the scope of the doubt to a great disadvantage of the opposition parties. The situation is well observed by Mr R.K. Hedge:

"The entire law on the aspect of abuse of government machinery is archaic and pathetically inadequate. Even some checks which it originally provided were erased in 1975. This is crying shame.."(29)

The ruling party in another respect also is in an advantageous position: the use of government transport for the furtherance of its election prospects. This is not a

28. Ibid., p. 127.

29. Hegde, R.,K., Electoral Reforms, Bangalore, Karnataka State Janata Party, 1985, p. 66:

corrupt practice under the existing laws. The instances of the use of helicopters etc., by the Prime Minister and other Ministers for their electoral tours, are on the increase day by day. This facility enables them to cover a large distances in comparison to the leaders of the opposition parties, thus bringing a sort of inequality between the ruling party and the opposition parties. However, in order to bring a sort of equality, a model code of conduct has been evolved by the Election Commission, which prohibits the Ministers from using the government transport for the furtherance of the interests of the party in power. It is sort of moral restraints lacking legal sanctions, thus of no practical use, because in the real Machiavellian type of politics, appeals on the ground of morality, are most unappealing. Even this is incomplete as Prime Minister, the biggest vote catcher for the ruling party, has been exempted from this prohibition on the ground of security. This gives an unfair advantage to the party in power, because as L.P. Singh comments:

In elections in a democracy, communicating with the electorate on the policies and programmes of a party is of crucial importance, and the extent of easy and quick mobility of the party leader determines the proportion of the electorate which he can address.(30)

30. Singh, L.P., Electoral Reforms, (New Delhi, Uppal), 1986, p.40.

Thus, despite of the restrictions imposed by the model code of conduct, the ruling party is at an advantageous position, because the whole scheme is biased in its favour. Actually, this should be made a corrupt practice and be included in the S. 123(7) of the Representation of the People Act. As the appeal on the ground of morality is ineffective and unrealistic in the present real politics, the whole conduct of the Ministers in this respect should be regulated by the statutory provisions, forbidding this practice statutorily.

In the modern age, the means of communications such as Radio and T.V. also play an important role. These are of vital importance for the mobilization of public opinion because of their capability to influence the millions in a very short period. Therefore, their utility at the time of elections cannot be imagine. The public opinion can be very easily influence by these and the wave phenomenon of elections is the outcome of these.

In India, T.V. and Radio are not independent and the policies framed by the government regulate them. In this situation, the ruling party is at advantageous position. It is usually companied and quite correctly that these two medium of communications help the ruling party a lot in the image-building process at the cost of opposition

parties. This aspect of party-politics is well expressed by Mr L.P. Singh:

It has been the complaint of practically all the political parties, except the party in power that the coverage of elections by All India Radio and Doordarshan is biased in the favour of the party in power at the Centre. As AIR broadcasts are listened to throughout the country and with the setting up of a large number of TV transmission or relay stations during the last two years or so, both these have become exceptionally potent media for influencing the public mind. It is argued that any slant given to broadcasts and presentations on these two media in favour of the party in power, is apt to prove harmful to the interests of other political parties and their candidates.(31)

There is no statutory provision which can effectively control the discriminatory behaviour of the media. For the first time, Janata party government afforded facilities over AIR and thereafter Doordarshan, on the eve of general elections to 13 assemblies in June 1976 to political parties for political broadcasts for a limited time. There was no discrimination in it between ruling party and the opposition parties. This scheme has been followed since then. But in another way, the government can earn goodwill and credit at the cost of the opposition parties by the selective presentation of the government activities on the AIR and Doordarshan during and in the months immediately preceding the beginning of electoral proceedings. There is no effective check on this aspect.

31. Ibid., p. 49.

Thus, the statutory position regarding the use of government machinery by the ruling party for the furtherance of its electoral prospects at the time of elections or even before it, is quite unsatisfactory. The legal provisions are ineffective in checking the ruling party from taking the advantage of its position and call for a drastic change.

Unfair Means

There are various unfair means, which are adopted by the political parties at the time of elections in order to influence the electoral outcome. These acts on the part of the political parties, tend to distort the spirit of democracy at its beginning. The S. 123 of the Representation of the People Act has attempted to define some of the unfair means which are usually prevalent at the time of election.

Sub-section 1 of Section 123 of the Representation of the People Act define bribery as:

- A. Any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever with the object, directly or indirectly of inducing --
 - (a) a person to stand or not to stand as or to withdraw or not to withdraw from being a candidate at an election, or
 - (b) an elector to vote or refrain from voting at an election.

- B. The receipt of, or agreement to receive, any gratification, whether as a motive or a reward.
- (a) by a person for standing or not standing as, or for withdrawing or not withdrawing from being, a candidate; or
 - (b) by any person whomsoever for himself or any other person for voting or refraining from voting, or inducing or attempting to induce any elector to vote or refrain from voting, or any candidate to withdraw or not to withdraw his candidature. (32)

This legal provision attempts to control a vital aspect of electoral process, that is, the use of bribes, in monetary and other forms, to influence the franchise on the basis of material gains rather than any ideological commitment: an unhealthy trend, distorting democracy at its very beginning. But the instances of the distribution of blanket and other goods before elections by the political parties are numerous. The election petitions containing the complaints of this practice, are filed after every general-elections, but nothing happens to any one being charged of this practice, thus showing the inability of the legal provisions to cover the matters as a whole.

Similarly S. 123 (5) of the Representation of the People Act, 1951, covers an important aspect of elections, that is, the use of vehicles by the political parties for the free conveyance of voters on the polling day it shows

32. n. 11, p. 125.

the desire on the part of political parties to influence the final outcome of the elections by the show of its capacity to lure the voters, a sick mentality that the sacred rights of the franchise can be influenced by giving some immediate facilities on the polling-day. It is an open and dirty game, in which the party having more resources is at an advantageous position. This game is controlled by S. 123(5) to some extent when it includes in corrupt practices:

The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person with the consent of a candidate or his election agent, or the use of such vehicle or vessel for the free conveyance of any elector (other than the candidate himself, the members of his family or his agent) to or from any polling station provided under section 25 or a place fixed under sub-section (1) of section 29 for the poll:

Provided that the hiring of a vehicle or vessel by an elector or by several electors at their joint costs for the purpose of conveying him or them to and from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause if the vehicle or vessel so hired is a vehicle or vessel not propelled by mechanical power. (33)

The legal provisions, in practice, are ineffective in checking the use of Motor-Vehicles at the time of elections. The electoral contest is marked by the use of vehicles by rival political parties in increasing number for the purpose of canvassing etc. This adds, to a great extent, in the

33. Ibid., p. 127.

of a specific number of vehicles which a candidate can use for the purpose of his electioneering, in the legal provisions, makes the whole subject controversial. In the present situation, the candidate is required to add the amount being spent on the hiring or procuring of vehicle in the account of his election expenses. But in actual practice, the candidates usually give the false number of vehicles being used by them which is obviously less than the actual number being used by them. Thus, a change regarding this aspect is necessary in order to make legal provisions more effective.

As mentioned earlier, under S. 77 of the Representation of the People Act, 1951, a candidate is required to keep a separate and correct account of the expenses incurred by him or his election-agent in connection with his election and lodge it with the district election officer under S.70 of the same Act. S. 123(6). The breach of this included in the corrupt practices.

