CHAPTER-XIII
EXCESSIVE EXPENDITURE

INTRODUCTION

An important aspect of electrol reform that has not received proper attention is the need to rescue elections from the clutches of money power. President V.V. Giri once lamented, "It has been a most regrettable development in recent years that money power has come to play such a dominant role in the elections to legislatures. This, to my mind, is at the root of corruption and corruptive influences in our public life".\(^1\) Dr. Farooq Abdullah, a former Chief Minister of J & K, once remarked, "Election creates money power and not mass power".\(^{(1-a)}\) The Santhanam Committee on Prevention of Corruption has pointed out that the belief in the prevalence of corruption at high political levels has been strengthened by the manner in which funds are collected by political parties especially at the time of elections.\(^2\) The Tarkunde Committee report on Electrol Reform submitted in 1975 observed, "A major malady in the operation of elections in India has been the reckless use of money".\(^{2-a}\). A similar feeling has been voiced by the Supreme Court, "It is a notorious fact that huge sums of money are lavished by candidates on election,
thus closing the door for ordinary people to contest democratic elections. The point is that when suspiciously small sums are returned as election expenses, no machinery to investigate and take action is found with the result that return of election expenses becomes an idle ritual and not an effective check. If parties pour funds for campaigning the law is silent and helpless. This is certainly a matter for the Election law to consider. It must make provision deterrent enough so as to enable the small to negotiate with elective opportunities.\(^3\)

Similarly, on another occasion the highest Court observed: "Money power casts a sinister shadow on our elections and the political pay-off of undue expenditure in the various constituencies is too alluring for parties to resist temptation.\(^4\)

It has been experienced that excessive expenditure of elections has been a recurring allegation in election petitions. Despite the legal limit on expenditure it has reached unimaginable proportion, corroding the moral fabric of the society. That is why Krishna Iyer, J. observed, "If campaigns run berserk and expenses unlimited become the rule, general elections become national nightmares and the fabric of our freedom shakes.\(^5\) Thus it can be seen that the vicious role of money in our elections has been attacked from every quarter.\(^{(5-a)}\)
THE LEGAL LIMITS ON EXPENDITURE

Under Section 123(6) of the Act the incurring or authorising of expenditure in contravention of Section 77 is a corrupt practice for the purpose of the Act. Section 77 deals with account of election expenses and maximum thereof. The first sub-section of Section 77 states that every candidates at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his election agent between the date of publication of the notification calling the election and the date of declaration of the result thereof, both dates inclusive. The second sub-section states that the account shall contain such particulars, as may be prescribed. The third sub-section states that the total amount shall not exceed such amount as may be prescribed. The amounts prescribed are to be found in Rule 90 of the Conduct of Election Rules, 1961. Under Section 10-A of the Representation of the People Act, 1951 if a candidate fails to lodge with the District Election Officer, the account of election expenses within 30 days after the date of election of the returned candidate, he is liable to be disqualified for a period of three years from the date of the order which is required to be made by the Election Commission. Under Rule 87 of the Conduct of
Election Rules, 1961 the District Election Officer is required to publish a notice on his notice board within two days from the date of lodging of the account specifying the date on which the account has been lodged with him and the time and the place at which the account can be inspected. Any person can inspect such account and obtain an attested copy of such account on payment of the prescribed fee. The above provisions, taken together, have sought to place two limitations upon a candidate: Firstly, candidate is required to spend money on his election within the maximum limit prescribed by the relevant law, and secondly, a candidate is under obligation to maintain an account of the expenses incurred.

THE RATIONALE OF LIMITING EXPENDITURE

The object behind putting a ceiling on the expenditure which a candidate may incur in his election campaign has been clearly summed up by the Supreme Court. Bhagwati, J. Speaking for the Court, observed that the object of the provision limiting the expenditure is two-fold. In the first place, it should be open to any individual or any political party, howsoever small, to be able to contest an election on a footing of equality with any other individual or political party, howsoever rich and well financed it may be and no individual or political party should be able to secure an advantage over others by
reason of its superior financial strength. The other objective of limiting expenditure is to eliminate, as far as possible, the influence of big money in the electoral process. The small man's chance is the essence of Indian democracy and that would be stultified if large contributions from rich and affluent individuals or groups are not divorced from the electoral process. It is for this reason that our legislators, in their wisdom, enacted a ceiling on the expenditure which may legitimately be incurred in connection with an election.

