CHAPTER-IV

FLAWS IN THE ELECTION LAWS AND NEED FOR REFORM

4.1. INTRODUCTION

Electoral process and apparatus ARE basic to the design of a Constitution and the quality of a Government in a democracy. The electoral system is a determinant as well as concomitant in modern democracies as it provides the institutional workshops for hammering out a government on the anvil of popular choice. Free and fair elections are the foundation of a democratic form of government. Democratic set up of the Government may be threatened if the elections are not held in a free and a fair manner. Elections have to be fair and free, if parliamentary form of government is to survive.

The **purpose** of elections, among other things, can be stated to be:

1. A legislature reflecting the main trends of opinion within the electorate;
2. Government, according to the wishes of the majority of the electorate;
3. The election of representatives whose personal qualities best fit them for the function of Government; and
4. A strong and stable Government.

A system which achieves all these objects or at least comes as close as possible to fulfilling each; will offer an electoral system which can provide both a democratic and effective Government.

The Indian Constitution vests sovereignty in the 'People of India' and it is exercised through their elected representatives to the parliament and the State Legislature. Parliamentary democracy in India is based on adult suffrage. Indian Constitution provides that every citizen, man or woman, who is not less than eighteen years of age, and not otherwise disqualified by reasons of non-residence, unsoundness of mind, crime or corrupt legal practice has the right to vote in the elections to the Parliament of India and the State Legislative Assemblies. Universal adult franchise is one thing about which India can be reasonably proud of. The principle of one man, one vote, and

one value is a constitutional right. Our electoral system can be described as a majoritarian system which has aptly being described as the "first past the post" system.

The democratic structure of the constitution is maintain through elections and in order to ensure free and fair elections, the Constitution of India has vested in an independent body, the Election Commission of India, the superintendence, direction and control of all elections in India. The framers of the Constitution empowered the Parliament and the State Legislatures to enact laws with respect to all matters relating to election. Article 327 empowers the parliament and Article 328 empowers the State legislature to make provisions with respect to elections. The Parliament under such power has enacted the Representation of People Act, 1950, the Representation of People Act,1951, The Delimitation Act,1962, the Registration of Electoral Rules,1960, the Conduct of Election Rules,1961, the Parliament (Prevention of Disqualifications),Act,1959,etc. to deal with elections to Parliament and State Legislatures.

The Representation of People Act, 1951 defines corrupt practices and other electoral offences at or in connection with the conduct of elections to the Houses of parliament and to the Houses of the Legislature of each State. The provisions are based on English Law.

In the last fifty years, while there had been many improvements in the conduct of elections, many new undesirable developments have also taken place distorting the system and corrupting it in a substantial manner. Over the years while working out these electoral systems various aberrations

4.2. ELECTORAL VICES AND THEIR EFFECTS ON OUR PARLIAMENTARY SYSTEM

It is, however common knowledge that elections in India do not truly represent the will of the people, as mafia, money power and muscle power are ruling the roost and various means like booth capturing

and undue influencing the free will of the electors by bribing them have been adopted to make the election farce. Now the persons elected in such a situation cannot really claim to represent the true will of the electorate.

4.2.1 Criminalization of politics

Criminalization has already been discussed in Chapter III "Party System" at page ( ). The line between law makers and law breakers in our country has only become more tenuous. In the present Parliament, according to the statistics gathered by the Election Commission, at least 40 MPs faced criminal charges including murder, dacoity, rape, theft and extortion.[1] The same is true for some 700 MLAs. In the 14th Lok Sabha of 542 members, there are no less than100 MPs who have been chargesheeted in criminal cases, ranging from minor misdemeanours like"disturbing the peace" to the omnibus charge of "rioting" to serious offences like murder, rape and dacoity. Of these five –score MPs across the political spectrum, roughly one-third can be described as those involved in heinous crimes. A dozen have murder charges against them, another 10 have been charged with attempted murder. Around 11 of them are, in public perception, known as "dons".[2] During Karnataka Assembly Elections an NGO had released a list of candidates facing criminal charges. NGO listed 91 candidates with criminal background, 4 candidate face murder charges and seven were booked for attempt to murder.[3]

The entry of criminals in politics is a matter of grave concern. The Vohra Committee appointed by the Government had stated in strong terms that the nexus between crime syndicates and political personalities was very deep. According to the Central Bureau of

[1] The Indian Express, Nov6, 2000.
[2] Outlook, 21 June 2004 p.33-35.
[3] Election 2004, The New Indian Express, April 22,2004,p.1by Express News Service.

Investigation (CBI) report to the Vohra Committee:[4] "all over India, crime syndicates have become a law unto themselves. ..... Even in the smaller towns and rural areas, muscle-men have become the order of the day. Hired assassins have become part of these organizations. The nexus between the criminal gangs, police, bureaucracy and politicians has come out clearly in various parts of the country." The Committee quoted other agencies to state that the Mafia network is "virtually running a parallel government, pushing the State apparatus into irrelevance." The report also says "in certain States like Bihar, Haryana and Uttar Pradesh, these gangs enjoy the patronage of local politicians cutting across party lines and the protection of the functionaries. Some political leaders become the leader of these gangs/armed senas and over the years get themselves elected to local bodies, State assemblies and national parliament."

The National Commission to Review the Working of the Constitution (NCRWC) has observed that criminalization has become a worrisome characteristic of India's politics and electoral system. According to unofficial studies cited by the Commission, in 1996 as many as 39 Members of Parliament, including four Ministers, faced criminal charges which included murder, rape, dacoit, abduction, assault and breach of peace. An investigation into the record of 500 persons who were candidates in the Lok Sabha elections of 1998 revealed that 72 of them had criminal proceedings pending against them. A recent report cited by the Commission says that 169 members of the Uttar Pradesh Legislative Assembly have criminal records.

The post –independent India inherited the semi-feudal structure with which modern Parliamentary democratic system was juxtaposed. The power base of British overlords was consolidated and perpetuated by rural landlords who would patronize and utilize the services of criminals. Therefore those groupings that wielded economic clout, resorted conveniently to the old game of recruiting criminals and

[4] Vohra Committee Report quoted in UIOV. Democratic reforms (2002) 5SCC 294 at p.301.

utilizing their services to lay hold upon the new power structure. There are three types of criminals who are used by politicians to perpetuate their rule. The white-collar criminals, the blue-collar criminals and there are street criminals. The white-collar workers or the bureaucrats bend rules to accommodate the ministers or the politicians starting from the district- level up to the Central Secretariat, help the politicians to get kick-backs from major purchases or on contracts, and help those to be siphoned off either to the party funds or for the politicians' personal use. The blue-collar criminalisation affects the industry and production, by which a politician can help the company to declare a lock out and get paid for the help which he has rendered, or stage a strike to affect priority production items to force the management to pay. Criminals of the third category are more active during the election time, for distributing permits, licenses and other major or minor favours including elimination of rivals or doctoring ballot-papers.

The reports, highlighted by the media (e.g. Nalini Singh's T.V. documentary films)[5], even by the Government controlled media, are quite alarming. As reports indicate, the criminals are indulging in the following activities during elections:[6]

(1) Keeping away segments of population from exercising the right to vote;
(2) Preventing the people from exercising their free will,
(3) Using criminal force to accomplish (i) and (ii) above.

This has been the main reason of decrease in the participation of enthusiastic people in the election.

Election Commission reports do not specifically make a mention of this process of criminalization. They have been clubbing all criminal activities into 'violence' and passing it on in their reports. In fact, during elections, two types of activities have been taking place:

[5] Susheela Bhan –'Criminalisation of Politics,1995.pg.96.
[6] Ibid.pg 124.

(i) activities in violation of election laws and

(ii) activities in violation of criminal laws;

The Election Commission of India has been concerned, by and large, about the violations of election laws.

The findings basically point to serious defects in the electoral system. An order issued by the Election Commission in August 1997 clarified that disqualification of a person from contesting elections to Parliament and the State legislatures under Section 8 of the Representation of the People Act, 1951 (RPA) takes effect from the date of conviction by a trial court irrespective of whether the convicted person is released on bail or not during the pendency of an appeal. However, Section 8(4) of the Act exempts sitting Members of Parliament and State legislatures from such disqualification. Further, the utility of the ElectionCommission's order in countering the scourge of criminalisation of politics is limited because it seeks to keep out only persons convicted and disqualified under the RPA.

The Commission notes that one possible explanation for the rapid criminalisation of the polity is that criminals have understood the mechanics of the electoral process and have themselves become contenders for power. Earlier, politicians patronised criminals and provided them protection from the law-enforcement agencies in exchange for the use of their muscle power during elections.

According to the Commission, early signs of criminalisation appeared after Section 77 of the RPAct. It was amended in 1974 to provide that expenditure incurred by political parties and others shall not form part of the election expenditure of a candidate, thereby paving the way for unrestricted spending in elections.

The Commission has suggested the deletion of Explanation (1) to Section 77 of the RPA so that expenses incurred by the political party and the friends of a candidate are considered part of his or her election expenses. It has also suggested that the Election Commission

be vested with legal powers to supervise, verify and investigate the election expenses of candidates and initiate legal action if they exceed the prescribed limits. State funding of elections, with sufficient safeguards, will offer a level playing field to those seeking to contest elections without money power.

4.2.2. ABUSE OF MONEY POWER

One of the most critical problems in the matter of electoral reforms is that for contesting an election one needs large amounts of money. The limits of expenditure prescribed are meaningless and almost never adhered to. As a result, it becomes difficult for the good and the honest to enter legislatures. It also creates a high degree of compulsion for corruption in the political arena. This has progressively polluted the entire system. Corruption, because it erodes performance, becomes one of the leading reasons for non-performance and compromised governance in the country. The sources of some of the election funds are believed to be unaccounted criminal money in return for protection, unaccounted funds from business groups who expect a high return on this investment, kickbacks or commissions on contracts etc. People are directly affected because apart from compromised governance, the huge money spent on elections pushes up the cost of everything in the country. It also leads to unbridled corruption and the consequences of wide spread corruption are even more serious than many imagine. Electoral compulsions for funds become the foundation of the whole super structure of corruption.