Thus, it tends to impose a sort of restriction on a candidate in connection with his election expenses. But after every general elections, the instances of contravention of S.77 by the candidates, are found in large number. The whole scheme has been made ineffective by 1956 Amendment to the Representation of the People Act 1951 which

restricted the accounting of the expenses between the notification of elections and the declaration of the results, thus giving a chance to candidate to incur expenditure either before the Notification or after the declaration of the results. As Election Commission observed:

The amendments to the Representation of the People Act 1951 made in 1956 in so far as the account of election expenses is concerned have rendered the entire scheme of the Act on this subject practically nugatory. Too many loopholes have been left in the law with the result that a candidate can easily evade the objectives of the law, if he is so inclined.(34)

Besides these, S.123 of the Representation of the People Act, 1951, also includes the promotion of feeling of enmity or hatred between different classes on grounds of religion, race, caste, community or language by a candidate for the furtherance of his election prospects [S.123 (3A0)]; publication of false statement in relation to the personal character or conduct of any candidate [S.123 (4)]; threat to any candidate or elector with injury of any kind including social ostracism and excommunication or expulsion from any caste or community or inducement to a candidate or elector with the prospects of divine displeasure or spiritual censure [S.123(2A)]. But these practices are not within the

34. India, Election Commission, Report on the Second General Elections, 1957, (GOI Press, New Delhi, 1959) p.187.

scope of the present study. So any analysis of them is irrelevant and unnecessary in the present context.

At present, the statutory position as regards corrupt practices, is not satisfactory. The legal provisions as originally enacted were effective, to some extent, in checking the prevalence of corrupt practices. But the various amendments in the original provisions, made the whole provisions ineffective and to some extent meaningless. The situation at present demands a drastic change in the legal provisions regarding corrupt practices, in order to bring a sort of equity in electoral politics.

CHAPTER : 5

CODES OF CONDUCT

There are numerous practices prevalent during the time of elections, which remain outside the scope of existing legal provisions. Consequently, their breach do not involve any punishment for the guilty person. But sometimes, they assume a dimension which influences the electoral verdict, to some extent. So their potentials for influencing the elections cannot be underestimated. So in order to regulate them, the Election Commission mixing old guidelines with new details, evolved codes of conduct for the guidance of the political parties and candidates.

These codes of conduct are merely a set of conventions lacking any legal sanction. Probably, the idea was borrowed from the British system where conventions play an important role in various aspects of life. These codes attempt to cover almost all the residual matters, which are not covered by the legal provisions but at the same time require some regulatory measures in order to keep alive the democratic spirit. The procedure of framing this code of conduct is evolving in nature subject to the experiences. In spite of dealing with major problems, the code of conduct deals with the small and practical problems being faced by the

candidates and electors at the time of elections. The codes of conduct, thus, deals with the practical aspects of the electioneering.

The model codes of conduct are in the form of instructions given to the political parties and the candidates by the Election Commission for a smooth and fair conduct of elections. There is no legal sanctions behind them. This means that there cannot be any appeal against any one if he tries to act against the spirit of the code. The purpose behind the issue of the code is only to make or appeal to the conscience of the candidate that he should act according to the instructions given by the Election Commission in order to maintain a sort of the fairness at the time of election. So it is merely an appeal rather an order. It is left to the candidate whether he follows the instructions or not. There is not any sort of compulsion. 'What he should do rather what he is compelled to do', is the main motive behind the issuing of the model codes of conduct by the Election Commission. The model code of conduct, in fact gives the idea of an ideal type of elections in which there is no discrimination between the ruling party and other parties or between rich candidates and poor candidates, thus a scene of fairness during an election when political recruitment is made.

The scope of the code of conduct is very wide and covers various aspects of electioneering. It has been well expressed by Mr L.P. Singh in his book Electoral Reforms:

The code is designed to regulate (a) the general conduct of political parties and candidates, (b) election meetings, (iii) processions, (iv) conduct of all concerned on the polling day, (v) entry into the polling booths, and (vi) the conduct of the party in power. (35)

Thus, the code of conduct covers the whole process of electioneering from its beginning to its end. A sort of moral restraint is imposed on the candidates to follow the instructions throughout the period of election. This concept is based on the assumption that the will rather force is the motivating factors. So the success of the measures, to a great extent, depends on the fact that how these instructions are taken by the candidates and political parties, whether lightly or seriously.

The idea of code of conducts dates back to 1961 when the national integration conference advised the formulation of a set of conventions to regulate and guide political parties at the time of elections. The code of conduct for

35. Singh, L.P. Electoral Reforms, N.D., Uppal, 1986, p. 46.

term elections in 1962. Later political parties in several political parties was first evolved in Kerala during mid-states evolved the code of conduct for themselves during election. These were the efforts made by the political parties at the state level only. The need for a code suitable for the whole country was felt by Election Commission. Accordingly, in 1971, a Model Code of Conduct was issued by the Election Commission for the guidance of political parties and candidates. The code had 12 points which tried to cover various aspects of the elections. But only four of them are relevant for the purpose of the present study:

- (5) The government officers, while taking measures to maintain law and order, will take care not to impose undue restrictions on civil liberties and will not employ such measures as would interfere with a satisfactory election campaign by the parties.
- (6) The ruling party will ensure that no cause is given for any complaint that it has used its official position for the purpose of its election campaign.
- (8) All parties and candidates should cooperate with the officers on election duty to ensure a peaceful and orderly polling and complete freedom for the voters to exercise their franchise without being subjected to any annoyance or obstruction.
- (9) All parties and candidates should avoid scrupulously all activities which are corrupt practices and offences under the election law, such as the bringing of voters, intimidation of voters, transport and conveyance of voters to and from polling relations. (36)

36. India, Election Commission, Report on the Fifth General Elections in India, 1971-72, pp. 151-52.

Thus, the Model Code of Conduct issued by Election Commission was in the form of general instructions in order to maintain a sort of fairness at the time of elections. The success or failure of the code depended to a great extent on the parties and candidates. From the very beginning Election Commission was not having an optimistic outlook as regard the future of these codes, as is clear from the comment of Mr S.P. Senvarana, then Chief Election Commissioner:

Such code of conduct is of little practical value because no party or no candidate observes the various rules and instructions laid down in such code of conduct at the crucial time, namely election time. At that time every political party and every candidate is, so as to say, overpowered and overwhelmed with an extreme sense of selfishness and hardly hesitates to have recourse to means, fair or foul, to win the elections. Therefore, the issue by the Election Commission of any code of conduct before an election, is more or less, a meaningless ritual in which high sounding jargons are formulated and published on every occasion. (37)

But this sort of helplessness and pessimism of Election Commission did it prevent it from revising the model code of conduct from time to time according to the changing situations which produced new types of problems. This code was revised in 1974 before the general elections to legislative assemblies of five states/union territories held in that year. It had 23 points which, in detail, dealt

37. Ibid., p. 152.

with the question of procession organised by the political parties at the time of election. No other matter of any importance was given attention.

