CHAPTER 3
CORRUPT PRACTICES AND ELECTORAL OFFENCES: AN OVERVIEW
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3.1 CONCEPT OF CORRUPT PRACTICES

The essence of a democratic election is freedom of choice. In modern times elections have been primarily associated with the system of representative form of government. In all democratic countries of the world the electoral systems were established on the basis of the natural right of the individuals. This followed freedom of candidate and universal franchise. For putting the system into action, we find that since the 19th century states have been relying upon political parties for the choice of candidates in accordance with the principles and methods of the party machinery. With the passage of time laws were enacted to regulate the entire electoral system. Once the candidates jump into fray, their prime objectives is to win the election, so that his desire to represent the electorate is fulfilled. Winning an election has not been so easy a task and since the candidate, his party followers and workers, as well as his agent, want victory and this desire too often causes them to adopt undesirable tactics. Laws have, therefore, been made restraining prohibited activities which may not only regulate the conduct of the candidate at elections but declare certain activities as corrupt practices.¹

Corrupt practices is basically a general term and include bribery undue influence etc. having specific reference to electoral systems. Such practices were declared against the law by many nations in the beginning of 19th century as these were considered interferences in the free exercise of right to vote. In latter years legislation acquired a new dimension and covered many more aspects including the size of expenditure, contribution and the specification of purposes for which the money could be spent. In United States corrupt practices were regulated by both State and Federal Legislation.

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The early statutes covered matters concerning bribery and related abuses. In latter years other states also enacted similar statutes. The principle Federal Legislation rested on the Corrupt Practices Act of 1925, the Hatch Acts of 1939, 1940, and the Labour Management Act 1947.\(^2\) In the United Kingdom, the earliest legislation enacted to curb these undesirable practices was the Corrupt and Illegal Practices Prevention Act, 1883. The basis thrust of this legislation was the placing of the onus on the election agent for any infringement of the provisions. Corrupt practices under this Act included; (1) bribery, (2) treating, (3) undue influence, (4) personation and (5) unauthorised expenditure. Illegal practices included, paid conveyancing, advertising, hiring without authority committee rooms; voting without qualification; false statements made about candidates; disturbance of public meetings during elections; printing; publishing or posting any bill placard or poster not bearing on its face the name and address of the printer and publisher and illegal proxy voting. The expenditure aspect was further controlled by the latter enactment of 1918 and 1928 and thereafter the Representation of People Acts, 1948 and 1949.\(^3\) In England, the latest law governing the field is occupied by corrupt practices, is the Representation of the People Act. 1983.\(^4\)

In India the law relating to corrupt practices was for the first time introduced by the Government of India Act, 1919. The law was virtually a reproduction of the provisions of the British Act of 1883 with slight modifications. The Indian Election Offences and Inquiries Act, 1920 which also introduced certain amendments in the Indian Penal Code, disqualified persons found guilty of corrupt practices. The Corrupt Practice Order, 1936 did not make any significant change in the existing provisions regarding corrupt practices. The position continued till the enactment of the Representation of the People Act, 1951, the first Statute enacted by our Parliament to regulate matters concerning elections including corrupt practices. This way we find that the emergence of the concept of corrupt practices...
practices has remained closely connected with the system of election of representatives in all democratic countries of the world. The basic thrust behind the evolution of the concept of corrupt practices has been to enable a voter to exercise his right to vote freely and fearlessly. It is also an injunction to all those who may like to win elections by employing means which are not only undesirable, unethical but are also prohibited by specific legislation.

It cannot be denied that the credibility of any democratic institution is dependent upon the purity of electoral process through which succession to this institution is to be made. In other words, if the elections are free and fair, then only there would be true representation of the people in the Government. This objective is primarily sought to be achieved by framing rules for election which provide to every citizen an equal opportunity to participate in the democratic process. Further, this has also been sought to be achieved by creating an appropriate machinery to see that the elections are conducted strictly in accordance with the rules framed for the purpose. Lastly, the objective of fair and free elections is also sought to be achieved by creating an atmosphere where people could form an objective opinion about their selection of the candidate of their choice without any interference from any quarter. Thus, fairness of an election is dependent upon the existence of these pre-conditions.

It must also be stated that the choice of a suitable candidate by the voters involve so many consideration. Merits and demerits of a candidate and their political parties and programmes are some of the considerations which usually weigh the mind of the voters in selecting a candidate. When considerations other than the merits of the candidates and policies overtake the mind of the elector or influence his choice, we may say that the purity of process of election has been contaminated. If this happens, it is treated as an interference with the electoral right of the voter. Such acts of interferences are called corrupt practices. It may take various forms. It may be in the form of an inducement, hereby compelling him to vote for a candidate whom he would not have voted for in the normal course. Sometimes attempt may be made to purchase voters or put them under threats so as to change their mind. There
may be various other methods resorte to which are not only unwarranted but have been declared as illegal practices by or under the law and the candidate may still make use of such methods bypassing all norms statutory or otherwise. The Representation of People Act, 1951 as amended from time to time, Conduct of Election Rules, 1961 and the Indian Penal Code, 1861 are some of the statutes which have taken care of all such practices resorted to by candidates or his election agent or any other person on his behalf.

Whatever may be the provisions in the statute book covering the subject matter, the most important aspect that has to be taken into account is the role of the machinery constituted under the law for implementing the mandate of these statutes. It is in this context that a reference to Article 324 of the Constitution of India becomes inevitable. The provision vests the authority of superintendence, direction and control of these elections in the Election Commission of India. The Election Commission is required to work within the framework of Article 324 and other provisions of law and the rules made thereunder. In a way the provision contained in Article 324 not only confers powers on the Commission but also entrusts him with duties relating to the same subject matter. Thus the Election Commission has all the powers to give proper directions and pass necessary orders for a free and fair poll. If any complaint from any quarter is received alleging violation of the law and the rules by any of the candidates during elections, he is the competent authority to take full cognizance of the matter, issue directions or orders which he may consider appropriate in the eyes of law. This way, corrupt in by the candidate himself or on his behalf, if brought to the notice of the Election Commission can be taken cognizance of by the Commission itself. There may be situations where, in the opinion of the Election Commission, a particular complaint may not be considered as of establishing a prima facie cause in favour of the complainant and consequently the same may be dismissed. But when a candidate wins the election with such allegations, his election can still be set aside by an election tribunal if the complainant is able to substantiate his allegations dismissed earlier by the Commission. Thus, we may find that purity of electoral process is always protected by law. But it is equally
important that the public remains vigilant and if they come to know of any unfair practices, the matter must be reported to the appropriate authority. No law can be implemented in true letter and spirits unless there is a solid public support behind it.

Objectives

Free and fair elections are a basic postulate of a democratic process. The absence of confidence of the people in the verdict through ballot box may endanger the whole democratic system. Today the democratic process is well defined and we have the legislation to protect and safeguard the purity and freedom of elections. Nevertheless, it has been observed in actual practice that the candidates, in order to win the election, resort to such corrupt practice which cast doubt upon the sanctity of free and fair elections. As already submitted, such practices have been banned under the Representation of People Act, 1951. Resorting to these banned practices by the candidate as a means of influencing voters constitute a direct interference in free and fair elections. These corrupt practices which are outlined in Section 123 of the Act include, bribery and gratification, undue influence, booth capturing, making appeals on grounds of caste, race, community or religion, creating hatred or enmity between citizens on grounds of religion, etc., publication of false and defamatory matter, hiring or procuring of vehicles and vessels, incurring or authorizing excessive expenditure and seeking help from government employees.