Reporting on Aspects of the **Black Economy** in India by the National Institute of Public Finance and Policy, Government supported research institution, the attention of the Government was drawn to the fact that even if economic policies such as tax and industrial import policies are changed to scale down the generation of black income, so long as there is a persistent demand for the clandestine

receipt of unaccounted money on the part of the politicians, some of whom may be already in authority and others who are likely to assume leadership, businesses have the need and the temptation to spawn black income.

As early as in 1964, the Committee on Prevention of Corruption headed by K. Santhanam had sounded a warning about money power on elections. The Committee said that the public belief in the prevalence of corruption at high political levels had been strengthened by the manner in which funds were collected by political parties, especially at the time of elections. The Committee, therefore, felt that it was essential to have a law requiring political parties to keep proper account of their receipts and expenditure and publish annually an audited statement giving details of individual receipts. The Committee also thought that those who received donations for unauthorised political parties or themselves should have to account for these in their own private accounts for purposes of income-tax.

In Common Cause case in 1996 the Supreme Court took judicial notice of the fact that political parties spend over Rs. 1000 Crores on elections and that nobody discloses the source of the money. According to a survey it is the money that drives the politics. The study commissioned by the Centre for the Study of Developing Societies – CSDS in New Delhi found that 98 Per Cent of the winning candidates in its sample of 25 constituencies belonged to categories: Super Rich, Very Rich and Rich, Fifty eight percent of all candidates also belonged to these categories. Election expenditure table is given in Annexure –c (i).

Officially, a limit of rupees 1.5 lakh has been set for a parliamentary constituency and rupees 50,000 for an Assembly constituency. These amounts were fixed over thirty years ago and they have no relation to what a candidate has to spend today if he has to meet even the minimum essential expenses. These limits have long become meaningless and currently the average expenditure is in the range of rupees 50 lakh to 1 crore for a parliamentary constituency

and rupees 10 to 20 lakh for an assembly constituency. In key constituency where the rich and powerful are involved, figure is often many times the average. This very expensive business of fighting elections has been one of the worst corrupting influences of our political system. A steep upward revision of these figures is a must in order to make them realistic.

As it is found that politicians have to depend, to a considerable extent, on funds to be supplied by business for defraying election expenses, one of the important measures to be undertaken to remove one major source of demand for black money would be to permit companies and businesses to make donations to recognised political parties out of after tax profits. This should be supplemented by State finding of election expenses.

There is **no system of auditing** the accounts of political parties in India. As a result, every political party operates in accordance with its own norms and procedures. How funds are collected, how they are accounted and how they are disbursed, all these depend on the norms and procedures adopted by each party and if there is any control system, it is entirely internal and not based on any law. As demand for funds to finance successive elections continued to grown, the country witnessed increasingly the unwholesome phenomenon of 'black money'. It has been the most regrettable development in recent years that money that money power has come to play such a dominant role in the elections to legislatures, lamented a former President of India, V.V. Giri. A rather exaggerated statement on the subject was made by a former Chief Justice of Bombay High Court who was later a Cabinet Minister to the effect that 'elected members do not represent the people; they represent money power'.

To free our electoral process from the corrupting influence of money power RPA, in section 77, prescribed a ceiling on expenditure by the candidate in connection with his election. If he spends or authorizes expenditure more than the prescribed limit, it amounts to a corrupt

practice, as laid down by Section 123(6) of the Act, and his election can be set aside on that ground under Section 100. While under section 10A of the Representation of the People Act, 1951, failure to submit an account of election expenses within the prescribed time and in the manner required under the law entails disqualification of period of three years. **No law has been passed to deal with the problem.** The Left parties have a very transparent system of party funding.

4.2.3. DONATIONS TO POLITICAL PARTIES

The tehelka expose highlights the need to clean up and make transparent the procedures followed by political parties in receiving donations from various sources.

The Tehelka expose of BJP leader Bangaru Lakman receiving money across the table was a classic example of a party functionary receiving a donation that cannot possibly be accounted for in its accounts. The BJP, however, asserted that the gift received by him from the Tehelka team had been duly accounted for in its accounts. Bangaru Laxman claimed that in the absence of the address of the donor, the party could not have legally accounted for the money. BJP treasurer Goyal told 'We give receipts only if the donors demand. In this case, everybody knows who the donor was, and as they did not want any receipt, the question of giving a receipt did not arise."[7] There is also apparent confusion with regard to who is authorised to receive donations on behalf of the party. It is pointed out that only treasurers were supposed to receive donations, V.V. Krishna Rao, the Samata Party president, on the other hand, authorises only the party's national and state presidents to receive donations. According to him, the party treasurer only keeps track of the accounts of expenditure and income, and he is not competent to receive contributions.

[7] Frontline-Vol. 18,Issue 07, march 31-April13,2001.

All political parties receive donations. In democracy parties do need donations to run their affairs. Political parties generally require large funds to fight elections. Between elections too, they require funds to run their organisations and carry out programmes. Political parties, therefore, draw funds from several sources. But there are legal requirements involved, as also norms that parties themselves have evolved to receive donations.

The simplest and the most transparent of these sources are membership subscriptions, but these may account for only a limited part of a party's needs. The BJP, for instance, invites its members, supporters and well-wishers to enroll themselves as Aajiwan Sahyogis (lifelong associates). Annual contributions were invited for the Nidhi in three categories - of Rs.1,000, Rs.5,000 and Rs.10,000. [8]The contributions could be sent to the central office in New Delhi or State offices. It was announced that the party would register the donor's name, address and contribution, and input this information in the computer at its headquarters. For some time, the party organ, *BJP Today*, published the names of such donors State-wise, without their addresses, but discontinued the practice for unknown reasons.

In the mid-1990s the party announced that all contributions to the party exceeding Rs.10,000 could be made only by cheque. But it soon discovered that this was not feasible. Laxman argued that the party had to abandon the norm when it faced difficulty raising funds for the two or three elections it faced within a short span of time.

The BJP's admission of its failure to practice what it preached should be seen in the context of the legal requirement. Evidently, contributions by cheque, makes for more transparency, which factor impedes the free flow of unaccounted money. But this does not mean that a party can accept cash contributions on the plea that not enough people are willing to pay be cheque.

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[8] Ibid.

Under a Supreme Court order (*Common Cause vs. Union of India*)[9], contributions and donations to a political party are admissible for exemption from income tax only if the party keeps and maintains books of accounts satisfactorily; it keeps and maintains records of such voluntary contributions in excess of Rs.10,000 and of the names and addresses of the persons who have made such contributions; and the accounts of the party are audited by a chartered accountant or an otherwise qualified accountant. Sub-section 4-B in Section 139 of the Income Tax Act makes it obligatory for all political parties to file income tax returns.

Though all major political parties claim that they have been filing income tax returns regularly following the Supreme Court order, it is the extent of unaccounted money that some major parties seek to mobilise that should be a matter of concern. In order to account a contribution exceeding Rs.10,000, every party should show the name and address of the donor in its account books and issue a receipt. In cases where the donors do not want to be identified, it is likely that their contributions would be unaccounted for in the party's accounts. There is at present no mechanism to establish that parties receive unaccounted donations, even though technically the parties might be fulfilling the legal requirement of maintaining books of account audited by a qualified accountant and filing income tax returns.

In the case of the Congress (I), it appears that only the treasurer receives donations. A former Congress (I) treasurer said that his party had introduced the system of issuing coupons in lieu of receipts to donors for cash contributions. These coupons do not carry the names and addresses of the donors, but only numbers, which are mentioned in the party's books of accounts. During elections, candidates are supplied campaign materials in order to take advantage of the provisions of the Election Commission order on election expenditure. Much of the cash donations come to the party during election time.

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[9] A.I.R.,2002,SC2112.

The Communist Party of India (Marxist) funds itself through a system of levies: if a member receives an income of Rs.10,000 a month, he or she should contribute Rs.250. If the member does not thus contribute for three consecutive months, it will lead to loss of membership. Members of Parliament and of the State Assemblies have to deposit their entire salaries with the party, and accept a fixed sum as monthly allowance. Besides the party goes for collections from the public, but avoids donations from big industrialists as a matter of principle. The CPI has a similar system of fund collection

4.3. NATURE AND SCOPE OF THE POWERS OF THE ELECTION COMMISSION

The Constitution of India has vested in an independent body, the Election Commission of India. Article 324 vests in the Election Commission the superintendence, direction and control of all elections in India. The framers of the Constitution empowered the Parliament and the State Legislatures to enact laws with respect to all matters relating to election. Article 327 empowers the parliament and Article 328 empowers the State legislature to make provisions with respect to elections. The Parliament under such power has enacted the Representation of People Act, 1950, the Representation of People Act,1951, The Delimitation Act,1962, the Registration of Electoral Rules,1960, the Conduct of Election Rules,1961, the Parliament (Prevention of Disqualifications),Act,1959,etc. to deal with elections to Parliament and State Legislatures.

The Representation of People Act, 1951 defines corrupt practices and other electoral offences at or in connection with the conduct of elections to the Houses of parliament and to the Houses of the Legislature of each State. The provisions are based on English Law.

The Power and Duty of Election Commission

An analysis of Article 324 which gave a general power to conduct fair election would show that it is couched in very wide terms which imply that that EC has very wide powers. The scope of this Article has been defined by the Supreme Court in a number of important cases.

By Article 324 of the Constitution the EC is vested with the power to pass orders for all contingencies not already provided for in an enacted legislation. This position was reiterated by the Supreme Court in the Mohinder Singh Gill case. The Supreme Court in [A.C. Jose v. Shivan Pillai in 1984)[10] and the Symbols Order (Kanhiya Lal Omar v. R.K. Trivedi case in 1985][11] again confirmed this residuary power of the EC. These judicial decisions establish that the EC was free to issue rules and take steps for the smooth conduct of elections. This power includes issuing necessary orders to fill the gaps left by the legislature.

