Chapter 5
ROLE OF THE POLITICAL PARTIES IN ELECTORAL REFORMS

Democracy implies reference to certain norms, standards, value, character and behaviour but today these norms are disappearing in India. The number of politician who believes in principles is declining. We all aware of the fact that the most successful candidates in election of these days are people who have money and muscle power. Some politicians take support of criminals because they lack faith in themselves and feel that they would not be able to win elections without the help of musclemen. They spend a huge some of money and have been trying to come to power by hook and crook. The painful fact is that today Constitutional morality or ethics has become irrelevant corruption is the pervasive force in our political life and its worst manifestations is the decline of standard of Parliamentary institutions. The short duration of government causes huge lose to the nation. After the era of outside support, unholy alliances, formation of coalition governments, criminalization in politics and frequent dissolution of Lok Sabha and State Legislative Assemblies prematurely have become the order of the day and the foundations of all the democratic institutions have been shaken beyond repair. Therefore, for speedy progress and development we need stable governments. There has been a big question mark on the credibility of the institutions like Parliament, Judiciary, Bureaucracy, Police, etc. Today voters are disappointed by his own representatives who they send to Parliament or the Assembly. To his, utter dismay, their elected representative keeps on changing colours for quick personal gains this state of affairs has led to growing sense of frustration and despair. The conduct of our elected representatives has shaken the very faith of the people in the system of
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governance. There has been sharp erosion in this respect that people used to have for politicians.

In a democracy the ultimate power is with the politicians who control the Legislature and the Executive. Election play crucial role and therefore, some thing very seriously have got to be done, to bring drastic improvements in the present electoral system and to bring stability and good governance in the Country. However, there are certain trends going on to improve the situation. They are as follows:

(A) Political Parties and Electoral Reforms:

Political parties are essential actors in a democratic political system. In a democratic set-up, political parties form the government after seeking mandate of the people. Political party is a group of person who agree on some ideology and seek to capture the power and form the government on the basis of collective leadership. The political parties are generally united on the basis of traditions, ideology, mutual common interest, psychological orientations etc. they are considered by many as intermediate link between the citizen and the government. They are regarded as having an important place in a democracy, carrying the weight of expectation and aspiration upwards from citizen to government, and the burden of policy down wards, form government to citizens.

Indian Constitution promises secularism social justice and political equality to the smooth operation of democratic institutions. The social structure of Indian society is deeply embedded in the complex Indian caste structure. Communalism in India has been along standing problem keeping in view the traditional background of Indian social political set-up, we must confess that religion, caste or community has continued to play its
role in electoral politics. There is nothing new about this statement that
today there is greater emphasis on religion and caste than before. Political
parties, some of the State Governments, and the superior judiciary, all of
them have to share responsibility for this menace. Politicians are equally
responsible for mixing religion and caste with politics for their electoral
gains. The government is responsible by making caste the only basis of
reservation of appointments and judiciary by recognizing caste as sole
factor for identifying backward classes for the purpose of reservations
aforesaid. Of these the most unfortunate aspect of Indian polity has been
the mixing up of religion and caste with politics and exploiting religious
sentiments and caste feeling for achieving political power through the
ballot box\(^1\). Several political parties with their potently communal identity
were not only recognized or registered as political parties but they are
frequently contesting elections with their communal manifestos\(^2\). For
example, Muslim league, Shiromani Akali Dal, Bajrang Dal, Shiv Sena,
Hindu Maha Sabha, Vishv Hindu Parishad etc. continue to enjoy
recognition by the Election Commission.

The Representation of People Act, 1951 was amended in the year
1989 to provide for registration, with the Election Commission, of
association and bodies as political parties\(^3\). Along with the application for
registration every political party is required to submit a copy of
memorandum or rules and regulations which shall contain a specific
provision that the party shall bear true faith and allegiance to the
Constitution of India as by law established and to the principles of
socialism, secularism and democracy and should uphold the sovereignty
unity and integrity of India. This is the only step so far taken to de-link
religion from politics. But mere paper declaration of bearing true faith and
allegiance to the Constitution is not sufficient. Until and unless there is a
provision to ensure that the political parties act strictly in accordance with
the principles enunciated in section 29-A of the Representation of People
Act, 1951, secularism will remain a distinct goal. At present mere filling a
memorandum regarding true faith and allegiance to the Constitution or
secularism etc. has become a farce and a formality to be complied with for
securing registration and forgotten there after the consequences of breach
of faith in this respect needs to be clearly spelt out. Since the law permits
the formation of religious or communal parties, it would be only natural
that such parties might use the communal or religious cards for winning an
election. Thus, the legacy of communal parties is continued under the nose
of law. Therefore, the first step to de-link religion from politic should be to
ban all communal parties from contesting elections to the Legislatures and
second, to enforce ruthlessly the provisions of section 123(3) and (3A)\(^4\). Unless drastic steps are taken for such electoral reforms, it will be difficult
to root out the problem of communalism. Banning the communal parties
should be an essence of the secular democracy. It is significant to note that
there is no law which requires compulsory registration of political parties
or regulating their formation, internal function or the manner and mode of
election of their office bearers, etc\(^5\); Even an unrecognized or unregistered
body or association or party can participate in elections to the Legislature.
The result is that the parties tend to be a collection of individuals who can
walk in or out of the party at their convenience. There is always a
possibility that number of parties can increase at any time through the
splitting of the existing parties, or formation of new ones without any
distinctive policy or viable programme. Even every dissident leader can
float a new party with his own caste combinations and vote-banks. The
consequence of this menace is the unmanageable number of candidates
standing in elections and ultimately ridiculous to democracy itself\(^6\).
Therefore, it is needed that political parties should be properly regularized. Intra-party democracy has to be maintained as a basic principle of democracy.

It was certainly assumed by the framers of our Constitution that in the process of development, secular loyalties will emerge and ethnic or caste loyalties get submerged. But the trend is quite reverse and disturbing. In fact today no explanation of provincial or local politics in any part of India is possible without reference to caste or community. In addition to this, there is linguistic regionalism. The comfort that minorities availing under the Constitution is also being misused for collecting vote-banks or forming communal parties. Thus, the divisive forces are still continued to play dubious role in post independence India.

Though India claims to be a largest democracy of the world but the subject of electoral reforms has been consistently and consciously neglected by all political parties since independence. In 1972 a Joint Committee on Amendments to Election Law submitted its 121-page report to the Parliament. Somnath Chatterjee, Atal Behari Vajpayee and L.K. Advani were its members, who continue to call the tune in Parliament even today. Nearly three decades have elapsed since then and these venerable members have gone places in their political careers but the electoral reforms have remained where they were. The Goswami Committee on Electoral Reforms (1990) had rightly underlined that electoral reforms are correctly understood to be a continuous process. But the attempts so far made in this area did not touch even the edge of the problem.

Again, political parties have talked about the urgent need of undertaking electoral reforms in their election manifestos but these promises have remained on paper. In the last two decades, every incoming
government assured the public that it would introduced a comprehensive Bill for Electoral Reforms in Parliament but in actual practice it has never been translated. The only serious effort made in this direction was during the tenure of the V.P. Singh Government in 1989-90 but since the government lost majority in the House, this initiative too was a non-starter⁷. Even the special session of Parliament called during the term of the P.V. Narasimha Rao Government failed to arrive at any consensus on the outstanding, issues relating, to electoral reforms once again Bharatiya Janata Party (BJP)-led coalition government in October 1999 announced that a Comprehensive Electoral Reforms Bill, to cleanse the poll process and introduce proxy voting for defence and security forces, will be brought up in Parliament. It was also not gets translated into reality. Though the Election Commission come into prominence and caught the imagination of the people during and after the tenure of T.N. Seshan as Chief Election Commissioner. The previous Chief Election Commissions too had worked silently and diligently on the subject of electoral reforms and had submitted to the Central Government, from time to time, detailed and highly sensible proposals for electoral reforms. Unfortunately, these did not receive any attention of the government.