The role of corrupt practices in elections assumes new dimensions more particularly when the candidates and the political parties to which they belong are bent upon to win the election by using all means fair or foul. They try to overstep the limits laid down by law on one pretext or the other. Such instances have been seen in two situations. First, where the corrupt practice is difficult to prove for the rival candidate, it is easy for the other candidate to destroy evidence, and secondly, where the alleged activity falls short of the corrupt practice, the candidate can still achieve the desired result. This makes the role of law a futile exercise. For example, the corrupt practice concerning
excessive expenditure is well defined and its application is regulated by the Conduct of Election Rules.1961. In practice, it has been seen that the candidate spends many times more than the prescribed limit. Thus law is followed on papers which are submitted to the Election Commission. Since law has to take its own course to prove the alleged violations, resultantly, the candidate in the meantime succeeds in obtaining the desired results. The examples can be multiplied and the use of money power in the election remains a factual reality. Thus the unbridged gap between the law and the social realities is tantamount to undermining the concept of free and fair elections. In view of this unpleasant situation and failure of the law to effectively regulate human actions and inactions the present study has assumed special significance. The not only intends to study the law by giving juristic interpretation to it but also aims to study law in relation to the society. The role of the Election Commission as well as the judiciary remains of lesser significance if the candidate has destroyed evidence or the available proof is not sufficient to prove the corrupt practices alleged. It is quite amazing to point out that election matters are regulated by civil law, whereas the standard of proof required for proving a particular allegation of corrupt practices is similar to the one required under the criminal law. This seems to be an inherent contradiction in the procedural aspect which has resulted in dismissal of a majority of election petitions before the Election Tribunal. Thus, the role of corrupt practices under the Act depends upon its perception by the society as well as agencies involved in administration and implementation of law. The perception aspect is affected by social, economic, cultural, religious and political considerations. On the other hand, in actual practice the legal machinery created for implementing the law has to lay stress on the availability of evidence as well as the standard of proof required for substantiating the allegations. Thus there arises the need to analyse the law of corrupt practice both from a judicial and sociological perspective keeping in view the statutory scenario as well as the judicial responses to it.

Though electoral reforms have remained an area of wide discussions among jurist and parliamentarians but nothing concrete has been done till this
date. Astonishingly the areas discussed so far in the Parliamentary corridors as well as outside it have remained confined to electoral machinery and the voting system. Surprisingly, the problems of corrupt practices have never come up for a serious thought or deliberation. This fact can be proved from the cold response which the Representation of People (Amendment) Bill, 1993 did receive from the members of Parliament at the very introductory stage itself. It may also be pointed out that in this area of study which is of great concern to all the citizens of the country including our present day politicians, no empirical researches have ever been undertaken. Therefore, there also arises a need to make an empirical study of how our people view the law relating to corrupt practices and what role these practices play in influencing the election of a candidate. Therefore, the basic objective is:

(a) to study the development of law relating to corrupt practices;
(b) to examine critically the provisions of the Representation of the People Act, 1951 dealing with corrupt practices and to find out the loopholes if any, existing in the law;
(c) to analyse the role of the judiciary in interpreting the law relating to corrupt practices and to see whether the judiciary has been able to appreciate the law in the context of social realities;
(d) to conduct a social survey so as to obtain a view point of a select number of voters to judge their responses to the role of various corrupt practices during elections. Whether these practices are liked by them? Whether they subscribe to these undesirable tactics employed by candidates to influence their freedom of choice of a right candidate?
(e) to examine whether the judicial interpretation matches with the social perception of corrupt practices? If yes, How? If not, Why? And,
(f) Lastly, what suggestions can be made to improve upon the existing legal framework governing corrupt practices. Whether the existing law needs amendments or some alternative
mechanism is required to deal with the problem of elimination of the role of corrupt practices in elections?

3.2 Corrupt Practices and Electoral Offences

A. Corrupt Practices

There are 8 types of acts which are regarded as corrupt practices. They are:

(i) Bribery;
(ii) Undue influence;
(iii) Appeal on the ground of religion, race, caste, community, language, religious symbols or national symbols;
(iv) Promotion of enmity or hatred between different classes of citizens of India on grounds of religion, race, caste, community of language;
(v) Publication of false statement in relation to the personal character or conduct of any candidate;
(vi) Illegal hiring or procuring of vehicles or the use of such vehicles for free conveyance of voters;
(vii) Incurring or authorising election expenditure in excess of the prescribed limit; and
(viii) Obtaining or procuring assistance from Government servants of specified categories.

The law originally divided corrupt practices into three categories, namely,

a. Major corrupt practices;

b. Minor corrupt practices; and

c. Illegal practices.

Corrupt practices mentioned at (i), (ii), (v), (vi), (vii) and (viii) above were classified as major corrupt practices. The remaining major and minor corrupt practices and illegal practices were either abolished all-together or converted into electoral offences.

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5 Sec. 123 of R.P. Act, 1951
6 Sec. 123 of R.P. Act, 1951.
A joint Select Committee of Parliament on Amendments to Election Law set up in 1971 again considered the matter and recommended in its Report\(^7\) the reclassification of corrupt practices into corrupt practices and illegal practices. The Committee suggested that the existing corrupt practices of (1) illegal hiring or procuring of vehicles for free conveyance of voters and (2) incurring or authorising of election expenses in excess of prescribed limit might be made as illegal practices and the remaining corrupt practices might continue to be regarded as corrupt practices. The underlying idea of this suggestion of the Joint Committee was that while the commission of either the corrupt practice or the illegal practice should result in the election of the returned candidate being declared void, the period of disqualification which previously automatically followed the finding of guilt by the High court in such cases might vary depending upon whether the returned candidate was guilty of corrupt practice or an illegal practice. The Committee further recommended that the period of disqualification for commission of a corrupt practice might continue to be six years as was then prescribed and the period of disqualification for commission of an illegal practice might be fixed for a duration between 2 years and 6 years at the discretion of the High Court in each case.

The aforesaid underlying idea of the Joint Committee is no longer valid after 1975 because now the disqualification for commission of a corrupt practice is not automatic any more and the question of disqualification as also the period of such disqualification is now determined by the President on the basis of the opinion of the Election Commission in every such case.

**Bribery**

While exercising his franchise, a voter should be guided by his reason and not by extraneous considerations brought to bear upon by him by inducement. Therefore, the election law makes 'bribery'\(^8\) as the first and the foremost corrupt practice. 'Bribery' as defined has wide amplitude and covers

\(^7\) Chapter XIII of the Joint Committees Report (Vol I).
\(^8\) Sec 123(1) of R.P Act, 1951.
as large a field as possible of activity which may take the form of inducement affecting any electoral work.

The corrupt practice of bribery is committed not only by a person who provides gratification, but also by the person who accepts such gratification.

The receipt of, or any agreement to receive, any gratification, whether as a motive or a reward, by a person for standing or not standing as a candidate or for withdrawing or not withdrawing his candidature or for voting or refraining from voting also amounts to a corrupt practice. The receipt of any such gratification not merely for himself but for any other person with a view to inducing or attempting to induce such other person to vote or not to vote or to withdraw or not to withdraw his candidature at an election is equally prohibited. But the payment made to a candidate not to withdraw when the last date for withdrawal of candidatures is already over may not amount to corrupt practice of bribery.\(^9\)

A gratification to constitute bribery may not necessarily be restricted to pecuniary gratifications or gratifications estimable in terms of money. It includes all forms of entertainment and all forms of employment for reward.

General promises of public action or redressal of public grievances by a candidate holding a responsible position in the Government like a Minister may not fall within the mischief of law making bribery a corrupt practice. The promise not made to a particular voter or voters but to the general body of voters without distinguishing between those who were favourably inclined and those who were not is not a corrupt practice.\(^10\)

However, the energy to do public good should be used not on the eve of elections but much earlier and if such things are done on the eve of an election, although for general public good, they are when all is said and done an evil practice. Even slight evidence might change this evil practice into corrupt practice is a very thin one.\(^11\)

The grants sanctioned or announced by the Government on the eve of elections in the form of exemption from land revenue, or by way of additional

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9 55 ELR 249 (SC).
10 AIR 1972 SC 2367.
dearness allowance to Government employees and the like do not attract the
definition of corrupt practice as the Government cannot be considered to be
an agent of a candidate even if he belongs to the ruling party.\textsuperscript{12}

\textbf{Undue Influence}

The second type of corrupt practice is undue influence.\textsuperscript{13} Undue
influence, as defined in the law, is wide in its term and contemplates four
distinct forms of interference with the free exercise of any electoral right,
namely, direct interference, indirect interference, direct attempt at interference
or indirect attempt at interference.\textsuperscript{14} Electoral right means the right of a person
to stand or not to stand as a candidate or to withdraw or not to withdraw from
being a candidate or to vote or refrain from voting at an election.\textsuperscript{15} Any
interference or attempt at interference at such electoral right whether direct or
indirect is corrupt practice. However, such direct or indirect interference or
attempt to interference must be with the consent of the candidate or his
election agent.

