CHAPTER V

The role of Judiciary in India

Commission, electoral reforms: the role of Election Commission, electoral reforms:
CHAPTER-V

THE ROLE OF ELECTION COMMISSION, ELECTORAL REFORMS:
THE ROLE OF JUDICIARY IN INDIA.

5.1 GENERAL INTRODUCTION

"Democracy is government by the people. It is a continual participative operation, not a cataclysmic, periodic exercise. The little man, in his multitude, making his vote at the poll does a social audit of his Parliament plus political choice of his proxy. Although the full flower of participative government rarely blossoms, the minimum credential of popular government is appeal to the people after every term for a renewal of confidence. So we have adult franchise and general elections as constitutional compulsions."¹ The inseparability and the inter-relation between elections and democracy has been succinctly stated by the apex court in the following words: "the concept of democracy as visualized by

The health of a democracy depends on the choice of representatives and leaders, which in turn is directly linked to the way political parties function and elections are conducted. While we have outstanding men and women in public life, flawed electoral process is increasingly alienating public spirited citizens from the political and electoral arena. The persons best equipped to represent the people find it impossible to be elected by adhering to law and propriety. If elected, decent citizens cannot survive for long in elective public office without resorting to, or conniving in, dishonest methods. Even if they survive in office, their ability to promote public good is severely restricted. Indian

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2 Kashyap, Subhash C., Electoral Reforms, The Observer of Business and Politics, 31 May and 1 June 1994
2 V.S. Achuthanandan v. P.J. Francis AIR 1978 SC 1232
people have often been changing governments and elected representatives. However, this change of players has little real impact on the nature of governance. Even if all those elected lose, and all losers are elected, the outcome is not substantially altered. This sad situation calls for a change in the rules of the game, and citizens cannot be content with mere change of players.

5.2 ELECTION EXPENDITURE-ROOT CAUSE OF CORRUPTION:

Excessive, illegal and illegitimate expenditure in elections is the root cause of corruption. Often the expenditure is 10 to 15 times the legal ceiling prescribed. Among elected representatives, almost everyone violates expenditure ceiling laws. Most election expenditure is illegitimate and is incurred in buying votes, hiring hoodlums or bribing officials. Abnormal election expenditure has to be recouped in multiples to sustain the system. The high risk involved in election expenditure, the long gestation period required for most politicians who aspire for legislative office, the higher cost of future elections, the need to involve the vast bureaucracy in the web of corruption all these mean that for every rupee of expenditure, fifty to hundred rupees has to be recovered to sustain the system. One rupee election expenditure normally entails at least a five-fold return to the politician. To share five rupees with the political class, the rent-seeking bureaucracy has to recover about Rs.50. In order to extort Rs.50 from the public, there should be delay, inefficiency, harassment, humiliation and indignity worth Rs.500 heaped on the innocent citizens. Cleansing elections is the most important route through which corruption and maladministration can be curbed.

*90% shared by the large number of employees*
Many scholars wonder how despite massive irregularities the electoral verdicts still seem to largely reflect public opinion, and how parties in power often lose elections. The answers are simple. Happily for us, though parties in power are prone to abusing authority for electoral gains, there has never been any serious state-sponsored rigging in most of India. The irregularities are largely limited to the polling process alone, and most of the pre-polling activities including printing and distribution of ballot papers, and post-polling activities including transport and storage of ballot boxes and counting of ballots are free from any political interference or organized manipulation. That is why parties in power have no decisive advantage in manipulating the polls, and electoral verdicts broadly reflect shifts in public opinion. However, the massive irregularities in polling process make sure that candidates who deploy abnormal money and muscle power have a distinct advantage. Sensing this, most major parties have come to nominate 'winnable' candidates without reference to their ability and integrity. Thus, the use of money power and muscle power are sanctioned by almost all the parties, and often they tend to neutralize each other. The net result is that candidates who do not indulge in any irregularity have very little chance of being elected. Election expenditure mostly for illegitimate vote buying, hiring of hoodlums and bribing officials - is often ten or twenty times the ceiling permitted by law. Criminals have a decisive or dominant influence on the outcome in many parts of India, and have often become party candidates and won on a large scale.

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The elections are largely plebiscitary and the people vote for a platform or a leader or a promise or, as is seen more often, vote to reject the incumbent government or party in power. The individual candidate's ability is rarely an issue in India's electoral politics. At the same time party workers and local oligarchies do not regard election as an opportunity to vindicate their policies or ideologies. In most cases, election of their chosen candidate is merely an opportunity to have control of state power and resources, to extend patronage selectively to people of their choice, to get pliant local bureaucrats appointed in plum postings, to humiliate and harass the inconvenient employees who would not do their bidding, and increasingly to interfere in crime investigation and prosecution by doctoring evidence, influencing investigation and letting criminals loyal to them go scot-free and implicating people opposed to them in criminal cases. In the midst of this, governance is an irrelevant and often inconvenient ritual without any meaning to that in power and without any positive impact on the people.

At the macro level when we examine a whole state or the country, the electoral verdict does broadly reflect public opinion. More often than not this verdict is a reflection of the people's anger and frustration and is manifested in the rejection vote, or their support to a leader, promise or platform. However, at the local level, caste or sub-caste, crime, money and muscle power have become the determinants of political power. All parties are compelled to put up candidates who can muster these resources in abundance in order to have a realistic chance of success. While political waves are perceived around the time of election or afterwards, at the time of nomination of candidates all parties are uncertain about their success and would naturally try to maximize their chances of success at the polls.
by choosing those candidates who can somehow manipulate or coerce the voters. As a net result, irrespective of which party wins, the nature of political leadership and quality remain largely the same, and the people end up being losers. This is then followed by another rejection vote in the next election and the vicious cycle keeps repeating. Where the candidate cannot muster money or muscle power, he stands little chance of getting elected irrespective of his party’s electoral fortunes. Increasingly in several pockets of the country, people are spared even the bother of having to go to the polling station. Organized booth-capturing and rigging are ensuring victory without people’s involvement.

5.3 NEW ENTRANTS INTO POLITICS:

If we examine the new entrants into politics over the past three or four decades in the country, very few with intellect, integrity, commitment to public service and passion for improvement of the situation could enter the political arena and survive. Almost every new entrant has chosen politics exactly for the wrong reasons. A careful analysis shows that heredity and family connections are the commonest cause for entry into politics. This is closely followed by those who have large inherited or acquired wealth and have decided that investment in politics is good business. In recent years, many local muscle men, whose services were earlier sought for extortion or vote-gathering, are now directly entering the fray and gaining political legitimacy. A few persons have entered politics out of personal loyalty to, and close contacts with those in high public office. People with very high visibility on account of great success in mass

entertainment like sports or films have also been increasingly drawn into the vortex of politics. Occasionally, accidents of fate are pitch forking certain individuals into elective public office. If we exclude these methods of heredity, money power, muscle power, personal contacts, high visibility, and accidents of fate, there will not be even a handful of persons in this vast country, who have entered politics with deep understanding of public affairs and passion for public good and survived for any length of time over the past four decades. There is no activity more vital and nobler than governance. In the true sense, politics is about promotion of happiness and public good. But if the best men and women that society can boast of are either prevented or repelled or rendered incapable of surviving in the political arena, then that governance is bound to be in shambles. Over the past sixty two years of Indian republic, the unsuitable constitutional and legal mechanisms that we evolved landed the Indian republic in an extraordinary crisis of governability.

Democracy is the only system, which demands constant selection, nurturing and development of capable leadership. If the best men and women society can offer are repelled by the political process and politics acquires a official connotation, the result is collapse of ethics in public life, and with it public confidence in governance. With the most competent and qualified persons eschewing politics, paralysis of governance is the inevitable consequence. With all decisions geared towards somehow winning elections and retaining power or to amass individual wealth at the cost of the public, the people are swindled. This legal plunder ensures that

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9 Kashyap, Subhash C., Coalition Constraints, Times of India, 11 December, 1999.
public goods and services are of appalling quality and wholly insufficient to meet the requirements of a civilized society or growing economy. Public exchequer will soon be depleted and fiscal collapse will be imminent. Sadly, all these ugly features of a dysfunctional democracy are evident in contemporary India.

5.3.1 COMPULSIONS OF FIRST-PAST-THE-POST SYSTEM:

In addition to the electoral irregularities, use of unaccounted money power and criminalisation of politics, the first-past-the-post (FPTP) system in a plural society added to the decline in political culture. On the one hand the largest party is likely to obtain disproportionate presence in legislature, with consequent marginalization of large segments of public opinion. On the other hand, in the FPTP system, there is desperation to somehow win the election in a constituency by all means fair or foul, as each seat becomes critical in the legislative numbers game to form government or acquire influence in the Westminster model. The ugly practices adopted by a party at the constituency level becomes somehow acceptable in this quest for electoral success. Once a candidate obtains party nomination, he and his caste or group often make it an issue of personal prestige to be elected in the winner-take-all electoral and power game. As election in each constituency runs on similar lines, the parties and candidates are not inhibited by the fear that their illegitimate efforts to win a few constituencies might undermine the larger objective of enhancing the voting share in a whole state or the nation\(^\text{10}\).