A thorough revision of the model code of conduct came in 1979. This tried to cover various aspects of electioneering. Some instructions were given to the ruling party in order to create a sense of fairness at the time of elections:

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

- i) Government vehicles shall not be used for furtherance of the interests of the party in power;
- ii) Public places such as Maidans etc. shall not be monopolised by itself for holding elections meetings. Other parties and candidates shall be allowed the use of such places on the same terms and conditions on which they are used by the party in power.
- iii) Rest houses, dak bungalows or other government accommodation shall be allowed to be used by other parties or candidates in a fair manner.
- iv) Issue of advertisements at the cost of the public exchequer in newspapers and other media during the election period regarding their achievements with a view to the furthering the prospects of the party in power shall be scrupulously avoided. (38)

38. India, Election Commission, Report on the General Elections and Vice-Presidential Elections, 1979, pp. 96-97.

Thus, through these instructions, efforts were made to regulate the behaviour of the party in power during election. The purpose behind the issue of such instructions is only to ensure that other parties should not suffer or face discrimination in the face of the enormous power enjoyed by the ruling party at the time of elections.

The current code of conduct, issued in 1984, did not tell any thing new. Only two aspects of electioneering were specifically mentioned:

1. Public places for holding election meetings and use of helipads for air-flights shall not be monopolised by the ruling party.
2. Similar provision was made regarding use of government transport including official aircraft and announcement of financial grants etc. from the time the elections are announced by the Commission. (39)

Thus, these instructions were meant only for the ruling party in order to maintain the fairness at the time of elections. These instructions were, in fact, aimed at bringing the ruling party to the position of equality in relation with other parties.

But the experiences with these model codes of conduct have not been very happy. In the absence of specific

39. Hegde, R.K., Elecoral Reforms, Banglore, Karnataka State Janata Party, 1985, p. 61.

statutory sanction, these codes do not exert any pressure on the political parties to follow the instructions. It is left to the good spirit of the political parties and the candidates that they will follow the instructions of Election Commission in order to keep alive the democratic spirit. It is an appeal to the conscience of the political parties on the assumption that will rather force is the basic motivating factor. But this appeal seems to be unheeded. Increasing instances of the breach of the code are found after every general elections. In this matter, the Election Commission can only receive the complaints and give directions to the government in this regard. Any kind of action is not in its hand. Only the government can do any thing in this regard. The fact remains that nothing much was done by the way of action.

In recent years, there has been a proposal from Election Commission to include the breach of model code of conduct is corrupt practices in the Representation of the People Act, 1951. But this proposal has not been materialised so far, probably because of the interaction of the ruling party to maintain status quo. The situation in this regard is that:

Understandably, while those in power, whether at the centre or in the states, irrespective of the political party to which they belong, are generally, though not in all cases, inclined to think that the code is

effective enough, those in opposition regard the code to be an inadequate deterrent to improper conduct. (40)

Thus, the Model Code of Conduct has not been able to achieve much in practice, as it lacks as statutory sanctions. The real politics, where appeal to conscience is unheeded, made it ineffective. But the fact remains that it is not fully meaningless. In one sense, it has pointed out various evil practices at the time of election and made them the main point of attraction among the conscious people. The power and utility of the code depends ultimately on what the electorate thinks of candidates who violate the guidelines prescribed by Election Commission. This is the significance of the code.

40. Singh, L.P., Elecoral Reform, N.D., Uppal, 1986, p. 46.

PART III

PROPOSALS OF REFORMS

The present section is different from previous two sections in one respect, that is, the Nature of Concern. While earlier sections, make a analytical study of the statutory position regarding political financing, election expenses, and corrupt practices prevalent at the time of elections and the incapability of the legal provisions to effectively cope with the situation, the present section makes an attempt to find out the improvements in legal provisions in order to curb the influence of money-power and corrupt practices at the time of elections. So what should be? Is the main concern of this section.

The free and fair election is the very essence of democracy. If it is not so, the spirit of democracy is vitiated, the last thing which any one wants to happen. So it is quite natural for any one to raise the question of reform as soon lacuna is found in the statutory position. Proposals for reforms are coming from time to time. In fact concerns for reforms were expressed even after the first general elections in 1952. Since then there is continuous flow of proposals for reforms.

The section contains two chapters. Chapter six deals with the proposals given by the official commissions - Election commission and law commission from time to time.

While the Election Commission looks at the problems in wider sense, that is, the general nature of the problems, the law commission has an eye of an expert in this matter. Both are the permanent government bodies, This differentiates the proposals made by them from other proposals. The point of view of the government is reflected in these proposals. The chapter seven considers the proposals made by various committees and eminent personalities in this regard. In this chapter, the question to State-funding of election had been dealt separately under one sub-chapter.

CHAPTER 6

SUGGESTIONS FROM OFFICIAL COMMISSIONS

1. Election Commission's Views

The role of Election Commission in the democratic process in India, is quite important and decisive. The conduct of free and fair, elections is its main work.. But besides this, the Election Commission also plays the role of sincere advisor to government and express opinion regarding various aspects of election from time to time. Regarding its this job Election commission has expressed the opinion:

Although there is no provision in law requiring the preparation of a report on the elections, the Election commission considered it necessary and desirable for obvious reasons to prepare an exhaustive record of the different aspects of this remarkable, administrative task. The commission has taken advantage of occasion to review the working of our election procedure as also to offer comments and suggestions to the improvement of the same. (1)

Since then it has become a regular practice on the part of the Election Commission to publish an exhaustive report on election after every general election. From 1983 onwards, the commission is publishing annual reports to parliament. The reforms proposals of Election commission

1. India, Election Commission, Report on the First General Elections in India, 1951-52 (N.D. GOI Press), Preface (i).

touch various aspects of election. Some of these aspects are irrelevant for the purpose of present subject matter. So only those aspects which deal with money power are taken under consideration.

Money Power:

From very beginning, the Election commission expressed dissatisfaction over the legal provisions relating to Election expenses, specially after 1956 amendments to the Representation of the people Act, 1951.

The present provisions of the law are substantially ineffective and call for an immediate amendment. Such a desperate measure by the way of the wholesale deletion of the provisions need not be taken. It would be sufficient for the time being to restore the original provisions of the act and the rules which were in force before the 1956 amendments.(2)

Two major defects in the existing legal provisions relating to election expenses were detected by Election Commission. The limitation of the period of accounting to interval between notification of election and declaration of result was thought to be a major defect in the opinion of Election Commission. This limitation do not serve any purpose as commission observed:

2. India, Election Commission, Report on Second General Elections in India, 1957 (New Delhi, GOI Press), p.185.

If the reducing of accounts by candidates and the prescription of a maximum limit for expenses are to have any significance, it is clear that the candidates must be required to account for all expenses incurred on account of, or in respect, of the conduct or management of the election, whether before, during or after election.(3)

Actually, this limitation of period of accounting gives a wide scope to a candidate to escape from the restraints of the ceiling. A person can, by making an advance payment of the facilities availed by him at the time of election even before nomination, very easily shift such expenses beyond the scope of accounting similarly the promise of payment after declaration of result, also serves the same purpose. So in existing situation, the legal provisions in this regard do not serve any purpose.