In recent ADR case, the bench emphasized that 'to maintain the purity of elections and in particular to bring transparency in the process of election the Election Commission can ask the candidates about the expenditure incurred by the political parties. Further this transparency in the process of election would include transparency of a candidate who seeks election or re-election.

In the absence of parliament-made-law on disqualification and disclosure the EC's executive directions were criticized as being beyond jurisdiction and hence invalid.

In further contravention of the contention that the only Parliament had power to make necessary amendments to the election law, the Supreme Court in the ADR case[12], asserted that "if the field meant for legislature and executive is left unoccupied detrimental to pubic interest, this court under Article 32 read with Articles 11 and 142 of the Constitution can issue necessary directions to the executive to sub serve public interest".

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[10] (1984)2 SCC656.
[11] (1985) 4 SCC628.
[12] Supra11

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Another important legal question that arises from the decision is whether the Supreme Court or Election Commission had valid authority to order disqualification of the contestants. Even in the ADR case 25 the Supreme Court desisted from prescribing a disqualification. When it issued orders authorizing returning officers to reject the nomination of candidates who fail to give an elaborate affidavit disclosing their criminal, financial and educational record, did the Election Commission assume more powers that intended by the Supreme Court to read into its constitutional powers?

The Supreme Court has reiterated that Election Commission has no authority to deprive the candidates from contesting for not furnishing sufficient information. The apex court tried to explain in so many words that it was primarily upholding the right of information about the antecedents rather than prescribing a new disqualification

[13] Supra12
[14] Supra13

or empowering the Election Commission to reject the nominations on new grounds.

Even the non-furnishing of information will not lead to disqualification, at least the concerned authorities under the Prevention of Corruption Act or the Income Tax Act should verify the disclosures regarding assets in the sworn affidavits and their source. Such consequential provisions to consider the disclosures should form part of a comprehensive legislation based on the newly derived voter's right to information about the antecedents and assets of contestants. The lawmakers instead of making such legislation preferred not to respond to Supreme Court's well-considered suggestions. The demand for accountability did not find endorsement from the political parties. In a rare show of unanimity all the 21 parties rejected EC's order and Supreme Court's directives. As further reinforcement, ruling party moved a legislation, which virtually blanked out the information duties imposed by the Supreme Court.

4.4. FLAWS IN OUR ELECTORAL LAWS AND ELECTORAL SYSTEM

4.4.1. Disqualifications of persons with criminal records

There are grave incongruities in the existing provisions of sub-sections (1), (2) and (3) of Section 8 of the Representation of the People Act, 1951 (RPA 1951), illustrating the case of a rapist, convicted and sentenced to ten years' imprisonment, being disqualified only for six years under sub-section (1) and while not able to vote, being free to contest elections even while serving the last four years of his sentence in prison. Section 8 of the RPA, for instance, disqualifies a person from contesting elections if he or she has been convicted in the manner specified in sub-sections (1), (2) and (3) of the Act. Under Sections 8(2) and (3), a convicted person is disqualified for the period of imprisonment and six years thereafter. Under Section 8(1), the disqualification is only for a period of six years from the date of

conviction, whatever the term of imprisonment. Section 8(4) exempts sitting members of Parliament and the State legislatures from disqualification following conviction under any of the preceding three sub-sections if they have filed an appeal against their conviction within three months of the judgment. The exemption will be in force until the court disposes of the appeal.

The Election Commission is suggesting amendments to Section 8 since long. In 1997, it came up with an order whereby convicted persons, regardless of pendency of appeal were prohibited from contesting elections. Thus the Commission added new disqualification even though Section 8 of the RPA was silent with regard to the position of the convicted candidates if an appeal against the conviction was pending. The Elections Commission also directed the states and union territories and chief electoral officers that the disqualification of candidates under Section 8 of the RPA would commence from the date of conviction even if the person was out on bail. The Election Commission further sought information from contesting candidates with regard to the nature of offence, date of conviction and punishment imposed thereof, on affidavit.

The Election Commission highlighted some of the peculiar consequences arising from imposing a disqualification from contesting only for six years on convicts. Taking as an example the case of a person convicted for rape and punished with imprisonment for ten years, the Commission raised the following questions. Can such a convict contest an election after serving six years of the term? Or should be asked to complete full term before he can be permitted to stand for election? The EC suggested that disqualifying period of six years under Section 8 should start to run only after the prison sentence is completed. This suggestion alone was accepted and the Government proposed to bring amendment to that effect.

The Government however, proposed to disqualify those candidates who six months prior to filing their nominations had been charged by a competent court of having committed two heinous crimes, in

separate transactions, from a list specified in the draft bill. The heinous crimes included violent crimes such as rape, murder, kidnapping and dacoity. White-collar crimes such as hawala, financial fraud, charges under Foreign Exchange Management Act, charges under Prevention of Corruption Act have not been included. If the Bill had become law, this would have given rise to ridiculous position that a person charged with two heinous crimes in the same transaction would be permitted to contest. While those charged with such crimes in different transactions be prohibited. Even person charged with listed heinous crimes can contest election provided that those crimes were not committed 6 months before filing of nomination on when only one heinous crime was committed in this period. Fortunately, this draft which validated criminalization was not made into an ordinance or Act.

The incongruities in Section 8 of the RPA came into focus in **"Jayalalitha"** case.[She was convicted and sentenced in two cases under the Prevention of Corrupting Act and also some sections of the Indian Penel Code by a special court, in Oct.2000. she was sentenced to jail terms of three years of one case and two years in another].[15] The Supreme Court's Constitution Bench ruled that she was ineligible to hold the office of Chief Minister of Tamil Nadu following her conviction and disqualification under Section 8(3) of the RPA. Section 8(1), for instance, mentions 10 categories of grave offences. A person found guilty of any of these will be disqualified even if the sentence imposed by a court is not significant. How-ever, this has given rise to an anomalous situation: a person convicted for an offence under sub-section(1) and sentenced for a period exceeding six years can contest an election even while serving the sentence of imprisonment because his or her disqualification ceases to operate at the expiry of six years. This is in contrast to those found guilty of committing offences under Sections 8(2) and 8(3), who may be disqualified for a much longer

[15] Frontline, May25,2001,p.5.

period than those disqualified under Section 8(1), even though the offences mentioned in Sections 8(2) and 8(3) are considered less grave than those mentioned in Section 8(1).

Jayalalitha was convicted and sentenced to three years by a trial court. The execution of her sentence was stayed by the appellate court. But the Bench held that a stay on the execution of sentence did not amount to a stay on the sentence itself. The inconsistency between Sections 8(1) and 8(3) was left unresolved by the Bench.

There seems to be no good reason why disqualification for a lesser period should be prescribed for serious offences of the nature mentioned in Section 8(1) and a person should be allowed to contest elections even while serving a sentence of imprisonment. Therefore in all cases under Section 8 a person should be disqualified for the period of imprisonment and six years thereafter.

The Court had made it clear that it would not hesitate to strike down Section 8(4) in its entirety if it is found to be violative of Article 14. It may be appropriate to provide some protection to sitting legislators in order to avoid any situation in which the conviction of a sitting member is set aside by a higher court but the vacancy caused by his or her disqualification is filled in the meantime through elections. It is wrong to extend the protection until the disposal of an appeal by a sitting member against his/her conviction. The disqualification in such cases shall not operate for six months from the date of conviction. If the appellate court does not provide any relief within this period, the period of disqualification of the member would begin. Such protection should not be available to them if they want to contest elections that may be held after the completion of their existing terms.

The process of reform in this arena was triggered by the MP High Court in Purushottam Kaushik v. K.C. Shukla[16], when it ruled that mere filing of an appeal or revision by a convicted person did not prevent the operation of disqualification under Section 8 of the

[16] AIR 1981 SC547.

Representation of People Act, 1951. This proposition was not reversed by the Supreme Court.

The NCRWC report has made significant proposals with regard to the framing of charges in an offence that attracts a maximum punishment of five years or more. In such cases, the accused would be disqualified from being chosen as or from being a Member of Parliament or a State legislature at the expiry of two years from the time of framing of charges. The accused would continue to remain disqualified until the completion of the trial. The objection that it could be abused by a ruling party against political opponents can be taken but to allay such fears, the Commission has proposed an amendment of the Code of Criminal Procedure, 1973, in such a way that the trial in such cases would be completed within two years.

The judiciary has tried to take the initiative. The Delhi High court has ruled in recent P.I.L[17]. that the public has the right to know the criminal antecedents of the persons contesting the election to any public office. The ruling was, however, not accepted by the government of the day, and was appealed against. Recently, the Supreme Court has dismissed this appeal and affirmed the High Court's directive. But, unfortunately the political leadership of the country is in no mood to implement the court order. The political parties either have vested interest in the ever increasing criminalization or they are so beholden to the criminals that they can not think of eradicating this menace, inspite of the Courts taking the first step in this regard. The present government has stated that the decision of the Delhi High Court can not be implemented until there is a consensus among all the political parties on the issue. It is indeed a very lame excuse, aimed at inaction and delay on the part of the government.

[17] JT 2002,SC501,Civil App.2001

4.4.2. LEGAL LIMITS ON ELECTION EXPENDITURE

The present provisions of law have a significant loophole in the shape of Explanation 1 to section 77(1) of the Representation of the People Act, 1951, under which the amounts spent by persons other than the candidate and his agent themselves, are not counted in his election expenses. This means that there can be never any violation of the expenditure limits. All extra expenditure, even when known and proven, can be shown to have been spent by the party or by any friends and it remains outside of the enforceable limits. **Explanations 1 and 3 of Section 77 of the RPA are the root cause of much of the electoral corruption because with the help of these any "expenditure incurred in connection with the election 'explanation' not only permitted but encourage and legitimized the influence of big money in elections.** Explanation 3 lays down that expenditure incurred in respect of any arrangements made or facilities provided by any government servant, would not be part of a candidate's expenditure within the ceiling imposed by the law.