Another feature of the FPTP system is that reform of the polity becomes more and more difficult. Genuinely reformist groups with significant but limited resources and influence have no realistic chance of success in the FPTP system and they tend to wither away. In a system in which winning the seat by attracting the largest number of votes is all-important, honest individuals or reformist parties fighting against the electoral malpractices and corruption have very little chance of success. Political process becomes increasingly incestuous, and even as power alternates between parties, the nature of the power game and the quality of governance remain unaltered. The political system has thus become fossilized over the years and is self-perpetuating. Fresh breeze of electoral reforms, is vital to rejuvenate the political process and to inject institutional self-correcting mechanisms to revitalize Indian democracy.¹¹

5.3.2 ROLE OF POLITICAL PARTIES

In India, traditionally parties have been seen as pocket boroughs of those at the helm. Often there are entry barriers to members. Communist parties have always had a somewhat strict membership admission procedure, which is generally uniform in its application. The mainstream parties which are mass-based and have no rigid membership norms, however, have been erecting barriers of entry to all persons who are potential threats to the current leadership. While ordinary, faceless members are admitted as cannon-fodder with ease, the potentially influential members are not always welcomed with open arms. Similarly, even the faintest criticism of party bosses on any issue is taken as an act

of indiscipline, often leading to suspension or expulsion. Again, when leadership changes in the party, the same member who was earlier punished for rebellion is welcomed back with alacrity. There are countless instances of such disgraceful autocracy in all major political parties in India.

The political parties, which exhibit such authoritarian tendencies in protecting the privileges of those in power and nipping in the bud any potential threat to individual dominance have not shown the slightest sense of shame or remorse in assiduously cultivating and recruiting known criminals, corrupt persons and charlatans and rogues. Such shady elements are courted and welcomed, while decent and dignified citizens are shunned and often rejected. No major mainstream party has any published membership rolls. Spurious membership and disputes arising out of it are only too well known to all of us in respect of major political parties. As a net result, parties have often become a collection of greedy, corrupt and unscrupulous persons, who are willing to use any method, however ugly, immoral, violent or brutal, to perpetuate their hold on state power. By virtue of entry barriers and expulsion powers in the hands of party bosses, no real rejuvenation of parties with injection of fresh blood is possible. All idealistic, talented youngster are often repelled by the parties, and undesirable elements find a haven in them.

As a perceptive political observer commented some years ago, in Indian political parties, 'the man who wears the crown is the king'.

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Leadership is often acquired through undemocratic means and retained by the power of patronage, nomination and expulsion, rather than the support of members. This paved way for oligarchies and unaccountable and unelected coteries dominating and manipulating the political process. Party leadership, however illegitimate the ascent to it may be, gives total control of the party apparatus and resources. Through total monopoly over candidates' choice, the leadership's access to, and control over, levers of state power is complete and unchallenged. Given the fact that most parties are dominated by only one leader, and not even a small group, 'monarchy' is the correct description of party leadership. Once in office, the power of leadership is absolute, and control of resources is awesome. Any potential dissidence or principled opposition is instantly snuffed out. Suspension, expulsion, instant removal from office, denial of party tickets, all these and more weapons are fully available to leadership if there is any whiff of opposition. If the party is in power, state machinery is used for party ends, and more often to perpetuate absolute control over the party and state, with cynical disregard to propriety and public good. All positions in the regional and local units are nominated by the party leader. Every party functionary owes his or her position to the grace and good will of the 'High Command'. Myths and images are assiduously propagated to perpetuate personal power. No other party functionary or leader is allowed to share the limelight. The moment a local or rival national leader is gaining in popularity, he is immediately cut to size, removed from office, and if necessary expelled from the party to deny him a political base, and force him into political wilderness.

Membership rolls are not available, and when prepared are often spurious. Elections are not held, and if held are rigged. Musclemen often take over party meeting and conferences at various levels, and fisticuffs and violence are quite common. All parties, without exception, nominate candidates for public office through the dictates of the leadership or high command. All funds are collected clandestinely and spent at will to further augment personal power. State level 'leaders' are nominated by the 'high command'. When a party is elected to office in any State, the legislature party leader, who will be Chief Minister, is nominated by the central leadership, and formally anointed in a farcical 'election'. Often sealed covers are sent indicating the name of the person chosen as Chief Minister by the party leadership. There are instances in which persons who did not command the support of even a handful of legislators became Chief Ministers. Even candidates for public office in local government elections and cooperatives are decided by the party's central leadership. When the party obtains a majority in a local election, again the zilla parishad chairman or other functionaries are decided by the party bosses far removed from the scene. In short, political party functioning has become totally autocratic, oligarchic, unaccountable and undemocratic. The whole political process and all democratic institutions are systematically subverted. Party leaders have become medieval potentates, with the sole intent of survival in power, and bequeathing their office to their family members or chosen successors.

5.3.3 PUBLIC SCRUTINY AND REGULATION

It does not require any great analysis or insight to understand that undemocratic political parties cannot nurture, sustain or strengthen a democratic society. The most critical need is to reform parties and make them open, democratic and accountable. Basic democratic principles of member control, elected representatives from lower tier electing leadership at higher levels, open membership rolls, fair and free elections, no power to central party over regional and local units, easy and effective challenge to incumbents, no recourse to expulsion or removal of potential rivals, and no nominated office holders at any level, should be integral to the functioning of any political party. The question then is, can the political parties be left to manage their own affairs democratically. Past experience shows that it is futile to expect parties to become democratic on their own. Through long years of neglect, democratic processes have become fragile. The coteries, individuals and families controlling parties are so firmly entrenched, that there is no realistic hope of members being allowed to organize themselves and challenge the leadership and procedures. It will be somewhat naïve to except the party leaders themselves initiating the process of party reform, which will undermine their own unaccountable, and often illegitimate personal power nor is there hope that democratic elections for public offices will automatically force reform on parties.

People also have come to realize that their vote has no sanctity after the election. Even if a candidate gets elected on a platform, there is no guarantee that their representative will not defect to a party with an entirely different agenda and ideology and betray the people's verdict purely for personal gain. Public office is seen as private property and in handling it the trust reposed by voters is of little consequence. Personal honour and commitment to a cause are at a premium in a system which rewards
defections and does little to penalize political malfeasance. Obviously, this situation calls for urgent and practical electoral reforms along with fundamental governance reforms to enhance people's empowerment and participation. These electoral reforms should address the following concerns:

1. Criminalization of politics.
2. Abuse of unaccounted money power.
3. Electoral irregularities of flawed electoral rolls
4. Personating, false voting, rigging and booth capturing.
5. Autocratic, unaccountable political parties.
6. Electoral reforms in local governments
7. Elections to Rajya Sabha
8. The curse of defections for personal gain
9. The deficiencies of FPTP system.

Elections and the reforms in the electoral system have been a major subject of study for a long time in the country. Almost since the first general elections in India held on the basis of adult franchise, doubts have been expressed about the soundness of Indian electoral system. During the last 20 years or so, views have been expressed on the Electoral System both in Parliament and in the press as well as on public platforms, a number of Committees, official and non-official, have made studies—all highlighting the various inadequacies of the present system and procedure. The Chief Election Commissioner also has from time to time made a number of suggestions for the removal of certain defects and the improvement in the system. But no basic changes have so far taken place. For the first time, a Joint Parliamentary Committee on Amendments to
Election Law was formed in 1970 to examine the question of electoral reform from all angles. But, with the dissolution of the Loksabha in December 1970, this committee’s life also came to an end. When in 1971 a new Loksabha and a new government came into being, a 21-member committee headed by Sri Jagannath Rao was formed in July 1971. It included, among others, the then Law Minister Sri H.R. Gokhale. The question of electoral reform was discussed threadbare in this Committee.\(^{15}\)

Later, on behalf of Citizens for Democracy, Sri Jayaprakash Narayana had appointed a Committee on Electoral Reforms with six members\(^{16}\), under the Chairmanship of Sri V.M. Tarkunde, in August 1974, which too, after holding discussions with representatives of numerous organisations, produced a comprehensive set of recommendations. Tarkunde Committee deals with the use of money power in elections, misuse of official authority and machinery, alternative system of representation and disposal of election disputes. It recommends that the Election Commission should be increased to three and its members should be appointed by a committee consisting of the Prime Minister, the leader or representative of the opposition and the Chief Justice of the Supreme Court. It also recommends that before each election to the Loksabha or Legislative Assembly, the President may appoint regional election Commissioners. There may be an Election Commissioner for each big state, and for the smaller states there may be a commissioner for two or three states. It has recommended that from the

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\(^{15}\) After about a year’s Labour this Committee submitted to Parliament a report in 2 volumes making number of very valuable suggestions.

\(^{16}\) The members of the Committee appointed were: (1) V.M. Tarkunde (Chairman), (2) M.R. Masani, (3) A.G. Noorani, (4) P.O. Mavalankar, (5) KD. Desai and (6) E.P.W. da Costa (Convener). For an elaborate study, see. “Interim Recommendations of the Electoral Reforms of the Citizens for Democracy”, Monthly Public Opinion Surveys, Vol. 20, No. 1 October, 1974, pp. 5-9.
date of announcement of the general elections, the existing ministries should function as caretaker governments and should not indulge in proposals or expenditure which are meant to benefit the ruling party. The other recommendations regarding the use of Government conveyances for election propaganda, taking unfair advantage of the All-India Radio and other misuse of government machinery are worthy of careful consideration.