THE SCOPE OF SECTION 77

Section 77 of the Act requires correct account to be maintained of "all expenditure in connection with the election incurred or authorised" by the candidate or his election agent and under sub-section (3) the amount of such expenditure is not to exceed the prescribed limit. The scope of this provision was explained by the Supreme Court in Vidya Sagar Joshi V Surinder Nath. Hidayatullah, C.J., speaking for the Court, observed:

The critical words of section 77 are "expenditure" "in connection with election" and "incurred or authorised". "Expenditure" means the amount expended and "expended" means to pay away, lay out or spend. It really represents money out of pocket, a going out. Now the amount paid away or paid out need not be all money which a man spends on himself during this time. It is
money " in connection with " his election. These words mean not so much as "consequent upon" as "having to do with". All money laid out and having to do with the election is contemplated. But here again money which is liable to be refunded is not to be taken note of. The word "incurred" shows a finality. It has the sense of rendering oneself liable for the amount. Therefore the Section regards everything for which the candidate has rendered himself liable and of which he is out of pocket in connection with his election that is to say having to do with his election.12

In this case the facts were that by notifications dated January 13, 1967 the electors of Santokhgarh Assembly constituency of Himachal Pradesh constituency were invited to elect a member to the Assembly. The last date for filing of nomination papers was January 20, 1967. Three candidates contested the election. The appellant was an independent candidate opposed by the respondent who was a Congress nominee. The present appellant was returned with a margin of 742 votes. The returned candidate filed his return of election expenses showing an expenditure of Rs. 1862.05. The limit of expenditure in this constituency was Rs. 2000/-. One of the contentions of the election petitioner was that he had filed a false return of his election expenses, that he had spent an amount exceeding Rs. 2000/- in the aggregate and therefore contravened the provision of Section 77(3) of the Act and therefore committed corrupt practice under Section 123(6) of the Act.
The petitioner therefore asked that the election be declared void. The main item on which the expenses were said to be false was a deposit of Rs. 500/- as security and Rs. 200/- as application fee which the returned candidate had made with the Congress Party on or before January 2, 1967. The fee was not returnable, but as this payment was made before the notification calling upon the voters to elect a member to the Assembly nothing turned upon it. The returned candidate was denied the Congress ticket on or about January 10, 1967. This was also before the said notification. According to the rules of the Congress Party the security deposit was refundable to a candidate if he or she was not selected. It was however provided in the same rules that if the candidate contested the election against the official Congress candidate the security deposit would be forfeited. The returned candidate chose to stand as an independent candidate against the official Congress nominee and incurred the penalty of forfeiture. This was after the date for the filing of the nomination paper, January 20, 1967. He had time till January 23, 1967 to withdraw from the contest. If he had done so the deposit would have presumably been returned to him. The case of the petitioner was that if this deposit were added to the election expenses, the limit of Rs. 2000/- was exceeded and therefore
this amounted to a corrupt practice under Section 123(6) read with Section 77(3) of the Act.

The Court held that the deposit with the party was an expenditure in connection with the election. If he had got the ticket and the money was refunded to him, that would not have counted as an expenditure since the expenses would not have incurred. As he became a contesting candidate the forfeiture of the deposit became a fact between the two dates prescribed under 77 (1) and thus was an election expenses. But since inclusion of this amount in the expenses would have exceeded the limit of the election expenses there was contravention of Section 77(3) and the candidate was guilty of corrupt practice under Section 123 (6) read with Section 77(3).

(a) The Earlier Judicial Approach on S. 77

On several occasions the courts came to be called upon to determine the true scope of S. 77. The moot question was whether any expenses incurred by others than the candidate or his agent were excluded from the purview of the provision. The courts sought to give a literal meaning to the words employed by S.77. The courts came out with the view that election expenses incurred without the
authority of the candidate or election agent were not liable
to be included in election expenses under Section 77. Ram
dial v Brijraj Singh, is a good instance of such approach.
The Supreme Court through Shah, J. observed:

Unless it is established that the expenditure
was incurred in connection with the election
by the candidate or by his election agent or
was authorised by him it is not liable to be
included under Section 77 of the Representation
of the People Act. We agree with the High Court
that under Section 77(1) only the expenditure
incurred or authorised by the candidate himself
or by his election agent is required to be
included in the account or return of election
expenses and thus expenses incurred by any other
agent or person without anything more need not
be included in the account or return, as such
incurring of expenditure would be purely
Voluntary.

Another case on similar line is Magraj Patodia v R.K.
Birla in which the allegation made against R.K. Birla, the
candidate returned from one of the Parliamentary constituencies
in Rajasthan was that he had incurred or authorised expenditure
in contravention of Section 77 of the Act, in connection with his
election. The maximum amount of expenditure permitted for the
constituency from which R.K. Birla contested the election was ₹25,000. The
return of the respondent showed that his total expenditure in connection with
the election was ₹1638/96*
P. If it was shown that the total expenditure incurred
either by the respondent or his election agent or by others
with their consent or under authority exceeded ₹25000/- then
the election of respondent must be held to be void.