(B) Political Defection and Electoral Reforms:

The endless game of defection and toppling of governments is the most glaring example of the erosion of the democratic and moral values in the Parliamentary life of India. In the era of outside support and the coalition governments in the States and at the Centre, it is an admitted fact that the representatives of the people in the Assemblies and the Parliament accept money to support a particular government⁸. Hence, Member of Parliament and State Assemblies became a marketable commodity and a
subject of sale and purchase or horse-trading. Defection is shifting loyalty from one political party to another either for the benefit of the person who shifts or for a group of to deny the benefit to others. The incentives may be monitory gain or official assignment. The famous JMM case is one of the illustrating case in this regard. In almost all political system one point of time or another by virtue of switching over the loyalty the ruling government is defeated and new government is formed under the changed leadership of the same party when there is formation of new party or by virtue of third party forming the government. In Andhra Pradesh Telugu Desam Party headed by N.T. Rama Rao the then Chief Minister lost his government on similar grounds. There are instances where all political parties have condemned and criticized the defection but unfortunately when there is a need the defection is supported. Nevertheless Constitutional amendment was made and it has been inserted in the seventh schedule of the Constitution. Law Commission of India in its 170th report on the Reform of Electoral Laws. It is suggested that deletion of para 4 which deal with merger in the tenth schedule of the Constitution. It also suggested to delete para 3 of the tenth schedule. It suggested to insert the following definition to replace the existing definition of original political party: “Political party in relation to a member of a House, means the political party on whose ticket that member was elected and where such political party is a part of a front or coalition formed before a general election for contest in such election, such front or coalition, provided that the Election Commission is informed in writing by all the constituent parties in the front/coalition before the commencement of the poll such a front/coalition has been formed.” Politics of India gradually degenerated into a struggle for power for personal ends, general interest and well being
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of the people is a secondary thing for the present day politicians. This is a depressing feature of India's Parliamentary democracy.

Defection and counter-defections from one party to another is a routine affair in India in which the only thing which guides the politicians is their lust for power. They change political parties to suit their needs. The spirit so essential for the working of a coalition government is non-existent among the politicians. On several occasions, coalitions had been entered into between the political parties which are ideologically opposed to each other. Even in the very often the Member of Parliament and the Member of Legislative Assemblies quarrel over sharing the spoils of power, which lead to political instability with its deleterious effect on the entire body politics. The first Anti-defection Bill was introduced in Lok Sabha in 1973, which, however, lapsed on account of dissolution of the House. Again the Constitution (Forty-eight Amendment) Bill, 1979 was introduced. This Bill also lapsed and it was followed by the Bill which was enacted into the Constitution (Fifty-second Amendment) Act, 1985; as of now the tenth schedule to the Constitution of India. The objective underlying the provisions in the tenth schedule is to curb the evil of political defections the remedy proposed is to disqualify the member of either House of Parliament or the State Legislature who is found to have defected, from continuing as a member of the House.

The anti-defection law provides for disqualification of a member of a House on account of: (i) his voluntarily giving up the membership of his party or (ii) his voting or abstaining from voting contrary to the party's direction or whip. Under the law, the disqualification of a member on ground of defection does not apply in case of a split in the legislature party so long as the group of splitters consists of at least one third of the party
membership. Similarly, the disqualification of a member of the House on the ground of defection does not apply in cases of a merger of his original political party provided that not less than two-thirds of the members of legislature party concerned have agreed to such a merger.

Former President of India, Sri R. Venkataraman rightly says that defection from a party is an affront to the electorate and the law should be amended to deprive the defector of the membership of the elected body and other political party in future. The defector should not be eligible for admission to any political party including the party to which he originally belonged. Action should also be taken against members for not abiding by the whip and directions of the party. The proposal of the Law Commission of India in its 170th report on the Reform of Electoral Laws will become an important contribution towards anti-defection. However, the following measures are also equally important in curbing defection:

1. The defection should be concluded by when there is a split in the party with not less than 50% of the elected Member of the Parliament or Assembly.

2. The defection is concluded when the elected Member of Parliament or Assembly refuses to accept the order of the whip of the party whenever there is need for casting in the no confidence motion or any other occasions where there is party decision.

3. The defection falls with the jurisdiction of the speaker only to recognize defection and not to regulate the defection in any other manner other than strictly 50% rule.
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4. The defection should be considered as an electoral offence which attracts disqualification of not contesting the immediate two general elections.

To incorporate them suitable amendments may be incorporated in the tenth schedule and other election laws. A sound anti-defection law is passed in Parliament in December 2003. According to it, the defector has to seek a fresh election and is disqualified to any office until re-elected. The law has come into force\(^15\).

Finally a code of ethics should be worked out defining the manner and spirit in which the political parties should discharge their functions and responsibilities. Unless character of our leaders improved, the sordid game of defections cannot be curbed which is eroding people's faith in the efficacy of our democratic system.

(C) Electoral Reforms and Criminalisation of Politics:

Criminalisation of politics and politicization of criminals has become a shocking reality of national life. In the early days criminals and goonda element were by and large kept away from direct involvement in the political process, but today they have acquired a political base of their own and are a law unto themselves. Since it is the reach of power that determines the degree of immunity, persons with criminal antecedents have found a way to foist themselves on the Legislature\(^16\). Criminals have also made in-roads in all political parties whether at the national or regional level. In 1996 Lok Sabha elections, more than 1,500 candidates has a criminal background. A survey was conducted by the Weekly Magazine Outlook which comprises a penal of former Supreme Court judge, Kuldeep Singh, Social activist Swami Agnivesh and Madhav
Godbole, had compiled a list of 72 candidates contesting elections to the Lok Sabha in the 1998 elections against whom criminal proceedings were pending. Within the short time which was available between the filing of the nominations and the holding of elections, the panel could compile and scrutinize the data in respect of only 500 of the 4,693 candidates in the fray. G.V.G. Krishnamurthy, the then Election Commissioner, had observed that thanks to the role played by the media, the number of Lok Sabha candidates with criminal records had reduced from 1,500 in 1996 to around 150 in the 1998 elections. It was however, disconcerting that in the elections to the Bihar Assembly in February 2000, more than 12 notorious criminals were elected as Member of Legislative Assemblies and both major political parties were vying with each other to seek their support to form the ministry.

Winnability has become the sole criterion for selection of candidates by political parties. A Karnataka Member of Legislative Assembly is facing charges of rape and extortion. He had contested the 1999 State Assembly elections from prison. But, it will be wrong to blame only the political parties. Criminals have often fought elections as independent candidates and people have voted for them with open eyes. Pappu Yadav, who is facing murder charges, fought the Lok Sabha poll in 1999, as an independent candidate, from Purnia Jail and managed to get 66.3 percent votes which were the highest in the State of Bihar. The fact that Yadav was elected with a lead of over 2 lakh votes shows that the influence of caste continues to dominate in Bihar, as in several other parts of the Country. For once, Bal Thackeray is right when he says, in India, People don’t cast their vote, they vote their caste. Pappu Kalani, a noted criminal in Maharashtra, who won as an independent candidate in the Assembly
polls held in 1999, has been detained in the Yeravada jail and seems to enjoying five star facilities.