When the Janata Government was in office, deliberations of the issue at governmental level had been concluded, but it had been decided that necessary legislation would be initiated only after consultations with the opposition. After 1980, the Congress (I) Government also set up a Cabinet Sub-Committee to consider all the above recommendations. With the formation of the National Front Government at centre once again much talk of electoral reforms. On 9th January, 1990, the National Front Government was organised an All-Party Conference at New Delhi to discuss on electoral reforms and set up a Committee of Parliamentarians and Experts to review the Indian electoral system and giving final touches to the poll reforms proposals.

More recently, in a rare gesture, the National Front Government accepted a private member's resolution calling for urgent poll reforms to curb the influence of money and muscle power in elections. This resolution

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17 All-Party Conference on Electoral Reforms, which was held at New Delhi on 9th January, 1990, was a wide measure of agreement included the introduction of voter-identity cards, rotation of reserved seats, phased delimitation of constituencies without increasing the total number, strengthening of the Election Commission, appointment of adhoc judges to facilitate the expeditious disposal of election petitions and measures to deal with non-serious candidate?. Other matters on which there was broad agreement included that of giving more representation to women, ensuring statutory backing for the model code of conduct, implementation of the Election Commission's recommendations on booth-capturing, fixing of a statutory limit for the holding of by-elections and a review of the anti-defection law. For instance See. (i) "Panel to recommend poll reforms", The Hindu, January 10, 1990, p. 9 : (ii) "Towards purposeful poll reforms" (Editorial), The Hindu, January 12, 1990, p. 8.
had been moved by B.J.P. leader, L.K. Advani in the Loksabha. L K. Advani's resolution read: "This House is of the opinion, that against the background of the ninth general elections, poll reforms should be urgently undertaken, more particularly to curb the influence of money power and muscle power, and to ensure that future elections held in this largest democracy of the world are completely free and fair".18

5.4 ELECTORAL REFORMS

For the first time in many years, the government was made to eat humble pie in Parliament on June 14, 1994, on account of its bungling over the electoral reforms bill. Two bills, one of them, among other things, amending the Representation of the People Act with a view to banning the use of religion during elections and the other relating to the composition and powers of the three Election Commissioners, which were publicised as a kind of sovereign remedy for ail that ails India's democratic system, were to be passed. As it turned out, one of the bills was introduced but not discussed and the other could not be introduced at all in either House. The government frankly admitted that it had failed in its endeavours to muster the support to opposition parties without which the bills relating to the composition and powers of the election commissioners, which involved a constitutional amendment, could not be passed. It needed two-thirds majority support in either House. In view of its failure, the government agreed to the abrupt adjournment of Parliament.

The entire opposition accused the government of betrayal and some of the leaders went to the extent to saying it had committed a fraud on

18 Indian Express, May 5, 1990.
Parliament and therefore no longer had moral authority to rule: it should quit, they demanded. Never before in the country's parliamentary history had the government suffered such humiliation. Chief Election Commissioner T.N. Seshan, whose wines the Congress (I) apparently wanted to clip, described the development as "a victory for good sense". Besides the issue of the status of the Election Commissioner vis-a-vis the other election Commissioners, the other important point of difference between the Congress (1) and the opposition was the mode of appointment of the Election Commissioners. The Dinesh Goswami Committee Report on electoral Reforms presented in May 1990 had recommended that the Chief Election Commissioner be appointed by the President in consultation with the Chief Justice of India, and the Leader of the Opposition or the largest group in the Lok Sabha in case no Leader of Opposition is available, while in the appointment of the other two Election Commissioners, besides the aforesaid two, the Chief Election Commissioner also be consulted.

5.4.1 GOSWAMI COMMITTEE RECOMMENDATIONS

In attempting to push through the Bill\(^9\), the Government has totally ignored the Dinesh Goswami Committee on electoral reforms, going back on repeated assurances that all legislation concerning electoral reforms would necessarily have to be based on its findings. According to experts, all the important proposals of the Committee have been confirming doubts that the amendment is aimed more against the Chief Election Commissioner than it is for introducing genuine reforms in the electoral

\(^9\) The Constitution (83rd) Amendment Bill

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system. The biggest controversy surrounds the mode of appointment of the CEC. The Goswami Committee made it clear that the "CEC should be appointed by the President in consultation with the Chief Justice of India, and leader of opposition, and in case no Leader of Opposition is available, the consultation should he with the leader of the largest opposition group in the Lok Sabha".

While the Government did agree to routinely inform the Chief Justice, there was no provision for consulting the Leader of the Opposition or any other political party. Says former home secretary L.P. Singh, who was associated with the formulation of the Goswami Committee report: "The opposition was not represented at all. This would have to be a political process", This is also directly linked with the powers of the CEC. The Goswami Committee recommends that the appointment of other two Election Commissioners should be in consultation with the CEC and the Leader of the Opposition. "Not only was no opposition consulted while framing the amendment, the pre-eminent position of the CEC as defined by the Committee, has been challenged in the amendment which seeks to put the other Election Commissioners on par with the CEC", points out Mr. Singh. On the vexed question of delimitation, the Committee was categorical that rules of internal procedure should be determined by the Election Commission itself, but that the 83rd Amendment was bypassed again when the government combined the issue with the business of multi-member Commission. The issuing of identity cards also figures in the Committee's recommendations. Says the Goswami report:
• Government departments and ministries should be involved to make the possession of the card by every adult citizen compulsory for receiving benefits and facilities;

• The Bhabha Atomic Research Centre be associated to prepare fuller details of the scheme from the point of view of cheaper costs;

• Active involvement of the postal agencies for covering all areas and make them serve as focal point for the field operation connected with the scheme if necessary.

• Identifying an agency of the state government and making it fully responsible for the implementation of the scheme is essential.

The Goswami Committee also suggested that a "Standing Committee of Parliament should be constituted to go into all electoral matters from time to time as electoral reforms are a continuous process."\(^{20}\) Electoral reform is too serious a subject to be handled on the basis of narrow partisan considerations. Since the electoral system has to be sustained for a long period in a democratic polity, it cannot be subjected to frequent and frivolous changes introduced in an ad hoc manner. The legislative measures needed to introduce important reforms must, therefore, be framed while keeping in mind their long-term implications. These measures must necessarily be discussed thoroughly with different parties in order to evolve a broad national consensus. This is all the more necessary when a special two-third majority in both the Houses of Parliament is required for adopting a Constitution Bill on electors reforms.

\(^{20}\) Committee on Electoral Reforms (Dinesh Goswami Committee), Report of the Committee on Electoral Reforms, New Delhi: Legislative Department, Ministry of Law and Justice, 1990
The Rajya Sabha is expected to represent the interest of States. It was, therefore, made obligatory that a person contesting elections to the Rajya Sabha from a state should normally be & resident of that state. The government was initially keen to drop these restrictions in order not to embarrass several veterans, including senior ministers elected to the Rajya Sabha from states which were not their normal places of residence. They had enlisted themselves as voters from those states only a short while prior to the Rajya Sabha polls. This was obviously in violation of the spirit of the federal structure of the Constitution. The government could have anticipated objections to these violations. And yet the original draft of the electoral reform bill had provided for the dilation of domicile restrictions. Frightened by the prospect of not securing a two-thirds majority, the government was ultimately compelled to drop the bill. Mr. Soli, J. Sorabjee, Senior Counsel, Supreme court and former Attorney General of India, presented to the Prime Minister on May 11 certain "Recommendations for Electoral reforms. These recommendations were made by the National Convention to Promote Communal Harmony and Constitutional objectives. They are;

5.5 COMMUNALIZING IN POLITICS

1. A party bearing the name of a religion, race or caste either wholly or partly shall not be registered as a political party to contest elections. Reasonable time may be given to the existing political parties bearing such names to change their names.

21 Committee on State Funding of Elections, (headed by Indrajit Gupta), New Delhi: Government of India, Ministry of law, Justice and Company Affairs, 1998
2. A party which promotes communalism whether before, during or after elections or which seeks to fight elections on communal issues, shall be deregistered and disqualified to participate in elections.

3. The Constitution of a registered political party shall contain a provision stating that its membership is open to all, irrespective of religion, race, caste or language.

4. Any person holding a religious office shall, so long as he holds that office, be disqualified from contesting in an election. However, it shall be open to him to relinquish the religious office and contest.

5. If the total votes polled in a constituency is less than 35 per cent of the total number of voters in the constituency, there should be a repoll.

6. (a) No candidate shall be declared elected from a constituency unless he has secured at least 50 per cent of the total votes polled in the constituency. 

(b) If no candidate secures at least 50 per cent of the votes polled, there should be re-poll to elect one of the two candidates who have secured the largest and the next largest number of votes in the first poll.

7. Ex-communication of a member of a political party or an elected representative of the people for any act or omission on his part as such member or representative by the community to which he belongs shall be prohibited in order to ensure that religious and caste sanctions are not applied to control the conduct of political workers and/or elected representatives in the discharge of their duties.

5.5.1 CEILING OF ELECTION EXPENSES

8. The existing ceiling on election expenses may be revised so as to allow a maximum expenditure of Rs. 5 lakh in the case of State Assembly
Constituency including the expenditure incurred by a party on a candidate.22

5.5.2 IDENTITY CARDS FOR VOTERS

9. Expeditious steps should be taken to issue identity cards to voters so as to check the evil of impersonation.

5.5.3 ELECTRONIC VOTING

10. Electronic voting should be introduced as early as possible after making necessary amendments to the Conduct of Election Rules, 1961.