The Election Law prescribed punishments for several corrupt practices which include exceeding the limits of expenditure by the candidate contesting election for any legislative house. Section 123 (6) of the RPA makes the 'incurring or authorizing of expenditure in contravention of Section 77 of the Representation of People's Act, 1951 is a corrupt practice'. Section 77 makes it mandatory for every candidate at an election to keep a separate and correct account of all expenditure incurred or authorized by him or his election agent, between the date on which he was nominated and the date of declaration of the result of election booth dates inclusive. The total of the said expenditure shall not exceed such amount as may be prescribed under Section 77(3). Rule 90 of the Election Rules, 1961 prescribes varying limits of election expenditure for parliament and assembly constituencies in each of the state and union territories.

In Kanwar Lal Guptha v. Amarnath Chawla[18], the Supreme Court explained that the object of limiting expenditure is twofold. First, it should be open to any individual or any political party, howsoever small, to be able to contest an election on a footing of equality with any other individual or political party, how so ever rich and well financed it may be. Second, it is required to eliminate the influence of big money in the electoral process.

The Election Law had been amended in 1975 providing that the election expenditure of a candidate was now to be accounted for the period starting with the date of the nomination and ending with the date of declaration of result.

In Hans Ram v. Hari Ram[19] the Supreme Court had held that the expenditure must be by the candidate himself. Any expenditure made in his interest by others except the agents was not to taken note of. The Supreme Court has provided a reasonable interpretation of Section 77(1) in Kanwar Lal Guptha v. Amarnath Chawla. The court ruled that when political parties sponsoring a candidate incurred expenditure in connection with his election as distinguished from expenditure on general party propaganda, and the candidate knowingly takes advantage of it or fails to disallow it or acquiesces the expenditure. He cannot escape the rigor of the ceiling by saying that he has not incurred the expenditure but his political party has done so. The same reasons should be extended to the expenditure incurred by friends or supporters in connection with the election of a candidate.

The Expenses incurred by the agent of the candidate became a bone of contention. Consequently, when Mr. Raj Narain filed an election petition against Mrs. Gandhi alleging that she had exceeded the expenditure ceiling, Section 77(1) was hurriedly amended by promulgating the Representation of People's (Amendment) ordinance, 1974, by insertion of a explanation to the effect that.

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[18] AIR 1975 SC 308.
[19] 40 ELR 125.

Notwithstanding ay judgment, order or decision of any decision of any court to the contrary, any expenditure incurred or authorized in connection with the election of a candidate by apolitical party or by any other association or body of persons or by individual (Other than the candidate or his election agent) shall not be deemed to be, and shall not ever deemed to have been, expenditure in connection with election incurred or authorised by the candidate or by his election agent for the purpose of this subsection.

This Ordinance was later replaced by the the Election Laws (Amendment) Act. 1974. Despite this amendment, Mrs. Indira Gandhi lost her election case on several grounds including that misuse of power by a public servant and excess expenditure by the public servant which being part of the expenditure of the candidate contesting election led to contravention of Section 77(1) Mrs. Indira Gandhi preferred an appeal to Supreme Court. Before the appeal came up for hearing, another amendment was brought in with great haste.

Another Explanation was added to Section 77(1) by Election Laws (Amendment) Act, 1975 as Explanation III to the effect any expenditure incurred in respect of any arrangements made, facilities provided or any other act or thing done for any candidate by any person in the service of the government, in the discharge or purported discharge of his official duty, shall not be deemed to be expenditure incurred or authorized by the candidate or his election agent. This change helped the candidates holding positions in the Government, as it allowed expenditure to be incurred the Public Servants on the election of those candidates, whom the public servants were serving in their official capacity. This amendment was introduced to nullify the effect of the Allahabad High Court Judgment which found fault with expenditure incurred by public servants. The Supreme Court allowed for this effect by upholding Mrs. Gandhi's election in Indira Nehru Gandhi V. Raj Narain[20].

[20] AIR 1975 SC2299

It is in the powers of the Parliament to frame with regard to elections. But the law should not be framed for private benefit but for the common good for all citizens. This amendment was done for the personal benefit of Prime Minister. Similarly, giving retrospective effect to legislative amendment is accepted to be valid exercise of legislative power but for retrospective effect the law should be in operation in the past. When Amendment was passed, the appeal Filed by the Appellant and the cross appeal by the respondent were pending before the Supreme Court and were to be disposed of in accordance with that cause and not by applying the law to the facts as ascertained by the Court. According to J. Mathew, " I do not think that under Article 368 the amending body was competent to pass an ordinary law with the retrospective effect to validate the election".[21]

According to Explanation 1 to Section 77(1) of the RPA, the amounts spent by persons other than the candidate and his agent, are not counted in his election expenses. This means that there can never be any violation of expenditure limits. All extra expenditure even when known and proven can be claimed to have been spent by the party or by friends and thus remains outside enforceable limits. In view of the increasing cost of election campaigns, the NCRWC felt that it is desirable that the existing ceiling on election expenses for the various legislative bodies be suitably raised. Further the Election Commission should be required to revise this ceiling from time to time. In fixed the ceiling the EC should include all he expenses incurred whether by the candidate, his political party or his friends and his well-wishers. It should also take into account any other expenses incurred in any political activity on behalf of the candidate by an individual or a corporate entity. Such a provision should be incorporated in legislation that consequently Explanation 1 to Section 77(1) of the RPA should be deleted.

The NCRWC recommended that the political parties as well as individual candidates be made subject to a proper statutory audit of

[21] Supra,para 308,Page 2377.

the amounts they spend. 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. At the end of the election each candidate should submit an audited statement of expenses under specific heads. The EC should devise specific formats for filing such statements so that fudging of accounts becomes difficult. The audit should be mandatory and its observance enforced by the Election Commission.

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 be fixed by the Election Commission from time to time and should include all the expenses by the candidate as well as by his political party or his friends and his well-wishers and any other expenses incurred in any political activity 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.**

Transparency in the context of election means both the sources of finance as well as their utilization as are listed out in an audited statement. If the candidates are required to list the sources of their income, this can be checked back by the income tax authorities.

4.4.3. DONATIONS TO POLITICAL PARTIES

As the problem has already been discussed in the earlier part of the chapter we will focus here on the efforts being done in the direction. There has **been an amendment to the Companies Act to permit political contributions subject to certain conditions. Under Section 239 A of the Companies Act a company (excluding government companies and those less than 3 years old) can donate funds to any political party or for any political purpose to any person in any financial year, any amount not exceeding 5% of**

its average net profit during the three immediately preceding financial years. However such contribution can be made only after a resolution authorizing it is passed at a meeting of the company's board of directors. The Companies Act also requires the disclosure of the details of such contributions in the company's profit and loss accounts. Any contravention of these requirements would, under the Act, attract stringent punishment, which includes fine, extending up to three times the amount contributed, and three years' imprisonment of the office responsible for the default.

However, these provisions in the Companies Act has failed to ensure transparency of the funding process. The prospect of shareholders opposing it at the annual general meeting and getting the company bad publicity has dissuaded the corporate sector from making legal contributions to political parties. Besides, there was the threat of victimization by the winning party once it new that it received lesser funds than its rival. This amendment to the Companies Act has not had the desired effect yet. The requirement of funds for fighting elections as well as meeting the needs of political parties for other political activities, legitimate or illegitimate, has led to a heavy dependence on those operating the black economy, and these have received a return in the form of virtual freedom to carry on their unlawful activities. This linkage has resulted in numerous evil consequences for politics, society and the economy. It has led to a general lowering of ethical standards in public and personal life, and is at the root of much of the prevailing corruption in politics and administration.

It is not clear how changes in the RPA will make corporate donations any more transparent than they are now. On December 19, the Union Cabinet approved the Election and other related laws (Amendment) Bill which sought to amend the RPA to allow companies to make donations to political parties subject to provisions of the Companies Act, 1956. The Bill seeks to delete Explanations 1 and 3 of

Section 77 of the RPA, which have been found to be the root cause of much of the electoral corruption because with the help of these any "expenditure incurred in connection with the election 'explanation' not only permitted but encourage and legitimized the influence of big money in elections.

The Bill seeks to substitute these Explanations with an explanation indicating that the expenditure incurred on general party campaign by leaders of political parties on account of travel by air or otherwise shall not be deemed to be expenditure incurred or authorized by a candidate of that party or his election agent.

The Bill proposes that while computing the amount of income tax on the total income of an Indian company, the amount contributed directly or indirectly to a political party or for any political purpose may be allowed as deduction from the amount of income tax. The Bill extends a similar tax relief to individuals, Hindu Undivided Families (HUFs) and other entities or juridical persons. The corporate sector will, doubtless, welcome this provision, but it is unlikely to be an incentive for corporate to make their contributions public.

The Bill also raises the limit of income of a political party from voluntary contributions in cash from Rs.10, 000 to Rs.20, 000 under Proviso (b) of Section 13 A of the Income Tax Act, 1961. The treasurer of the political party will have to prepare a report of donations and submit it to the E.C. If he fails to do so the political party shall not be entitled to tax relief allowed under the Income Tax Act, 1961. More important, the accounts in respect of donations, together with the audited report, shall be laid on the table of both Houses of Parliament. This is expected to help greater public scrutiny.

State funding of elections and strict enforcement of the ceiling on expenditure are measures aimed to ensure a level playing field among political parties and candidates. The Bill, based on the decision of the Group of Ministers constituted to examine the Inderjit Gupta Committee report on State Funding of elections (1998), does not

address any of the Committee's recommendations. The Committee had recommended state funding of elections in kind.

The Bill, no doubt, makes a small beginning in making electoral funding of political parties a little more transparent, but it is not a decisive step in enforcing clean politics.

The Indrajit Gupta Committee has recommended state funding of parties only in kind, and not in cash. It has also left the issue of banning donations to parties by the corporate sector to be decided by Parliament. Clearly, as frequent elections necessitate the thorough milking of sources of funding, many of the political parties seem to be in search of new methods, legitimate or otherwise, to raise funds.