This situation is worsened by another defect: the exclusion of the expenses incurred by political parties on candidates sponsored by them from the accounts of such candidates for purpose of ceiling. It is very easy in these circumstances for a party to spend as much as possible in connection with the election of a candidate without any breach of law. This is not fair because this situation put the poor candidates or poor political parties at disadvantage, when money power plays a decisive role in

3. Ibid., p. 186

electoral verdict. In this regard, the Election commission recommended that:

While organised political parties can not be debarred from spending even during the election period on party propaganda generally, they must be made to account for any expenses incurred by them in promoting the election of particular candidate.(4)

It is a practical suggestion. The ban on the general expenses of the political party at the time of election is illogical. Political parties play an important role in a democracy. They are a major source of political education of the general people through meetings of posters. Without this the democracy has no meaning. The problem arises at a point when there is a shift from general propaganda to the furtherance of the election of a candidate. It is not a healthy sign. This should be checked. So some sorts of restrictions should be imposed on that point which separates the sphere of general propaganda from the furtherance of the prospect of election of a particular candidate.

The Election Commission took the aspects of electioneering also into account. It is recognized by every body that the cost of election is increasing day and it is very difficult for a person or party having meeger resources

4. Ibid., p. 189

to contest on the footing of equality. The material advantages of an affluent party is reflected in various forms at the time of election: the grand nature of processions or demonstrations, the number of canvassers, the number of motor vehicles and etc. These practices tend to create an impression on the mind of meagre the voter which is prejudicial to persons or parties having resources. A common person has the impression on looking at the huge demonstrations and processions, large number of canvassers and motor vehicles and etc. of a party, that this particular party is serious and has a bright prospects in the election. So why to waste the vote by giving it to other party. Exception to this is also there when there is a wave against the affluent party as happened in 1977. But this is only exception unlikely to repeat. In common atmosphere, these practices can, and in fact do, influence the electoral verdict.

The Election commission considered this matter seriously and recommended that:

1. It should be practicable to restrict the number of the motor vehicle used for campaigning : 3 in as assembly constituency and 6 in a parliamentary constituency.
2. There should be a complete ban on public processions and demonstrations in which election propaganda takes the low and unintelligible form of chanting slogans and catch words. The display of large sized streamers and banners should be prohibited. The use of peripatetic

loud speakers on roads and highways for election propaganda should be prohibited.

3. Apart from the election agent who may, if necessary, be employed on payment, the employment of paid canvassers should be debarred, under the election law. Where any remuneration is paid to the election agent of a candidate, it should of course be included in his account of election expenses.(5)

The commission also considered another aspect. Opinions were expressed in some quarters that as the legal provisions relating to election expenses are practically ineffective and remain merely decorative in nature, they should be scrapped. A situation just beyond imagination. It will worsen the situation and Every thing which is hidden and secret, will be in the form of an open game. As commission observed that:

Simple omission of the provisions will be of hardly any avail. Then there will be no limit of election expenditure except the sky with the result that men of moderate means, however able and eminent they may be, may be altogether eliminated from contesting any election. In no country in the world where representative democracy prevails, the provisions as to election expenses have been entirely dispensed with. At the same time no country has been able to solve all problems relating to legal and illegal election expenditure.⁶

In fact, the scraping of legal provisions is very dangerous for the spirit of democracy. In the absence of

5. India, Election Commission, Report on Third General Election (GOI, New Delhi, 1965), pp. 122-23.

6. Ibid., p.139.

any legal restraints, the candidates and political parties shall not hesitate in indulging in corrupt practices. The dirty game of money power which is illegal at first, will be legalised. The presence of legal restraints puts some checks in the sense that breach of law is one of the greatest disqualification at the time of next election which none want to incur.

So there should be some reasonableness in the legal provisions. In this regard, the commission recommended for elaborate provisions in Representation of the people Act. Some of the features of these provisions are clearly pointed out by Election commission:

- i. Definition of election expenses and personal expenses should be inserted. There should be no time limit as in the existing section 77.
- ii. By a new provision unauthorised election expenses should be prohibited. To this provisions an exception should be made however in relation to a political party.
- iii. It should be provided by a new section section that any contract whereby any election expenses are incurred shall not be enforceable against a candidate unless made by the candidate himself or his election agent or any other person authorized in writeing in this behalf by the candidate or his election agent.
- iv. The certain amounts, the amount not exceeding 250 in the case of legislative assembly and 500 in the case of parliamentary elections which a candidate may required to pay to a political party for being accepted as a candidate and the same amount which is required to be deposited by a candidate under S 34 should not be included within the per missible maximum amount.

- v Elaborate provisions should be made as to return of the election expenses and the lodging of such returns.
- vi The procedure which a contesting candidate is expected to fulfil as regards the returns of the election expenses, should also be adopted by the political parties.(7)

These provisions as recommended by the Election commission, are quite practical. The Joint committee of parliament accepted some of these recommendations. But one major recommendation: The filing and return of election expenses by political parties was not accepted.

Thus, a major lacuna in the legal provisions remained. As there is no legal compulsion on political parties to file a return of election expenses, there is enough freedom to political parties to spend as much money as possible. In that situation only sky is unit, a situation prejudicial to the interests of the political parties with moderate means, a situation characterized by the vitiating of the very spirit of democracy.

Considering this aspect, the Election commission in its report on 1977 general election for the first time talked of the state funding of election. The reason for this recommendation was well expressed by Election commission.

7. Ibid, p.139

The law relating to election expenses has been designed with a view to curbing the influence of Money power on election and to ensure that even a candidate with moderate means could contest in election with a fair chance of success at the poll. But in actual working elections have become an expensive affair and beyond the reach of an ordinary man. This is why a growing demand is made that the government should bear a part of the election expenses of candidates from out of public exchequer. So a part of burden of election expenses of candidates should be progressively shifted to the state.(8)

Thus, motive behind the idea of the state funding of election is that as legal provisions relating to election expenses are ineffective and give a bright chance of success to influent persons or parties, why the poor ones should suffer. But state subsidy to political parties should be given only on the fulfilment of certain conditions as the commission observed:

The state subsidy to the political parties should be conditional upon the party securing certain minimum percentage of valid votes polled. Further, the inner party functioning and the mode of elections of office bearers and other bodies and committees of the party at various levels at stated intervals should also be regulated by the law so that the parties function on democratic lines.(9)

As the question of state funding of election will be analysed in a separate sub-section of chapter Seven, it seems better to leave the procedure and other frame works of

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8. India, Election Commission, Report on Seventh General Elections in India, 1980 (ND, GOI, 1980), p.183.
 9. Ibid., p.183

the subject as recommended by Elections commission at this stage.

Corrupt Practices:

Side by side money power, corrupt practices in various forms play an important and sometimes decisive role at the time of election. These corrupt practices include bribery, misuse of government machinery and etc. These practices tend to influence the electoral verdict in favour of the parties having more resources at their disposal, particular the party in power. The legal provisions regarding minor corrupt practices have been scrapped in order to bring simplification in the statutory position. But the scrapping of these provisions has resulted in the worsening of the situation. As early as 1957, the Election commission observed that:

In the interest of keeping the entire body of public servants impartial and immune from public influence, the provision of the original act in this regard should be restored and a candidate should be peralised for obtaining the assistance of any government servant without distinction of status or category. Pseudo-government servants like village officers, who are not village accountants may, however, be excluded from the ban.(10)

10. n.2, p.232.

The misuse of government machinery by the party in power appears to be a grave danger to the survival of the very spirit of the democracy. Complaints in this regard are usually made by the opposition parties after every general election. In fact, the enormous resources which the party in power has at its disposal may be discriminatorily used in its favour at the time of election. This situation is very prejudicial to the interests of the opposition parties for it puts them at a disadvantageous position.