Evidence was led to show that about the time of the
election, several telephones installed in the residence of some
of the members of the Birla family and some of their
executives were extensively used and the telephone charges ran into few thousands of rupees; that a large number of Jeeps and Cars were used in connection with the election; that thousands of persons worked for respondent; that considerable expenses were incurred for arranging meetings.

In the opinion of the supreme Court, since the petitioner failed to prove that those amounts were spent with the consent or under the authority of the respondent or his election agent, those expenditures could not be taken into consideration. In other words, according to the Supreme Court, whatever was spent was done freely and voluntarily. A voluntary expenditure would not come within the mischief of Section 123 (6). It is true, the Court observed, that many times corrupt practices at election may not be able to be established by direct evidence and the commission of those corrupt practices may have to be inferred from the proved facts and circumstances but the circumstances proved must reasonably establish that the alleged corrupt practice was committed by the returned candidate or his election agent. Preponderance of probabilities is not sufficient. But showing his "uneasiness", Hegde, J. speaking for the Court, observed:

Section 123(6) is by and large ineffective in controlling election expenses. There are ways to bypass that provision. From what we
have seen in the various election cases that came before us we are of the opinion that the law controlling election expenses has been reduced to a mockery.\textsuperscript{19}

In this 'helpless' situation the learned Judge held that he could only repeat the observation of the Supreme Court in an earlier case, \textit{Raananjaya Singh V Baijnath},\textsuperscript{20} that "the appeal in this connection must be to the Parliament."\textsuperscript{21} In \textit{Raananjay Singh} the Supreme Court had to consider a case where a proprietor of an estate lent the services of his Manager, Assistant Manager, twenty Ziladars and their peons for canvassing on behalf of his son. It was proved that the father was an old man and the returned candidate was helping his father in the management of his estate. The question was whether because of the canvassing by those persons the returned candidate had committed the corrupt practice of engaging the services of more than the prescribed number of persons and further whether the salary and wages paid to them should have been included in computing the expenses incurred by the returned candidate. The Supreme Court found that there was no evidence to show that the services of those persons were either procured by the returned candidate or his election agent nor was it proved that their services were obtained with the consent or under the authority of the returned
candidate or his election agent. The Court observed that there was no doubt that in the eye of the law those extra persons were in the employment of the father of the appellant and paid by the father and they were neither employed nor paid by the appellant. "It obviously was a case where a father assisted the son in the matter of the election. These persons were the employees of the father and paid by him for working in the estate. At the request of the father they assisted the son in connection with the election which strictly speaking they were not obliged to do". It was, however, contended that such a construction would be against the spirit of the election laws in that candidates who have rich friends or relations will have an unfair advantage over a poor rival. To this, Das, J., who wrote the judgement on behalf of a five-judge bench replied:

The spirit of the law may well be an elusive and unsafe guide and the supposed spirit can certainly not be given effect to in opposition to the plain language of the sections of the Act and the rules made thereunder. If all that can be said of these statutory provisions is that construed according to the ordinary, grammatical and natural meaning of their language they work injustice by placing the poorer candidates at a disadvantage the appeal must be to Parliament and not this Court.

Thus all the three above mentioned judgements show that in order to bring a case under Section 123 (6) it is
necessary that unauthorised expenditure must have been done either with the candidate's consent or with the consent of his election agent. In case 'consent' is not proved, the candidate is not liable for what has been spent by others for making his election a success. The act of others will simply come under the category of volunteers. In other words, the Supreme Court has been consistent in holding that any expenditure incurred by persons other than the candidate for election purposes will not be taken into account (unless it is incurred by such third persons as the candidate's agent) in determining whether a corrupt practice was committed by the candidate. The effect of the decisions of the Court is also that the expenses incurred by a political party to advance the prospects of the candidates put up by it, do not fall within Section 77 of the Act.