The nexus between criminal gangs, police, bureaucracy, politicians and industrialists has come out openly in various parts of the Country. The Vohra Committee Report gives enough hints to come to the conclusion that criminalization of politics and corruption in high levels is destroying the very system and edifice of our Parliamentary democracy, political authorities the civil servants and even the judiciary\textsuperscript{22}. The Committee revealed in its report that in the present Lok Sabha (2004) 47 Members of Parliament were having criminal records of serious crimes like murder, rape, kidnappings etc. In August 1997, the Election Commission revealed that nearly 40 percent of Parliamentarians were involved in criminal cases which were pending against them, where nearly 700 members of the Legislative Assemblies out of 40,072 were involved in criminal cases and trials were pending against them\textsuperscript{23}. In the 14\textsuperscript{th} Lok Sabha out of the 5,436 candidates who contested polls about 100 with cases pending against them have made it to the Parliament\textsuperscript{24}.

The Constitution of India empowers Parliament to make laws from time to time with respect to all matters relating to, or in connection with, elections to Parliament or the Legislature of a State, for securing the due consideration of each House or Houses\textsuperscript{25}. The provision of the Representation of People Act, 1951, therefore, exclude person of criminal background of the kind specified therein, from standing as candidate as well as voters\textsuperscript{26}. It is distressing to note that a person who is in jail or in police custody due to any reason can not vote, but he can contest election and more so he is qualified to be a member of the legislature till his conviction is confirmed by the court of law\textsuperscript{27}. In case if such a convicted
person is a sitting member of the House and has appealed against his conviction he is not disqualified until that appeal is disposed of by the court. The main hurdle in the enforcement of these laws is the political interference and enforcement official’s corruption as is evident from the Vohra Committee Report.

In fighting criminalization in electoral arena, the Delhi High Court came out with a landmark judgment on November 2, 2000. The judgment was the result of the Public Interest Litigation filed by Kamini Jaiswal on behalf of the Association of Democratic Reform (ADR) in December 1999. The High Court observed that the Election Commission must gather information of candidates, assess their suitability for holding public office and publicize it widely. In January 2001, the Government of India formally appealed against the judgment in the Supreme Court. The court pronounced its judgment on May 2, 2002 directing the Election Commission to call for the following information from candidates in exercise of its power under Article 324 of the Constitution of India by way of an affidavit to be filed by the candidate along with his/her nomination form.

1. “Whether the candidate is convicted/acquitted/discharged of any criminal offence in the past, if any, whether he is punished with imprisonment or fine?

2. Prior to six months of filling of nomination, whether the candidate is accused in any pending case of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the court of law. If so, the details thereof.
3. The assets (immovable, movable, bank balances etc.) of the candidate and his/her spouse and that of dependants.

4. Liabilities, if any, particularly whether there are any over dues of any public financial institution or government dues.

5. The educational qualifications of the candidate”.

The Supreme Court gave the Election Commission two months to implement the judgment. The Election Commission urged upon the government to undertake the necessary amendments in consonance with the judgment. The government did not show any interest in amending the law and asked the Election Commission to seek more time from the court. Since there was no extension of time by the Supreme Court, the Election Commission issued an order on June 28, 2002, implementing the Supreme Court Judgment30.

Aggrieved by the Court directives the government drafts an Amendment Bill to the Representation of People Act and send it to the President to proclaim an ordinance. The draft Bill was widely criticized by every section of the society and finally on August 22, 2002, the President A.P.J. Abdul Kalam return the ordinance initially for reconsideration, it was promulgated and eventually enacted as law unanimously where by the President has no other option but to sign. The Government of India than amended section 33 the Representation of the People’s Act, which stipulated “not withstanding any thing contained in any judgment” of any court or any order or any other instructions issued by the Election Commission, “no candidate shall be liable to disclose or furnish any such information in respect of his election, which is not required to be disclosed or furnished under the Act or the rules made there under.” The amendment
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Representation of People Act, also provided that the candidates have to give details of only such criminal cases, in which cognizance has been taken by the court. It further stipulates that only elected candidates were required to give details of their assets and liabilities. It, however, did not make any provision for declaring their educational qualifications.

The new ordinance was challenged in the Supreme Court by the organized public, namely, the People’s Union for Civil Liberties (PUCL), Loksatta and Association for Democratic Reforms (ADR). They questioned the Constitutional validity of the Electoral Reform Ordinance as it violates the citizen’s right to know. The Supreme Court ultimately overruled the ordinance and upheld the earlier order made by itself and Election Commissions directives. The Judgment declared that while filling nominations for election, the candidates have to mandatory furnish the information which are to be scrutinized by the concerned Returning Officers. The Supreme Court quashed a part of the Electoral Reforms Ordinance of the government and simultaneously restored the order and directives of its own and those of the Election Commission of May and June 2002 respectively. The court also declared the newly included provision 33 as unconstitutional and held the Amendment Act ‘null and void’. The court also held that “a voter has a fundamental right to know the criminal antecedents of a candidate” and this right was independent of the statutory rights under the election law. To keep further check on criminalization of Politics the Supreme Court on 6th January 2005 has made an exception in the election law to allow continuance of a Member of Parliament or Member of Legislative Assembly even convicted during his/her term could not be used to contest the next poll. This order was delivered by a five judge Constitution Bench headed by Chief Justice of India R.C. Lahoti, While allowing a petition filed by Ramesh Dalal
Challenging the election of Nafe Singh of Bahadurgarh in Haryana. Under Section 8(4) of Representation of People Act, 1951 sitting Member of Legislative Assemblies and Member Parliament, if convicted and sentenced to two years imprisonment during their tenure as member of the Assembly or Parliament were allowed to continue if their appeals against the order of conviction was pending with a High Court. However, it was noticed by the court that many of there Member of Parliament and Member of Legislative Assemblies were using this exception to convince the Returning Officer, while filing nomination for the next elections that their conviction had been stayed under the exception clause and hence be allowed to contest the elections. Justice Lahoti writing on his behalf and on behalf of Justice S.V. Patil, B.N. Sri Krishna and G.P. Mathur, observed that the saving from disqualification was pre-conditioned by the person convicted being a member of a House on the date of conviction. “The benefit of such saving is available only so as long the House continues to exist and the person continues to be a member of it. The saving ceases to apply if the House is dissolved or the person ceases to be a member of the House.” The court noticed the anomaly being practiced in the acceptance of nomination of persons who were convicted while being a sitting Member of Legislative Assembly or Member of Parliament.33

Despite efforts by the Supreme Court, Election Commission and Parliament criminalization of politics could not be eliminated. Large numbers of candidates having criminal records are being fielded by various political parties and some of there are also getting elected to Parliament and State Assemblies. In 14th Lok Sabha for which elections was held in 2004 there is no sign of much improvement as number of candidates having cases pending against them have made their way to Parliament. The
Reform Bill passed by Parliament in 2003 could hardly make a dent in the present mess.

Thus, the subject of criminalization of politics can only be checked by political parties themselves and through public opinion. Under the law it should be obligatory for the political parties to file a declaration with the Election Commission that they will not field candidates of criminal background or give tickets to those who are charged as criminals, power should be given to the Election Commission to de-recognise or de-register political parties who are found putting up such candidates. Political parties should be legally banned for collecting funds from the candidates seeking tickets, because persons of character and integrity having no money can never expect political positions, if such practice continues. Whenever a criminal case is reported against any one regarding violation of election law, an immediate action should be taken against him. At least judiciary must give priority to cases relating to political corruption and electoral offences. Canvassing by the criminal gangs should be completely banned. The main issue of electoral reforms is to restore the moral foundations of Indian democracy by rescuing it from the pernicious influence of money and muscle power in elections. The suggestions given by the Election Commission and other Commissions may be helpful to check the entry of criminals in politics. The Parliament must consider these suggestions and amend the law accordingly.