The relevant question here, however, is whether some changes in the existing electoral laws, including a scheme of **State funding** of election campaigns, can at east led to a fall in the evil influence of black money and money power and also lead to a fall in the number of parties, thus facilitating the growth of a few strong parties. No other democratic country has perhaps such a multiplicity of political parties as India has. Nor is it easy to find instances in other democratic countries of such uncontrolled flow of funds to parties from undisclosed sources. In 1979 as well as 1980 the Election Commission has observed in its reports on elections to Parliament and State Assemblies that in the interest of proper functioning of the parties which is essential for the survival of the country's democratic institutions, a law should be made by Parliament providing for **compulsory registration of political parties**, regulating their internal functioning and the manner of electing their office-bearers at regular intervals. Such law should also provide for periodic inspection and publication of their audited accounts. Only such parties, the Commission recommended, should be recognised for the purpose of reservation and allotment of symbols. It is also widely felt that State funding of elections is essential both on wider social and economic

considerations and for promoting equality of opportunity among political parties in elections.

Making of a false report is not covered by that section or any other section. It appears necessary rectify this omission by a suitable amendment of the law. Without proper scrutiny by the Commission followed by appropriate action where necessary, the purpose of the existing provision of the law will remain largely unfulfilled.

4.4.4. DISCLOSURE OF ASSETS AND LIABILITIES OF CANDIDATES

Expenditure and disclosures have a close link. Both are connected with making elections free form money power. Almost every committee or commission suggested that there should be limits on spending and need for revelation of assets and earnings.

The **Sum and substance of these suggestions** is as follows:

It should be made mandatory for every candidate to declare one's property and income at the time of nomination; the declaration should be made public and false declaration should be made punishable.

The Legal provisions regarding the ceiling on electoral expenses should be modified to provide for :

a) Upward revision of the ceiling to allow for expenditure at Rs. 2 per elector in the constituency and regular revision of this ceiling.

b) All expenditure including that of parties and friends should be included in calculating the expenditure; the 1974 Amendment to Section 77 should be annulled.

c) Publicity of the returns filed by the candidates in the local press ad their regular verification and auditing should be made mandatory.

In Line with the above body of suggestions the NCRWC also recommended that every candidate at the time of election must declare his assets and liabilities along with those of his close relatives. Every holder of a political position must declare his assets and

liabilities along with those of his close relations annually. Law should define the term 'close relatives'. All candidates should be required under law to declare their assets and liabilities by an affidavit and the details so given by them should be made public. Further, as a follow-up action, a special authority crated specifically under law for the purpose should audit the particulars of the submitted assets and liabilities. Again the legislators should be required under law to submit their returns about their liabilities every year and a final statement in this regard at the end of their term of office.

Parliament and several state legislatures, including of Andra Pradesh framed a code of ethics incorporating a condition that every elected representative shall declare his assets and liabilities immediately after getting elected and every year thereafter. There are no consequences for wrongful disclosures nor did provision make for scrutiny of the revelations. When all the political parties could unite for opposing a specific direction of the apex court, it is futile to expect strict adherence to a toothless code of conduct. At least, the lawmakers must be ready to create a statutory obligation of periodical declarations of assets and liabilities in the form of affidavit with provisions for verification by lawful authorities.

4.4.5. DIQUALIFICATION FOR COMMITTING THE OFFENCE OF CORRUPT PRACTICES

There is no reference in the Constitution regarding corrupt practices. Article 327 empowers the Parliament and Article 328 empowers the State Legislatures to make provisions with respect to elections. The Parliament under such power has enacted the Representation of People Act, 1950, the Representation of People Act,1951, The Delimitation Act,1962, the Registration of Electoral Rules,1960, the Conduct of Election Rules,1961, the Parliament (Prevention of Disqualifications), Act, 1959, etc. to deal with elections to Parliament and State Legislatures.

The term **"corrupt practice"** has no standard meaning which can be applied uniformly to all the statutes dealing with the subject. Therefore, the Court has to assign the meaning according to the Act and Rules framed under that Act, under which the election petition has been filed before it.

In our country, in order to conduct elections for Parliament and State Legislatures, bribery; undue influence; appeal to vote or refrain from voting on ground of religion, race, community or language and the use of or appeal to religious or national symbols; promotion of enmity or hatred between different classes of the citizens on grounds of religion, race, caste, community, or language; publication of false statement in relation to personal character or conduct of any candidate; hiring or procuring vehicle or vessel; incurring excessive expenditure; obtaining or procuring or abetting or attempting to obtain or procure any assistance of government servant and booth capturing have been included as corrupt practices.

5.4. 5.1. Impersonation

It is admitted by all parties that impersonation has been a widespread practice during the polling. However, opinion differs as to how widespread procedural refinements introduced in successive elections, the incidence of impersonation has come down, substantially. However, there is general agreement on the point **that impersonation** is a more serious problem in the urban than in rural areas where voters are known to one another and usually also to the polling agents of the candidates. This is not so in urban areas, particularly in metropolitan cities and other large urban centers.

Rule 28 of the Registration of Electoral Rules, 1960 provides for the issue of identity cards to voters with photographs affixed on them, but only in such areas as may be notified for the purpose by the Election Commission. Identity cards were, in fact, issued on an experimental basis in the State of Sikkim for the 1980 elections. However, only about 80 percent of the voters could be photographed. The scheme

was extended to Nagaland and later partly to the State of Meghalaya. Since all these State have relatively small populations, it was thought that the scheme could be easily implemented. But the fact that all these States have vast mountainous tracks and people live in far-flung areas, the percentage of the coverage of the scheme was not satisfactory enough. **The experience of these States, however, show that identity cards with photographs affixed can become successful only when the scheme covers every voter. The political parties as a whole appear to support the introduction of the scheme. They would, however, like to implement it in stages, with the metropolitan cities to begin with.**

5.4.5.2. Booth Capturing

Removing ballot boxes from polling stations forcibly by supporters of one candidate and driving away the supporters of other candidates and thus all the votes in a particular polling booths are forcibly deposited in the ballot box in favour of the candidate on whose behalf the crime is committed is called **'booth capturing'**. This menace had its origin during the second general elections in 1957. By 1967 it was practiced in several constituencies. The Election Commission has stated that in the General Elections of 1971 there were eight cases of removal of ballot boxes in the State of Bihar organized by gangs of anti-social elements, two cases in the State of Jammu and Kashmir and one case in the State of Haryana. In 1989 election electoral malpractices were much more pronounced in several part of the country. The State of Bihar was worst hit by this criminalization. During the Seventh General Elections to Lok Sabha and to a number of Legislative Assemblies, Bihar topped the list, where 21 polling stations in six Parliamentary constituencies were affected. In the eleven cases, the ballot boxes were snatched away from the polling officials in spite of the best arrangements for safe guarding them by posting a number of policemen, often armed with firearms. But in spite of such arrangements, riotous mobs armed with deadly weapons attacked the polling stations, overwhelmed the security forces,

threatened the polling and presiding officers and forcibly removed the ballot boxes.

During the seventh General Elections, it was reported, that there were at least 66 reported cases of booth capturing where the Election commission had ordered fresh poll or re-poll. In addition to these cases of re-poll or fresh poll, there have been reports of interference with polling in some other States also. For example, there were reports from the State of West Bengal about such interference with the polling in ten polling stations but no fresh poll was considered necessary.

The election commission's report on the seventh General Elections to the Lok Sabha and to a number of Legislative Assemblies lists the Parliamentary constituencies and polling stations where because of violence, booth capturing, etc, re-poll had to be ordered, the report of the Commission mentions that in order to eradicate the evil of booth capturing, the commission had issued detailed directives at the time of the elections held in 1980. But the Commission notes: 'It is a matter of regret that the Returning Officers and the Presiding Officers in respect of a number of constituencies where the problem of booth capturing is chronic did not follow the directions fully in letter and spirit and failed to report cases of abnormal voting in terms of the Commission's directions soon after the poll was over. Consequently, the Commission's effort to eradicate the evil of booth-capturing did not produce the desired effect.'[22]

There have also been cases of **'silent' booth capturing.** This is a novel form of aberration of electoral behavior in which the very officers who are expected to insure orderly polling become parties to booth capturing. They never report the matter to the Election Commission and hence the Commission is unable to take any remedial action.

[22] Our constitution,Government and politics by M.V.Pylee

4.4.5.3. Cast and Communal Hatred-

Provisions of law relating to corrupt practice of appeal on the ground of religion, caste, etc. is a peculiar feature of Indian Election Law. In S.R. Bommai V. U.O.I.,[23] the Court pointed out that Sec. 123[3] of the R.P. Act dealing with the corrupt practice of appeal on the ground of religion is not confined to appeal to the candidates religion. In R.Y. Prabhoo V. P.N. Kunte[24], it was clarified by the Court that for soliciting vote for a candidate, the appeal prohibited that which is made on the ground of religion of the candidate for whom votes are sought, and when appeal is to refrain from the voting for any candidate, the prohibition is against an appeal on ground of religion of that other candidate. It was held that the provision is not violative of either Article. 25 or Article 19[1][a] of the Constitution.[25] In Z.B. Bukhari V. B.R. Mehra,[26] the Court examined the role of religion in modern world and observed that modern man permit his religion which should be essentially his individual affair to invade what are properly the spheres of law, politics, ethics aesthetics, economics and technology.