(b) **The Shift in Attitude**

The Supreme Court judgement of *Kanwar Lal Gupta* V *Amarnath Chavla* brought shock waves to the political bosses as the Court there in clear terms held that expenses incurred by political parties and friends are also to be included under the head of election expenses. This was an obvious departure from the line the Court had so consistently followed. In the words of Bhagwati, J., who
spoke for the Court on behalf of himself and Sarkaria, J.:

Now, if a candidate were to be subject to the limitation of the ceiling, but the political party sponsoring him or his friends and supporters were to be free to spend as much as they liked in connection with his election, the object of imposing the ceiling would be completely frustrated and the beneficial provision enacted in the interest of purity and genuineness of the democratic process would be wholly emasculated ... The legislators could never have intended that what the individual candidate cannot do, the political party sponsoring him or his friends and supporters should be free to do. That is why the legislators wisely interdicted not only the incurring but also the authorising of excessive expenditure by a candidate. (24-a)

The Court further observed that when the political party sponsoring a candidate incurs expenditure in connection with his election, as distinguished from expenditure on general party propaganda, and the candidate knowingly takes advantage of it or participates in the programme or activity or fails to disavow the expenditure or consents to it or acquiesces in it, it would be reasonable to infer, save in special circumstances, that he impliedly authorised the political party to incur such expenditure and he cannot escape the rigour of the ceiling by saying that he has not incurred the expenditure, but his political party has done so. "A party candidate does not stand apart
from his political party and if the political party does not want the candidate to incur the disqualification it must exercise control over the expenditure which may be incurred by it directly to promote the poll prospects of the candidate. The same position must also hold good in case of expenditure incurred by friends and supporters directly in connection with the election of the candidate.25

On the facts, the Court held that the first respondent's election expenditure exceeded the statutory limit and his election was accordingly invalid. Thus, in the opinion of the Court, this is the only reasonable interpretation of the provision which would carry out its object and intendment and suppress the mischief and advance the remedy by purifying our election process and ridding it of the pernicious and baneful influence of big money. This is in fact, the Court continued, what the law in England has achieved. There, every person, on pain of criminal penalty, is required to obtain authority from the candidate before incurring any political expenditure on the candidate's behalf. The candidate is given complete discretion in authorising expenditure upto the limit permitted. If the expenditure made with the knowledge and approval of the candidate exceeds the limit or if the candidate makes a
false report of the expenditure after the election, he is subject not only to criminal penalties, but also to having his election voided.

Bhagwati, J., also pointed out that it would not be correct to say that putting ceiling on the expenditure of a candidate by unauthorised persons/volunteers or friends would considerably inhibit the electoral campaign of political parties. In the words of the learned judge:

In the first place, a political party is free to incur any expenditure it likes on its general party propaganda though, of course, in this area also some limitative ceiling is eminently desirable coupled with filing of return of expenses and an independent machinery to investigate and take action. It is only where expenditure is incurred which can be identified with the election of a given candidate that it would be liable to be added to the expenditure of that candidate as being impliedly authorised by him.26

In short, Section 77 provides for a limit on the expenses in connection with the election incurred or authorised or authorised by a candidate or his election agent. The Supreme Court in this case has held that this 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 sponsoring him or his friends and supporters to spend an amount far in excess of the limit and if the latter were to be left free to spend such amount.
The object of imposing ceiling on the expenditure to be legitimately incurred in connection with the election would be completely frustrated. The rationalistic approach of the apex Court behind the judgment is that the "small man's chance is the essence of Indian democracy and that would be stultified if large contributions from rich and affluent individuals or groups are not divorced from the electoral process."

**AMENDMENT OF THE LAW**

It may be noted that following this decision the law was amended within a fortnight. The Representation of the People (Amendment) Ordinance 1974 promulgated by the President on 19th October, 1974 set at naught the above decision of the Supreme Court. It added an Explanation to Section 77(1) of the Act according to which notwithstanding any judgment, order or decision of any Court to the contrary, any expenditure incurred or authorised in connection with the election of a candidate by a political party or by any other association or body of persons or by any individual (other than the candidate or his election agent) shall not be deemed to be and shall not even be deemed to have been expenditure incurred or authorised by the candidate or by his election agent. It was, however, provided by a proviso to the Explanation that the Ordinance
would not affect any decision of the Supreme Court given before its commencement or any decision of a High Court against which no appeal had been preferred and that the time allowed for filing such appeal had expired before its commencement.

Another notable change in clause (1) of Section 77 came to be relating to the period of keeping a separate and correct account. Previously a candidate was required to keep the account of expenditure incurred or authorised by him or by his election agent "between the date of publication of the notification calling the election and the date of declaration of the result thereof both dates inclusive". Now by the amending Act 40 of 1975, the period is "between the date on which he has been nominated and the date of declaration of the result thereof, both dates inclusive".