5.5.4 REGULATION OF POLITICAL PARTIES

11. There shall be a law to ensure (a) inner party democracy in every political party, and (b) that every party maintains regular accounts of the funds and donations received and the expenses incurred by it. Such accounts shall be audited regularly.

12. There shall be a Commissioner to decided whether a political party is (a) promoting communalism or acting against the provisions of the Constitution and/or the law (b) observing inner party democracy and (c) maintaining proper accounts of income and expenditure etc. The Commissioner shall give his decision after giving a reasonable opportunity to the parties to tender evidence and to be heard. The

Commissioner shall have power to deregister a party which is guilty or any breach of law.

13. The Commissioner shall be appointed by a Committee consisting of the Prime Minister, the Leader of Opposition and one person nominated by the Chief Justice of India.

5.6 DIRECTIVES FROM ELECTION COMMISSION

Mr. Seshan has directed electoral officers to ensure that by January 1, 1995, all voters in the country are provided with photo-affixed identity cards to check the mass impersonation and bogus polling rampant in the urban constituencies.

Even the Chief Minister who assembled in the capital recently to consider the issue could not find fault with the proposal as such. But the conference, presided over by Union Home Minister S.B. Chavan, wanted the proposal to be implemented in phases. The Union Law Ministry undertook to explain to the Election Commission "the practical difficulties" in completing the exercise by the year-end. Press reports make it evident that Mr. Seshan remains unconvinced by the executive's arguments about the shortage of time or any other practical difficulty. Mr. Seshan, reiterating his earlier directive, 23 It was then that the Act 24, was amended to insert Section 61 which reads as follows:

"Special procedure for preventing personation of electors: (a) for marking with indelible ink of the thumb or any other finger of every elector

23 Mr. Seshan stressed: "No identity cards, no elections after January 11.' The issue of voter identity cards is not a new one. In 1958, complaints were made to the Commission by various quarters that mass impersonation had taken place in the urban constituencies.

24 The Representation of the People Act, 1951
who applies for a ballot paper...(b) for the production before the presiding officer...by every such elector as aforesaid of his identity card before the delivery of a ballot paper...to him if under rules made in that behalf under the25 electors...have been supplied with identity cards with of without their respective photographs attached thereto; and (c) for prohibiting the delivery of any ballot paper to any person for voting...if at the time such person....has already such a mark on his thumb or any other finger or does not produce on demand his identity card before the presiding officer”. This enabling provision was further supplemented a rule26, under which an elector can be refused a ballot paper if he fails to produce his identity card. Thus, it should be appreciated that the intention to provide voters with identity cards and the requisite statutory sanction to carry out this intention have been in existence for over three decades. It is the Government that has been dragging its feet on some pretext or another.

The identity card scheme was tried on an experimental basis in the early 1960s in Calcutta. In 1990, when the Dinesh Goswami Committee on Electoral Reforms considered the question, it was told by the Law Ministry that the Calcutta exercise did not succeed because of a variety of reasons.27 The Law Ministry also informed the Committee that things improved in the late 1970s when S.L. Shakdher, as Chief Election Commissioner, made strenuous attempts in this regard. The 1980 report of the EC recorded that the system of identity cards, introduced first of all in Sikkim, had been quite successful. Significantly, the report said the scheme of identity cards was aimed not only at checking impersonation of voters at the time of election, but also “to avoid enumeration of foreign nationals”.

6.6.1 IMPLEMENTATION OF EC ORDER

25 The R.P Act, 1950(43 of 1950)
26 Rule 28 of the Registration of Electors Rule; and Rules 35(3) and 37 (2)(b) of the Conduct of Election Rules, 1961
27 Like poor technological support, reluctance on the part, of ‘pardanasheen’ women belonging to a minority community to get themselves photographed, general apathy among electors and logistic problems confronted by the electoral machinery".
Some of the Chief Election Officers have started implementing Mr. Seshan's order on identity cards. The Gujarat CEO, Mr. Ashok Narayan, says his department has made all preparations to issue identity cards to nearly 26 million voters. The State Chief Minister has already sent a letter to the central government asking it to share the cost of around Rs. 150 crore. In Maharashtra, some 55 million cards are needed and Chief Minister, Sharad Pawar says, "It is not possible to give cards to all in one year, but we will implement the decision of the Central Government". Total estimated cost for the state is Rs. 125 crore. A sum of Rs. 140 crores will be required for issuing identity cards to the 58.8 million voters in Bihar and there too, funds are the only problem.

Mr. Seshan has virtually relied on the Representation of the People Act, 1951— which lays down a special procedure for preventing personation of electors and empowers a polling officer to demand identification of the voter framed under the Act, which empowers the Commission to direct the issue of identity cards for electors after due notification. The present controversy arose after the Commission, through an order of August 28, 1993, issued a notification to enforce the rule for application all over the country. The rule states that "the identity card shall — (a) be prepared in duplicate; (b) contain the name, age, residence and such other particulars of the elector as may be specified by the Election Commission; (c) have affixed to it a photograph of the elector.

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28 Section 61
29 Rule 28 of the Registration of Electors Rules, 1960
30 Sub-section 2 of Rule 28 of the Act states that, "the registration officer for such notified constituency shall, as soon as may be, after the issue of the notification under Sub-Rule (1) arrange for the issue of every elector of an identity card prepared in accordance with the provisions of the rule."
31 Sub-section 3
which shall be taken at the expense of the Government; and (d) bear the facsimile signature of the registration officer".

In his painstaking efforts, the Chief Election Commissioner has listed the recommendations for electoral reforms, identity cards being one of them, by a plethora of Committees in the last three decades and lamented the inaction of the Union/State Governments on them. He has complained about the lack of response from Prime Minister P.V. Narasimha Rao to the long list of electoral reforms he had suggested way back in February 1992 and cited this as justification for his latest directive. As the Union Home Minister informed the specially convened conference of the Chief Minister on the identity cards issue, the exercise would involve an expenditure of between Rs. 1,100 crore and Rs. 1,650 crore. The expenditure would double if the identity cards were to be issued in duplicate.

5.6.2 V. M. TARAKUNDE COMMITTEE (1974-75):

The Tarakunde Committee on Electoral Reforms was appointed by Jayaprakash Narayan on behalf of the Citizens of Democracy, an independent organization. An important recommendation of this committee was that there should be a law requiring all recognized political parties to keep audited accounts and sources of all income and details of expenditure, with false accounts being a punishable offence.

5.6.3 DINESH GOSWAMI COMMITTEE REPORT (1990)

Main recommendations of the Committee are as follows:
- A three member election commission and appointment of the Chief Election commissioner in consultation with the Chief Justice of India and the leader of the opposition and the appointment of other Election commissioners in consultation with CEC;
- A fresh de-limitation of the constituencies on the basis of 1981 census and rotation of seats reserved for SCs and STs;
- Issuing of multi-purpose photo identity cards to voters;
- Disallowance of contesting by candidates from more than two constituencies;
- The raising of security deposits of independent candidates and forfeiture of security deposits of all candidates failing to secure at least ¼th of the votes polled;
- A statutory status to the model code of conduct formulated by the Election Commission;
- introduction of electronic voting machine;
- Legislative measures against booth-capturing, rigging and intimidation of voters;
- Limited state-funding in kind to recognized political parties, to begin with;
- Transportation of voters, carrying of fire arms; sale and distribution of liquor on poll day to be cognizable electoral offence in law;
- Restriction of disqualification under the anti-defection law to voluntary resignation and violation of party whips only in cases of vote of confidence, money bills and vote of thanks to the President;
- A review of the electoral system by a standing Committee of the Parliament and by an expert Committee.
The Goswami Committee Report\textsuperscript{32} also made some recommendations relating to political parties and candidates. The main reform proposed was the deletion of Section 29(A) of the RP Act concerning registration of parties. The matter, instead should be delegated to be solely decided by the Election Commission under the Election Symbols (Reservation and Allotment, 1968). The Committee did not feel the necessity for recognizing electoral alliances of political parties or changing present procedure of allotment of symbols.

5.6.4 JUSTICE V. R. KRISHNA IYER COMMITTEE (1994)

The Iyer Committee recommended that a law should ensure inner-party democracy in all political parties. It also reiterated a legal sanction for proper audit and accounts. Besides it proposed the institution of a Commissioner to examine and decide whether a political party was promoting communalism or in any way acting against the Constitution.

5.6.5 LAW COMMISSION'S REPORT (1998)

The recommendations of the Law Commission could be summed up as follows:

- Independent candidates be barred from contesting elections to the Lok Sabha and legislative assemblies.
- Full five year term for the legislatures.
- In order to contain defections, a “pre-poll coalition” or front of political parties should be treated as a “political party”.

\textsuperscript{32} Chapter 5
Inclusion in the RPA to regulate the formation, functioning and income-expenditure accounts of political parties and to avoid their splintering and ensure internal democracy.

Scraping of the Act to make the electoral system more representative, fair and transparent making it obligatory for every candidate to declare his/her assets and of his/her spouse and dependent relations as well as provide particulars regarding criminal cases pending against them.

On state of funding of political parties, recommendations of the Indrajit Gupta Committee subject to certain changes, be adopted.