While interpreting Sec.123[3] of the RP Act , the Supreme Court took the view that an appeal to vote for a candidate owing to the reason that he is a member of the same caste as that of the electors[27], appeal to vote for getting more representation to a particular caste or religion in the legislature[28], canvassing for votes of a particular tribe showing that a candidate belonging to that tribe is contesting in another constituency under the label of the organization which fielded the candidate for whom the votes of the tribes are sought[29], soliciting the votes of members of a religion stating that a particular candidate is the best person to protect the interest of that religion[30], statement by

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[23] A.I.R. 1994 SC 1918.
[24] A.I.R. 1996 SC 1113.
[25] Subhash Desai V. Sharad J Rao, AIR 1994,SC2277.
[26] AIR 1975 SC 1788.
[27] Bishwanath V. Sachindanand AIR 1971 SC 1949.
[28] Kanti Prasad V. Purushottamdas AIR 1969 SC851.
[29] Lalroukung V. MaokhoLal Thangjom 1969UJ SC 12.
[30] Kultar Singh V. Mukhtiar Singh AIR 1965 SC141.

a Muslim candidate that another candidate could not be a true Muslim at all since he represented all that was against Muslim religion and belief,[31] publication of a statement containing the request to vote against a Brahmin candidate, highlighting the exploitation done by that community in the past[32] and exploiting the religious sentiments of a tribal group towards a candidates election symbol[33] would come within the purview of corrupt practice of appeal on the ground of religion.

The word 'Hinduism and 'Hindutva' were repeatedly used in the disputed election speeches which formed the basis of the cause of action in the election petition, the Court made an attempt to find out the meaning of the words. The approach of the Supreme Court had generated some controversy. It said that that 'Hinduism and 'Hindutva' are not necessarily to be understood and construed narrowly, confined only to the strict Hindu religious practices unrelated to the culture and ethos of the people of India, depicting the way of life of the Indian People.[34] But it is very unfortunate, in spite of the liberal and tolerant features of 'Hinduism' recognized in judicial decisions; these terms are misused to promote communalism during elections to gain any unfair political advantage. Any misuse of these terms, must therefore, be dealt with strictly.

The 1951 Act, also requires amendment to make **coercion and intimidation of voters,** which are now widely prevalent in many parts of the country, an electoral offence. It is one of the main reasons for not exercising voting right by enthusiastic people.

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[31] Z.B. Bukhari V.,B.B.Mehra Air 1975 SC1788.
[32] Ram Swarup Verma V. Omkar Nath 1970 # SCC 783.
[33] Shubnath V. Ram Narain AIR 1960 SC148.
[34] Ibid at 1131.

4.5. QUESTION OF REPRESENTATIONAL LEGITIMACY

Winning by minority vote: The multiplicity of political parties, combined with our Westminster based first-past-the-post system results in a majority of legislators and parliamentarians getting elected on a minority vote. In other words, they usually win by obtaining less than 50% of the votes cast, i.e. with more votes cast against them than in their favour. There are States where 85% to 90% of the legislators have won on a minority vote. At the national level, the proportion of MPs who have won on a minority vote is over 67% at an average for the last three Lok Sabha elections. In extreme cases, some candidates have won even on the basis of 13% of the votes polled.

In a pluralistic society such as ours, some political parties have found it advantageous to develop a vested interest in progressively appealing to narrower and narrowing loyalties. Clearly, if a candidate can win on less than one-third share of the votes polled, he does not need to generate a wider appeal.

It is strange that most people of the constituency do not vote for the particular candidate who becomes their representative. Whose representatives are such candidates when a majority of voters did not want them? The seriousness of this issue has generated suggestions from many quarters focused primarily on some possibilities.

It has been said that this principle of representative ness will be fulfilled if the elected representatives win on the basis of 50% plus one vote. If, in the first round, no body gets over 50% of the votes polled, then according to this view, there should be a run-off contest held the very next day or soon thereafter between the top two candidates so that one of them will necessarily win on the basis of 50% plus one votes polled. Several representations from various organizations favored this option to achieve the objective of better representative democracy. The Chief Election Commissioner is reported to have confirmed that the task of run-off elections can be managed. Actually, the run-off vote is analogous to a re-poll. There is no revision of

electoral rolls, no fresh nominations, no fresh campaigning or the like. The Commission is of the view that there are substantial advantages of following the policy of 50% plus one vote. On the one hand, it resolves the problem of inadequate representation. On the other, it also makes it in the self-interest of various political parties themselves to widen their appeal to a wider electorate. It can help push political rhetoric in a direction of mobilizing language might take on comparative 'universal' tone as opposed to 'sectoral' tones of the present day. With the need to be more broad-based in their appeal, issues that have to do with good governance rather than with cleavages and narrow identities might start to surface in the country.

Despite the suggested merits of this system, the Commission refrains from making a positive recommendation for its acceptance straightaway, as the Commission cannot put out of consideration certain apprehensions expressed by several sections, particularly, in regard to the implications of a repoll. The pros and cons of the proposal need and merit a closer and more careful evaluation.

The NCRW Commission while recognizing the beneficial potential of this system for a more representative democracy, recommended that the Government and the Election Commission of India should examine this issue of prescribing a minimum of 50% plus one vote for election in all its aspects, consult various political parties, and other interests that might consider themselves affected by this change and evaluate the acceptability and benefits of this system.

4. 6. MENACE OF INDEPENDENT CANDIDATES

Apart from political parties recognized and unrecognized, there have been a large number of independent candidates at every election. Their number was rather negligible in the first three general elections, 1952, 1957 and 1962. Thereafter their number began to swell in an abnormal manner. For instance, there were 2694 and 3746

candidates in 1980 and 1984 respectively for the parliamentary elections. The 1984 Election showed that only one out of 758 independent candidates could be elected. Only five of them in all could succeed to reach Parliament. And for every independent candidate elected, 749 lost their deposits.[35] The situation in the State Assembly elections was not different. In some cases it was even worse. For example, in one assembly constituency in the state of Tamil Nadu, there were as many as 308 candidates. This is a mockery of democratic elections and has no parallel anywhere else in the world. The Election Commission has been making recommendations to the Government to pass suitable legislation to curb this menace of independent candidates, most of whom are non-serious and even frivolous.

A large number of independent candidates make serious administrative problems, such as large number of additional symbols at short notice (for, each candidate has a symbol which is printed against his name on the ballot paper), ballot papers of considerable length to be printed, many polling agents to be accommodated in the booths and the counting centers, etc.

Among the recommendations of the Election Commission to curb the menace of independent candidates, the following deserve serious consideration:

1. Raising the security deposit to ten times the present amount (That is, Rs. 5,000 for a Parliamentary candidate and Rs. 2,500 for an Assembly candidate);
2. Increasing the minimum percentage of votes required for refund of security deposit from one-sixth to one-fourth;
3. Disqualification of a candidate who fails to secure at least 20 per cent of the valid votes;
4. Denial to independent candidates of facilities like priority allotment of telephones, immunity from requisition of their motor

[35] M.V.Pylee – Our Constitution

vehicles, stopping supply of paper at subsidised rates for printing their posters, etc.

In a decision of the Supreme Court on Rajiv Gandhi's election to the Lok Sabha in 1981, the Court has drawn particular attention of all concerned to the menace of independent candidates which has assumed great proportions. 'Experience shows that a large number of independent candidates contest the elections with a view to making out grounds for challenging the election.[36] The presence of a large number of such candidate results in confusion for the millions of illiterate and ignorant electors who vote on the basis of symbols printed in the unduly long ballot papers. In the instant case, out of 14 candidates who contested the election, 11 including the appellant contested as independents, and they polled a paltry number of votes. This shows how serious these candidates were. During the arguments the appellant glibly stated that he had contested the election to the offices of President and Vice-President and that he would be reforming society and the election law. The situation causes anxiety to us and we hope that Parliament will devise ways to end the menace of independents.

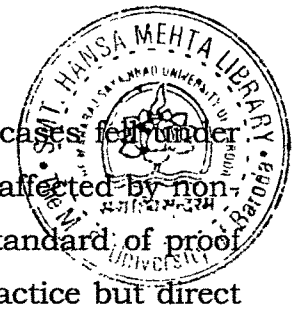
4.7. ROLE OF THE JUDICIARY

Our law is based on English law. However, foreign precedents have not played any decisive role in the interpretation of election laws. The Act of 1951 is quite extensive in its operation and its provisions have received interpretation from HC and Supreme Court s. Hence we have developed our own precedents on election matters and the same have continued to be followed in subsequent decisions. The legislation relating to corrupt practices being technical in nature, the judicial verdicts have generally gone in favour of the returned candidate. The court have set aside the election of the returned candidate in a very few cases depending upon the category of individual corrupt practice. For example, Rajendra Prasad Jain's case seems to be the leading

[36] Ibid.

exception where the Supreme Court set aside the election of a returned candidate on the ground of bribery. On the contrary, cases of corrupt practice of publishing false statements of facts in elections have been set aside in more cases. Similarly, very few cases have been set aside on account of excessive election expenditure as compared to corrupt practices of undue influence and making of appeals on ground of religion and caste. In Dasrao Deshmukh V.Maharashtra [(1995) 5 SCC 139] where a candidate declared in his election speech and canvassing materials held to be vitiated by the corrupt practice committed within the meaning of sub-section 3A of section 123 of the R.P. Act. While in Subhash Desai V. Sharad Rao [(1994) Supp.(2) SCC 446], Mr. Ram Jethmalani argued that a call given to the voters to vote for a candidate, who served the interests of the Hindus could not be held to be a corrupt practice. The Supreme Court said that freedom of religion does not include the freedom to invoke religion in electoral matters. The question of the validity and of the interpretation of sub-section 3 of section 123 came up for consideration in three cases, namely Ramesh Prabhu V. Prabhakar Kashinath Kunte[1996) 1 SCC130], Manohar Joshi Vv.Nitin Bhauuurao Patil [1996) 1 SCC 169] and Ramchandra G. Kapssssse V. Harbansh Ramakbal Singh[(1996) 1 SCC 206]. High Court of Bombay had held that Prabhu, Joshi and Kapse had committed corrupt practice as defined in sub-section 3 of section 123 of the RPA and their elections to the Legislature were invalid. But Supreme Court on appeal upheld the Court's decision in Ramesh Prabhu but reversed those in Joshi and Kapse. Supreme Court now require playing such a positive role and has to not merely to decide disputes between two parties but more importantly has to arculate Constitution al philosophy. Cultural, religious and regional pluralism is the backbone of Indian nationalism. We must not to be complacent about them.