POST - AMENDMENT JUDGMENTS

In the same year of 1975 the Supreme Court decided Smt. Indira Nehru Gandhi V Raj Narayan. One of the main allegations was that the appellant's election expenses exceeded the prescribed limit if the expenses incurred by the Congress Party was taken into account. Beg, J., held that there was no case or evidence that the Congress Party
was the agent, express or implied, of the returned candidate or acting as the channel through which any money whatsoever was spent by her. The learned Judge observed:

Voluntary expenditure by friends, relations or sympathisers and expenditure incurred by a candidate's party, without any request or authorisation by the candidate, has never been deemed to be expenditure by the candidate himself.²⁸

Beg J. further observed that the law requires proof of circumstances from which at least implied authorisation can be inferred.²⁹ It is not enough that some advantage accrued or expenditure was incurred within the knowledge of the candidate.³⁰ The test of authorisation would naturally be the creation of a liability to reimburse whoever spends the money and not necessarily the provision of money before-hand by the candidate on whose behalf it is spent.³¹ To the same effect was the opinion of Ray, C.J.:

"Authorisation means acceptance of the responsibility. Authorisation must precede the expenditure. Authorisation means reimbursement by the candidate or election agent of the person who has been authorised by the election agent of the candidate to spend or incur. In order to constitute authorisation the effect must be that the authority must carry with it the right of re-imbursement".³²
Thus, justice Bhagwati's approach in *Kanwar Lal Gupta* did not find favour with the majority judgment in *Indira Nehru Gandhi* because the expenses incurred by a political party could not always be taken as either incurred or authorised by the candidate himself. In this connection A.N. Ray, J., observed, "A candidate is not required to disavow or denounce the expenditure incurred or authorised by the political party because the expenditure is neither incurred nor authorised by the candidate. One can disavow what would be ascribed to be incurred or authorised by one."(32-a) Similarly Beg, J., said, "If some expenses are shown or admitted to have been incurred by the candidate's party or third persons over the election of the successful candidate, is it possible to separate it from a total expenditure on more than one constituency by some process of estimation and apportionment?"(32-b) Moreover, according to the learned Judge, this question could only arise if it is first proved that whatever expenditure was incurred by candidate's party or by some other person, who may be a friend, a relation or a sympathiser, was incurred in circumstances from which it could be inferred that the successful candidate would reimburse the party or person who incurred it.(32-c)
Then came *Nongthomban Ibomeha Singh* V *Leisangthem Chandramani Singh* in which the main allegation was that the respondent's election expenses exceeded the prescribed limit of Rs.2,500. He had filed his nomination on 23 January, 1974. On 5 December, 1973 he had given Rs.500 to a political party to secure an election ticket. This amount of Rs.500 was not mentioned in the return of election expenses filed by him. According to the return the expenses amounted to Rs.2160. Adding the sum of Rs.500 to the amount of Rs.2160 would take the expenses beyond the prescribed limit of Rs.2500. This would have invalidated his election but for the amendment of the Act in 1975 which was given retrospective effect. According to the amendment made in Section 77 of the Act, every candidate of an election will either by himself or by his election agent keep a separate and correct account of all the expenditure in connection with the election, incurred or authorised by him or by his election agent between the date on which he has been nominated and the result thereof, both dates inclusive. The Supreme Court held that the said amount of Rs.500 consequently need not have been shown in the return of expenses filed by the respondent, nor could the same amount be taken into the consideration in calculating the total expenses of the respondent with a view to judge as to whether his expenses exceeded the prescribed limit. The
amending Act of 1975, because of the retrospective effect attributed to it, was in operation at the time of election which returned the respondent to the Assembly.

In Dhartipakar v Rajiv Gandhi, (33-a) K.N. Singh, J., on behalf of himself and Venkataramiah, J., Commenting on the allegation that 'a number of vehicles were plying with Congress (I) flags and food was served in connection with the election meetings, distribution of badges and leaflets, reiterated the principle that any voluntary expenses incurred by a political party, well-wishers, sympathisers or association of persons does not fall within the mischief of Section 123(6) of the Act, instead only that expenditure which is incurred by the candidate himself or authorised by him is material for the purpose of Section 77.