In case of electoral offences and certain other serious offences, framing of a charge by the court should itself be a ground for disqualification in addition to conviction. Relevant provisions of the Criminal Procedure be amended to check false complaints.

Only a candidate obtaining 50 percent or more votes be declared elected, holding of “run off” elections wherever necessary.

Any party, which receives less than five percent of the total vote in elections to the Lok Sabha and Assemblies “shall not be entitled to any seat”.

Use of electronic voting machine.

Restriction on frequency of “no-confidence motions”

List system on the German model for 25% or 50% additional seats and concept of negative vote.

5.6.6 JUSTICE KULDEEP SINGH PANEL: The recommendations of Justice Kuldeep Singh panel could be summed up as follows:

Explanation I to section 77(1) of the RPA
• To prevent criminalisation of politics, the candidates with a criminal background or those facing substantial criminal charges framed by a court be debarred from contesting elections.

• Just as government servants facing criminal proceedings are placed under suspension until cleared by the courts, the same yardstick should be applied to politicians as well.

• Election Commission should bring effective changes in the model code of conduct to exclude candidates from contesting elections who have criminal proceedings pending against them. And, if the Election Commission cannot do this, Parliament must do it.

• More effective laws be created that will prevent criminals from entering the political process. The legal reforms can push criminals out of the system. New legal initiatives such as amendments could empower the Election Commission to deal with crime-tainted politicians.

• If we cannot bar criminals from contesting elections until they are convicted by the courts, then the next best course would be to get speedy verdicts in their cases. Special courts and benches to try cases against legislators and other high profile people should be set up for speedy trials.

Following are the additional suggestions

• Rules of procedure may provide for the election of the Leader of the House by the Lok Sabha along with the election of the Speaker and

34 Section 8 of the Representation of the People Act 1951
in the like manner. The Second Ballot system be adopted, in case no candidate secures a majority in the first round. The Leader may then be appointed as the Prime Minister. The same procedure may be followed for the Chief Minister.

- Adoption of a system of constructive vote of no confidence. For a motion of no-confidence to be brought out against a government at least 20% of the total number of members of the House should give notice. Also, the motion should be accompanied by a proposal of alternative Leader to be voted simultaneously.

- Under the present system of "first -past -the -post", candidates can get elected on a minority of votes. No candidate should be declared elected unless he or she secures more than 50% of the votes cast. If no candidate gets 50% of votes in the first run, a second run off election be held immediately the next day of the first ballot. These days of electronic voting and counting make it possible to adopt such a system without incurring heavy expenditure or need for fresh security and administrative arrangements.

- Candidates should not be allowed to contest election simultaneously for the same office from more than one constituency.

- Candidates contesting elections should be familiar with the Constitution and should be able to read, write and understand its provisions.

- The election code of conduct which should come into operation as soon as the elections are announced, is only a guideline. It should be given the sanctity of law and its violation should attract penal action. Political parties should also evolve their own codes for fair and violence free polls.
5.7 CURBING CRIMINALISATION OF POLITICS

The entry of criminals in politics is a matter of great concern. Although it can be prevented by laws, but more than that it is within the powers of political parties to see that no criminals or persons with the reputation of being in criminal activities are selected as candidates. The proposed law on political parties should provide that no political party would be able to sponsor and provide ticket to a candidate who has been convicted by any court for any criminal offences or if the courts have framed criminal charges. In case of conviction, the bar should apply for six years after the completion of the period of the sentence. If any party violates this provision, the candidate involved should be disqualified and the party deregistered forthwith. Any person convicted for any heinous crime like rape, murder, etc. should be permanently debarred from contesting for any political office. Criminal cases against politicians pending before Courts either for trial or in appeal must be disposed off speedily by appointing Special Courts.

5.7.1. CHECKING PROLIFERATION OF INDEPENDENT CANDIDATES

Vide the Representation of People (Amendment) Act, 1996, security deposit for independent candidates was enhanced to twenty times of the earlier limit, number of proposers for independent candidates increased and it had been provided that the names of the independent candidates would be listed in the ballot paper below the names of the candidates set up by the political parties. These measures to some extent succeeded in reducing the number of non-serious independent candidates but, more
needs to be done. In order to check the proliferation of the number of the independent candidates and the malpractices that enter into the election process because of the influx of the independent candidates, the security deposits in respect of independent candidates may be raised further. The security deposits should be doubled progressively every year for those independent candidates who fail to win and still keep contesting every election.

If any independent candidate has failed to get at least five percent of the total number of votes cast in his constituency, he/she should not be allowed to contest as independent candidate for the same office again at least for 6 years. Any independent candidate who loses election three times consecutively for the same office as an independent candidate should be permanently debarred to contest election to that office. An independent candidate should be nominated at least by twenty elected members of Panchayats, Municipalities or other local bodies spread out in majority of electoral districts in his constituency. 

5.7.2 PROBLEM OF PARTY FUNDING

The problem of political funding is a complex and undeniable reality, and that there are no panaceas to remedy it. In effect, the premise that there are no absolute truths or ideal solutions in electoral matters has gained even more strength with regard to funding for two main reasons. One because of the close link that exists between this issue and the specific characteristics of the political system as a whole, as well as with

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the characteristics of the political party system in particular. Another reason is the permanent relationship posed by this subject with the values of political culture, which may mean that any solution can be evaluated in completely different ways in different contexts. For instance, whereas in Scandinavian countries the disclosure of electoral expenses and sources of funding is perceived as a violation of the fundamental principle of the right to voter secrecy, in other countries, such as Germany and Canada, these practices are viewed as exactly the opposite, as a guarantee of transparency in political activity and of the citizens' right to be duly informed. Two other considerations deserve attention. The first one has to do with emphasizing the importance of reviewing the funding system, not only in terms of the aims of the reform effort and its desired effects on the political system and system of political parties, but also with respect to the degree of effectiveness of regulations as well as their undesirable or immoral effects. The second expresses the need to insist that not every reform to the funding system must be analyzed separately, but rather as an integral part of political/electoral reforms as a whole. This is so because the consequences of such an analysis affect very important aspects, such as competition among parties, conditions for competition, the system of political parties and, consequently, the very credibility and legitimacy of democracy itself.

Moreover, every reform on this issue must be aimed at achieving greater and improved levels of transparency with respect to party revenues and expenditures. In fact, the issue of transparency and public disclosure is crucial to the fight against political corruption. In principle, this need would seem more fitting with regard to hefty contributions than for small ones, since greater the contribution, the greater the risk of dependance
and the greater the danger of corruption. Thus, there is a need for greater transparency and public disclosure in respect of party funding. This demand for transparency must be conceived, rather, as a democratic value in itself, a tool designed to avoid any wrongful influences of money in politics that might lead to corruption.36

If laws are intended to be effective with regard to transparency, they should be very general in nature and be enforced with respect to everyone, and not just political parties or candidates, but also to the donors as well. Otherwise, alternate or indirect ways to evade control will be devised. In fact, while it is essential to strengthen regulation, the mechanisms and capabilities of supervision and controlling entities, this only addresses part of the problem. Quite often, funding and commitments do not reach the parties, but rather go directly to the candidate and his/her inner circle of supporters37. This is truer today in the context of the image and credibility crisis that partisan organizations have been undergoing, and the emergence of regional leaders due to the decentralization process. This usually tends to make transactions between donors and beneficiaries become even more secretive. Hence, the main leaders or party members are often not aware of private contributions (many of them dubious in origin and in quite large sums), but only the candidate and his/her inner circle, which frequently consists of private contributors and/or individuals not involved in the party. Consequently, any proposals for reforms concerning political funding should revolve, among other things, around the following five main objectives: (i) reducing the influence of money by diminishing its impact (by shortening campaigns, establishing ceilings on expenditure and

37 Ibid
limiting individual contributions); (ii) improving the use of money by investing it on more productive activities for the sake of democracy, and not just squandering it on propaganda and negative campaigns; (iii) stopping, or at least curtailing, as much as possible, current levels of influence peddling and political corruption; (iv) strengthening public disclosure and transparency mechanisms with respect to both the origin and the use of funds; and (v) promoting fairer requirements for elections, particularly concerning access to the media.

5.7.3 REGULATING POLITICAL CONTRIBUTIONS

There is a need for one comprehensive legislation regarding the regulation of political contributions to political parties and towards election expenses. The various existing provisions in different Acts need to be consolidated into a single law regulating the flow of funds to political parties both from the internal as well as external sources. Legislation should provide for compulsory auditing of the accounts of all political parties registered with the Election Commission by an independent authority specified under the new law regulating the functioning of political parties, publishing of audited party account, and immediate de-recognition and enforcement of penalties for filing false or incorrect election returns. Accounts should be made available for public inspection. Legislation should also contain provisions for making both donors and receivers of political funds accountable. Individuals and corporate agency be permitted to make contributions to the political parties upto a certain ceiling higher than the present 5% of profits and an incentive be provided in terms of tax concessions. The Government should encourage the corporate bodies
and agencies to establish an electoral trust which should be able to finance political parties on an equitable basis at the time of elections.

5.7.4 CONTROLLING ELECTORAL EXPENDITURE

In view of the increasing cost of the election campaigns, it is desirable that the existing ceiling on election expenses for the various legislative bodies be suitably raised to a reasonable level reflecting the increasing costs. However, this ceiling should include all the expenses by the candidate as well as by his political party or his friends and his well-wishers or any other expenses incurred in any political activity sponsored on behalf of the candidate by an individual or a corporate entity. Such a provision should be the part of a legislation regulating political funding in India.