In case of booth capturing there is hardly any case where the election appears to have been set aside. One reason which can be assigned for this seems to be that booth capturing has been made a corrupt



practice since 1989 only. Prior to that, such type of cases fell under undue influence. The decision of the court is usually affected by non-availability of reliable evidence as well as the high standard of proof required by it. We know that bribery is a corrupt practice but direct evidence to prove the same is seldom available as bribe is usually given with utmost secrecy. The implied consent of a candidate was held to be proved only in such cases where the wrong acts had been committed with the knowledge or in presence of the candidate.

In fact, the courts have interpreted the law in literal sense. Cases like that of Ghashi Ram, Amar Nath Chawla received a detailed judicial examination of the provisions of corrupt practices. The general trend that emerges from a large number of cases decided by the apex court have remained in favour of the returned candidate, who are seen as representing the popular will of the electorate. The difficulty in collecting sufficient evidence in such cases has not been appreciated by the courts in true sense of the term. The resulting effect has been that most of the election petitions have continued to be dismissed on one ground or the other.

Election Petitions

The Representation of the People Act, 1951 has made elaborate provisions for the adjudication of election disputes. Till the amendment of the Representation of the People Act in 1968, vesting the jurisdiction to try election petitions in the High Courts, election petition were heard by election tribunals. The jurisdiction of the Court was barred by Article 329(b) in Mohinder Singh V. Chief Election Commissioner case (AIR 1978 S.C. 851.) if the order of Election Commissioner was passed in the process of the election. In Ponnuswami V. Returning officer, Namakkal(A.I.R. 1952 SC 64) Supreme Court held that the word 'election' is used in a wide sense.

Under the existing law, election petitions on alleged corrupt practices or any illegality in the election process are permitted only

after the declaration of results. Once the election machinery is put into action and the election process has started, no one can stop it under any plea; no one can get an order of a court to settle a disputed matter pending the election. All such matters should come up before the High Court after the election in the form of election petitions. There is also provision for appeal to the Supreme Court from the High Court. Often these cases take a long time to be settled finally. Such undue delay in finally settling the matter takes away the very value of the provision. But under the present law there is no time limit.

In the case of Rajiv Gandhi's election to Lok Sabha in 1981, referred to above, the Supreme Court pointed out this defect of the law in strong terms. **The Court stated that 'Parliament should consider amending the law to prescribe a time limit for enquiry into allegation of corrupt practice to ensure that the valuable time of Court is not consumed in election matters which by efflux of time are reduced to mere academic interest.'** An election petition, the Court said, is a process necessary to hold enquiry into alleged corrupt practice. But there should be some time limit for holding this enquiry. 'Is it in the public interest', the court asks, 'to keep the Sword of Damocles hanging over the head of the returned candidate for an indefinite period of time as a result of which he cannot perform his public duties and discharge his obligations to his constituents? We do not mean to say that the returned candidate should be permitted to delay the proceedings and then seek to get the case dismissed on the ground that it is time-barred. Ways and means should be found to strike a balance between ascertaining the purity of an election and preventing waste of public money and time.'

1. For this purpose all election petitions should be taken up simultaneously by different judges and if need be retired judges of High Courts should be appointed ad-hoc for this purpose.

2. There should be no appeal to the Supreme Court or the order of High Court except by special Leave under Article 136 of the Constitution.

The election to the legislative bodies is the basic feature of all democratic governments. However, the method and machinery for the conduct of elections may differ from country to country. Similarly, the problem to eliminate corrupt practices may also differ due to various reasons, e.g. the nature of society, literacy rate, the legal framework and its enforcement and so on. In the United States of America the Constitution of respective States enshrine the guarantee of free and fair elections. However, it cannot be denied that some of the problems are common to many democratic countries. Since, our roots of election law are based on the English law, it becomes important, to draw comparisons and contrasts not only from theoretical point of view but also from practical experiences. Under the English law, the field is occupied by the English Representation of People Act, 1983, which makes the election agent as the focal point for fixing responsibility regarding receipt and expenditure in election. Howeve, the foreign law has very little role to play in the Indian context as we have specific legislation governing the field since 1951.

4.8. EFFORTS MADE TO REFORM THE ELECTORAL SYSTEM

The question of bringing about comprehensive changes in the election laws and electoral processes has been receiving the attention at various levels right from the time of the first general election. The most recent official exercises in this regard have been:

1. The Goswami Committee on Electoral Reforms (1990)
2. The Indrajit Gupta Committee on State Funding of Elections (1998)
3. The Law Commission's report on Reform of the Electoral Laws (1999).
4. The Election Commission's comments on the recommendations.

In spite of such undesirable developments and valuable suggestions of several commissions there has been no tangible effort to bring about substantial electoral reforms during the last two decades.

In 1969 the then Law Minister of India assured Parliament that a comprehensive amendment of the electoral law would be made. Two years later, both the Houses of Parliament set up a Joint Committee for the same purpose. The Committee submitted two reports in 1972. But no progress was made thereafter either under the Congress Government headed by Indira Gandhi or the Janata Government headed by Morarji Desai which succeeded it in 1977. The matter came up again in Parliament when in 1980 the Law Minister declared that electoral reforms were under consideration. However, nothing happened until 1985. On January 31, 1985 at the time of passing the anti-defection law, Prime Minister Rajiv Gandhi said "This bill is the first step towards cleansing our public life. We will be taking other steps, electoral reforms, other reforms and you have my assurance that we will carry the whole opposition with us in these forthcoming decisions that we will have to take".[37] The Prime Minister's assurance was subsequently incorporated as policy in the address of the President to the joint session of Parliament.

Emphasizing the **need for electoral reforms**, the Election Commission of India in its annual Report to Parliament for the year 1985 states: "In the light of experience gained during the Lok sabha elections held in December 1984, and the Assembly elections held in March 1985, the Commission had made a number of **proposals for electoral reforms** to ensure purity of elections and to find solutions to some of the problems faced during these elections. These proposals suggested amendments in law for elimination of non-serious candidates, ban on contesting elections from more than two constituencies, disqualification of persons with criminal record, punitive measures to check disturbance at election meetings, measures to prevent fraudulent filling of nomination papers and

[37] Subhash Kasyap-Anti-defection Law and Parliamentary Priviledges.

effective measures to check the evil of booth capturing. These proposals were sent to all the recognized national and state parties for obtaining their views. The Commission's proposals together with the opinion received from the political parties with the Commission's comments there on were sent to the Government to enable them to formulate their views on Commission's recommendations and discuss these with the political parties. These recommendations along with their other recommendations made from time to time earlier, were discussed with the Secretary, Ministry of Law on May 1, 1985. Decisions are awaited."

The recent attempt in this regard was the introduction of the Constitution 80th Amendment Bill 1993 and the Representation of People Amendment Bill, 1993 in Parliament which sought to decline religion from politics. The Bill sought to introduce Article 102 A and 191-A, a modified article 28-A and suggested other consequential amendments in the legislation. The Bill however could not see the light of the day because of strong opposition from almost all the political parties except the Congress. The recommendations of these recognized bodies as well as the amendments suggested in the 1993 Bill need to be incorporated with in the provisions of the law. The Election Commission, which has been assigned the tremendous responsibility of supervising elections for ensuring is fairness may find numerous problems and difficulties in the absence of any proper guidelines provided by the law. The Model Code of conduct evolved by the Commission has no binding force in the eyes of law. Therefore, its enforceability depends on the individual personality of the Chief-Election Commissioner and other person associated with the process. Article 324 which gives residuary powers to the Election Commission operates only in the field left untouched by the Legislature. Even these powers may not prove to be effective unless there is a proper legal framework and guidelines formulated for its operation. The Election Commission has also been given advisory power to remove or reduce the period of disqualification arising out of corrupt practice. The power

though binding in nature is a judicial power and can be exercised by the court at the time of disposal of the case.

Government could not resist the pressure from the Court, society, media and growing opinion for voter's right to information. Despite the earlier attempts to avoid disclosure of information by candidates, the Government came out with an Ordinance, which allowed for disclosure at the nomination stage. However, all the other directions from the Supreme Court were specifically rejected. It was however; different from the draft discussed above ironically in making this legislative reform the Government did not just reverse the decisions of the Supreme Court. It also ignored the suggestions of NCRWC.

That Ordinance replaced by an Act in 2002, contains a disclosure clause which added a new Section 33A to the RPA. It says :

1) "A Candidate shall apart from any information which he is required to furnish, under this Act or the Rules made there under, in his nomination paper delivered under sub-section (1) of Section 33 also furnish the information as to whether :
   (i) He is accused of any offence punishable with imprisonment for two years or more in pending case in which a charge has been framed by the court of competent jurisdiction.
   (ii) If he has been convicted of an offence (other than any offence referred to in sub-section (1) or sub-section (2) or covered in subsection (5) of section 8), and sentenced to imprisonment for one year or more.
2. The candidate or his proposer, as the case may be, shall at the time of delivering to the returning officer the nomination paper under subsection (1) of Section 33 also deliver to him an affidavit sworn by the candidate in a prescribed form verifying the information in Subsection (1).

3. The returning officer shall, as may be after the furnishing of information to him under sub-section (1), display the aforesaid information by affixing a copy of the affidavit delivered under subsection (2) at a conspicuous place at his office for the information of the electors relating to a constituency for which the nomination paper is delivered.

The ordinance totally protected the candidates from disclosing the assets and liabilities at the time of nominations. It added Section 44B with a direction that it will have retrospective effect that is 2nd of May 2002 the date on which the Supreme Court pronounced judgment in the ADR case.

Section 33B provided as follows:

"33B, -Notwithstanding anything contained in any judgment, decree or order of any court or any direction, order or any other instruction 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 this Act or the rules made there under".

The effect of this section will be that except for information on criminal accusations no other information with regard to financial standing or educational background needs to be given. Another positive feature of the Ordinance is that the rule, which was earlier indicated in the code of conduct, has now been made a legal provision Chapter VIIA under headline "Declaration of Assets and Liabilities" is added with Section 75A. Though the voters have been denied the information, at least, the assets disclosure code has became a legal rule.