CONSTITUTIONAL VALIDITY OF THE AMENDING ACT

The validity of Explanation I to Section 77(1) of the Act which gives a carte blanche to political parties to spend unlimited monies for the election of the candidates sponsored by them was challenged before the Supreme Court in Dr. P. Nalla Thampy Terah v Union of India. (33-b) The matter was examined by a five-judge Constitution Bench. Chandrachud C.J. who headed the Bench outlined the principle which the Court as a matter of judicial policy must be inclined to follow in such cases:
The main strength of the judgment ... lies in this: The Constitution Bench first separates the policy considerations of the legislature from the ones which are perceived or preferred by us privately or individually and then insists that the issue of constitutional validity of the impugned provision should be tested on the count of the former and not the latter. (33-c)

He then emphasised:

... it is not for us to lay down policies in matters pertaining to elections. If the provisions of the law violate the Constitution, they have to be struck down. We cannot, however, negate a law on the ground that we do not approve of the policy which underlies it ... we may have our own preferences and perceptions but, they cannot be used for invalidating laws. (33-d)

And further noted that the legislative policy behind Explanation I is "that persons other than the candidate or his election agent may, on their own, release their purse strings and never tie them again". (33-e)

One of the grounds on which the Explanation was challenged was that it violated Article 14 of the Constitution because it sanctions serious discrimination between one political party or individual and another on the basis of money power. It makes the wealth or affluence of the political party supporting the candidate the decisive factor in the outcome of elections. It introduces wealth and affluence as a measure of a candidate's
qualification or prospects of success, which is to 'introduce a capricious or irrelevant factor'. To this the Court answered that Explanation I classifies all political parties or association in one group and confers upon them the same or similar advantages. A classification of this nature, the Court held, bears reasonable relationship with the object of the statute that expenses incurred by those who fall within the particular group should not be regarded as expenditure incurred or authorised by the candidate or his election agent. It is then no answer to say that all political parties are not equally situated in the wealth which they command. It is not the election law which creates such inequalities. "Inequalities exist apart from that law and are, unfortunately, implicit in the unequal positions in which the citizens find themselves." What the law does, the Court observed, is to allow, in an equal measure, all political parties, associations or bodies of persons or individuals (other than the candidate or his election agent) to incur expenses in connection with the election of a candidate, which need not be included in the return of election expenses which the candidate is required to file. "Election laws are not designed to produce economic equality amongst citizens. They can, at best, provide an equal opportunity to all sections of society to project
their respective points of view on the occasion of elections."(33-i) The method, the Court admitted, somewhat unfortunate, by which law has achieved that purpose, is by freeing all others except the candidate and his election agent from the restriction on spending, so long as the expenditure is incurred or authorised by those others.

Regarding the argument that different political parties have been treated equally though they are situated unequally, or that individuals have been discriminated against either inter se or in relation to political parties is correct, the Court observed, "the only method which would measure upto the required constitutional standard is the one in which the State would have to allocate funds from its own exchequer in order to enable the various candidates to contest elections. That would be the fairest form of fairness. But, that is a far cry."(33-j)

Another ground of challenge in the instant case was that the Explanation 1 nullified the effect of Section 77(1) "as it not only permits but encourages and legitimises the influence of big money in the electoral process and thus militates against the fairness and purity of the electoral process."(33-k) The impugned provision, it was further pointed out, far from suppressing the mischief of baneful influence of big money directly promoted it and thereby sullied the purity of the electoral process.
Discarding the argument that the Explanation denudes the Section of its meaning and makes it purposeless, the Supreme Court held that Section 77(1) on the one hand and the Explanation I on the other, deal with two different situations. The former deals with the expenditure 'incurred or authorised by' a candidate or his election agent in connection with the election. It is obligatory to keep a separate and correct account of such expenditure. The Explanation deals with the expenditure incurred or authorised by a political party or any other association or body of persons or by an individual other than the candidate or his election agent. It is not obligatory for the candidate or his election agent to keep a separate and correct account of such expenditure. That is, in the opinion of the Court, because of two reasons. Firstly, such expenditure is not incurred or authorised by the candidate or his election agent and therefore, in the very nature of things, they cannot keep an account of that expenditure. Secondly, the argument that expenditure of the kind described in the Explanation I must be deemed to be incurred or authorised by the candidate or his election agent, is met by the provision in the Explanation that it shall not be so deemed. The Court, thus, concluded that "the latter (namely, Explanation I) cannot render the former (namely, Section 77(1)) meaningless."
THE SCOPE OF EXPLANATION I

In the Court's estimation thus if an expenditure which purports to have been incurred, for example, by a political party, has in fact been incurred by the candidate or his election agent the Explanation would not be attracted. If it is in fact incurred by a political party or any other association or body of persons, or by an individual (other than the candidate or his election agent) that the Explanation would come into play. The candidate cannot place his own funds in the power or possession of a political party or a trade union or some other person and plead for the protection of the Explanation. The reason is that in such a case, the incurring of the expenditure by those others, is a mere facade. In truth and substance, the expenditure is incurred by the candidate himself because, the money is his. "What matters for the purpose of Explanation is not whose hand it is that spends the money. The essence of the matter is whose money it is. It is only if the money expended by a political party, for example, is not laid at its disposal by the candidate or his election agent that the Explanation would apply."(33-m) In other words, it must be shown, in order that the Explanation may apply, that the source of the expenditure incurred was not the candidate or his election agent. The Court also clarified that the reason why the expression
"shall not be deemed to be" is used in the Explanation is that the Parliament wanted to get over the effect of the judgment of the Supreme Court in *Kanwar Lal Gupta*. Similarly, the reason why the expression "shall not ever be deemed to have been" is used in the Explanation is that the intention of the Parliament was to get over the effect of that judgment retrospectively, except to the extent mentioned in clause (a) and (b) of the Proviso to the Explanation.

