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## **ELECTION FUNDING IN INDIA – FORMING PATHWAYS INTO THE WORLD OF CORRUPTION**

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Being the World's biggest democracy, India undoubtedly should envisage the true spirit and credo of free and fair elections with the power of selecting leaders rests in the hands of the populous. In a country with a population of 1.24 billion,<sup>49</sup> the responsibility of political parties is and the need for reliable and honest leaders is indispensable. From forming policies controlling the economic and social sanctions of the Indian population to formulating statutory welfare schemes and ensuring the implementation of the same, the leaders of the country play an imperative role in shaping a rapidly burgeoning country.

This brings us to the essential part played by the very selection process by which these leaders are elected. Elections in India play a pivotal role in the finding a group of leaders to help attain the country's popular goals. Unfortunately, financing of elections by corporate and others with vested interests resulted in the nexus between politicians and businessmen lobbying to protect their interests and this has long tarnished the image of the Indian Polity ever since 1950.

Political parties receive massive funding that have not been accounted for and remain a secret due to the lack of transparent election laws. Funds flow in from individuals with black money like businessmen, corrupt government officials and politicians hoping to protect their economic interests. The authenticity and sources remain unaudited because those in power are under obligation to protect the interests of those who funded their election campaign. Further the parties cement a stronger vote bank and leads to a vicious cycle in which the politicians sustain their own and other businessmen's interests in return of financial aid to win elections. This thoroughly undermines the

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<sup>49</sup> Ministry of Home Affairs, Government of India, *Census of India-Population Finder*, [http://censusindia.gov.in/PopulationFinder/Population\\_Finder.aspx](http://censusindia.gov.in/PopulationFinder/Population_Finder.aspx), [accessed on: 1 September 2013].

needs and the interests of the common man in the topography of Indian democratic governance.

This paper has attempted to comprehensively deal with the various propositions attached to financing of election campaigns and the sources of the same. The relationship between this financing and power that leads to corruption has been exposed in the light of legislative reforms. The legislative accountability mechanism to audit such financing has been substantiated upon along with the autonomy of the Judiciary in playing a protective role in safeguarding democratic interests. Lastly, certain measures to curb such financing bred corruption and these have been highlighted to provide a refreshed view on the prevailing problematic situation in India.

### **HISTORY OF ELECTION FINANCING IN INDIA**

Initially, financing of elections in India was restricted to contributions of individuals, which were further supported by corporate contributions that were limited and to be accounted for. In 1951, the Representation of People's Act put a cap on the limit of election campaigning expenses along with the introduction of disqualification of candidates exceeding such limits.<sup>50</sup> Meanwhile, black money generated as an after effect of high tax regime of 1950s, which could not be accounted for in banks otherwise, had been pumped in scrupulously for financing the elections. The Santhanam Committee and the Wanchoo Committee brought this to light<sup>51</sup>.

In 1968<sup>52</sup> to prevent corporate intervention in the electoral system a ban was established on political parties receiving corporate donations<sup>53</sup> that were not substituted by any form of state funding for campaigning. This in turn increased the reliance on black money for such expenses and was detrimental to the success of the corporate donation ban. The

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<sup>50</sup> Gowda, Rajeev M.V., and E. Sridharan, 'Reporting India's Party Financing and Election Expenditure Laws', *Election Law Journal*, Volume 11, Number 2, 2012, <http://casi.sas.upenn.edu/system/files/Gowda-Sridharan,+ELJ+paper,+Reforming+India's+Party.pdf> [accessed on: 1 September 2013].

<sup>51</sup> Committee on Prevention of Corruption, 1962 was headed by K Santhanam; The Wanchoo Committee was appointed in 1971 to examine and suggest legal and administrative measures for unearthing black money and countering evasion and checking avoidance.

<sup>52</sup> Tummala, Krishna K., *Combating Corruption, Lessons out of India*, [http://www1.imp.unisg.ch/org/idt/ipmr.nsf/ac4c1079924cf935c1256c76004ba1a6/8d7b05bc0b50a162c1257599003ae46d/\\$FILE/Tummala\\_IPMR\\_Volume%2010\\_Issue%201.pdf](http://www1.imp.unisg.ch/org/idt/ipmr.nsf/ac4c1079924cf935c1256c76004ba1a6/8d7b05bc0b50a162c1257599003ae46d/$FILE/Tummala_IPMR_Volume%2010_Issue%201.pdf), [accessed on: 31 August 2013].