In order to avoid this situation, the Election Commission has evolved model codes of conduct from time to time to be followed by political parties at the time of election. Since these model codes of conduct have been dealt in detail in chapter five, it is futile to repeat all these here. The election commission expressed its dissatisfaction over the lack of legal sanction behind these model codes of conduct. Chief Election Commissioner Shri. R.K. Trivedi observed in a speech:

The commission is of the view that misuse of official machinery should also be treated as corrupt practice attracting the legal provisions. For this purpose, breaches of the following should be treated as corrupt practices through suitable amendment of the law.

1. a. Ministers shall not combine their official visit with the electioneering work and shall not also make use of official machinery or personnel during electioneering work.

- b. Government vehicles, machinery and personal shall not be used for furtherance of the interest of the party in power.
2. Public places shall not be monopolized by ruling party for holding election meetings.
3. Issue of advertisements at the cost of public exchequer in newspapers and other medias during the election period regarding their achievements with a view to furthering the prospects of the party in power shall be scrupulously avoided.
4. Ministers and other authorities shall not sanction grants/payments out of discretionary funds from the time elections are announced by the commission.
5. From the time elections are announced, ministers and other authorities shall not make any promise to the electorate of new welfare or development projects, in favour of the party in power.(11)

Thus, a number of suggestions have been made by election commission to amend the legal provisions relating to election expenses and corrupt practices in order to bring the spirit of equity at the time of election. These suggestions are quite practical and seem to have the potential of producing the desired results. But the irony is that no effective measures have been taken by the government to implement these suggestions.

11. R.K. Trivedi, Seminar on Electoral reforms, background papers (N.D.), ICPS, Mar.27, 1983, p.7.

2 The Law Commission's views

The Law Commission is in the form of an expert body which deals with various aspects of legal provisions from technical point of view. It has been practice on the part of Law commission to reports from time to time on the various aspects of the statutory position. These reports are characterised by the insight of a legal expert. On looking at these reports, one can very easily get an expert's comment on the subject.

The law commission has paid a proper attention to the legal provisions relating to election. In fact, the legal provisions relating to corrupt practices and illegal practices, are quite ineffective. The disqualification or punishments are also light in nature and do not produce any desirable result. Further an amendment in S 196 of the criminal procedure code debarred the courts from taking cognizance of an election offense except upon complaint made by order of government. In this regard the law commission observed that :

It was thought that this would give some discretion to the government to determine whether criminal proceedings were warranted in the circumstances of each case, so that vexatious proceedings instituted solely on the basis of political animosity by private individuals could be avoided. This secondary object was certainly achieved but it is doubtful whether the penal provisions not ostentatiously put in the panel code, but effectively blunted by S. 196 of the

procedure code, helped to maintain the purity of elections to any appreciable extent.(12)

The fear of law commission proved to be true as the impediments to prosecution came in the way of free and fair election. It was an embarrassing situation in one sense for the government which has to work under the party system. To the decisions made by the government in this regard there is fear of attributing political motives prejudices. So Law commission after analysing various aspects of the subject in its 42nd report recommended for the removal of impediments to prosecution:

If the bar contained in S 196 of the code is removed there will be a spate private complaints, including quite a few vexatious ones for the sake of harassment, but we feel that this possibility must be faced in the interest of free and fair elections. We recommend that all election offences should be excluded from which the purview of S 196.(13)

Accepting this recommendation, the government passed code of criminal procedure bill, 1970. The clause 197 of this bill removed the impediments to prosecution of electoral offenses. This has brought the situation under control.

12. India, Law Commission. 42nd report (N.D.Gol, Ministry of law) 1971, p. 178.

13. Ibid., p. 170.

Similarly, the law commission has considered S 171 H of Indian penal code unnecessary. This sub-section penalises any person who, without the written authority of the candidate incurs any expense for the purpose of promoting procuring the election of that candidate. This provision is anomalous in relation to the much larger number of elections for which there is no such limit. Even this provision does not have any relevance to the parliamentary and assembly election. Cases of the breaches of this provision is very frequent. Therefore the law commission after analysing the various aspects recommended that :

It can be safely omitted from the panel code. It could be left to the law governing a particular election to create this offense, if considered necessary or desirable. Similarly any penal provision on the lines of S 171 I should be made in the law which requires candidate to keep accounts of election expenses and it need not find a place in the penal code.(14)

Thus, the proposals made by law commission gives a sort of technical insight regarding the various aspects of election expenses. It does not see the matter in a broader perspective and the analysis is abalysed only to the extend of legal nicety.

14. Ibid., p. 185.

Chapter 7

THE PUBLIC DEBATE OF ELECTIONS REFORMS

This chapter discusses the proposals for reforms given by other bodies and individuals besides Election commission and Law commission. It is different from previous chapter in one sense that while the opinion of Election and Law commission might be influenced to some extent by the views held by the government, it is not so in the case of other bodies and individuals whose proposals are under consideration in this chapter.

(1) Joint committee of Lok Sabha on amendments to Election law, 1972.

A joint committee was formed in 1972 to analyse the various aspects of electoral law under chairmanship of Sri Jaganath Rao. The committee expressed concerns over the mounting expenditure incurred by a candidate at the time of election which tends to make election costly and diminishes the chances of persons with moderate means in electoral contest. The committee thought that the answer to this problem does not lie in the scrapping of legal provisions relating to election expenses. These should continue in the interest of the parliamentary democracy.

The committee considered it necessary to define election expenses and personal expenses in precise terms. In this respect, the committee observed that:

Election expenses in relation to an election should mean all expenses incurred or authorised by the candidate or his election agent between notification of elections and declaration of the result. Personal expenses in relation to the expenditure of any candidate at an elections should include all reasonable traveling and living expenses of the candidate for the purpose and in relation to such election.(15)

The committee suggested to exclude certain expenses: The amount to paid to party by a candidate in order to get acceptance from that party and the amount to be deposited by a candidate under S 34 of the representation of the people Act, 1951, should be excluded from the personal expenses of the candidate in counting the permissible maximum account. Similarly, the permissible maximum amount should be increased by a certain specified percentage, where a poll is countermanded on the death of a candidate. Regarding filing of the return of election expenses the committee feel that: it would be better if the principal matters which ought to be shown in are a return are specifically enumerated in the rules.

15. India, Lok Sabha, Joint committee on amendments to Election Law report, 1972 (N.D. Lok Sabha sec. 1972).

The committee made a departure from the past when it talked about the shifting of the burden of legitimate election expenses to the state in order to create a footing of equality. In this respect, the committee suggested some measures:

1. Five copies of electoral rolls instead of two, should be supplied free of charge to every recognized political party, not later than the date of notification calling for an election.
2. Forms for appointment of polling agents and counting agents should be supplied free of charge to all contesting candidates at least a fortnight before the polling day.
3. Polling slips with necessary details indicating date time and place of polling etc. should be got printed by Election commission and supplied to political parties at least 15 days before the date of the poll, for distribution to voters.(16)

Further the committee suggested to ban the procession, use of loud speakers and holding of public meetings and other functions, plying of mechanically propelled vehicles on public roads on the polling day and reduction of the period to 17 days between date of final withdrawal and the date of polling.