This definition in the election law is wider than the definition of the
same expression in the Indian Penal Code, inasmuch as the words ‘direct’ or
‘indirect’ are not to be found in the Penal Code.\textsuperscript{16}

Undue influence is used in contradistinction to proper influence which
may be secured through affection bestowed or from kindness indulged. A
friendly advice or an influence arising from gratitude or esteem is not undue
influence unless thereby the functioning of a free mind is destroyed.\textsuperscript{17}

A leader of a political party is entitled to declare to the public the policy
of the party and ask the electorate to vote for his party without interfering with
any electoral right and such declarations on his part would not amount to
undue influence. Where, however, a Minister abuse his position and goes

\begin{footnotes}
\item[12] AIR 1968 SC 1191
\item[13] AIR 1979 SC 211
\item[14] Sec 123 (2) of R.P.Act, 1951.
\item[15] AIR 1959, Orissa 188.
\item[16] AIR 1961 Punjab 383.
\end{footnotes}
beyond merely asking for support for his party candidates the question of undue influence may arise.\textsuperscript{18}

Likewise, spiritual heads or religious leaders may canvass for candidate at election. But where a spiritual head or a religious leader particularly leaves no choice to the electors not only by issuing in writing the Hukum or Farman but also by his speeches to the effect that they must vote for the candidate, implying that disobedience of his mandate would carry divine displeasure or spiritual censure the case would be clearly brought within the purview of the corrupt practice of undue influence.\textsuperscript{19} Similarly wrath of deities invoked if electorate did not vote for a particular candidate would amount to undue influence.\textsuperscript{20}

\textbf{Appeal on Ground of Religion etc.}

Purity of election demands that considerations of religion, race, caste, community or language of the candidate should not play any role in his election and such considerations should not influence the voters while exercising their franchise. The election law, therefore, specifies that an appeal on the ground of religion, race, caste, community or language of a candidate is a corrupt practice.\textsuperscript{21}

An appeal on the ground of religion would be a corrupt practice even if the rival candidates belong to the same religion.\textsuperscript{22}

Likewise, it is only when the electors are asked to vote or not to vote because of the particular language of the candidate that a corrupt practice may be deemed to be committed. Where, however, for the conservation of language of the electorate appeals are made to the electorate and promises are given that steps would be taken to conserve that language such appeal would not amount to a corrupt practice.\textsuperscript{23}

\textsuperscript{18} AIR 1968 SC 904.
\textsuperscript{19} AIR 1959 SC 855.
\textsuperscript{20} AIR 1960 SC 148.
\textsuperscript{21} Sec 123 (3) of R.P.Act, 1951.
\textsuperscript{22} AIR 1965 SC 141.
\textsuperscript{23} AIR 1965 SC 183.
Not merely an appeal on the ground of religion, but the appeal to, or the use of, religious symbols or national symbols is also prohibited. The law treats the use of religious symbols or national symbols as a corrupt practice.

Promotion of Feelings of Enmity or Hatred on Ground of Religion etc.

The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of citizens of India on grounds of religion, race, caste, community or language is a corrupt practice. But such actions or attempts would come within the purview of the corrupt practice only if committed by the candidate or his agent or any other person with the consent of the candidate or his election agent, for the furtherance of the prospects of the election of that candidate or for prejudicially effecting the election of any other candidate.

Publication of False and Defamatory Statements

The publication of any false statement in relation to a rival candidate is sought to be prohibited by making it a corrupt practice. The object of this provision in the law is to see that the unscrupulous or scandalous propaganda in the election campaigns is avoided. Such false statements to come within the purview of this corrupt practice should be made by a candidate or his agent or by any other person with the consent of a candidate or his election agent. Further such statement should as a matter of fact be false and the publisher should either believe it to be false or should not believe it to be true. Such statement to constitute an offence be a statement in relation to the personal character or conduct of a candidate or in relation to his candidature or withdrawal and should be reasonably calculated to prejudice the prospects of that candidate’s election. In other words, to prove that the corrupt practice of the above type has been committed it must be shown: first, that there has been a publication by a candidate or his agent or by any other person with the consent of the candidate or his election agent, of a definite statement;

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24 Sec.123 (3A) of R.P. Act, 1951
25 Sec.123 (4) of R.P. Act, 1951
secondly, the statement must be false; thirdly the publisher must either believe it to be false or must not believe it to be true; fourthly, it must be a statement reasonably calculated to prejudice the prospects of that candidate's election.  

Any statement of fact which the publisher bonafide believes to be true or any statement in relation to the public conduct of a candidate in contrast to his private character or conduct would not come within the purview of this corrupt practice. The question as to what allegations can be said to amount to allegations in regard to the personal character of conduct of a candidate as distinguished from his public character may not be easy to decide and in order to decide such a question the context in which those allegations were made, the setting in which that occurred and the circumstances in which those allegations were published will have to be looked into.

Illegal Hiring of Vehicles for Free Conveyance of Voters

The next type of corrupt practice is the illegal hiring or procuring of vehicles for free conveyance of voters. 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 candidate or his election agent or the use of such vehicles for the free conveyance of any elector to and from any polling station is a corrupt practice.

The Election Commission has been issuing instructions since the general election to the Lok Sabha held in 1980 to curb this corrupt practice by regulating the playing of all vehicles on the day of poll. The candidates are permitted to use only the specified number of vehicles on the day of poll for the purpose of their election rounds.

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26 AIR 1970 SC 522, 1500, 1841.
27 AIR 1970 SC 1231.
28 AIR 1966 SC 773.
30 Sec. 123 (5) of R.P. Act, 1951.
31 Vide Order dated 02.01.1980 of Delhi High Court in C.W. no. 1 of 1980
**Assistance of Government Servants, etc.**

The last type corrupt practice is obtaining or procuring any assistance other than the giving of vote for the furtherance of the prospects of a candidate's election from government servants.\(^{32}\) Not merely obtaining or procuring but abetting or attempting to obtain or procure such assistance is also a corrupt practice. The underlying policy of such provision is clearly to keep the government servants aloof from politics and also to protect them from being imposed upon by those with influence or in position of authority and power.

Such assistance to come within the purview of a corrupt practice should however be obtained or procured by a candidate or his agent or by any other person with the consent of the candidate or his election agent. Further the corrupt practice would be committed if such assistance is sought from only the following categories of government servants, 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; and
- (g) such other class of persons in the service of the Government as may be prescribed.

Though the law authorise the Central Government to prescribe other categories of Government servants also to come within the purview of this corrupt practice as contemplated in item(g) above, the Government has so far not chosen to specify any category of Government servants other than those mentioned in items (a) to (f) above.

\(^{32}\) Sec. 123 (7) of R.P. Act, 1951.
B. Electoral Offences

In addition to the corrupt practices at elections, various acts of commission and omission have been termed as electoral offences. While the commission of a corrupt practice, if found proved, might cost the elected candidate his election, the commission of an electoral offence would expose a person who commits it for penal consequences. Further a person committing electoral offence is liable to punishment irrespective of the fact whether such act was done by him with the consent of the candidate or not. The following acts are regarded as electoral offence:

Promoting Enmity between Classes of Citizens in Connection with Election

The promotion of, or attempt to promote enmity or hatred between different classes of Indian citizens on grounds of religion, race, caste, community or language feelings is an electoral offence. Any person indulging in such an act is punishable with imprisonment for a term which may extend to three years or with fine or both.

Prohibition of Public Meetings during the Specified Period

The election propaganda in the form of public meetings in the polling area is to end 48 hours before the hour fixed for the conclusion of the poll for any election. If the poll is to be taken on the 3rd of a month and hours between 7 a.m. to 4 p.m. are fixed as the hours of poll no public meeting in the polling area can be held after 4 p.m. on the 1st of that month. It is not merely the convening or holding of a public meeting during this prohibited period which is barred; but attending to any such meeting is equally an offence.