5.7.5 MONITORING ELECTION EXPENDITURE

The Election Commission should devise specific format(s) for filing of election returns by the candidates as well as political parties in such a manner that the fudging of accounts be made difficult. These accounts should be monitored through a system of checking and cross-checking through the income-tax returns filed by the candidates, parties and their well-wishers. The Election Commission should organize training-cum-orientation workshops for the candidates and party agents to enable them to manage party accounts and election expenses in the format prescribed by the Election Commission, especially on the eve of elections. A suitable

law should be enacted providing penalties against damaging or desecrating public or private property by candidates, political parties or the agents, through painting of slogans or erecting cutouts and hoarding or putting banners and buntings. The law should also provide for special courts to ensure strict compliance of these regulations, should any dispute arise in respect of the alleged violations of such regulations by any candidate, political party or his agents and well-wishers.

5.7.6 PATRIMONY OF CANDIDATES AND POLITICIANS

A useful tool in the fight against corruption would be legislation to make it possible to ascertain details about the patrimony of candidates by means of public affidavits reporting on it. Such affidavits should be audited by the Special Authority created by the proposed law on Political Parties. During their term of office, elected officials should also submit audited reports on a yearly basis, as well as a final audited statement at the end of their term of office. This type of measures would serve to keep the public fully informed about the patrimony and lifestyle of politicians before they assume power, during their term of office and at its conclusion, thereby avoiding any unlawful acquisition of wealth.

5.7.7 STRENGTHENING OF ANTI-DEFECTION MEASURES

In order to curb the insidious practice of defection, the law should be amended to specifically provide that all persons defecting from the party or the alliance of party, on whose tickets they had been elected must resign from their parliamentary or assembly seats and must contest fresh elections. In other words, they should lose their membership and the
protection under the provision of split etc. should be scrapped. The defectors should also be debarred to hold any public office of a minister or any other remunerative political post for at least the duration of the remaining term of the existing legislature or until, the next fresh elections whichever is shorter. 39

5.7.8 PARTY SYSTEM AND GOVERNANCE:

- As the parties provide the necessary political leadership for governance, it is necessary that the incumbent to public offices must be chosen on the basis of their integrity and capacity to administer. If the political parties have a continuous program of grooming the potential members of their parties for different types of assignments corresponding to the ministries and departments of the government, things would become easier and a smooth transition of the government could take place. At the same time, the parties could contribute effectively to the processes of policy formulation, implementation and governance even while remaining in opposition 40.

- The practice of political parties extending support to the government from the parliamentary floor from outside is an amoral exercise of power without responsibility. This inhibits the process of governance and has been the immediate cause of premature collapse of all the governments since 1989. This must be disallowed, if the coalition governments have to survive and carry on their task of governance.

40 Rishikes, “The crisis of party system in India”, Politics India, 3(2), Aug 1996 : p. 33-34
The practice of bloating the Council of Ministers must be stopped. A ceiling on the number of Ministers in any state or the Union government be fixed at the maximum of 10% of the total strength of the lower house of the legislature.

The practice of creating a number of political offices equivalent to the position or privileges of a minister should also be stopped. Any new administrative organization should only be created through regular administrative procedures and only if the provisions have been made in the regular budget estimates of the government concerned.

The think tanks in various political parties' organizations should occasionally come out with alternative policy perspectives in the form of a "Green Paper" for want of a better term on some of the crucial issues facing the nation at a given moment and be widely circulated amongst the public, the media, intellectuals and others to elicit alternative opinions on the subject.

In times of emergencies, or national calamities, the parties should not eschew taking specific responsibilities in assisting governments in their activities to tide over the crisis.

5.7.9 RESTORING MORAL STANDARDS IN PUBLIC LIFE

To the question what can be done for the restoration of moral standards and ethical values in public life, there is no simple answer. In the context of the current feeling of resignation to corruption and unethical and criminal practices in public life, and the disposition to consider them as inevitable and, therefore, acceptable, it may be well to remember Gandhiji's observation that "Life is an aspiration...the ideal must not be
lowered because of our weakness and imperfections⁴¹," and the fact of his life long resistance to evil in many forms from racialism and imperialism to untouchability.

Thus, in addition to measures like the proposed legislation to effectively curb defections and operation of black money, break the nexus between electoral politics, economic resources and criminal support, and establishing the institution of Lok Pal, it is necessary that a rigorous Code of Conduct be drawn for both Ministers/Legislators and important functionaries of all political parties, which should incorporate what the Nolan Committee in the U.K. has suggested as the seven principles of public life viz., selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

5.8 THE ROLE OF MONEY POWER IN ELECTIONS

The functioning of a healthy democracy depends on the conduct of free and fair elections. It is through the instrument of elections that the notion of consent and representation are translated into reality. The legislature, so elected by the people, enacts laws, exercises control over administration and serves as a platform to ventilate grievances of the people and to seek redressal for, and solution to the various problems⁴². Elections secure people's participation in public affairs, ensure orderly transfer of power and clothe the authority of government with legitimacy. Elections thus not only sustain democracy but enliven it as well. Holding of free and fair elections is therefore, a sine qua non of democracy. India has

⁴¹ Special issue: votes without power, Asian Journal of Public Administration, 13(2) Dec. 91,
enjoyed the unique distinction of being the largest democracy in the world and the elections constitute the bedrock of democratic system. The Constitution makers were quite clear in their mind about the importance of elections in Indian democratic polity and as a result laid down elaborate procedure to conduct them. The experience of the last years effectively demonstrates the distortions in the democratic processes generated by the inflow of big money in elections. The role of the big money can, to some extent, be circumscribed by putting a ceiling on electoral expenses. However, Indian experience again shows that laws controlling election expenses have not worked well. The question whether access to larger resources makes a difference in elections is important. But even more important is the belief that such an access is necessary to win elections. Prevalence of this belief has led various parties, in general and the Congress Party, in particular to attempt to control and lately to monopolize as much resources as possible both for normal party functions and elections. This was brought to the fore the role of big money in party and electoral affairs. The nexus between big industrial houses and political parties and consequent injection of big money in party and electoral affairs augur ill for the sanctity of democratic processes. The unrestrained use of big money leads inexorably to corruption and distortion of political processes since it offers greater advantage to the rich and the affluent who constitute only a fraction of the Indian society. This has the pernicious effect of big money playing a decisive role in controlling the democratic process in the country\textsuperscript{43}. It has been a regrettable development in recent years that money power has come to play such a dominant role in elections to legislatures. This is at the root of corruption and corrupt

influences in Indian public life. This malady has assumed alarming proportions during the last decade. The huge expenditures incurred by candidates and political parties have no relationship to the ceiling prescribed under the law. The candidates and political parties look to big money bags for their funds to contest elections, thereby adopting a formula which establishes the chances of winning in direct proportion to the money spent. That this in course of time triggers a chain reaction, leading to corruption at various decision-making levels, does not seem to bother, Political corruption would continue to grow in geometric progression unless steps are taken to eliminate chances of indiscriminate spending of huge amounts at elections and thus remove dependency on money power.

One of the suggestions that have come from the Election Commissioner, is that an election fund has to be created, which should provide certain facilities to the political parties and the persons who contest the elections. The most important issue that needs to be considered is how the expenditure on elections can be reduced. A candidate may bank on a donation of a few lakhs of rupees from the party, because the party expenditure is not to be included in the election expenses. Section 77 of the Representation of the Peoples Act deals with the "Expenditure incurred by the candidate or a person authorised by the candidates". If any expenditure is incurred by any other person, with the consent of the candidate, it would be treated as an amount of expenditure by the candidate himself. One of the gravest dangers to democratic process arises from contribution by corporations to political parties. It is desirable to

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ban corporate contribution to election expenses. In the case of corporate contributions to political parties, it will be necessary to impose ceilings on such contributions. Such ceilings should be based both on capital and reserves of the corporation and on absolute amounts of say Rs. 50,000 per annum. In addition, the prior consent of shareholders should be made mandatory before a corporation makes a contribution to any political party. Similarly, individual contribution to political parties should also be placed under a ceiling not exceeding, say Rs. 5000/- per annum.46

Elections in India have become very expensive. The ceiling imposed by the Commission, is exorbitant. For the Lok Sabha elections this ceiling varies from Rs. 50,000 to 1.5 lakh and for Assembly elections it is Rs. 50,000. Even this limit has become meaningless because it does not include the expenses incurred by political parties and candidates friends. They collect these funds by underhand means which has become the major source of political corruption. If the political corruption is to be stopped then the government should provide funds to the genuine candidates through political parties which should be registered with the Elections Commission and whole accounts should be auditable. There is such a system in West Germany. It may be mentioned here that the Election Commission has also made this recommendation but unfortunately the central government seems to be in no mood to accept it.47 Moreover, even the Election Commission does not have its own funds. Every time the election is held, it approaches the government for funds and this severally curbs its independence. Keeping this fact in view L.L.