**CONCLUSION**

There can be no doubt that money power in many situations dominates and determines the fate of election in India. The vast majority of our representatives represents a select class rather than the masses. Our experience of holding elections has shown that elections are hardly free and fair. The law has miserably failed to check the malpractices of excessive electoral expenditure.

Section 77, taken in its totality, suffers from two distinct disabilities. Firstly, it leaves out from its purview all political parties and associations. Secondly, its requirement as to the rendering of account is so superfluous that it can hardly ever be effectively enforced. It is a matter of common knowledge that political parties
are largely funded by vested interests deeply interested in the outcome of the election results. It is also a matter of common knowledge that political parties, with huge sums of money at disposal, know well how money can play its part in furthering the interests of their candidates and what method they should employ in order that money can be made operative. Those fighting as independents have also come to learn the tricks of the trade. That the provision of Section 77 implies, if anything, a meek mandate is a fact too well known. Since the commencement of the R.P. Act, a number of political parties and combinations have been at the helm of affairs. Neither of them has wanted to tie its own hands, and so none of them has ever been serious to bring about changes in the law to reduce, if not eradicate, the malaise that has permeated through the entire institutions of electioneering.

The Courts know it, and know it too well, that the remedy, if at all there can be one, lies largely with the Parliament, and not with the the Courts. The law, as it exists now, is so weak that the courts are hardly a forum for redressel of the consequence which money-power often brings to the individual. The cases fought in the apex Court, and discussed earlier, show a relaxed attitude on the part of the Judges. They do not seem to be truely
inclined to invalidate an election on the touchstone of Section 77. Kanwar Lal Gupta's was a case where the Court seemed to be keen to effect a reversal in the traditional judicial trend. But that effort soon found itself negatived by a Parliamentary amendment. The Courts therefore started treading the same path in the post-amendment litigation period. The Courts' disinclination to interfere is generally comparable with the Parliament's disinclination to bring about any appreciable reform in the existing law. Opinions, like those of Bhagwati are exceptions, and are notable for the intensity with which a particular Judge might feel obsessed with the system that somehow has come about.

A time may come, it may be hoped, when the various political combinations in the Parliament realise that if democracy in this country has to be established on fairer foundations, the potentiality of the money-role in elections has to be cut down, to the possible extent it can be through and by the instrumentality of law.\textsuperscript{34}
1. The Statesman, August 15, 1974
1-a The Indian Express, December 14, 1984
   Ministry of Home Affairs, Government of India,
   New Delhi.
2-a See Journal of Constitutional and Parliamentary
3. Rahim Khan v Khurshid Ahmad, AIR 1975 S.C. 290 at
   304 per Krishna Iyer, J.
   359 per Krishna Iyer, J.
5. Ibid.
5-a It is a popular saying today that India is not only
   the largest but also costliest democracy in the
   world in so far as the cost of electioneering and
   elections is concerned. There have been different
   heads of expenditure -booth legal as well illegal.
   some new heads are emerging. For example, Kali
   Pandey, an ex-M.P. from Bihar who lost his election
   in 1989, said,"The cost of electioneering has
   tripled in the last five years. Now there are many
   new heads of expenditure. Alcohol is often essential
   for workers now. Cost of vehicles, electioneering
   material, money for village VIPS, buying over of
   independents, are all part of the game": Seminar 55
   (April, 1990).

   The total expenditure on elections can be
   classified into two categories. The first one is the
   official expenditure incurred by the EC in
   conducting the election. The second category
includes the money spent by candidates, their parties and friends. In the 1989 election it was unofficially estimated to be around Rs.1,000 crore. According to a random survey of 800 polling booths in one parliamentary constituency, the main items on which there was lavish spending during elections were: transport and fuel, Rs.1.70 lakh; payment to workers, Rs.1.89 lakh; electioneering and election material, Rs.1.66 lakh; stationery, Rs.50,000; miscellaneous, Rs.10,000. The grand total comes to Rs.5.85 lakh. "And this figure does not include the "invisible" expenditure on giving gratification to voters on election eve. The law governing this 'unofficial' expenditure is extremely liberal and it gives more or less complete immunity to candidates": See Dev Dutt, "What Price Election", The week 22 (December, 1989).