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33 Sec 125 of R.P.Act, 1951.
34 Sec 126 of R.P.Act, 1951.
Disturbance at Election Meetings during the Specified Period

Disturbance at an election meeting is prohibited and it is an electoral offence to do so. Any person who at a public meeting of a political character acts, or incites others to act, in a disorderly manner for the purpose of preventing the transaction of business for which a meeting has been called commits an electoral offence and is liable for punishment with fine which may extend to Rs. 250.\textsuperscript{35}

Public meetings which are held between the date of issue of notification calling the election and the date on which such election ends only are covered by the above prohibition. The disturbance caused at election meetings during the other periods would be governed by the general law.

If the Chairman of an election meeting reports to any police officer about any person acting in disorderly manner at the meeting, such police officer may require that person to declare to him immediately his name and address and if that person refuses or fails to declare his name and address or if the police officer reasonably suspects him of giving false name or address the police officer may arrest such person without warrant.

Restrictions on Printing of Pamphlets, Posters etc.

The election law imposes certain restrictions on the printing and publication of posters, pamphlets etc. by any person.\textsuperscript{36} These restrictions have been imposed with a view to establishing the identity of publisher and printer of such documents so that if any such document contains any matter or material which is illegal or objectionable like appeal on ground of religion, race, caste, community or language or character assassination of any opponent etc. necessary

\textsuperscript{35} Sec 127 of R.P.Act, 1951.
\textsuperscript{36} Sec 127-A of R.P.Act, 1951.
punitive or preventive action may be taken against the persons concerned.

**Maintenance of Secrecy of Voting**

It is incumbent upon every officer. Clerk, agent or any other person who performs any duty in connection with the recording or counting of votes at an election to maintain and aid in maintaining the secrecy of voting.\(^{37}\)

**Officers etc., at Elections not to Act for Candidates or to Influence Electors**

No District Election Officer or Returning Officer or Assistant Returning Officer or Presiding Officer or a Polling Officer or any officer or clerk appointed by the Returning Officer or by the Presiding Officer to perform any duty in connection with an election shall, in the conduct or the management of the election do any act for the furtherance of the prospects of the election of a candidate, other than giving of his own vote. These officers and any member of a police force are prevented from (a) persuading any person to give his vote at an election, or (b) dissuading any person from giving his vote at an election in any manner. Any contravention in this regard is punishable with imprisonment which may extend to six months or with fine or with both. Further, the above offence is cognizable.

**Prohibition of Canvassing in or Near Polling Station**

On the date of poll, the commission of any of the following acts within the polling station or in any public or private place within a distance of 100 metres of the polling station is prohibited\(^{38}\) namely:

(a) canvassing for votes; or
(b) soliciting the vote of any elector; or

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\(^{37}\) Sec.128 of R.P.Act, 1951.

\(^{38}\) Sec.130 of R.P.Act, 1951.
(c) persuading any elector not to vote for any particular candidate; or
(d) persuading any elector not to vote at the election; or
(e) exhibiting any notice or sign (other than official notice) relating to the election.

**Disorderly Conduct in or near Polling Station**

On the date of poll, using or operating, within or at the entrance of the polling station or at any public or private place in the neighbourhood of a polling station, any apparatus for amplifying or reproducing the human voice, such as a megaphone or a loudspeaker is prohibited\(^{39}\), so that no annoyance is caused to any person visiting the polling station for the poll or that no interference is made with the work of the officers and other persons on duty at the polling station.

**Misconduct at the Polling Station**

For the smooth conduct of poll at the polling station, it is necessary that no person should be allowed to misconduct himself at the polling station during the hours fixed for the poll and every person should be required to obey the lawful directions of the Presiding Officer.\(^{40}\)

**Penalty for illegal Hiring or Procuring of Conveyance at Elections**

Illegal hiring or procuring of vehicles for free conveyance of voters is not only a corrupt practice which if proved will vitiate the election of the returned candidate, but is also an electoral offence.

**Breach of Official Duty in Connection with Elections**

If any person belonging to any of the specified categories is, without reasonable cause, guilty of any act of omission or commission in breach of his official duty in connection with elections, he commits an electoral offence.

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\(^{39}\) Sec.131 of R.P.Act, 1951.

\(^{40}\) Sec.132 of R.P.Act, 1951.
Penalty for Government Servants for Acting as Election Agents, Polling Agent or Counting Agent

If any person in the service of government acts as an election agent or a polling agent or a counting agent of a candidate at an election he commits an electoral offence for which he may be punished with imprisonment for a term extending up to 3 months or with fine or with both.\(^{41}\)

Removal of Ballot Papers from Polling Stations

Any person who at any election fraudulently takes or attempts to take a ballot paper out of a polling station commit a cognizable electoral offence. Any person who wilfully aids or abets the doing of any such act is also guilty of the above offence.

Other Offences and Penalty Therefor

A person committing any of the following acts of commission or omission also commits cognizable electoral offence,\(^{42}\) i.e. if he:

(a) fraudulently defaces or fraudulently destroys any nomination paper; or

(b) fraudulently defaces, destroys or removes any list, notice or other document affixed by or under the authority of a returning officer; or

(c) fraudulently defaces or fraudulently destroys any ballot paper or the official mark of any ballot paper or any declaration of identity or official envelope used in connection with voting by postal ballot; or

(d) without due authority supplies any ballot paper to any person (or receives any ballot paper from any person or is in possession of any ballot paper); or

(e) fraudulently puts into any ballot box anything other than the ballot paper which he is authorised by law to put in; or

\(^{41}\) Sec. 134A of R.P. Act, 1951.

\(^{42}\) Sec. 136 of R.P. Act, 1951.
(f) without the authority destroys, takes, opens or otherwise interferes with any ballot box or ballot papers then in use for the purpose or the election; or

(g) fraudulently or without due authority, as the case may be, attempts to do any of the foregoing acts or wilfully aids or abets the doing of any such acts.

3.3 Financing Elections

By far the most challenging problem about our election system (and even in many other developed countries is the problem of finance. The enormous amounts spent by candidates on elections is one of the principal causes (but not the only cause) of some of the other evil features of our political, economic and social system – like the influx of criminals into politics, multiplicity of candidates, defections and even the generation of black money in the economy which, at one time was ascribed to the regime of controls and permits and the high rates of income-tax. The rates of income-tax have come down from more than 90 per cent to just 40 per cent and yet one sees no sign of reduction in black money. On the contrary evils like extortion and economic offences like the Securities scam have been on the increase. One of the principal causes for this are for elections. Indian politics is becoming capital-intensive and expenditure on elections is looked upon as an investment not only for the candidate himself but for several generations of his family.

Six questions arise:

(1) Should there be a limit on the expenditure a candidate or a party can incur on elections?

(2) Should candidates and parties be required to disclose the amounts spent by them and the sources of their funds?

(3) Should the funds of parties and candidates be subjected to audit?

(4) Should companies and individuals be allowed to contribute to election funds and, if so,

(5) Should there be any limit on these contributions?

(6) Is state funding for parties practicable and desirable?
These problems have also vexed people in other countries and a brief description of the systems and practices in some of the developed countries. This information has been gathered from a number of sources including diplomatic missions of some of these countries, the World Encyclopaedia of Political System and parties(1987), some other books and article in The Economist (April 16 ,1994) . One cannot vouch for the absolute correctness of the information but we can get a broad idea of what is being done in other countries.

Regarding limits on expenditure, in most of the developed countries, except the UK and Australia, there is no limit on expenditure by candidates or parties but there are limitations and restrictions on the amounts which can be received by parties and candidates. In countries like the USA, Spain, Belgium, Norway and Sweden, contributions by trade unions and companies are banned. In the USA an individual cannot contribute more than $1000 to a candidate’s fund but can contributed up to $20000 to a national party committee or a political action committee (another name for a lobby).

In India there is a limit on the expenditure by candidates (laid down under section 77 of the Representation of the people Act, 1951) but no limits on expenditure by, or contributions to, a party or to any other association or body of persons.