(D) Election Expenditure and State Aid:

Money plays one of the most important roles in elections. In the present political and economic context, the conduct of elections and electioneering campaign led by candidates and political parties have tend to be costly. While the 1952 elections to Parliament and State Legislatures
cost Rs 10.50 crore, the 1980 election to the Lok Sabha alone cost about
Rs 52 crores notwithstanding all the economy measures taken to keep cost
down\textsuperscript{35}. It must be stressed here that this is a conservative estimate based
perhaps on the returns filled by the candidates to the Election Commission.
These returns show less expenditure than actually incurred. Certainly with
the present system of conducting elections, the cost will escalate at least in
proportion to the rise in the cost of living.

Section 77 of the Representation of People Act, 1951 puts a limit on
election expenses incurred by a candidate for Assembly Constituency or
for a Parliamentary Constituency, but there is no provision in the
legislation to regulate the flow of unaccounted funds into the coffers of
political parties. The law does, however, prescribe the manner in which
accounts of election expenses, followed by filing of returns by political
parties and candidates are to be maintained\textsuperscript{36}. Collecting funds from
various sources is a routine affair for the political parties. As a result, the
use of huge unaccounted money in election has become a fact of life and it
is perhaps the most serious issue in any programme of electoral reforms.
The estimates of such expenditure vary from constituency to constituency.
A great deal depends on the candidates contesting the election and prestige
attached to winning the seat. The average expenditure of a serious
candidate for a Parliament election in 1999 was estimated at Rs. 2-3 crores.
According to another estimate it was Rs. 1.3 crore in the 1998 elections.
Where such huge unaccounted money does came from? Partly, it comes
from candidate, his friends, supporters and sympathizers but a big chunk of
it comes from the political party which sponsors him. Therefore, it is
necessary to go into the question of financing of not only the candidates
but more importantly of the political parties. It is often said that there is a
nexus of politicians, businessmen and criminals which is the root cause of
political corruption in India and the nexus generates black money to be used in elections. Thus one of the vital evils inhabiting the system of free and fair election in the Country is the mounting cost of fighting elections. The influence of money in election has increased, though the law has put a ceiling on electoral expenses but one can observe the limit more in the breach.

Whether the amount spent by political party's supporters, friends etc. could be treat as the expenses incurred or authorizes by the candidate was the issue in earlier election petitions and it was the view of the Supreme Court that such expenses incurred by persons other then the candidate, did not fall with in the expenses actually incurred by the candidate himself. For first time in Kanwar Lal Gupta V Amarnath Chawala, the Supreme Court distinguished between two kinds of expenditure. One incurred by political party on its general party propaganda; other is the expenditure which can be identified with the election of a given candidate. The objective of limiting the said expenditure is to eliminate as far as possible the influence of big money in electoral process. However, the judicial verdict providing a check on the statutory limit in this case was nullified in 1974 by the Parliament by adding Explanation (1) to Sub-section (1) of section 77 of the Representation of People Act, 1951. The effect of the said Explanation was that any expenditure by the political party, body or association or an individual other than the candidate or his agent shall not be deemed to be expenditure incurred by such candidate.

The recent land mark judgment of the Supreme Court in Common Cause (Registered Society) v. Union of India, is really significant and timely. It has cleared many unsolved problems faced so far in the election
field in relation to money power and to cleanse politics and inducting
sanity into the most daunting problems created by huge amount of political
contributions and election expenditures which give rise to the black
money, economy and corruption in government. In this case the court had
an occasion to examine the provisions of section 77 (1); explanation (1) of
the Representation of People Act, 1951, section 13 A of the Income Tax
Act, 1961, section 293 A of the Companies Act, 1956 and Article 324 of
the Constitution of India, all of these had bearing on the aspects of money
powers in elections. As per the ruling of Supreme Court in this case all
registered and recognized political parties will now be under legal
obligation to disclose how much amount was collected by them and from
whom and the manner in which it was spent. This will enable the Election
Commission or the court to determine whose money was actually spent
during the election through the hands of political party, if the election of
the returned candidate is questioned. The court did the best that was
possible with in the constraints of a provision of the Constitution.
However, to root out the role of black money in elections the remedy is to
repeal the Explanation I to section 77 of the Representative of People Act
1951.

Against this background the main question which arises for
consideration is whether the present system of funding of elections should
continue or whether it be replaced by state funding of elections. The Joint
Committee on Amendment to Electoral Laws had recommended as far
back as 1972 that ‘a process should be initiated whereby the burden of
legitimate election expenses should be progressively shifted to the state.’
Very limited State Funding of elections was recommended by Goswami
Committee on Electoral Reforms in 1990. The Committee on State
Funding of Elections (Indrajit Gupta Committee) recommended the
creation of separate election funds with equal contribution from the Central and State Governments. To begin with it, the Committee has suggested the creation of a corporation with contribution worth Rs. 1,200 crore. The Report of the Committee submitted to Central Government in the month of January, 1999, recommended the state funding of elections in kind as against any cash. It has suggested that the funding be confined only to the political parties recognized as the national or state parties by the Election Commission and to the candidates setup by such parties.46

A National Seminar on Election Expenses and State Funding was organized on 24.1.1999 and it also supported the proposal of state funding. The Law Commission of India in its 170th Report on Reform of the Electoral Laws submitted in May 1999, too recommended that in the present circumstances only partial state funding could be contemplated more as a first step towards total state funding but it is absolutely essential that before the idea of state funding (whether partial or total) is resorted to the provisions suggested relating to political parties including the provisions ensuring internal democracy internal structures and maintenance of accounts, their auditing and submission to Election Commission are implemented. The state funding even if partial should never be resorted to unless the other provisions mentioned aforesaid are implemented, lest the very idea may prove counter productive and may defeat the very object underlying the idea of state funding of elections47.

It is disappointing to see that even the Law Commission has failed to do any justice to the subject and has remained satisfied by making only a token gesture. Thus the successive reports on this critical issue have failed to grasp that what is stake is not just the purity and integrity of elections, but more importantly, combating the evil of black money improving the
credibility of democracy and cleansing public life from corruption. To achieve these objectives, no price should be considered high enough. Infact state funding of elections is the ‘least cost solution’ to these formidable and intractable problems. It is expected that the system of state funding of election would enable the competent men of merit integrity and public spirit who are otherwise unable to contest the elections for want of necessary financial support, to vitalize the democratic system in India. Election Reform studies reveals that the only objection against the state funding of election is the argument that India is not rich enough to undertake so colossal an expenditure as are some democratic Countries like, United Kingdom, United State of America, France, Germany and Australia affording public financing of election campaign. On this aspect various organizations, including the Centre for Policy Research have estimated that the cost of legislative elections is manageable in India which has a Central budget exceeding Rupees 60,000 crore. It is further suggest that India being the world’s largest democracy should introduce the state funding system in elections to root out the political corruption.

It may be mentioned that no democracy in the world has been able to find a full proof solution to the most complex and vexed problem of election campaign funding. However, state-funding of election had long been acknowledged as a necessity in Indian politics. The belief was that if the political parties and politician did not have to depend on black money and had to operate with in certain limitations they would be more honest and restrained in their behaviour. It is submitted that the scheme of state funding of elections will reduce the role of unaccounted money and automatically impose certain restrictions on extravagance by providing the necessary assistance to the candidates in kind rather than in cash. It is
expected that the only method to cope with the influence of money power in elections in India is the funding of election expenses by the state itself.