The committee dealt with the problem of election expenses and corrupt practices in detail covering various

16. Ibid., p. 68

aspects. All the suggestions made by the committee are sound and practically capable of reducing the increasing cost of election. But a major lacuna remains in the sense that political parties are not required to file a return of expenses in connection with the election. The suggestion to this effect was made by Election commission but the committee did not accept it. Mr. Mahavir Tyagi in minutes of dissent expressed his dissatisfaction over the attitude of the committee on this issue and observed:

If the recommendation of Election Commission to this effect is rejected, the fixation of any ceiling on election expenses would become meaningless and it would be a safe device for candidates to throw the burden of election expenses to their party's account. Moreover, the past few elections have shown that bulk of election expenses are incurred by the political parties, with the result that the rate of election expenses is going far beyond the ceiling fixed and the candidates who are not sponsored by any political party are comparatively at great disadvantage. (17)

II. REPORT OF THE CITIZEN FOR DEMOCRACY'S COMMITTEE:

The committee appointed by Sri Jaya Prakash Narayan on behalf of citizen for democracy known as Tarkunde committee also analysed the issue of electoral reforms in detail. The committee expressed grave concerns over the increasing role of money in election and incapability of the legal provisions to control it. So the committee observed that:

17. Ibid., p. 78

Since all expenditure in excess of legal limits is contrary to law, it obviously generates, in addition to corrupt practices, moral degradation of the whole electoral process. This makes the limit on election expenditure one of the central conditions of the containment of money power. Therefore it is necessary to contrive effective measures to prevent the violation of the law and the curtail election expenses.(18)

The distortions in the situation has been brought to a great extent by an amendment in the Representation of the people Act, 1951 which empowers a political party to pour unlimited funds into its general propaganda. This has been abused very much and the purpose of the legal ceiling on a candidate's expenditure has been frustrated. The committee took serious note of this situation and recommended:

1. All recognized political parties should be required by law to keep full and accurate accounts, including their sources of income and details of expenditure. The accounts should be audited by chartered accountant nominated by Election commission and should be open to public inspection on moderate charges. Keeping of false accounts should make the office bearers of the party punishable of a cognizable offence.
2. In every constituency, all the amounts spent for the furtherance, directly or indirectly, of the prospects of a candidate in an election shall be disbursed through his election agent. These should include amounts spent by the candidate's political party or any organisation or person supporting him. All contracts where by election expenses are incurred shall, in every case, be entered into by the candidate himself or by his election agent, and by no body else.(19)

18. Reports of J.P. Committee on Electoral Reform, 1975 (N. Delhi, 1975), p.8.
19. Ibid., P.10.

The committee took sympathetic view of idea of the public funding of election, a big debate during 1970's and even today. But in prevailing situation, it was not thought suitable and practicable for the country. But the committee suggested some measures in this direction:

1. Printing cards giving the registered number of a voter and the polling booth where he may cast his or her vote, along with the names and symbols of the candidates should be made available to all voters at government cost. these printed cards should be test by postal delivery to the satisfaction of the candidates or their election agents.
2. Each candidates shall be entitled to send each voter, free of postage, one communication containing matter relating to the election not exceeding two ounces of weight.
3. School rooms and meeting halls should be available for meetings in furtherance of the candidature of every candidate at reasonable times and at a nominal cost.
4. Twelve copies of the relevant electoral roll should be supplied to each candidate free of charge.(20)

This is a moderate beginning in the direction of public funding of election. In fact it is the first step, which makes an attempt to reduce the advantages which affluent persons or parties enjoy over those having moderate or meagere resources.

20. Ibid., p.12

Besides money power, the misuse of government power also play an important role in influencing the course of election. It is prejudicial to the interest of the opposition parties. The committee analysed this aspect of electoral corruption in depth and recommended certain measures to be followed in order to create free and fair electoral politics:

- i. The government of the day should function as a care taker government from the time of the announcement of the dissolution of parliament or legislative assembly, as the case may be, until the polling day. During this, period, the care taker government should not
 - a. initiate and announce new policies.
 - b. promise or start new projects.
 - c. grant allowance or loans, salaries increases.
 - d. hold official functions attended by ministers, deputy ministers, and parliamentary secretaries.
 - ii. During the aforesaid period, ministers, deputy ministers and parliamentary secretary should not travel except at their own expense and should not use government aircraft or vehicles, generally, the use of government machinery for election purposes should be stopped.
 - iii. During the aforesaid period, no member of the government should be given time either on Radio or television except such time as may be allotted to his party for election propaganda.
 - iv. During the aforesaid period, no advertisements should be published at government cost and no newsreels should be exhibited at government expense for the propaganda of the government or the ruling party. (21)
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21. Advani, L.K. Scheme of Electoral reforms submitted to CFD committee (N.D., 1974) p. 27., Pai Pandandiker file, Electoral Reforms, CPR.

Thus, Tarakunde committee after making a detailed analysis of the various aspects of electoral politics, gave a number of proposals for electoral reforms which are sound in nature and if implemented, tend to reduce the evil of money power and various type of corrupt practices (some of which are not counted as corrupt practices by the legal provisions.

III Other proposals for reforms

Besides the proposals made by various committees, proposals for reforms also come from the individuals conscious of creating value based politics. There individuals have different political affiliations, but when the issue to cleaning the politics through electoral reforms emerges there is generally agreement on the important points.

Mr. L.K.Advani, an important figure who is crying for electoral reforms since a long time, has clearly recognized the growing influence of money power at the time of election. In this regard he gives some suggestions:

- I Recognized political parties should be permitted to avail of the AIR to convey their election message to voters. The scheme formulated by the Election commission of allotting an equal number

of radio broad casts to all parties should be implemented.

- II. Instead of separate public meetings by parties or candidates, joint meetings should be organised by Election commission at key points in the constituency.
- III. There should be a limit on the number of the posters, pamphlets, news papers, advertisements, etc. a candidate would be permitted to display during election.
- IV. The use of peripatetic loud speakers and the organizing of processions should be banned.
- V. On polling day, all vechiles should be off the road.
- VI. In order to check the abuse of official machinery by the ruling party, the government of the day should resign at least 12 months before the poll.
- VII. Last, but not the least, state must bear election expenses of the candidate.(22)

On similar lines, Mr. S.L. Shakdhar, ex-election commissioner has also given some suggestions:

- I. Expenditure incurred by political parties, friends, well wishes in furtherance of the prospects of a candidate in a constituency should be brought within the ceiling of election expenses.
- II. The political parties should maintain detailed accounts in which each item of receipt of money by way of subscription, donation, subsidy, etc. should be included. Each item of expenditure should be recorded and the account should be subjected to periodical audit.
- III. The commission should be empowered to examine the election returns on merit to satisfy itself that they are accurate and correct in all respects.

22. Ibid., p.15.

IV. The legitimate election expenses of candidates should be progressively shifted to and borne by the state.(23)

The proposals made by Mr. S.L.Shakdhar and L.K.Advani is sound in nature and take a practical view of the whole affair. The issue was analysed by Mr. S.P.Servasna in somewhat idealistic manner having solution in the formulation of long term policies from different angle. He observed that:

I. In the present state of our social order if we are to eliminate, or, at least to reduce substantially, the corrupt influence of money the only effective weapon will be to create a strong public opinion against such corrupt influences. This is bound to raise the tone and standard of our public morality including electoral morality.(24)

This, way of dealing with the problems is most effective. But at the sametime, it involves a long term efforts to be made by the conscious people. The task of raising the moral standards through the creation of a strong public opinion seems to be a very difficult task in the present area of real politics where terms like morality, emotions and etc. are used to serve the self interest.