<sup>53</sup> See *supra* n.3.

control over financing the elections was further fortified by the Supreme Court judgment in *Kanwar Lal Gupta v. Amar Nath Chawla*<sup>54</sup> that laid down the inclusion of party expenses toward a candidate, in his or her total election expenditure. However in 1975, an Amendment was made to Explanation 1 of Section 77 (1) of the Representation of People's Act to not include expenses unsolicited by the candidate in his total expenditure. In 1979, an exemption on wealth and income taxes was granted to political parties on their filing of annual returns on donations and also on revealing the identity of such donors.<sup>55</sup>

Later, in 1985 the Companies Act allowed corporate donations through Section 293A. This donation could not be more than five percent of the total net profits of the company and were to be audited by the company's board of directors.<sup>56</sup> This was followed by the suggestions of the Dinesh Goswami Electoral Reforms Committee, 1990, that suggested a limited state funding for basic campaign expenses along with banning corporate donations completely. However no alternative for sources of electoral expenditure was mentioned in the report and also the maximum expenditure was not tabulated for.<sup>57</sup>

The rise of liberalization in 1991, brought to focus corporate donations and this was reflected by the Supreme Court's decision in the *Common cause*<sup>58</sup> judgment ordering political parties to file income tax returns. Explanation 1 of Section 77 of the Representation of People's Act was interpreted by the Court to be applicable only on the submission of audited accounts of income and expenditure of the parties. This was an attempt to introduce transparency into the political system. In 1998, a partial state subsidy was granted to political parties (by allowing them limited free radio airtime) and the Indrajit Gupta Committee on State Funding of elections suggested supply of such subsidy in the form of kind (petrol, limited supply of raw material for campaigning). It suggested that parties that fail to file their return should not be granted

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<sup>54</sup> AIR 1975 SC 308.

<sup>55</sup> Oberoi, N., 'Reforming Election Funding', *NUJS Law Review*, 2008, available at [http://www.nujslawreview.org/pdf/articles/2008\\_1/namit\\_oberoi.pdf](http://www.nujslawreview.org/pdf/articles/2008_1/namit_oberoi.pdf) [accessed on: 1 September 2013].

<sup>56</sup> Kafaliya, Anand B., *Democracy and Election Laws*, Deep and Deep Publications, 2007 Edition, at p.380.

<sup>57</sup> Venkatesan, V., 'For state funding of elections', *Frontline*, Vol. 16, No. 04, Feb. 13 - 26, 1999, available at <http://www.frontline.in/navigation/?type=static&page=flonnet&rurl=fl1604/16041100.htm> [accessed on: 2 September 2013].

<sup>58</sup> 1996 SCC (4) 33.

such subsidy.<sup>59</sup>In 2003, the declaration of criminal records on candidates was made mandatory and most importantly the Election and other related Election Laws Amendment Act was passed which made personal and corporate donations fully taxable and mandates political parties to disclose their donations above Rs. 20,000.<sup>60</sup>

## **SOURCES OF FINANCES**

In India, often the actual expenditure of political parties on elections is ten times the quoted expenditure. This exposes the involvement of large-scale money in assuring the very essence of democracy. This makes it essential to scrutinize the sources of such financing. Often such sources of financing are illicit and unaccountable. They comprise primarily of black money and corporate contributions pooled in with the money of rich and large scale businessmen looking to escalate their profits. The abundance and availability of such large sums of money exposes the precarious existence of our democracy.

### ***Construction Contractors and Real Estate Business Individuals***

Contractors undertake a service or provide labor and materials under a contract. This includes builders, development investors and covers contractors dealing in construction and maintenance of roads, hospitals, airports, food distribution and subsidies and other government responsibilities under an agency contract. There is a huge contractor – politician’s nexus that weaken the democratic system. However contractors must not be bemused by Private organizations, as contractors are usually individuals (individual businessmen) or a smaller nexus of individuals with a common goal. It can be safely established that a quid pro quo relationship exists between such political parties and contractors especially those involved in the realty sector.<sup>61</sup> Politicians who are already established and ventured into business form informal coordination relationships with contractors and compel them to give them money for electoral spending.

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<sup>59</sup> Committee on State Funding of Elections, *Report*, 1998, available at <http://lawmin.nic.in/ld/erreports/Indrajit%20Gupta%20Committee%20Report.pdf> [accessed on: 2 September 2013].

<sup>60</sup> Ministry of Law and Justice India, Government of India, *Background Paper on Electoral Reforms*, December 2010, available at [lawmin.nic.in/legislative/ereforms/bgp.doc](http://lawmin.nic.in/legislative/ereforms/bgp.doc) [accessed on : 2 September 2013].

<sup>61</sup> Kapur, D. and Milan Vaishnav, *Quid Pro Quo: Builders, Politicians and Election Finance in India*, [http://www.cgdev.org/files/1425795\\_file\\_Kapur\\_Vaishnav\\_election\\_finance\\_India\\_FINAL.pdf](http://www.cgdev.org/files/1425795_file_Kapur_Vaishnav_election_finance_India_FINAL.pdf), [accessed on: 2 September, 2013].