However, the immediate remedy is to repeal the Explanation-1 Section 77 of the Representation of People Act, 1951. A clear provision should be made which may require political parties to maintain proper accounts of the donations and contributions they receive and get audited them. All assets and expenditure by political parties or leaders should be made public. Non-maintenance of true and correct accounts of the election expenditure by the candidate should be made a corrupt practice.

(E) Minimum Educational Qualification for a Legislator:

There was a demand in the Constituent Assembly that some minimum educational qualification may be prescribed as eligibility for contesting elections to the Lok Sabha and State Legislative Assembly. In such background, it has to be admitted that the founding fathers wisely decided against any such step at that time, considering the level of literacy in the Country and the need for building up a united Country and creating a sense of belonging and social cohesion in which all citizens are treated equally. After Indian's Independence, it is however, time so consider whether a minimum education qualification may be prescribed now. The educational profile of the legislators has been showing considerable improvement over the years. While it is possible to argue that democracy is much more than governance, looking to the complexity of issues of governance, which come before legislatures, it is only appropriate that the legislators are able to comprehend the issues and contribute to the deliberations in the House. The same Parliament and State Legislatures.
It is difficult to argue that while it is necessary to have a minimum educational qualification for the post of a peon or a messenger or a clerk, no such qualification need be prescribed for a legislator who is to be a law giver of the land. Against this background, it is necessary to lay down that a degree should be the minimum educational qualification for contesting an election as Member of Parliament /Member of Legislative Assembly. There is no dearth of suitable persons with such qualification even in tribal areas, leave aside other rural areas. It is also submitted that if prescribing the educational qualification is not possible then some sort of post election training, orientation course or the like programme should be initiated for the new members so as to acquaint them with their duties and responsibilities the Country’s political system, Parliamentary practice and procedure and a bare idea about the Constitution.

(F) Ban of Independents and Electoral Reforms:

The candidates at election as Member of Parliament or Members of State Legislative Assembly generally belong to recognized and unrecognized political parties. But beside them a large number of candidates contest election as independent candidates. The Election Commission found itself burdened with the demand for recognition of new political parties and the entry of large number of non-serious candidates into the election fray. In a Parliamentary form of democracy it is open to any elector to contest election from any Parliamentary Constituency, in the Country and it is not necessary that the candidate should be sponsored by a political party. It is possible for an elector to contest election on his own as an independent candidate. Some of them contest election genuinely and some of them have succeeded, but experience has shown that a large number of independent candidates contest the election for the mere sake of
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contesting, with a view to make out grounds for challenging the election and majority of them forfeit their deposit and very few are elected. The percentage of independent candidates forfeiting their deposits has gone up steeply from 51.27 percent in 1957 election to 99.70 percent in 1996 and 99.11 percent in 1998. The number of candidates contesting the election has come down sharply from 1998 elections after the deposit required to be paid by a candidate was increased. Inspite of declining number of independent candidates getting elected in each election the presence of independents has complicated the question of stability of governments at the Centre and the States. Horse trading in respect of independent candidates has become a matter of serious concern. A reference may be made in this context to the judgment of the division bench of the Bombay High Court in March 1997 in which the court has held that independent candidates can not come together after election to form a new grouping or give up the platform on which they had contested the election. In a case pertaining to Mahabaleshwar Giristhan Nagar Parishad, the High Court has disqualified the concerned councilors for non-adherence to this principle under the anti-defection law and has cancelled their election, the appeal is pending in the Supreme Court. The future of independent candidates and their role in India increasingly fractious polity.

The Election Commission of India had been from time to time reporting to the government about the trouble of non-serious candidates, particularly the independent candidates, and had recommended the elimination of such frivolous contests. It is often suggested that there should be a total ban on contesting elections by independent candidates in the view of Law Commission, the time is now ripe for debarring independent candidates from contesting Parliamentary and Assembly Elections. This will be an unreasonable restriction, particularly when in
the typically Indian party system, persons who are not professional politicians hardly ever get an opportunity to contest elections as party candidates. It cannot be denied that there is a need for induction of eminent persons from various fields in the politics of the Country. It should also be noted that after the state funding scheme is introduced, the fact that such funding will not be available to the independent candidates for contesting elections. Against this background, there need be no explicit bar to independent contesting the elections. However, to reduce the number of non-serious candidates still further, the deposit payable by candidates should be further increased. Yet another safe guard may be introduced by way of a stipulation that any independent candidate getting less than \( \frac{1}{4} \) of the total votes polled in a constituency should be disqualified from contesting the election again for a period of ten years. It is distressing to note that neither the Parliament legislated and nor political parties yet to have pleaded for comprehensive electoral reforms that could help to de-pollute the democratic system and rid the poll process of corruption and malpractices in the area of farivolous contestants. There is an urgent need to check this malady in Parliamentary election.

Some times, the same person has been found contesting and winning from more than one Parliamentary or Assembly constituency at the same time. In 1980 one candidate stood for election from 13 Parliamentary constituencies and several others from three to four constituencies. Finally, in 1996, the Representation of People Act, 1951 was amended so that a person could contest at the most from two constituencies. Even stalwarts such as Indira Gandhi, L.K. Advani, Mulayam Singh Yadav and Sonia Gandhi has contested from more than one constituency at a time. There have been cases where a candidate has been elected for more than one constituency. In such a case, he/she have to resign from one of the
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constituencies, leading to fresh elections therein. Though the number of such cases has gone down over the years, it is still an avoidable public expenditure which the Country can ill afford. The law should be amended in this regard that no person shall be nominated as a candidate for election from more than one Parliamentary or Assembly constituency or simultaneously for a Parliamentary and an Assembly constituency. This will save unnecessary exercise of bye-election in the constituency to which the winner leaves after choosing one seat.

(G) Role of the Political Parties and Reservation of Women in Lok Sabha:

No democracy can stay healthy if it can not create a favorable and inclusive atmosphere for women to participate in electoral politics because they constitute almost 50 percent human population but they have been discriminated in all walk of life. According to latest Inter-Parliamentary Union Statistics, only 7.1 percent of all Parliamentary Assemblies are presided over by women while the fair sex accounts only 11 percent political party heads despite the large number of female party activists. The report reveals with some exceptions that all countries conduct election in a way that excludes nearly half of their human resource and talents as a result of which democracy suffers and development is slowed down. The scenario is not different in India.

According to statistical report on general elections 1998 to Lok Sabha there were 166,821,679 women voters and 58.02 percent women’s participation in polls and out of 4750 candidates for 539 constituencies only 271 were women candidates. Interestingly even of this low figure two thirds were independent women candidates and this included many women who belonged to political party but who stood as independents.
once their parties denied them ticket. The representation of woman in the
Lok Sabha has basically remained stagnant. *It reached a high of eight percent* *in 1984.* This figure has not been crossed since then. Thereafter, it has showed some decline rather than register an increase. This despite the fact that every major national party in recent years has declared in their manifestos, that they would implement 33 percent reservation for women in all legislatures. One of the most puzzling features of this depressed level of women’s political representation in our legislative bodies is that it seems to have no direct correlation with literacy and other seemingly related indicators.

The Constitution of India guarantees not only the equality before the law and equal protection of laws to women but also confers certain affirmative rights to them. At present, Article 330 of the Constitution provides for the reservation of seats for scheduled caste and scheduled tribes in the House of the People. Article 332 makes a similar provision in the State Assemblies while 243D does so at the Panchayat level and Article 243T for municipalities. Following the 73rd Amendment, 1992 providing reservation for women at Panchayat level, clause 2 was added to this Article reserving one third of seats for Schedule Caste and Schedule Tribe women within the Schedule Caste and Schedule Tribe quotas and clause 3 which reserved one third seats for women including the number of seats reserved for women under the Schedule Caste and Schedule Tribe quotas. Clause 4 provides that the offices of Chairpersons in the Panchayats shall be reserved for Schedule Caste / Schedule Tribe and the women, in such manner as the Legislature of a state may by law provides.