23. Shakhar, S.L., Frame work of electoral reforms mainstream, 11 Oct, 1980.

24. Mr. S.P. Servarma, Views on electoral reforms. A letter to Jayapraksh Narayan, 17 June, 1974., Pai Pandandiker file, Electoral Reforms, CPR, 1988

Similarly his other suggestion that remedy for elimination of corruption from the society lies in the improvement in the economic condition of the people. But this suggestion also lack practicality. it is very difficult to imagine, at least for me, that how the prosperity is going to bring an improvement in the moral standard of the people. It is true that poverty generates crimes but at the sametime it is also the prosperity which generates crimes, sophisticated in nature.

The CPI attempts to solve the problem of money power at the time of election at two levels at the time of election and the time when donation is made to political parties. While at the time of election, it proposes, to include the expenses incurred by other individuals, associations or organisation except the political party within the ceilings, it talks about baring the donation to political parties by a private or public limited company. These two measures as suggested by CPI tend to reduce the evil of money power at the time of election. Besides these two, the CPI also talk about the state funding of the election in order to reduce the expenditure incurred from private or party funds at the time of election.

IV STATE FUNDING OF ELECTION

The idea of funding of election by state dates back to the period when the constitution was being framed. During the debate Pro. K.T.Shah made a suggestion that the state must bear election expenses. But this was not accepted on the ground that this experiment would saddle the economy with an unbearable burden. The idea again arose and intensely debated during 1970's when it was thought that besides legal provision, a measure to this effect would definitely reduce the role of big money at the time of election and break the nexus between money and politics. The sub-committee of the joint committee on amendment to election law, 1972 observed that:

The problem of election expenses which has not only agitated the minds of the candidates and the thinking of political parties but also of the general public can be solved only if it is accepted in principle that all election expenses ought to be made a legitimate charge on public funds and efforts made to achieve that end. A process should be initiated whereby the burden of legitimate election expenses at present borne by the candidate or the political party is progressively shifter to the state.(25)

25. India, Lok Sabha, report, Joint Committee on amendments to Election Law, 1972, N.D) p. 82.

For the first time, the Election commission in its report on general election to parliament, 1977 talked a great deal about the state funding go elections. It strongly recommended that a part of the burden of election expenses of candidates should be progressively shifted to the state. Besides, some subvention should be given to political parties. As commission argued that :

To be eligible for the grant of such subvention the political parties should be made to fulfill certain conditions and requirements to be prescribed by law. Such law may among other things, provide for complete registration of these parties, the periodic inspection and auditing of their accounts by chartered accountants on behalf of the Election commission and filing and publication of returns of their accounts stating the details of their income and expenditure. The state subsidy to the political parties should be conditioned upon the party securing certain minimum percent of valid votes polled. Further the inner party functioning should also be regulated by the law so that the parties function on democratic lines.(26)

Regarding subsidy to candidates form state, the commission recommended facilities in kinds rather cash, such as free supply of electoral rolls to political parties and the independent candidates, setting up of agents booths, daily allowance to election agents, printing of certain number of posters of suitable size for each recognized parties. These facilities would to a great extent help a candidate and reduce his dependence on external factors.

26. n.7, p.183.

Mr. L.K. Advani had prepared an elaborate scheme for the state subsidy on the basis of 1971 elections. He calculated the amount as 12 crores of rupees, a sum which can not be regarded as burdensome for the economy to bear. He further recommends that:

This proposal of state financing would have to be implemented through political parties. Recognized parties would be given election grants partly before the poll (on the basis of their performance in the preceding election) and partly after the poll (on the basis of their actual performance. A consequential piece of legislation would be a law requiring all recognized parties to publish their election accounts.(27)

A practical step in this direction was taken by N.T. Ramarao when he decided to experiment with state funding at the level of local elections. The major features of his scheme are :

- I. Parties which received at least one sixth of the valid votes in the earlier elections will be eligible for an amount fixed as admissible expenditure.
- II. Parties and independents who are not eligible will be reimbursed after the election when they submit their account of expenses.
- III. Candidates cannot seek any assistance, monetary, or otherwise from other than the government.

27. n.22, p.27.

- IV Only publicity material approved by the election authority can be displayed at notified places writing on the walls will be banned.
- V. Electioneering will be restricted to ten days.
- VI. Buying votes and distributing cash or liquor will be made cognizable offences.(28)

This scheme had been criticized on various grounds. The eligibility for getting the aid is one sixth of the total votes polled. This is too high a figure. By this criteria only Telegu Desham and congress will be eligible for the subsidy. Small parties will be wiped out, an undermocratic step. In fact, the eligibility of a party should not be judged merely by the percentage of votes secured by it, but its standing, ideology, programs, policies and generally popularity should be the criteria for eligibility.

In fact, the approach of the party in power is quite different from that of other parties towards this issue. This fact has been correctly described by Mr. L.P.Singh:

A party - usually the party in power which commands large financial resources, is not disposed to consider the problem of funding of election campaigns to be one of great importance or urgency. The parties which are not in a position to command such resources would, and

28 Rama Rao, N.T. Electoral reforms an agenda for action. newstimes (Hyderabad) Oct, 17, 1987.

have infact attached a greater importance all these years to this problem and to prevention of lavish expenditure on election campaigns.(29)

Infact, the state funding of election is the need and the demand of the situation. Inthe background of unequal access to the economic resources of the society, the equality between political parties at the time election is necessary. The state funding of election attempts to achieve its end to the some extent. Analysing this aspect. Suresh Chandra comments:

There seems to be no escape from the state taking on the responsibility of financing electoral and party expenses in a manner that is administratively feasible and political fair to all concern. Such a system will not only reduce the influence of big money bags on party policies but also help to stabilise the party system.(29)

29. Singh, L.P. Electoral reforms, (New Delhi Uppal), 1986, pp. 94-95.

30. Chandra Suresh, State financing of election Deccan Chronicle (Hyderabad) Nov. 26, 1982.

CONCLUSION

The present political scenario presents a gloomy picture as far as the distortion in its democratic spirit is concerned. This distortion is brought about by various factors. The nexus between money and politics is definitely most important and decisive among those factors. Money has the potential to corrupt. It is very intensely happening in Indian polity where a sort of captive politics has emerged, captive in the sense that the political process is being guided by the interests of the few having money power. This feature of Indian polity is gaining momentum day by day.

As every thing has its source, the source of captive politics may be found at the time of election when various equations come into being, because at this stage, political recruitment is made. The result of all these equations is that election has tended to become a costly affair, where parties and persons with moderate means find themselves in a handicapped position. Various legal measures have proved to be a failure. But, the irony is that, despite the serious concerns expressed by politically conscious observers no effective measure has been taken by the government to control the increasing role of money in Indian politics. Moreover, some amendments in the statutory position have

produced the results which are just opposite of that which is the need and demand of the situation.

It is a fact that in the prevailing politico-economic system, the role of money cannot be completely ruled out. But at the sametime, a reasonable and legitimate role can be given to 'money' by making certain amendments in the legal provisions.