According to a report by the Operations Research Group, the Congress (I) alone spent nearly Rs.10 crores for advertising through the mainline publications during the period October 20 to November 24 1989. The BJP and Janata Dal spent 5 lakhs rupees each to advertise through the mainline newspapers during this period. The National Front and its constituents spent, together, around 1.10 crores for campaigning through dailies; According to an unofficial estimate, the total expenditure by the political parties in the 1989 elections (including the Assembly elections in November) was 10,000 crores. See Ganguly & Ganguly, "The Election Scene 1989", Seminar 25 (April, 1990).
The Congress (I) is said to have spent another 20 crores in the production of audio and video cassettes: See S. Sethi, "Packaging Politics" Seminar 46 (April, 1990).

5-b The maximum election expenses of which account is to be kept under Section 77 and which is incurred or authorised in connection with an election shall not exceed the maximum prescribed for the said purpose. The maximum however differs from one State/Union territory to another.

Recently on 21 October, 1994 the Government enhanced the ceiling on election expenses by a candidate for the Lok Sabha as well as State Assembly elections. The limits have generally been raised three times from the existing levels for most of the States. A notification issued by the Government said that the existing ceiling for an Assembly election in majority of the States would be raised from Rs.50,000 to Rs.1.50 lakh. It would be enhanced from Rs.1.5 lakh to Rs.4.5 lakh for a Parliamentary contest. For example, for the States of Andhra Pradesh, Bihar, Maharashtra, Tamil Nadu and Uttar Pradesh the ceiling on election expenses would be from Rs.50,000 to 1,50,000 for Assembly and from Rs.1.50 lakh to Rs.4.5 lakh for Parliamentary elections. The revision was last done in 1984. See The Hindustan Times, New Delhi, 22-10-1994.

The Court followed its earlier decisions in Ram Dayal, Supra note 14 and Magraj Patodia, Supra note 16. See also Shah Jyantilal Ambalal V Kasturilal Nagindas Doshi (1972) 42 E.L.R. 307 at 311 in which the S.C. held: "It is now well settled that expenses incurred by a political party in support of its candidates do not come within the mischief of Section 123 (6) read with Section 77 of the Act."
29. _Id_ at 2422
30. _Id_ at 2421
31. _Ibid_
32. _Id_ at 2329
32(a). _Ibid_
32(b). _Id_ at 2421
32(c). _Ibid_
33. AIR 1977 S.C. 682
33(a). AIR 1987 S.C. 1577
33(b) AIR 1985 S.C. 1133
33(c) See Virendra Kumar on Election Law in *Annual Survey of Indian Law* 419 (1989)
33(d) *Supra* note 33b at 1142.
33(e) _Id_ at 1143.
33(f) _Id_ at 1137.
33(g) _Id_ at 1140.
33(h) _Id_ at 1141.
33(i) _Ibid_
33(j) _Ibid_
33(k) *Supra* note 33b at 1137. See also at 1141 where counsel for the petitioner urged that Explanation rendered the main provision in Section 77(1) nugatory, by taking away with one hand what was given by the other.
33(l) *Supra* note 33b at 1141
33(m) _Id_ at 1142.
34. In a most recent pronouncement in the case of C.K. Jaffer Sharif, Union Railway Minister, to the Lok Sabha in 1991 from Banglore (North) (Yet unreported as decided in August-September 1994) the S.C. has drawn attention to a serious and glaring flaw in the election expenses law and suggested steps to be
taken by Parliament to amend the law. The Court has called upon Parliament to enact a law that identifies and locates persons investing in a candidate's election in order to promote the purity of polls. The Court is correct in its conclusion on the present law that this means the freedom of any "Smuggler, criminal or any other anti-social element" to make an investment in a candidate's election without announcing or accounting for it.

It has been rightly observed by L.M. Singhvi that there is no public accountability in our political system. "Everyone is politically accountable, except political parties. The political parties are the least politically accountable institutions in our country. Is that a healthy state of affairs"?: J. of Constitutional & Parliamentary Studies 106 (January - June, 1984).

Former CEC R.K. Trivedi expressed concern over the "money power influence" in elections and said, "We shall go back to the old law" under which any expenditure incurred by a political party for the benefit of its candidate formed part of the ceiling on expenditure: The Times of India, New Delhi, December 12, 1984.