Till 1995 the limit on the expenditure by candidates, was about Rs 50,000$^{43}$ for election to an Assembly constituency and Rs 1,50,000 for a Lok Sabha seat. These limits prescribed under Section77(3) of the Representation of people Act, 1951 in 1984, had become completely out of date. Within this limit, a candidates could not even send a postcard to each voter. In the 1980’s the National institute of public finance and policy (NIPFP) had estimated that a candidate for a Lok Sabha seat would need$^{44}$ about Rs 5.0 lakhs and for an assembly seat, about Rs 2.0 lakhs. Considering the increase in the price-level during the last ten years, these limits will now have to be doubled-about Rs 10.0 lakhs for a Lok Sabha seat and about Rs 4.0 lakhs for and assembly

$^{43}$ These limits vary from state to state depending upon the size of the constituencies in the state.

$^{44}$ These limits vary from state to state.
seat. Mr Seshan and his predecessors had been urging the Government to increase these limits in line with the increase in the price level but the government has just increased them to about Rs 4.0 lakhs for a Lok Sabha election and Rs 1.50 lakhs for an assembly election- much less than the limits suggested by the NIPFP.

The result of this shadow play is that no candidate restricts his expenditure to the official limit which is like “emperor’s new clothes” and till Mr Seshan arrived on the scene, even the election machinery had been turning a Nelson's eye towards this farce. Mr Seshan has mentioned several times the case of a Lok Sabhan candidate who bragged to him that he had spent Rs 8.0 crores for his election. As Mr Palkhivala has said on a number of occasions a legislator starts has career by making a false declaration about the expenditure incurred for his election.

Under Section 88 of the Representation of the people Act, 1951, a candidate is required to submit an account of his election expenses to the District Election officer within 30 days of the declaration of the results. If he fails to do so without valid reasons, under Section 10A of the Act he can be disqualified for three years. However, if he is found to have incurred expenditure in excess of the limit laid down under Section 77(3), he can be disqualified for a period up to six years, which means disqualification even for the next general election. So it is safer for a defeated candidate not to submit his return of expenses which would increase the risk of discovery of excess expenditure. Many of the defeated candidates prefer not to submit any return of their expenses. It is, therefore, necessary to remove this anomaly by equalizing the disqualification period for both offences. Further, the disqualification for non submission should be automatic and not dependent on any enquiry except for a formal notice.

Even if a candidate does submit his return of expenses, the EC does not have powers to audit them or get them audited. Mr Seshan has called it a toothless provision of the Act but where there is a will there is a way. Mr Seshan managed to get round the handicap by the following administrative measures:
(1) He insisted on the candidate submitting an affidavit along with the return – so that in case of false returns he could be prosecuted for perjury.

(2) He insisted on the District Election Officer making a preliminary inquiry and certifying that the return was correct.

(3) He appointed some retired income-tax officers to check the expenses of the candidates.

(4) He also took recourse to the provisions of section 171H of the Indian penal Code under which if a person, not authorized by a candidate incurs any expenditure on behalf of the candidate, he is liable to a fine up to Rs 500.

These are not foolproof measures to detect excess expenditure, but as Mr Seshan said he was trying “to clutch at every straw” and did to some extent manage to reduce extravagant expenditure in the elections during the last two or three years.

But whatever is achieved by these imperfect measures to limit expenditure incurred by candidates, becomes meaningless by the exemption of expenditure by the parties from any restrictions. There are no limits whatsoever on the expenditure or receipts of funds by political parties or any other body or association of person. Judgements by the supreme court in the cases of Manwar lal Gupta and Amarnath Chawla tried to bring expenditure by parties or other association within the ambit of Section 77(3) but these judgements were set at nought by a specific explanation added to Section 77(1) in 1974, placing it beyond any doubt that expenditure by parties and other associations of persons was exempt from the constraints of section 77.

In the case of bodies or ‘associations’ other than political parties, Section 171H of the IPC can be pressed into service but the maximum fine of Rs 500 prescribed therein is just peanuts

The Tarkunde Committee had recommended that all amounts spent directly or indirectly for the furtherance of the prospects of a candidate, including amounts spent by his party, should be disbursed through his election agent and of course included in his election expenditure. If any expenditure is incurred in violation of this, the committee has suggested resort to Section 171H of the IPC but, as pointed out earlier, the penalty is just a
Further there is quite a lot of expenditure incurred by parties at the national or state level such as full-page advertisements in newspapers or radio and TV programmes, or preparation of video and audio cassettes. The Supreme Court had suggested a ceiling on this expenditure which is treated as general party propaganda.

The Goswami Committee recommendations are less satisfactory. The Committee has suggested the deletion of the explanations added to Section 77(1) in 1974 which means we go back to the earlier position when the courts had to do some legal acrobatics to bring expenditure by parties within the purview of Section 77. The Supreme Court observed in 1993, “the provision has ceased to be Recently the Supreme Court (Mr Justice Anand and Mr Justice Mukherjee) observed in the case of Mr Dutta Meghe of Maharashtra that Parliament and the EC should prescribe by rules the maintenance of true and correct accounts of the receipts and expenditure by political parties disclosing the sources of receipts.

It should be noted that in the first case the Supreme Court has just thrown up its hands in despair while it appears that in the second case it has only emphasised the need for maintaining correct accounts. There is no suggestion to impose any limits on expenditure by parties.

Another question regarding expenditure of parties is donations by companies. Prior to 1969, the Indian companies Act did not make any specific provision but Section 293 permitted companies to make contributions to ‘charitable and other funds’ subject to a limit of five per cent of the average profit for the previous three years. However there was no limit to contributions made with the sanction of the whole company, i.e. the share holders. The danger involved in the latter provision was pointed out by the High Courts of Calcutta and Bombay. In 1969 political contributions were totally banned. The ban continued till 1985 when the law was amended again to permit contributions up to five per cent of the average profits for the previous three years. This contribution can be sanctioned by the board of directors but has to be shown in the accounts.
This was apparently a retrograde step but was probably tried to reduce dependence on black money being collected by the political parties from all sources including companies which were, therefore, compulsorily required to generate black money. It has, however, pulled the companies and political parties into each other’s wars (as for example in the Wadia-Ambani tussle). It has also not reduced the flow of black money into political coffers or in general in the economy because a large portion of the black money comes from the unorganized sector of the economy—from smugglers, builders or by extortion from small businessmen by criminals.

Companies in any case need black money for their business or extravagant life—styles and illegal activities of their top men. So whether we make donations from companies legal or illegal will not make much difference to the black money in politics which will continue to play a crucial role in Indian politics. All the same it is better to keep an open window above the table rather than below it for company donations. It should, however, be subject to the consent of the shareholders rather than the directors.

What is more important is to subject the accounts of political parties to audit, a measure no political party would be willing to support.

Section 13A of the Income Tax Act excludes the income of a political party from house property, other sources and voluntary contribution from any person, from its total income provided, (1) the political party maintains such books of accounts and other documents as would enable the assessing officer to deduce from them the income of the party; (2) for every voluntary contribution in excess of Rs. 10000 the party maintains a record of the name and address of each such donor; and (3) the accounts of the political party are audited by a qualified accountant as defined in Section 288(2).

Section 139(4B) introduced along with Section 13A, provides that the Chief Executive officer of every political party shall, if the total assessable income of the party exceeds the exemption limit, furnish a return of such income for the previous year.

These provisions introduced by the Janata party in 1978 had remained a dead letter. In 1983 the then CEC circulated a paper proposing inter alia the
audit of accounts of political parties. Most of the parties including even the CPI(M) on the extreme Left objected to the proposal. It is relevant to note that according to a recent report in the Economist even in the U.K. the conservative party has opposed the disclosure of sources of funds by political parties.

Recently (in 1995), apparently as a result of the observations of the Supreme Court in the Datta Meghe case and a public interest petition filed by Mr H.D. Shourie, the Income –Tax Department initiated proceedings against the political parties calling upon them to submit returns of their income; but in a joint affidavit filed before the Supreme Court the Income Tax Department and the Department of Company Affairs, of the Finance Ministry, stated that the move had been dropped because "no definite information is available to assessing officers that political parties have income above the taxable income limit". According to the same report, the political parties have told the income Tax Department that they gave no income liable to tax.

One cannot help comparing the helplessness of these two government departments with the stand taken by Mr Seshan with respect to individual candidates asking them to file returns of election expenses with an affidavit about their veracity rendering them liable to action for perjury if they filed false return. Can the Government not ask the political parties to file statements under an affidavit that they do not have income above taxable limits? With all his faults one cannot help admiring Mr Seshan.