ADR, Lok Satta and PUCL filed a writ petition challenging the constitutionality of the Ordinance. First, the petitioners contended,

that the requirements of disclosure arose from the rights of voters guaranteed by Article 19(1) 9(a) of the constitution, which was negated and hence Section 3 of the impugned Ordinance has clearly hit by Article 13.

Second, the impugned Section 3 was violative of Article 324 of the Constitution, which vests the power to conduct elections with the Election Commission? This has been held in several cases including the ADR case, and Common Cause (A Registered Society) v. Union of India[38].

Petitioners also contended that the Ordinance violated principles of parliamentary democracy which required free and fair elections. The Supreme Court has held in ADR case, Keshvanand Bharati v. State of Kerala, P.V.Narasimha Rao v. State, Kihoto Hollohan v. Zachilluu and Others, [39]that parliamentary Democracy and free and fair elections were basic features of the constitution. They also contended that the impugned section was illegal since it sought to expressly nullify and set side a judgment of a court, without altering the basis of the judgment.

The Supreme Court struck down the amendments as unconstitutional. The Bench comprising justice M.B. Shah, Justice P.V. Reddy and Justice D. Dharmadhikari questioned the Parliament's legislative competence to ask the state or its instrumentality to disobey the court's orders. The legislature the court ruled could not declare that the law declared by the Supreme Court was not binding. The amended RPA can be described as a 'half –hearted attempt' of the Government to fight the use of money and muscle power in elections. The Parliament with all the political parties almost unanimously passed this Act which was invited an adverse response from the

[38] JT 2002,94) SC 501,Civil App. 2001. and AIR,2001,SC 2112.

[39] Supra

Supreme Court. The court was right in nullifying the controversial Section 33B and striking down the provisions, which denied the voter's right to information.

The Bench allowed that a legislature was entitled to retrospectively change the law which formed the basis of a judicial decision. This power was, however, subject to constitutional provisions. Therefore, the legislature could not enact a law which was violative of fundamental right. The voter had a fundamental right to know the antecedents of a candidate and this right was independent of statutory rights under the election law.

As the amended Act was found to curtail the right of the people to know about their candidates, the court directed a prospective rectification. The Bench further held that Section 33B on the face of it was beyond legislative competence, as the Supreme Court had earlier held that voters had a fundamental right to know the antecedents of the candidates. Further the Act did not entirely cover the directions issued by the court. On the contrary it provided that candidates would not be bound to furnish certain information which the court required to be submitted.

He said the right to vote would be meaningless unless citizens were well informed about the antecedents of a candidate. The Supreme Court said that a blanket ban on the dissemination of information by the candidates at the time of filing their nominations was impermissible. The right to information should be allowed to grow. Exposure to public scrutiny was one of the known means for getting clean and less polluted persons to govern the country. The voter must have necessary information.

The Supreme Court has taken a major step in the history of electoral reforms with regard to voter's right to be informed about the

antecedents of a candidate. These directions need to be appropriately consolidated in a duly amended RPA.

Several commissions have studied and made very valuable suggestions to stop criminalization, reform the poll process and provide for a real democracy with free and fair opportunity to voters to elect their representatives. However, the legal actions of the Government and the Opposition "show a singular lack of interest in the reform process. Whether ruling or opposition, all political parties are one in not plugging the loopholes in the electoral law and practices, be it disclosing their financial assets or liabilities, or preventing criminals from entering legislatures. What is required is not merely cosmetic changes but a comprehensive legislation that can reform and strengthen the process of free and fair democratic elections. Electoral malpractice originates in the fact that intermediary political institutions and the institutions of the civil society fail to perform their functions. Consequently the institution of election has acquired a centrality it must not have in a healthy democracy. Legislative acts of electoral reforms can become meaningful and effective only if they become a part of a wider movement of democratic consolidation in the arena of civil society and politics.

5.9 CONCLUSION AND SUGGESSIONS

There is urgency for electoral reforms in India because there has been no serious attempt at reforming the existing system during the past few decades. The credibility of the democratic system itself is at stake in the absence of such reforms. All political parties are in favour of electoral reforms. In fact, they are all committed to bring about reforms. Some of them have even included electoral reforms as an item in their election manifestoes. The Law Minister of Government of India made a statement in Parliament in 1986 that suitable legislation would be brought forward by Government for this purpose. They had also promised to introduce a Code of Conduct which would guide the

conduct of all concerned with elections, especially political parties. The fact that there is already a substantial measure of consensus among the different political parties on electoral reforms has created a favorable atmosphere. What is now needed is to capitalize it and get the reforms embodied in law.

Voter's Right to Information

It is needless to state that democracy is a part of the basic structure of our Constitution. And the rule of law and free and fair elections are basic features of democracy. The decision-making process of a voter includes his right to know about public functionaries who are required to be elected by him. Right to know is part and parcel of the concept of 'freedom of speech and expression. Such right to information of the voter, the Supreme Court found to be a part of the fundamental right to freedom of speech and expression. Further in a parliamentary democracy, free and fair election is part of the basic structure of the constitution. This requires that the voters be informed about the antecedents of the candidates. In realization of this right to information the Court directed the Election Commission to seek information from the candidates on affidavit about their criminal record, assets and liabilities and educational qualifications as a necessary part of the nomination paper.

SPECIAL COURTS FOR SPPEDY TRIAL OF ELECTION OFFENCES

Election petition should be decided within six months from the date of the Institution of election petition. Generally, the ordinary courts take long time to decide election petitions in the usual course. Raj Narain filed election petition against Indira Gandhi, then Prime Minister in 1971 and it was decided four years after by the Allahabad High Court. Establishment of the special Courts would not be violative of principle of equality under Art.14 of the Constitution if these are set up for speedy trial.

Amendments

In matters of disqualification on grounds of corrupt practices, the President should determine the period of disqualification under Section 8A on the direct opinion of the EC and avoid the delay currently experienced. This can be done by resorting to the position prevailing before the 1975 amendment to RPA, 1951.

Code of Conduct

For Governments and politicians in power and it should have some binding force or legal sanction. For years there has been a model code of conduct, which did not have a legal sanction, which sought to ensure that the Government of the day and the political party in power did not use the advantages of office to influence the voters unfairly. This included a bar on the announcement of new schemes benefiting the voters once the election process had been set in motion.

Re-Constitution of the Election Commission

At the time the Constitution was adopted, it was envisaged that the Commission could consist of more than one member [(Article 324 (2)]. But for many years we have had only one Chief Election Commissioner. The Joint Committee of Parliament on amends the law to include more members in the Election Commission. The Government accepted that recommendation and increased the number to include two additional Commissioners.

There are certain constraints and irritants in the matter of providing necessary where with all for the effective discharge of its functions and powers. It will be imperative to consider seriously some necessary constitutional provisions to fill up some of the gaps. On a short term basis the commission lacks powers which are necessary for the maintenance of its autonomy. It is felt that the commission should also be governed by identical constitutional provisions, as are applicable to the Secretariat of the Parliament , Supreme Court, Comptroller and Auditor General of India, Union Public Service

Commission, etc. to enable it to have an independent secretariat and the electoral machinery of its choice to aid in its function. In a federal set up, it may not be desirable for the Commission to assume direct disciplinary control over officers of State Governments. Nevertheless in the interest of fair elections suitable measures are required to be taken to meet this problem.

COMPULSORY VOTING

If voting would become compulsory, the election result would truly reflect the will of the people. It has been found that in some polling booths though the percentage of votes was as low as 12%, the one receiving the largest number of votes was declared elected. It may be that such a person got elected on the strength of the votes of 6-7% of the electorate. How can such a person be really taken to represent the will of the voters attached to that booth?

One thing is sure that if we want every citizen to exercise the right to vote we will have to improve nature of polling environment, security system and difficulties experienced in casting vote and create an atmosphere of safety and develop awareness among masses. Together, we should also develop modern and easy machinery for voting. Then only we can think of being successful in achieving this aim.

We should also not forget that the main purpose of election is to bring into office the right type of people to govern the country. In this context, the remarks of jurist Shri Nani Palkhiwala are very apt. "The duty of a citizen is not merely to vote but to vote wisely." He has gone to the extent of stating that "a right man in a wrong party is preferable to the wrong man in a right party."[40]

Introduction of Electronic Voting

The Election Commission has recommended the introduction of electronic voting with a **view to reducing malpractice and also improving the efficiency of the voting process.** It may not be

[40] D. Sunder Ram – Indian Democracy: Prospects and Retrospects.

practicable to introduce electronic voting and cover the country as a whole in the first attempt itself. The size of the country, the number of polling booths involved and the ability of a predominantly rural, illiterate population to make use of such modern devices will have to be taken into consideration. The additional cost involved also is an important factor to be kept in view. Nevertheless the case for introducing electronic voting and its gradual extension in a phased manner with proper planning is strong enough. The existing electoral law needs suitable amendment for this purpose.

Curbing the Role of Money –

- It is an essential step to curb many of the present day evils in the electoral process. Scandinavian countries have cheaper electoral process and state funding.

The following steps, if speedily implemented, would check the role of money in the elections:

1. Election expenses, now having only a restricted scope under law, should cover all election expenses incurred before, during and after the elections.
2. Failure to lodge account of the election expenses should entail disqualification for five years as against three years as at present.
3. The electoral laws should be so amended as to include the expenses incurred by the political party in a constituency for the furtherance of the chances of its own candidates, in the election expenses of the candidates himself.
4. Submission of falls returns of election expenses should be declared a corrupt practice and the Election Commission should make a selective scrutiny of the returns of the candidates to detect uncounted and unauthorized expenditure.
5. Donations from private companies should be fully accounted for under a system of compulsory accounting of such donations. The

donations themselves should be limited to a stipulated proportion of the declared and should be subject to audit.

6. A ban should be imposed on unauthorized expenditure by clubs, associations, etc., with penal provisions for contravention.
7. Audit of the accounts of every recognized political party should be made compulsory. The audit should be done by an independent body of auditors appointed by Election Commission.