Since inferior social status of women in the male dominated society makes it difficult for women to contest and get elected in the representative
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democracy, there is a strong demand for reservation of women seats in legislative bodies from various quarters including women organizations. The ball has already started rolling at least on paper, with the proposed Constitution (81st Amendment) Bill for 33 percent reservation for women in Parliament and State Assemblies. Infact in India no political party favour the women’s representation in legislative bodies. The criteria of political parties in given a ticket to a women candidate is always, “will she win, does she have the funds, will she assert herself, can she manager muscle power, etc.” Lack of money, muscle and mafia has actually prevented political parties from giving tickets to women candidates. In such a scenario where ‘win ability’ of the women candidates is the criteria used by political parties and money and muscle power is consider her asserts, not enough women in India will appear to fill up even the reserved seats.

Reservations were introduced in the Indian Constitution to make equality clause more effective. Equality on the basis of sex and individuality of women though recognized by the Constitution but neither the Constitution nor statutory provisions have been successful in changing the socio-economic status of women. They continue to be in an inferior position, not because legal protection is missing but because social norms make them to do so. However, if there are some legal barriers we have to repeal them. But the immediate need is to eradicate social and traditional barriers to women’s access to education, literacy, employment business and to the decision making positions. Women must be allowed to share equally in the management of the society sharing all the burdens and privileges of a full citizenship.
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Women's political empowerment no doubt is the need of time. It is, therefore, imperative to impose mandatory provisions on political parties to effect meaningful change. Since reform with in political parties in India is painfully slow. It should be impressed upon the political parties through electoral reforms that some kind of standard is adhered to giving tickets to their candidate. Perhaps the best solution than is to let the parties choose half of their candidates from women. This would automatically ensure a higher representation for women even if some of them lose the election. Fielding the women candidates by all the parties in constituency would be women to women contest, and that reduce the influence of money or muscle power or corrupt practices generally complained in our elections. Any way, if such a provision in not possible, a mandatory provision should be made in the Representation of People's Act, 1951 that all political parties shall nominate at least one third of women candidates for the seats they are contesting.62

Thus, Electoral Reforms have been the subject of innumerable seminars in the National capital and else where in the Country. Several Committees have spent their time and energy on them. The Election Commission has periodically made several suggestions to plug the loopholes in the election law. The politicians, busy as they are in pursuit of power, have not shown the urgency they ought to have pushing electoral reforms.

(H) Reservation and Representations of Muslims in Legislature:

Strong voice have been raised by some political parties that there should be a caste and community based quota with in the women's quota. Because the meager proportion of Muslims in our Parliament and State Legislatures does not match their numerical strength with the population.
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But then the whole idea of communal electorates was rejected by the Indian leadership because that demand had culminated in the partition of the subcontinent. In any case, can we consider a quota for Muslim women without conceding a quota for Muslim men? For the first time since independence, there are just two junior Muslim Ministers in Atal Behari Vajpayee Ministry formed after the 1999 election. In the seventh Lok Sabha, the maximum number of Muslim Members was 46 followed by the eight Lok Sabha that is 41. The percentage in terms of total membership decline steeply from 7.27 in the first Lok Sabha and 8.5 in the seventh Lok Sabha to 4.99 in the 12th. As compared with the percentage of Muslim in the total population, it is undeniably too low. This kind of insensitivity and short sightedness certainly send a very wrong message to the Muslim community. It can not be denied that except for a few elite Muslim families, the common Muslim has remained out side the mainstream of national life. The levels of literacy among Muslims continue to be much lower than the other sections of society. In a large measure, their primary and secondary education is restricted to religions institutions (Madarasas) away from the liberal education stream. Their share in organized sector employment is miserably low. Their percentage in employment in the government and public sector is negligible. This equally true of the police and security forces. No society which neglects a large section of its population in this manner can ever hope to make the grade. Muslim leaders from non-elite backgrounds have claims that caste is as deep-rooted an entrenched among the subcontinent’s Muslims as among the Hindus. Therefore, there are certain voices with in the Muslim community are arguing that the Muslim women’s quota be further reserved for lower castes among Muslims they allege that so far Muslim politics has been dominated by upper caste among Muslims who promote fundamentalist
politics, which has kept the Muslim community trapped in backwardness
and illiteracy, in jeopardizing their safety by taking very obscurantist
positions on various issues therefore, they are demanding that the benefit
of Muslim women’s quota should go to the lower cast Muslim women so
that the most oppressed among them get to heared and represented. This
demand for reservations with in reservations demonstrates how the very
logic of reservations be stretched end lessly. The manner in which this
issue has divided women’s organizations, shows that on most issues
women’s loyalty to their caste and community is far stronger than their
commitment to gender based solidarity.

Thus, minorities should be given special consideration in the politics
and an adequate reservation should also be given to this community in the
Lok Sabha and State Legislatures. Other wise India will sooner then later,
be faced with the demand for reservation of seats for the Muslims. Such a
demand will have large and unmistakable political overtones and will
militate against the principle of secularism which is a part of the basic
structure of the Constitution. It is a right time all political parties hear and,
more importantly, act upon the message.

(I) Media and Poll Reforms:

The media has the role to educate the electorate about policies and
programmes of different political parties, the candidates and the important
issues involved in election. Modern electorate is vast and can only be
reached through the media of mass-communication and to certain extent
success in election may depend on systematic and meaningful campaign
and propaganda through radio, television and the print media. In exercise
of its powers under Article 324 of the Constitution of India to conduct free
and fair elections in the Country, on August 20, 1999 the Election
Commission issued the guidelines banning publication and telecast of exit/opinion polls during the election in the line with its 1998 directives on the subject. The Commission also directed that no advertisement or campaign by political parties, candidates or any one else is allowed on electronic media. Justifying the ban the Commission stated that extensive advertising on electronic media could only be afforded by a few major parties there by introducing serious distortions in the electoral arena. The Commission was of the view that in a poor Country like India, democracy will be totally disturbed by money power if this trend is allowed to continue. However, as regard the allotment of time on Doordarshan and All India Radio. The Election Commission said that a scheme of time vouchers was started by it in 1998 which provided substantial time to all recognized political parties. Legal experts have pointed out that such guidelines are not legally correct and the Commission cannot infringe on the fundamental right to free speech and expression. While guidelines relating to sharing of time on state owned electronic media for election campaign on the basis of classification of parties at national and state level as a step towards indirect state-funding of elections and to improve awareness among the voters with in the campaign period, was welcomed from all corners, but banning the opinion / exit poll has become controversial on the following specific grounds:

1. The Election Commission directed that those conducting opinion or exit polls, while publishing them, must indicate the sample size of electorate and geographical spread of survey. Because the art of predicing electoral behaviour in still in its infancy in India. They must also give the details of methodology followed, likely percentage of errors, the professional background and experience of
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the organization and also the key professionals involved in the conduct and analysis of the poll.

2. It is known phenomenon all over the world that the so called pre poll survey reports are often fake and planted to boost the prospects of some political parties and candidates. The Election Commission also said that the restrictions on conduct of opinion and exit polls also existed in other democracies like Canada, France, Italy, Poland, Turkey, Argentina, Brazil and Colombia. The other view is that there is little to command this ill conceived and retrograde step of banning election forecasts. There is no ground available for banning the same under Article 19 (2) of the Constitution of India. So also there is no consistent evidence to support the contention that opinion polls have a net influence on voting behaviour. Admittedly, there may be a case for with holding the results as exit poll predictors have often voluntarily done until the completion of voting.