The real remedy lies in reducing the need for black money in elections which is possible only if we have an enlightened and mature electorate. One can seriously question the wisdom of introducing adult franchise in a country with barely 20 per cent adult literary in 1950 – it had crept up to just about 52 per cent in 1991. True, the results of the election in 1977 and 1989 showed that money bags cannot check the flood gates of people’s resentment when roused; but it needs a hot issue like the excesses in the Emergency or the Bofors scandal to stir them to overthrow an entrenched party. The electorate is, therefore, maturing but is not mature and rational enough and requires some provocation to make it wake up. Voters are guided more by emotions.
than reason. Recently in an article Mr Nani Palkhivala said, "No democracy has paid a heavier price for adult franchise than India has. I am not aware of any important democracy which started as a democracy on the basis of adult franchise."

Yet another way to reduce the role of black money is state funding or assistance for elections. This is not to suggest that state funding can eliminate black money from elections but it can reduce the disadvantages of parties and candidates which do not have enough funds even for the minimum expenses at an election. State funding can never match the crores spent by some candidates but beyond a certain limit, black money starts giving diminishing returns and when people are roused, as in 1977 and 1989 money does not help.

System of Financing Elections and Political Parties in Some Democratic Countries

United Kingdom: Elections are characterized by very short campaigns and therefore, modest expenditure. The maximum limit of expenditure for candidates are 4144 plus 3.5 pence per voter in densely-populated areas and 4.7 pence per voter in other areas. This does not include expenditure by parties. Candidates receive subsidies in the form of free postage (for one communication to each voter), free use of public halls for meetings and election broadcasts on radio and on TV at nominal fees as may be decided by a committee with representatives of political parties and the broadcasting authorities. Opposition parties also get small grants of about two to three million pounds from government probably for office expenses and not elections. A proposal requiring parties to disclose the sources of their funds was recently rejected.

USA: Federal elections in the USA involve very heavy expenditure because of the long period of campaigning which falls into two parts – first, the primaries for the selection of candidates of each party and second, the

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main election. The run-up to the primaries also requires considerable expenditure.

The Federal Election Campaign Act of 1975, however, has introduced several restrictions on fund-raising but not on expenditure. There is no limit on expenditure by candidates but there are restrictions on contributions. Individuals cannot contribute more than $1000 to a candidate's funds but can contribute $20000 to a political action committee or a national party committee; but the total of his contributions cannot exceed $25000. Contributions from companies or labor unions are not permitted. So people make contributions to parties or political action committees representation various interests (or lobbies).

The candidates are required to disclose the sources of their funds and their accounts are examined by the Federal Election Commission.

A unique feature of the American system is that in the presidential elections the federal government provides limited assistance to the candidates even for the pre-nomination campaign. The candidate must first himself raise $5000 with contributions of $250 or less in each of at least 20 states. The Federal government then makes a matching contribution up to $250, for each contribution raised by the candidate. The federal government also provides public funds for party conventions. (The amount received by each party in the 1988 elections was $9.2 million). This system of funding the primaries and party conventions is no doubt costly but helps inner-party democracy.

**Germany:** A regular system of government grants to political parties is in force since 1959. The grant is DM 5 per vote polled by the party. Parties getting less than 0.5 per cent of the total votes are not eligible to receive any grant. According to Mr L.P. Jain the practice of state funding has had a healthy effect on the electoral process.

**France:** In France candidates who secure at least five per cent votes get reimbursement of expenditure on certain items such as issue of notices and circulars subject to a maximum limit of Fr, 100000. Public premises for holding meeting etc are also made available free of charge. The manifesto of
each candidate is printed and delivered to each voter by the state which also pays for candidates posters.

**Japan:** Political parties receive a subsidy of about $70000 per member of parliament. Donations to individual candidates are limited to $15000. There is widespread political corruption mainly because of the large expenditure which MPs are required to incur on nursing the constituency – in particular attending every important wedding, ceremony or funeral in the constituency. Being multi-member, the constituencies are also very large and therefore, require huge expenditure on the part of the candidates.

**Spain:** Parties receive 8000 for every seat they hold and 0.31 p for every vote they win. Private donations up to 50000 are permitted but details of such donations have to be furnished and party funds are subject to audit.

**Belgium:** Each party gets 100000 plus 1 for every vote. Donations by companies and trade unions are banned. Publication of accounts is compulsory.

**Canada:** Individuals are given tax credits for political donations amounting to about $15000-20000 provided he gets a minimum percentage of votes. There are strict restrictions on electoral spending. Parties are reimbursed 22.5 per cent of the election expenses and individuals up to 50 per cent. Accounts of parties and candidates are subject to strict audit.

**Norway and Sweden:** State subsidies are given depending upon the number of votes secured by a party. Parties are required to publish accounts. Donations by companies and trade unions are banned.

**Italy:** State funding was introduced in 1974 but was discontinued in 1993. Parties are required to publish details of donations. Polities (particularly in the south) is, however highly corrupt because of the influence of the Sicilian Mafia. Recently a large number of politicians including even Prime Ministers have been arranged by independent prosecutors called ‘Magistrates’.

**Denmark:** The three main parties get a grant made up of a basic amount plus an additional amount proportional to the strength of the party in the legislature. The total amount distributed in 1980 was about $1 m. This
amount is meant for party offices in Parliament and not for elections. Election expenses come from membership fees donations and contributions from special interest organizations. There is on limit on election expenditure. The total amount spent by all the parties from their own funds in 1980 was about US $1.38 million.

There is no contribution from the government but all parties including even small ones get equal time on radio and TV.

**Finland:** There is no limit on election expenses; nor are parties required to disclose the sources of funds. The state gives $12000 per MP to the parties.

**Austria:** Financially parties depend upon members subscriptions and contribution from members and nonmembers and grants from Government. The government grants are regulated by the parties Financing Act of 1975. Each party represented in Parliament receives a minimum basic amount plus and additional amount which is distributed in proportion to the number of votes received at the last election. The total amount distributed to the parties in 1991 was 191 million Schilling (Aystrian) (1 Schilling=Rs 3/- approximately). The political academies run by the parties also receive grants which are distributed on the same principle viz, a minimum basic grant an additional amount depending upon the party's representation in parliament. The total amount spent in 1991 was 109.9 million schilling.

**Australia:** Public financing of party elections has been introduced recently. The law imposes a limit on election expenditure but is stated to be full of loopholes. Accounts of candidates and parties are subject to audit.

**Ireland:** There are no limits on election expenses either by parties or candidates; nor is there any audit of expenses or state assistance. Some time is allotted to parties on the broadcasting media.

**Sri Lanka:** There is no limit on election expenses. However, candidates are required to keep accounts and get them audited. The state does not provide any assistance except time on broadcasting media for political parties and even independent groups.
To conclude the study it is advisable that the question of financing political parties must be separated from that of election funding.

**Party funding**

Party funding may be allowed through private and corporate contribution subject to the following ceilings to be enacted by law:

Private contribution: Ceiling of Rs. 5000/- per annum with benefits of tax deduction, e.g. under 80(g) of Income Tax Act.

Corporation contribution: Ceiling as a percentage of capital and reserve subject to further ceiling of Rs. 50,000 per annum also with tax deduction benefits. Such contributions should be subject to approval by shareholders at the annual general meeting. All accounts of the political parties should be subject to public audit by agencies approved or appointed by the Election Commission.

**Election Funding**

On the election funding a law should be enacted covering both election to the Parliament and State Assemblies consisting of the following elements:

1. The State should undertake exclusively the responsibility of financing elections.
   (a) The Central Government should finance the Parliament Elections, and
   (b) The State Governments should finance the Elections to the State Assemblies and lower bodies.

2. An Election Fund should be created on the basis of one rupee per voter according to the votes polled in the last elections. Thus if 20 crore persons voted in 1977 Lok Sabha Elections, a total fund of Rs. 20 crores be created for the next elections.

3. A special funding agency should be created for the purpose of administering the fund. Alternatively the Election Commission should administer the Fund.
4. The ceiling of election expenses for Parliamentary constituencies should be raised to optimum levels say, of Rs. 100,000 or Rs. 150,000 per candidate.