The first step in this direction should be made regarding the increasing cost of election. Here, besides minor changes, some important changes should be made:

1. The amendment made in 1974 to the Representation of the people Act, 1951 enabling political parties, associations and individuals other than the candidate to pour unlimited amounts of money in electoral campaigning without any breach of law, should be immediately nullified. In fact, the freedom given to political parties, associations or individuals other than the candidate to incur as much expenditure as possible at the time of election tends to frustrate the scheme as well as the object of the ceiling.

2. The state should undertake the responsibility of financing the election subject to the past performance of the parties suggestions in this regard are coming from

different quarters but no effective step in this direction has been taken so far. Infact, in western democracies, some assistance is given by the goverment. In England, a parliamentary condidate can send free of charge a postal communication to each of his electors, and can avail the facility of meeting place without charge. All these are paid by the government: similiarly, in France subsidy on certain items, such as issue of notices, circulars and voting-papers, is given on securing 5% of the votes by a candidate.

Infact, taking advantage of the experiences of the western countries, a suitable scheme of state funding can be evolved. It is necessary in order to reduce the role of money in Indian politics and to provide the equality of opportunity to political parties irrespective of their resources.

3. Closely related to the role of money is the question of the misuse of authority by the party in power. The enormous resources, mostly belonging to government in the form the of official machinery create a favourable position for the ruling party at the cost of the other political parties at the time of election. This situation tends to create a sort of inequality at the time of election. For the purpose of creating a sort of equity between party in power and other political parties, the Election commission, has evolved

model codes of conduct from time to time to be observed by the political parties at the time of election. But they lack any legal sanction and are merely in the form of an appeal, the success of which depends to a great extent on the good will of the political parties, especially the party in power. In order to maintain the fairness of election, some of these codes, particularly those which deal with the misuse of government machinery, should be incorporated as corrupt practices in Representation of the people Act, 1951.

4. The Election commission has very little power regarding the return of expenses of a candidate. It is merely capable of seeing whether the return has been filed in time and the limit has been maintained. The commission has to accept the statement made by the candidate as correct in all respect without going into the details of its accuracy. This situation may and in fact does create various irregularities. In order to avoid such situations the Election Commission should be empowered to examine the election returns in depth and find out whether they are correct and accurate or not.

These measures if implemented properly, are capable of discharging the role which money power has become habituated to play at the time of election. Further, these measures tend to reduce the dependence of the candidate on external factors at the time of election.

Besides this step, another step should also be taken. Political parties receive huge amounts of money from companies as, under the present legal provisions, a company is permitted to donate a sum to political parties or for political purposes. This ban on the donations to political parties by the companies, is not practically applicable and to some extent against the democratic spirit. So it is practical to give some freedom to companies to donate as has been given by amendment in S.293A of the companies Act. But certain things are missing.

The amount which a company can contribute has been given as a percentage of its net profit of three preceding years. The amount should be fixed, that is there should be limit beyond which a company cannot contribute. It is immaterial in this regard that the upper limit prescribed by law constitutes what percentage of its net profit. The scheme of percentage enables a company to contribute unlimited amount of money which is usually prejudicial to the interests of political parties, other than the party in power. This situation should be avoided in the interest of the spirit of democracy.

Further, it should be made compulsory for the political parties to maintain details of such contributions. This record should be open to audit by competent persons

appointed for this purpose. In the lack of such compulsion, it is difficult to get the true nature of contributions and political parties usually takes advantage of this lucuna, which must be removed.

Actually, in the present politico-economic structure use, to think of a complete separation of Money from politics is utopian. These two factors have become so mixed that they cannot be separated completely. But at the sametime, efforts should be made to establish acceptable and reasonable limits to the role being played by money in elections.

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ANNEXURE¹

THE COMPANIES AMENDMENT ACT, 1985 , NO. 35 OF 1985.

In the Companies Act 1956 (hereinafter referred to as the principal Act) for S. 293 A, the following shall be substituted, namely:-

Political contributions

S. 293A(1) Notwithstanding any contained in any other provision of this Act -

- a) No government company, and
- b) No other company which has been in existence for less than three financial years shall contribute any amount or amounts, directly or indirectly -

- (i) to any political party, or
- (ii) for any political purpose to any person.

(2) A company, not being a company referred to in clause (a) or clause (b) of sub-section (1) may contribute any amount of amounts, directly or indirect -

- (i) to any political party, or
- (ii) for any political purpose to any person.

provided that the amount or as the case may be, the aggregate of the amounts which may be so contributed by a company in any financial year shall not exceed 5% of its average net profits determined in accordance with the provisions of S. 349 and 350 during the three immediately preceding financial years.

(3) Without prejudice to the generality of the provisions of sub-section (1) and (2) -

- (a) a donation or subscription or payment caused to be given by a company on its behalf or in its account to a person, who, to its knowledge, is carrying on an activity which at the time at which such donation or payment or subscription was given or made, can reasonably be regarded as

1. India, Ministry of Law, Justice and Company Affairs Acts of parliament, 1985 (new Delhi, Govt. Press, 1984) p.183.

likely to effect public support of a political party shall also be deemed to be contribution of the amount of such donation, subscription or payment to such donation, subscription or payment.

(b) The amount of expenditure incurred, directly or indirectly, by a company on advertisement or indirectly, by a company on advertisement in any publication (being a publication in the nature of a souvenir, brochure, tract, pamphlet or the like) by or on behalf of a political party or for its advantage shall also be deemed:

(i) Where such publication is by or on behalf of a political party, to be a contribution of such amount to such political party, and

(ii) Where such publication is not by or on behalf of but for the advantage of a political party to be a contribution for a political purpose to the person publishing it.

(4) Every company shall disclose in its loss and profit account any amount or amounts contributed by it to any political party or for any political purpose to any person during the financial year to which that account relates, giving particulars of the total amount contributed and the name of the party or person to which or to whom such amount has been contributed.

(5) If a company makes any contribution in contravention of the provisions of this sub-section -

(a) the company shall be punishable with fine which may extend to three times the amount so contributed; and

(b) Every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

ANNEXURE²

NEW CEILINGS

Name of the State	Maximum limit of election expenses in any one	
	Parliamentary Cons. (Rs.)	Assembly Cons. (Rs.)
1. Andhra Pradesh	150000	50000
2. Assam	130000	30000
4. Bihar	150000	50000
5. Haryana	150000	40000
6. Himachal Pradesh	130000	20000
7. Jammu and Kashmir	130000	20000
8. Karnataka	150000	400000
9. Kerala	150000	50000
10. Madhya Pradesh	130000	30000
11. Maharashtra	150000	50000
12. Manipur	100000	10000
13. Meghalya	70000	10000
14. Nagaland	100000	10000
15. Orissa	150000	40000

India, Ministry of Law, Justice and Company Affairs, Manual of Election Law (New Delhi, GOI Press, 1984), p.235.

16. Punjab	150000	40000
17. Rajasthan	150000	40000
18. Sikkim	50000	5000
19. Tamilnadu	150000	50000
20. Tripura	100000	10000
21. Uttar Pradesh	150000	50000
22. West Bengal	150000	40000

UNION TERRITORIES

1. Andaman & Nicobar islands	50000	-
2. Arunachal Pradesh	50000	10000
3. Chandigarh	50000	-
4. Dadra and Nagar Haveli	20000	-
5. Delhi	100000	25000
6. Goa, Daman and Diu	50000	10000
7. Lakshadweep	20000	-
8. Mizoram	50000	10000
9. Pondichery	70000	10000