3. The banning of opinion or exit polls was the out come of the meetings that the Election Commission had held with various political parties. But the leading opinion polling organizations have a regret that no opportunity was given to them to represent their side of the case and therefore the directives are unfair and arbitrary.

4. It was contended that banning of opinion or party’s advertisements on television network or press is not based on any statute, instead there is an implicit violation of fundamental right enshrined in the Constitution of India. Some what inexplicable is the Commission’s order to the electronic media not to carry advertisements by various political parties. When all parties, to the extent of their ability to pay the costs, can have access to the electronic media, it is not clear how
these advertisements would influence the voters except in marginal way. So also per election surveys and exit polls are an integral part of elections in every democratic Country. Since no direction can be issued by the Election Commission in violation of fundamental rights of the citizens and therefore banning of opinion / exit polls is out of the jurisdiction of the Election Commission\(^66\). Even if these guidelines are legal, it is not clear how the Election Commission would deal with the consistent violators of these guidelines.

As a result, television networks in various states challenged the guidelines of the Election Commission banning the poll predications and political advertisements. For instance, Madras and Andhra Pradesh High Courts granted stay orders against these guidelines which promoted the Election Commission to move the Supreme Court for the enforcement of these controversial guidelines\(^67\). In this case the court observed that it was absolutely wrong on the part of the Election Commission to approach the apex court and seek execution of its guidelines\(^68\).

Ultimately, the Election Commission has with drawn its above guidelines after the Supreme Court dismissed its plea for their enforcement. This seems a far more damaging observation of the court than the mere striking down of the ban orders. The court had not gone into the substantive issues pertaining to the merits of such polls or the implication of the ban on publication on the fundamental right of freedom of speech and expression guaranteed under Article 19 of the Constitution. These issues will no doubt be agitatedly discussed in the Supreme Court again at some point of time in the future. But in the meanwhile it is necessary to empower the Election Commission by a requisite

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\(^{66}\) This might be a reference to a specific rule or regulation.

\(^{67}\) The context here likely refers to the specific court case.

\(^{68}\) Another reference might be implied here.
Constitutional amendment to put the question of his powers to conduct elections in a free, fair and credible manner, beyond any shade of doubt.

Apart from this background equally relevant is the question of impartiality and credibility of the agencies conducting such survey. It is no longer a secret that often the sponsors of these surveys have an axe to grind and a goal to achieve. It is not therefore surprising that the result of the poll can often be predicted on the basis of the political leanings of the sponsors of the polls and/or the agency conducting the polls. The debate as to whether such polls influence the voter is meaningless. If they do not there is no reason why such polls need be conducted at such cost. Clearly, such polls are sponsored and published because they influence the voter significantly but in a subtle manner. This is particularly true in respect of exit polls conducted in areas in which polling has been concluded. If the trend of voting is in favour of any party or a political front, the voters in other areas which are yet to go to polls are unlikely concisely to go against the trend. The importance of these polls cannot therefore be minimized or overlooked.

Since there are no full proof scientific standards of sampling and projection of result by the agencies conducting the polls, every pollster has his own favorite map for converting votes into seats. The media organizations that sponsor the polls must adopt a measure of self regulation as regard the bogus polls predictions. There is scope for honest misjudgment, polls have gone wrong in previous predictions. But extreme care has to be taken to guarantee that the field work was actually undertaken. Legal experts are not in favour of banning the exit / opinion polls. An item of priority in our Country should be to device an agreed system of equitable distribution of radio and television time among the
political parties to enable them to place their programme before the electorate.

(J) Caretaker Government in the Period Leading to Elections:

The Ex-Chief Election Commission Dr. M.S. Gill has suggested that Chief Ministers should demit office six months before elections are held in their states while the sentiment behind this suggestion will be universally shared, it is doubt full if the suggestion it self can be implemented.

At the outset, it has to be accepted that the government, both in the State and the Centre have been remiss in observing ethical proprieties in the period preceding the polls. Even after six decades of democracy, political parties in power have been conducting themselves irresponsibly. The fact that the words 'caretaker government' has not been mentioned in the Constitution has been made much of in this debate. The media is also responsible, in no small measure, in encouraging the government to take all decisions during this period as if they are firmly in the saddle. This 'business as usual' literally becomes business most unusual. It is needless to say that the conventions, guidelines, norms and proprieties in a democracy are important, if not more important than the written word of the Constitution, particularly where ethical standards are involved. Successive governments at the Centre have thrown all responsibility to the winds in taking decisions to appease one section of the voters or the other. The same is true of the governments in the States. But the question is whether imposition of President's rule is the answer to the problem.

1. There is no provision in the Constitution for imposition of President's rule at the Centre. This would mean treating the Centre differently than the states. This can hardly be justified.
2. President’s rule will mean rule by the Central Government. It is quite likely that the Centre will be as partisan, if not more partisan in its dealings, particularly if the political party in power at the Centre is different than that at the state.

3. President’s rule implies putting the Governor in charge of the state. Looking to the manner in which active party functionaries belonging to the political party in power at the Centre are being appointed as Governors, this again will mean rule of the Centre by the back door.

A more reasonable solution will therefore, lie in the President of India/ Governor keeping a close watch on the decisions of the government at the Centre and State respectively, in the period preceding the elections. Whenever any undue favours are shown to any person, industrial house or a section of society with an eye on elections, the President / Governor should direct the government not to implement the said decision till the incoming government is consulted. Second, the media must play its role vigilantly giving publicity to such uncalled for and partisan decisions. Third, as a matter of normal practice, the incoming government should review all decisions taken by the earlier government within six month before the elections. Once every one known that all decisions will be reviewed in this manner both the officers and also the politicians will be more careful in taking decisions. The concerned parties will also not be keen on getting decisions which may create controversy or be reversed by the new government.

(K) Model Code of Conduct for Political Parties:

The Election Commission in consultation with recognized National and State parties has evolved a Model Code of Conduct for the guidance of
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political parties and candidates for a healthy and peaceful election campaign. Increasing reports of disturbances at election meetings, leading to violence and injury in some cases, and the death of several party workers at the hands of their political rivals in some states, provide a foretaste of what lies ahead if political parties continue to ignore the ground rules. The Election Commission took the initiative in securing the general agreement of political parties that they should adhere to the Model Code of Conduct otherwise the conduct does as good as not exist at all.

The Model Code of Conduct under which directions are issued by the Election Commission is an effective measure of regulating the election campaign. The code contains the instructions about the meetings, processions and the conduct of political parties and candidates during the campaign period and on the days of the poll. As per these instructions during the election process there is a complete ban on use of government aircraft by political functionaries including Chief Ministers and Ministers. The only exception is for the Prime Minister in office. Therefore, the Ministers are directed not to combine their official visits with the electioneering work and not to make use of official machinery or personnel during the election. No Minister either of Central or State Governments shall undertake an official visit of any constituency to which elections have been announced by the Commission during the period commencing with the announcement of the elections up to the end of the election process. The only exception to these instructions will be when a Minister in his capacity as incharge of the concerned department, or a Chief Minister undertakes an official visit to a constituency or summons any election-related officers of this constituency to a place outside the constituency, in connection with failure of law and order or a natural calamity or any such
emergency which requires personal presence of such Minister or Chief Minister.