Shakdher, the former Chief Election Commissioner, proposed that Rs. one hundred crore poll fund should be placed at the disposal of the Election Commission. This is a sound suggestion which needs serious consideration. Methods by which the state should finance elections as well as measures to ensure that a limit is placed on the election expenditure of parties and candidates have been proposed. As for imposing limits on election expenditure and ensuring that the rich sections do not influence the political processes through the crucial funds they provide, the opposition has cited the authority of case law and the reports of two Commissions.

The Supreme Court held that a candidate's return must include not only the expenses he personally incurred but also the amount spent by his party in his constituency. Describing as retrograde the subsequent amendment to the law, which eliminated the need to include the party expenses, he pointed out that the Election Commission had recommended the restoration of the status quo ante. Then again, a ban on donations by companies to political parties recommended by the Santhanam Committee in 1962 was accepted by the Government in 1969. This ban was subsequently approved by the Sachar Committee and the Wanchoo Committee and yet the Congress Government had changed the law and permitted the Corporate sector to "Play a legitimate role" in the democratic process. The government, instead of addressing, to these arguments, instead of addressing to their arguments, chose to dwell on the narrow point that state funding would not eliminate the role that money played. Calling for a return to principled politics in India, S.P. Hinduja a non-resident Indian

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48 Amarnath Chawla V. Kanwar Lal Gupta
businessman said, "a major factor in encouraging corruption is the practice whereby businessmen and industrialists are encouraged to make secret contributions to political party funds". Declaring that there could be no criticism of individuals and organizations making contributions since "that in part of the normal democratic practice" he added that "such contributions should be made in a manner that can be publicly scrutinized".

In a note of dissent, L.P. Singh a member of the all party committee on electoral reform, recommended a limit on contributions to parties, and publication of audited accounts of income and expenditure by the political parties. These two measures go a long way in reducing the play of money power in the electoral process.50

5.9 EXPERIENCE OF OTHER COUNTRIES

There are a number of precedents in countries such as Australia, Finland, France, Italy, Netherlands, Norway, Sweden, U.K., U.S.A. and West Germany for the grant of assistance in cash and in kind to political parties or their candidates. Government subsidies to recognised political parties as well as for electioneering expenses of individual contestants are common in most democracies in the world, although the forms and quantum of subsidies differ from one system to another. Amongst the countries to be noted in this contest are: West Germany, France, U.K., Netherlands, Italy, Norway, Sweden, Finland, Austria, U.S.A. and Canada. In most of these countries, the political parties are required to publicize proper accounts of their incomes by source and of expenditure on various

accounts. State subsidy for maintenance is the major source of income for all established political parties in Sweden. In Austria, Italy, Finland and Norway, the government subsidizes maintenance and also of some of the publications and research efforts of recognized parties. In the Netherlands, State aid is provided to the parties for their research institutes and political education centers, though not for other activities. Equitable free time on the radio for political debate is provided in the U.K., Norway and Canada. In the U.K. a Parliamentary candidate is entitled to send free of charge to each of his electors one postal communication; meeting halls for public meetings are made available free of charge; the T.V. time is available at a nominal cost. In France, the campaign statement of each candidate is printed and delivered to every voter at public expense, and the state puts up the candidate's posters. Also, the candidates who poll at least 5 percent of the votes are eligible for government reimbursement on specific items like notices, circulars and voting papers.

In the U.S.A., the Federal Government administers election fund contributed by voluntary nominal contribution of 1 per income tax payer, and this amount is shared evenly among major parties. In Canada broadcasting authorities are required by statute to make available a number of programme periods for use by the parties, free of charge. In Britain, the arrangement is provided voluntarily and the current practice is based on an agreement of February 1974.

6.10 THE PROBLEM IN INDIAN CONTEXT


The subject, in the Indian context, is however made highly complex by the enormous electorates or Assembly/Parliamentary constituencies, the multiplicity of parties, the inchoate nature of their organisation and financial management and not the least, will have to provide the Commission with information such as the names of its office bearers, numerical strength of its members, particularly of local units and of members who represent the party in parliament and state legislatures. The amendment empowers the Election Commission to take into account all these details and then decide whether or not to register an association or body as a political party. Many say that state funding of elections is impracticable. The fact is that it is not even costly. For instance, if Rs. 2.5 lakhs is given per candidate and there are four eligible candidates in a constituency, the cost of the elections to the whole Lok Sabha works out to nearly Rs. 55 crores. This hardly compares with the huge amount being spent now. Along with state funding there has to be a ban funding from other sources. Receipt of funds from other sources will have to be treated as a ground for disqualification of the candidate. The parties expenditure must be included along with that of the candidate. Besides these and the ceiling on expenditure, which must be strictly enforced, there must be a ceiling on each separate item used in the campaign, such as banners and posters and other publicity material can be stamped by the election authority the same way as the cinema tickets are, and only such items should be allowed to displayed. If unstamped posters or banners are put up, they may be removed and a fine may be imposed on the candidate. It
cannot, however, be made a ground for disqualification as some opponent of the candidate might put up such posters to jeopardize his candidature.\footnote{\textsuperscript{83}}

Similarly, wall writing, the use of neon signs, and the use of microphones round the clock may be banned and restrictions imposed on the setting up of camp offices. Very often party workers pressure the candidates to put up campaign sheds and provide them with loudspeakers and so on so that they can be entitled to T.A., D.A. and other perks. Only the minimum number of such offices may be allowed, and the sheds normally put up by candidates outside polling booths should be banned. Issue of the ballot slips can be managed by the election authority itself. All these, there can be state funding of elections. This need not be in cash. To start with it can be partly in kind with the government providing the candidates and parties standard posters and a few vehicles along with coupons for petrol and the like, and arranging notified meeting areas with all facilities and offering them to the candidates day rotation.\footnote{\textsuperscript{84}} Let us examine some of the recommendations by Various Persons and Committees:

5.10.1 SANTHANAM COMMITTEE RECOMMENDATIONS 1964

The public understanding in the prevalence of corruption at high political level has been strengthened by the manner in which funds were collected by political parties, especially at the time of elections; and it was therefore, essential to have a law requiring political parties to keep proper account of their receipts and expenditure.

\footnote{\textsuperscript{84}} Ibid
5.10.2 WANCHOO COMMITTEE RECOMMENDATIONS 1973:

- The government must finance the individual candidates' election campaign
- All accounts of political parties must be subjected to state audit and published for public information;

It is an accepted fact of life that in a democratic set up, political parties have to spend considerable sums of money, and that large sums are required for election. In this connection, it may be pertinent to refer to the manner in which this problem has been tackled in countries like West Germany and Japan. In West Germany, political parties are financed by the government on the basis of votes polled by them at the preceding election. In Japan, government finances election expenses of national parties on the basis of the size of a constituency and also gives financial assistance for research and party publicity. It is said that such measures largely ensure that political parties do not have to lean heavily on high patrons or indulge in underhand dealings. We are of the opinion that in India also the government should finance political parties. We recommend that reasonable grants-in-aid should be given by the government to national political parties and suitable criteria should be evolved for this purpose.55

5.10.3 V.V. GIRI'S VIEW POINT56:

Another viewpoint has come from Dr. V.V. Giri, former President of India. While giving his message on Independence Day in 1974, he said: "It has been a most regrettable development in recent years that money has come to play such a dominant role in the elections to legislatures. This to my mind, is at the root of corruption and corrupt influences in our public life. People may lose faith in cherished democratic values if leaders of all political parties do not take prompt corrective measures to remedy the situation by joint consultation".

S.L. Shakdher, former Election Commissioner gave his suggestions for tackling this problem. Some of them are:

1. The expenditure incurred by the political parties and friends and well-wishers in furtherance of the prospects of a candidate in a constituency should be brought within the ceiling of election expenses. Only expenditure by parties on political education without reference to any particular constituency should be exempt from such ceiling;

2. The political parties should maintain detailed accounts in which each item of receipt of money by way of subscription, donation, subsidy, etc., and each item of expenditure should be recorded and the account should be subject to periodical audit; and

3. The Commission should be empowered to examine the election returns on merits to satisfy itself that they are accurate and correct in all respects.
Rajaji International Institute of Public Affairs and Administration organised a seminar in 1986 on "Rooting out Corruption in the Electoral System". Some of the important suggestions are:

1. Political parties and politicians have the greatest vested interest in black money and major electoral reforms are required to break the nexus between the two;
2. Elections should be financed by a special fund set up for the purpose jointly by the Centre and the State Governments equally;
3. In order to reduce the number of political parties, it was suggested that a certain minimum percentage of votes should be established, failure to achieve which would cause a political party to lose official recognition, and therefore not eligible for state funding.