5. The parties should be apportioned the total fund on the basis of their performance. Fifty per cent of the amount, except in the case of a new party, should be given on the basis of performance in the preceding election and the rest on the basis of performance in the current one.

6. There should be a ceiling on the amount given to a party on the basis of the ceiling applicable to candidates. Thus, a party receiving 42 per cent of the 200 million votes polled will be eligible for a maximum support of Rs. 5.42 crores if the ceiling per candidate is Rs. 100,000.

7. The amount should be released to individual candidates (and not to the political parties) on the basis of nominations made by the party.

8. Every candidate should be required to maintain detailed accounts and these accounts should subject to audit by the Election Commission.

9. The cost of campaigning activities of political parties for helping their candidates should be included in the ceiling of election expenses.

10. If political committees are not to be stopped from engaging in campaigning activities they should be required to:
   (a) Register themselves with the Election Commission,
   (b) Keep strict accounts of their expenses and submit detailed reports to the Election Commission, and required to be made through cheques.
   (c) The bank account should be payments of over Rs. 100/- should be /audited and be available for public scrutiny.

11. Non-party individual or independent candidates should be provided funds after the elections provided they secure at least
The conclusion emerges that free and fair elections are the foundation of a democratic form of Government. The democratic set up of the government may be threatened if elections are not held in a free and fair manner. To ensure this purity of electoral process, it becomes essential that the law should extend full protection to the electorates against any fear, injury, misrepresentation, fraud and other undesirable practices which may be indulged in by or on behalf of candidates at an election. In order to protect the voters as well as the rival candidates against such intimidation or malpractices, Law has declared certain activities as corrupt practices. To ensure purity of electoral process as well as the implementation of the law and the rules relating to election, the Constitution of India has by virtue of the provisions contained in Article 324 entrusted this task to an independent authority known as the Election Commission. It may not be out of place to mention here that in the pre-independence era, the Government of India Act, 1919 was the first legislation and the rules framed thereunder declared...
corrupt practices as a ground to set aside election of a returned candidate if he was found guilty, personally or through any person of committing corrupt practices in the election. The Indian Election Offences and Enquiries Act, 1920 disqualified persons found guilty of corrupt practices. It also amended the Indian Penal Code to include electoral offences in the code. Interestingly the provisions were a virtual reproduction of the British Corrupt and Illegal Practices included bribery, undue influence, personation; publication of false statements, illegal expenditure in excess of the prescribed limit and failure to file return or to file false return of election expenses. The minor corrupt practices included those which were indulged in without the connivance of the candidate or his agent; personation, receipt of bribe, payment for conveyance of elector, hiring or use of public conveyance, including expense without authority the hiring of liquor shops, and the issue of circulars without printed and publishers name. Letter on the Corrupt Practice Order, 1936 does not make any significant changes in the provisions regarding corrupt practices except dividing them into three parts on the basis of penalty and disqualifications attached to them.

When India attained independence in 1947 and we framed our own Constitution which came into force on January 26, 1950, the democratic setup of Government was envisioned. To ensure free and fair elections to the Parliament and State Legislative Assemblies. The Representation of the People Act, 1951 was enacted. The Act, the earlier pre-independence legislations declared certain activities malpractices as corrupt practices. These included, bribery, undue offence, personation, removal of ballot papers, publication of false statement of facts, conveyance of voters to polling stations, illegal expenditure and illegal employment and assistance from government servants. Section 124 of the Act as originally enacted also declared these practices as minor corrupt practices which were earlier recognised under the Corrupt Practice Order of 1936. Thus, the Act of 1936 reformulated the pre-independence laws without any material change. They practically incorporated the basic principles of English law which were allowed to continue in our country for regulating matter connected with corrupt
practices. The act of 1951 has subsequently been amended six times i.e. in 1956, 1958, 1961, 1966, 1975 and 1989. All these amendments except the amendments of 1961 and 1989 curtailed the scope of corrupt practices. For example, personation as corrupt practice was deleted by the amendment of 1956. Similarly, obtaining assistance of Government employees as corrupt practices was confined to particular categories of employees only. The amendment of 1975 reduced the period of operation of corrupt practices. The amendment of 1961 inserted promotion of feelings of hatred and enmity between different classes of citizens on grounds of religion etc. as corrupt practice. Likewise, the amendment of 1989 made booth capturing as corrupt practice. It may be pointed out that the Parliament have taken into account the recommendations of the Election Commission as well as a Supreme Court Judgement for changing law till 1966. However, the subsequent years did not show any significant move to amend or change the law. Though there remained the need to review the matter not only within Parliament but also outside it. The Joint Parliamentary Committee which gave its report to Lok Sabha in 1972 had strongly favoured the idea of controlling the role of money power in election. Simultaneously, it also made specific recommendations to take steps to eliminate the practices of personation, coercion and intimidation from election.

The Tarkunde Committee of 1976 also made significant recommendation to check misuse of official media, power and machinery by Ministers and Political party in power. It was also in favour of incorporating legal provision for maintenance of proper accounts by political parties and its audit by the Election Commission. It also suggested that all the expenditure or receipts during election should be routed through election agent, so as to maintain an effective check on expenditure within prescribed limit in the election. The National Front Government in 1990 also introduced a Bill to check excessive expenditure and misuse of Government machinery and power during elections. However, favoured the idea of calculating the total expenditure of the candidate from the date of publication of notification of election and not from the date of nomination as was incorporated by the
amendment Act, 1974. The recent attempt in this regard has been the introduction of the Constitution (80th Amendment) Bill, 1993 and the Representation of People (Amendment) Bill, 1993 in Parliament, which sought to delink religion from politics. The Bill sought to introduce Articles 102A and 191A, a modified Article 28A and suggested other consequential amendments in the legislation. The Bill, however, could not see the light of the day because of strong opposition from almost all the political parties except the Congress.

It has been asserted in the preceding discussion that free and fair elections are the foundation of a democratic form of government. It has also been maintained all throughout this study that for winning elections, the candidates or their agents or other persons resort to underisable means and malpractices. The Representation of the People Act, 1951 is the main statute which makes provisions for controlling such practices. Analysis of the provisions contained in Section 123 of this Act dealing with corrupt practice and other related aspects reveal that despite and explicite statutory prohibition, corrupt practices have continued to influence the electoral process. Similarly, it has also been noticed that the existing electoral machinery for enforcing the mandate of the law is also not foolproof and over the years many shortcoming in the administrative set up of the electoral machinery have come to light. All this calls for immediate reforms not only in the administrative set up but also in the law dealing with corrupt practices as well. With this objective in view and to strength the legal machinery for ensuring free and fair elections, the researcher would like to make the following suggestion.

1. To ensure free and fair election is not only the responsibility of the Election Commission but also the Government and the electorates as well. To signify this perspective the Constitution must have a specific provision to that effect. Admittedly, the Constitution has envisioned an independent machinery for elections. It also gives express recognition to the right of adult suffrage. However, the right to have free and fair elections do not find a specific mention in the body of the Constitution. Such a provision also becomes essential to test the validity of subordinate legislation. Therefore,
Article 326 of the Constitution which entitles a citizen to be registered as a voter at an election should be amended suitably by inclusion of the words "should be entitled to have free and fair election and caste his vote at such election". This would also help in removing doubts which were expressed by the court in Indira Gandhi's election case regarding the concept of free and fair elections.

2. The Representation of People Act, 1951 vests important powers like removal of disqualification and making recommendations thereto in the Election Commission which primarily is concerned with the conduct of elections. The proper forum for adjudication of disputes concerning elections are the High Courts and the Supreme Court. When a candidate has been found guilty of corrupt practices, his election is ordered to be set aside by the court. For what period he should be disqualified for contesting the election again, the question has been left to the determination of the President of India who shall be advised in this regard by the Election commission. This provision which is incorporated in Section 8A of the Act, appears to be absurd. In our submission the questions whether a candidate found guilty of such practices should be disqualified or not should not be left to the decision of the executive. On the contrary, such a question must be left to the decision of the Court which has adjudged the candidate guilty of the alleged corrupt practice. It is, therefore, suggested that Section 8A should be deleted along with Section 11B and consequently the provisions contained in Section 11A should be amended on the following lines.