In the interest of preserving the purity of election process the Election Commission has directed that the government vehicles should not be used for furtherance of the interest of the party or candidate. Cars/vehicles being used for electioneering purposes shall, under no circumstances be allowed to move in convoys of more than three vehicles. All bigger convoys shall be broken up even if they are carrying any Minister. Rest houses, dakhbungalows or other government accommodations shall not be monopolized by the party in power or its candidates and such accommodation shall be allowed to be used by other parties and candidates in a fair manner but no party or candidate shall use or be allowed to use as campaign office or for holding any public meeting for the purpose of election propaganda. Misuse of official mass media or advertisements at the cost of public exchequer has to be avoided. Similarly, financial grants, any form of promises, or laying foundation stones, making appointments in government or in public undertakings or other transactions which may influence voters in favour of party in power must be avoided. Use of loudspeakers for the public meetings should be by permission of the administration and that too ensuring public peace and tranquility. Pasting of posters, wall writings, slogans and painting symbols, etc. are effectively regulated.

The Commission further directs that in the interest of free, fair and smooth conduct of elections, issue of license for arms will be totally prohibited during the period commencing with the date of announcement of elections and seizure of unlicensed weapons shall be vigorously intensified during the election period. State Governments are directed to
forward daily report of law and order. The State Government must also ensure adequate and full proof security arrangements. It must ensure that adequate and full proof security arrangements are made, both inside and around the counting centers as well. There are lots of other instructions to come in force during the election. The Election Commission, however, sometimes comes to be arbitrary and unreasonable in the exercise of it’s powers. During the recent elections the Commission has issued certain directions, orders and bans which eventually make a mockery of electoral process it issued even oral directions in Kunwar Raghuraj Pratap Singh V. Election Commission of India. In this case there was a report jointly submitted by the District Magistrate and Superintendent of Police Stating involvement of the petitioner, (a Minister in Uttar Pradesh State) in serious criminal cases and the recurrence of similar behaviour on his party may disturb peaceful conduct of election. Taking into consideration the stock of the situation, the Chief Election Commissioner ‘Orally advised’ the State Government to ensure that the petitioner (Minister) move out of District Pratapgarh. The Allahabad High Court has held that ‘Oral directions’ in such matters which tends to curtail rights and liberty of citizens is not envisaged in exercise of powers under Article 324 of the Constitution of India. Instead of concentrating on enforceable bans, the Commission is issuing edicts and orders in all directions. The result has so far been protest from some quarters and defiance from others and muffled discontent all around. While the Election Commission’s desire to keep the election process as clean as possible is commendable, the manner in which it has set about achieving this objective, lacks both focus and direction.

Therefore, the Model Code of Conduct evolved by the Election Commission seems to be an effective measure to control the malpractices in the elections by any one including candidates and voters. It works as a
preventive measure against of governmental power, official machinery public money and property by the ruling party. But it has only moral sanction and no legal force. There are instances of it’s rampant violation. Therefore, it seems necessary that the violation of Model Code of Conduct should be made an electoral offence under the provisions of the Representation of People Act, 1951. In the absence of legal sanction to it, violations of the code cannot be ruled out. The Law Commission of India in its 170th report, on Reform of the Electoral Laws, has recommended to incorporate Model Code of Conduct in the Election Law as a part of it. Perhaps this is one of the best recommendations of the Law Commission of India. India so far has not incorporated Model Code of Conduct into the Election Law and after in cooperating it the Election Commission will be able to conduct the election effectively.

All this would call a fresh look at the Role of Political Parties in Electoral Reforms, which plays crucial role in election. It is quite common to put almost the entire blame for above mentioned trends on the so called political parties in the Country. But all those who would have us believe that all that is wrong has been caused by the political party seem to overlook the fact that the political party does not exist or develop in isolation or in vacuum, but that it emerges and evolves out of the society at large. Therefore, the society at large, of which all of us are a part, cannot escape responsibilities. While the so called political party can not assigned the complete responsibility for the current state of affairs, they can not be entirely absolved of it either. The role of political party can be explained as a logical response to the broader social system within which they have to operate. Therefore, some thing very seriously has got to be done to bring drastic improvement in their role for bringing good governments and stability in the country.
References:

1. In 1993 the Central Government attempted to introduce the Constitution (Eightieth Amendment) Bill to de-link religion from politics and thereby to amend the Constitution. The said Bill was accompanied by the Representation of People (Amendment) Bill, 1993.

2. There is no mention or definition of political party in the Constitution even Tenth Schedule which was added to the Constitution by the Constitution (Fifty Second Amendment) Act, 1985 does not define a 'Political Party'.

3. Representation of the People Act, 1951, Section 29-A; if a political party violets its own declaration to abide with the Constitution or secularism then there is no provision to de-register such a party.

4. Ibid, Section 8A, If a candidate or agent indulge in a corrupt practice, not only the election is liable to be set aside, but the candidate incurs disqualifications under.

5. Ibid, section 29-A, under this section registration of political party is voluntary.


8. Report of the Committee on Defection, 7th January 1969, Observed: Following the fourth General Elections in the short period between March 1967 and February 1968, the Indian political scene was characterized by numerous instances of change of allegiance by legislators in several states, compared to roughly 542 cases in the entire period between the first and fourth General Election at least 438 defection occurred in these 12 months alone. The recent example of bribery is the JMM case namely, P.V. Narismha Rao V. state (CBI/SPE) etc. AIR 1998 SC 2120.

9. The 52nd Constitutional Amendment-Act, 1985, says: “the evil of political defection has been a matter of national concern. If it is not combated, it is likely to undermine the principles which sustain it”.


13. *Constitution of India*, Tenth Schedule, Paragraph 2(1)(a),(3), (4) and (6), paragraph 3 and 4.


22. The Committee was constituted on 9th July 1993 Comprising of Shri N.N. Bohra, the then Union Home secretary and four other officers of the Government of India the report on criminalization of politics dated 5-10-1993 is made on the basis of data supplied to the committee by different agencies-RAW, CBI, Intelligence Branch and Revenue Intelligence of Government of India etc.


27. *Ibid*, Section 62 (5), 8(1), 8(2) and 8(3).


34. *Ibid*, p. 146.


40. AIR 1975 SC 308.
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42. See for example, JMM Pay off scam, The Rs 160 crore in question alleged to have been belonged to the JMM which had got it as donations since 1991. India Today, June 15, 1996 pp. 64-65. P.V. Narisha Rao V. State (CBI/ SPE) etc. AIR 1998 SC 2110.

43. The Representation of People Act, 1951, Section 123 (6).

44. In Gadak, Y. K. V. Balasheeb Patil, AIR 1994 SC 678. at 691 the Supreme Court emphasized the need to amend the Representation of the People Act, 1951 so as the repeal the Explanation 1 to section 77.

45. Alleged Payment of Foreign Money for Elections in India by American Government: Lok Sabha Debates, Lok Sabha Secretariate, New Delhi, 7 May 1979, p. 64.

46. The eight member high powered committee headed by former Home Minister Indrajit Gupta, was constituted by the Central Government at an all party meeting on electoral reforms on May 22, 1998 – The Hindustan Times, January 15, 1999, p. 3.


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59. The Women’s Reservation Bill was kept pending since 1996 and it was introduced in Lok Sabha in 1998. The Bill received wide support among Parliamentarians but there was no consensus on its vital feature like whether there should be sub-quota for backward classes and minorities.


62. The Chief Election Commissioner Dr. M.S. Gill said “There should be changes in the election law forcing parties to protect a minimum percentage of women candidates”, *The Hindustan Times*, August 6, 1999, p.11


64. *The Representation of People Act, 1951*, Section 126.


67. *The Hindustan Time*, New Delhi, September 8, 1999, p.3

68. AIR 1999 Allahabad 98.