5.10.5 PROPOSALS OF THE ELECTION COMMISSION FOR ELECTORAL REFORMS:

The Election Commission of India gave the following recommendations with respect to matters relating to the Representation of the Peoples Act, 1950:

1. The incurring of unauthorised election expenses by clubs, societies, associations etc. (other than political parties) and making of false

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returns of elections expenses by candidates and political parties, should be made corrupt practices;
2. Sale of liquor, narcotic drugs, etc. should be banned during the day of poll and during 24 hours preceding that day;
3. Provisions relating to election expenses should be recast on the following lines to make them really effective and meaningful:
   (i) Definition of 'election expenses' may be provided to include all election expenses incurred whether before, during or after the election;
   (ii) Definition of 'personal expenses' of a candidate may be provided;
   (iii) There should be prohibition on election expenses being incurred by any person (other than the candidate or his election agent) or by any club, association, society etc. Political parties may, however, incur such expenditure;
   (iv) Certain amounts of election expenses such as security deposit, the amount not exceeding a specified sum paid to a specified sum, should not be included for the purpose of the prescribed maximum limit of election expenses;
   (v) Where the poll is countermanded due to the death of a candidate or adjourned for any reason, the permissible maximum amount should be increased by a specified percentage;
   (vi) The return of election expenses should be signed both by the candidate and his election agent and accompanied by declarations about their correctness;
   (vii) Political parties should also file their accounts of election expenses;
   (viii) No direct financial subsidy may be given to any political party/candidate;
   (ix) Use of vehicles by candidates over a specified number for electioneering purposes—5 mechanically propelled vehicles in the case
of parliamentary constituency and 3 vehicles in case of election from an Assembly constituency should be banned;

6. Indiscriminate display of big posters, banners, etc. either by political parties or by individual candidates or organisations should be banned and each candidate may be allowed to issue one poster only about his candidature;

7. All direct as well as indirect donations to political parties by companies should be banned. The account of political parties should be open to audit under the law.

5.10.6 TARKUNDE COMMITTEE RECOMMENDATIONS (February 1975)

Tarkunde Committee recommended as follows:

1. All recognised political parties should be required by law to keep full and accurate accounts, including their sources of income and details of expenditure. The accounts should be audited by Chartered Accountants nominated by the Election Commission and should be open to public inspection on moderate charges. Keeping of false accounts should make the office bearers of the party punishable of a cognizable offence;

2. In every constituency, all the amounts spent for the furtherance, directly or indirectly, of the prospects of a candidate in an election shall be disbursed through his election agent. These should include amounts spent by the candidate's political party or any organisation or persons supporting him. All contracts whereby election expenses are incurred shall, in every case, be entered into by the candidate himself or by his
election agent, and by nobody else. The provisions of Section 60-63 of the (British) Representation of the Peoples Act, 1949, should be referred to in this connection;

3. No advertisements on government expenses should be made for propaganda of the government of the ruling party;

4. No candidate or political party should give any donation, directly or indirectly, to any public institution;

5. In order to minimise the growth of many power in elections, both party and individual expenses should be audited;

6. Law relating to election expenses may be tightened. The Committee have, in particular, suggested that the recognised political parties should be required by law to keep full and accurate accounts including their sources of income and details of expenditure. Such accounts should be open to public inspection and audited by Chartered Accountants for the Election Commission;

7. The present limits of election expenses prescribed for parliamentary and assembly constituencies should be doubled and all expenses incurred by parties, etc., should also be included in the election expenses of candidates;

8. The amount of security deposit should not be increased 4 times as suggested by the Committee, but should be doubled;

9. Ban on corporate donations should continue. Payments for so called advertisements in the so called souvenirs issued by political parties should be prevented by law.\(^59\)

\(^59\) Journal of Constitutional and Parliamentary Studies, Vol. XVIII Nos 1-2, January-June 1984 p 45
5.10.7 V.A. PAI PANANDIKER AND RAMASHRAY ROY'S SUGGESTIONS: Pai Panandiker and Ramashray Roy gave the following suggestions:

1. A law controlling party funding and election finances may be enacted.
   (a) A group consisting of few political scientists, legal practitioners, and Members of Parliament may be constituted to consider and recommend the details of such an enactment including the question of legally permissible ceiling on election expenses;
   (b) The Bill on election finances should be referred for wider debate and discussion preferably through a Select Committee of the Parliament;

2. Such a law should be enacted by the Parliament covering elections both to Parliament and State Assemblies;

3. Such a law should consist of the following elements:
   (a) Party fund may be allowed through private and corporate institutions subject to ceilings discussed earlier. These funds should be subjected to public audit through agencies nominated by the Election Commission
   (b) The state should undertake exclusively the financing of Central and State level elections;
   (c) Three categories of contestants should be recognized for election purpose; well established national or major parties; minor or new parties; and non party or independent candidates;
   (d) The following should be the criteria of eligibility for public funding of elections:
   (j) National or major parties-20 per cent of national votes cast in parliamentary elections;

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(ii) Minor or new parties 10 percent of national votes cast in parliamentary elections and

(iii) Non-party candidates—one-eighth or one-tenth of votes cast in the parliamentary constituencies.

(e) Candidates should be given election fund directly on the basis of nominations by the parties. Independent candidates can be paid after the election subject to their receiving at least 12 or 10 per cent votes and with the same ceilings as applicable to party candidates;

(f) Estimate of the cost of public funding of elections:

(a) The ceiling on election expenses for parliamentary constituencies should be raised to optimum levels, say Rs. 1,00,000 or Rs. 1,50,000 each. Assuming 4 candidates per constituency, the entire cost is estimated to be Rs. 22 crores;

(b) Calculating the subsidy of one rupee per vote polled and assuming a 60 per cent voting turn out, the cost at present levels will come to about Rs. 20 crores;

(g) A special funding agency for the Election Commission should administer the funds;

(h) The parties and candidates should be given funds on the basis of their performance, 50 per cent of the subsidy to parties, except in the case of a new party, should be given on the basis of the performance in the preceding election and the rest on the basis of the performance in the current one. A party obtaining, say, 42 per cent of national votes will be entitled to 42 per cent of the total allocation for funding election, with ceiling of Rs. 1,00,000 per candidate or a maximum of Rs. 5.42 crores for present size of the Lok Sabha.

(i) Contributions to election activities by individuals and corporations should be strictly banned. However, individuals and corporations may
contribute to political parties. Individual contributions should not in any one year exceed Rs. 5000. The ceiling on corporate contributions to political parties should be based on their capital and reserves, with an absolute ceiling of Rs. 50,000 per annum. Prior approval of shareholders should be mandatory;

(j) The cost of campaign activities of political parties for helping their candidates should be included in the ceiling on election expenses;

(k) If political committees are not to be stopped from engaging in campaign activities, they should then be required to:

(i) Register themselves with the Election Commission;

(ii) Keep strict accounts of their expenses and submit detailed reports to the Election Commission;

(iii) Payments of over Rs. 100 should be made through cheques and they should be required to deposit their money in specified banks. Their accounts should be audited and be available for public scrutiny. This should also apply to political parties and candidates.

4. Other complementary measures can also be taken:

(a) Equal time sharing by national parties and/or candidates on radio and T.V.;

(b) Joint public meetings; provision by the state of facilities for holding meetings, etc.

(c) Shortening of campaign period.

5. These provisions should mutatis mutandis apply to elections to state assemblies.

5.10.8 V.N. GADGIL SUGGESTIONS:
1. Experience in Germany, Italy and Japan had shown that state funding had not in any way curbed donations from industries to political parties. State funding, in fact, would only increase the role of money power in election.

2. Election could not be won by money, take for instance the example of Tata and Birla who had both contested elections but lost.

Curbing the rising expenditure of elections more so when elections are held frequently needs urgent attention from all sections and various political parties. The phenomenal rise in expenditure prevents the entry of common man in a democratic process. Money power thus, provides opportunity to the few who have control over the market. This leads to entry of professional rather than genuine politicians. This can lead to decay of Indian politics, like the Gresham Law bad money driving away good money. In fact any talk of electoral reforms should include the role of money power in elections. As seen through various Committees reports pointed out the evils of money power unfortunately the system lacks the basic strength or political will to eliminate this malaise. The solution perhaps lies with the Election Commission it should recommend seriously the curbing of election expenses. An Independent body consisting of eminent personalities should monitor the election expense and can recommend statutory deterrent against such malpractices. In fact Election Commission should include in its code of ethics, the evils of money power. Indian democracy as far as withstood various onslaughts, for its survival a concerted attempt should be made to eliminate the misuse of money power. Among the many alternatives perhaps state funding can be a reasonable solution for curbing the rising expenditure, for this necessary
constitutional amendment can be initiated. The following Suggestions are made:

1. All the major political parties are putting huge cut-outs of their respective leaders. In some cases a single cut-out costs Rs. 5,000 to 75,000. This is not advisable. The Election Commission should either ban the cut-outs or restrict the size and number of the cut-outs.

2. Political parties are using thousands of video and audio-cassettes in their election campaign. So, it involves more expenditure to the candidates. Hence, this unlimited use of cassettes should be restricted by the Election Commission.

3. Just before and during elections, the Ministers are busy in laying fake foundation stones for various projects without proper budgetary provision. This practice should be immediately stopped and serious action should be taken by the Election Commission.

4. Sale of liquor should be banned one week before the polling day.

5. Introduction of electronic voting devices is one of the best methods for reducing election expenditure by political parties, candidates and administration. Apart from the tangible savings like saving on paper, printing of ballot papers etc., intangible benefits also may flow from the introduction of electronic devices.

6. One day polling is introduced in the whole country for low expenses. This system will prevent great strain on the resources of the government, personnel and administration.

7. Campaign period should be restricted to 10 days instead of the existing 21 days period. By this device, we can effectively reduce administrative costs and expenditure on deployment of police and other staff.
8. With counting following immediately after the polls, expenses on arrangements by candidates, political parties and administration would be completely eliminated. Besides, all the problems relating to security arrangements for storage of ballot boxes etc., would be removed.

9. Putting up of camps before the polling booths by different parties and candidates ostensibly for distributing voter slips should be totally banned. This single step can cut down the cost of election to half.