"11A – if any person, after the commencement of this Act, is convicted of an offence punishable under Section 171E or Section 171F of the Indian Penal Code (45 of 1960) or under Section 125 or Clause (a) of sub-section (2) of Section 136 or is found guilty of corrupt practices under section 123 of this Act, he shall for a period of six years from the date of the conviction or from the date on which the order setting aside the election made be disqualified for voting at any election". Similarly, Clause 3 of Section 11A requires to be omitted. Also the provisions contained in Section 10A which disqualifies a candidate for failure to submit account of election expenses
for a period of three years should either be omitted or amended by extending the period of disqualification to 6 years. This becomes essential because the order of the Election Commission under Section 10A would remain of little consequences as the candidate can contest the next election in view of the short period of disqualification. It is, therefore, suggested that provision be amended accordingly and the period of disqualification be extended to 6 years.

3. In a representative democracy a country is ruled practically by a political party in power. Therefore, no government can be expected to be above board without fairness of its political party. This necessitates the enactment of laws to regulate the conduct of political parties and their activities before of during elections. This is paramount because of national interests. Therefore, the law governing qualifications and disqualifications for being a legislator needs reformulations. It is, therefore, suggested that the proposed Constitution (80th Amendment) Bill, 1993 should be adopted without any further debate on the issue. Consequently, the suggested amendments in the Representation of the People (Amendment) Bill, 1993 should also be incorporated simultaneously.

4. The law relating to corrupt practices needs a second look. The existing corrupt practices have a limited reach. Our is one of the biggest democracy of the world. We have limited financial resources. The electors cannot all the time look for the enforcement of their free exercise of right to vote to the Election Commission. Therefore, there remains the need for devising an effective mechanism for protecting and safeguarding the rights of the electorates at the grassroot level. Empirical study conducted by the researcher has exposed many inadequacies of the law on corrupt practices. Thus, the following changes are suggested in the law on corrupt practices:

(a) Personation, which is at present included in the category of electoral offences should also simultaneously be made a corrupt practice. This is essential because personation is viewed presently
from a different perspective under the penal laws as it affects the individuals and not the electoral process.

(b) Misuse of official power and machinery by the political party in power has also become a common feature of the existing electoral set up. This is neither covered under electoral offences nor under the corrupt practices. Therefore, there must be a total ban on the use of official machinery during elections. Consequently, the misuse of official power and machinery by the candidate of the political party in power should be made a corrupt practice under Section 123 of the Act.

(c) In view of the improvements in the mode of transport and communication as well as the elimination of distance between the polling booth and the voter’s residence, the provisions regarding use of vehicles for free conveyance of voters has lost much of its significance and requires to be deleted as corrupt practice. However, it could remain as electoral offence. The penal provision contained in Section 133 covering this aspect should be amended and the penalty be increased to Rs.10,000 instead of the existing amount of Rs.1,000.

(d) It has also been observed that the majority of people are opposed to employee’s open participation in electoral politics. Therefore, Section 123(7)of the Act requires to be suitably amended and no employee irrespective of his rank/position should be allowed to participate in politics during election days.

(e) Purity of election is also affected when corrupt practices are committed by person without express authorization of the returned candidate. Therefore, Section 100 of the Act should be amended suitably so as to extend the principle of implied consent to party workers or other persons provided these activities have materially affected the election of the returned candidate.

5. The Constitution 73rd and 74th Amendment Act, 1992 have given a constitutional status to the Panchayats and Municipal bodies. Therefore,
the provisions of the Representation of the People Act, 1951 relating to corrupt practices must also be made applicable to these bodies. This would not only bring uniformity in the principle of purity of electoral process but would also serve a social cause by avoiding confusion and helping the electors in understanding the law in its correct perspective. However, the procedure regarding settlement of election disputes to these bodies should be left to the law made by legislature of a state.

6. The Election Commission is the only executive body which has been assigned the task of conducting election to legislative bodies. It receives all complaints relating to various malpractices and conducts inquiries relating thereto. It also takes decision on such complaints during elections. However, when the elections are over and the results have been announced, it does not possess any authority to take decision on matter relating to corrupt practices. The scope of this power should be widened and the Election Commission should also have the power to file petition to the court for setting aside the election of candidate whom it finds to have indulged in corrupt practices and the commission possesses material to substantiate the allegations.

7. The Representation of the People (Amendment) Act, 1975 has changed the meaning of the term ‘candidate’. Under this amendment a person can be treated as a candidate from the date of his proper nomination for the purpose. This means that the provisions relating to corrupt practices can be applicable to him from the date when he has been duly nominated. This provision needs amendment and should be restored to its original position as it stood before the above amendment with the change that the person should be deemed to have been a candidate from the time when the election has been duly notified by the competent authority and be holds himself out as prospective candidate.

8. The procedure laid down in the Act of 1951 relating to adjudication of corrupt practices is highly technical in nature. This has virtually resulted in dismissal of a large number of election petitions without looking into the
gravity of the charge. To simplify the procedure and prevent the likelihood of injustice to the petitioner the following amendments are suggested:

(a) Annexures disclosing the commission of a corrupt practice form part of the petition. Sometimes it is not possible to supply copies of the annextures (e.g. video tape) to the respondents. In such cases, the court dismisses the petition. This power should not be given to the court more particularly in cases where the election petition discloses a prima facie cause of action qua some other corrupt practices. Thus non-supply of annexures in such situations should not be treated as fatal to the petition. This necessitates a change which must be incorporated in Section 86(1) and (4) of the Act.

(b) The requirement of procedural law regarding joinder/non-joinder of necessary party needs reconsideration. Section 86(4) of the Act entitles the affected party to join as respondent within 14 days from the date of commencement of trial of election petition. To ensure complete justice it becomes desirable to extend the benefit of this provision to the petitioner also. Hence, consequential amendments in the provisions should be made to cover this aspect.

(c) Sec. 86 (6): The Representation of the People Act, 1951 contains sufficient provision for expeditions trial of the election petition. It has, however, been observed that election petitions linger on for four years together for final disposal. It is, therefore, essential that a maximum time limit is laid down within which the court should finally dispose off the election petition. A period of one year should normally be the limit. Hence, the provision in question should be amended suitably. For ensuring quicker disposal of such petitions, the High Court rules and Orders can be amended by the court itself. The courts are required to enforce procedural law strictly to ensure speedy disposal of election petition.
9. Excessive election expenditure has been and usual feature in every election. Though this matter has recently been reviewed and the limit for election expenses raised, still we do find that election expenditure, seeing the current inflationary trends cannot be kept within these limits. Moreover, in recent years expenses on behalf of friends, relatives, or businessmen have continued to be incurred for benefitting the candidate directly or indirectly. It is difficult to bring these expenses within the clutches of law under the existing legal set up. This all calls for a total review of the subject matter. It is, therefore, suggested that the election agent should be made the sole person responsible for maintaining all accounts of the election expenditure. No expenses should be incurred without specific authorization from the candidate or his election agent. In this context the provisions contained in section 77 and 78 of the Act should be amended suitably. Some other measures to check the expenditure in election such as maximum use of radio and television must be restored to. Similarly, the campaign period also require to be curtailed. Restrictions are also required to be imposed on Political Parties, Association and other individuals to spend in election.

10. Filling of false election returns should be made an electoral offence. Similarly, a provision should be incorporated in the Representation of the People Act, 1951 whereunder election returns, being a matter of public interest, should be made open for public inspection.

11. Lastly, with due respect to the existing administrative set up envisioned for conducting election in India, it must be acknowledged that half of India still live under the poverty line. The illeterate, the half clad, the backward and other neglected segments of our society can still be manipulated by clever, tricky and dishonest politicians for their own political ambitions. They have virtually no knowledge of law or the rules for conducting of free and fair elections. It becomes highly desirable that this vast segment of our population is properly educated and made aware of their right's obligations as a free citizens of this country. Hence, voter's education campaign should be included in the agenda of the Election Machinery of the state. It
is only then that these people will not only be able to know their rights but would also be able to exercise their right to vote in a free and unrestrained manner.

In the end, it may be submitted that the future of Parliament democracy in India would depend largely on the vigilance and maturity of the Indian voters. This is possible only if the suggestions given in this part of the study are implemented in true letter and spirit.