In return, this political nexus grants them a levy in the form of tax exemption, subsidized raw material and further their business strategies by twisting the law and pumping in money to contractors. Contractors also find politics a viable entry to protect their economic interests, leading to a pool of contractors turned politicians who rely heavily on hefty financing of elections.<sup>62</sup>

### ***Corporate donations***

This is the fertilization of a symbiotic relationship between corporate houses safeguarding their interests and politically hungry leaders. Corporate donations are the sum of money granted or donated to a particular party to support its electoral expenditure in the hope for an exponential increase in the amount generated by such corporates through the government. Political Lobbying is often used by corporates to literally “trade” in elections. Their contribution has gone through various phases imposed by the law and remains legal in India today although it is taxable and cannot be more than 5 % of net profits of the company. Foreign currency cannot be pumped in to fund the party as specified under Clause (e) of Section 2 of the Foreign Contribution (Regulation) Act, 1976, (49 of 1976)<sup>63</sup>.

Yet during elections every penny has a magnified value and is essential to the fate of the political party relying upon it. Corporate houses including old and established companies also have a say in the leaders who are elected and take office. By ensuring that they have sufficient representation in the Parliament, corporates push for the passage of bills to further their interests or stall them to inhibit laws preventing increase in their profit margins. Usually major national parties and big corporate houses share this electoral trust relationship to ensure that the balance of power lies between them and both make good money.<sup>64</sup>

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<sup>62</sup> K.C. Suri, *Democratic Process and Electoral Politics in India*, <http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/2690.pdf> [accessed on: 29 August 2013].

<sup>63</sup> Samya Chatterjee, ‘Campaign Finance Reforms in India, December 2012’, *ORF Issue Brief*, [http://www.orfonline.org/cms/sites/orfonline/modules/issuebrief/attachments/Issue47\\_136075437968.pdf](http://www.orfonline.org/cms/sites/orfonline/modules/issuebrief/attachments/Issue47_136075437968.pdf) [accessed on: 29 August 2013].

<sup>64</sup> ‘Election Finance in India’, *The Calibre*, September 12, 2012, available at <http://thecalibre.in/in-depth-current-affairs/election-finance-in-india/092012/?p=1286/> [accessed on: 29 August 2013].

***Individual Donors***

Individual donors are citizens who are not part of an organization but voluntarily contribute towards supporting the political party. The reason behind such contribution is due to the faith of the people in certain leaders and their political agenda. In India, there is no cap on the maximum contribution an individual can make in support of a party. They are also exempted from any tax return under Section 80GGC of the Income Tax Act, 1960.<sup>65</sup>

Contributions may range from meager amounts to a few crores. Individual donation can be made by corporates or contractors in their individual capacity and not in their organizational identity, thereby eroding the law meant to limit their contributions.

***Black Money (as separately identified)***

This is the term used for illicit money that is unaccounted for. Often this is the money made by evading taxes and used in under-table transfers. Black money cannot be saved in banks and is usually stalked in tax havens. This money however is in circulation and is not easily traceable due to the ambiguity of its origin and transfer. In India, the heavy taxing regime of the 1950's catalyzed the generation of black money system<sup>66</sup>.

Politicians in power also, make their fair share of black money by taking bribes and accumulating assets while in office. Often they borrow money from close aids in the promise of reimbursing them at a high interest rate after coming to power. This goes unnoticed due to the lax implementation of electoral laws and the massive bribery of officials.

Moreover such money is often pumped into the electoral system to buy votes and makes an unworthy leader win elections. This poses a serious problem towards the democratic set up of India.<sup>67</sup> When candidates present their expenditure, this black money is

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<sup>65</sup> Global Integrity Network, *India: Integrity Scorecards, 2009 Assessment*, <http://report.globalintegrity.org/India/2009/scorecard/26>, [accessed on: 2 September 2013].

<sup>66</sup> Raju Narayana Swamy, 'Analysis of current initiatives in monitoring of election related expenditure', *Indian Law Journal*, Volume 4, Issue 2, 2007, available at [http://www.indialawjournal.com/volume4/issue\\_2/article\\_by\\_rajunarayana.html](http://www.indialawjournal.com/volume4/issue_2/article_by_rajunarayana.html) [accessed on: 2 September 2013].

<sup>67</sup> Singh, Tavleen, 'Black Money in Politics', *The Indian Express*, March 13, 2011, available at <http://www.indianexpress.com/news/black-money-in-politics/761674/> [accessed on: 29 August 2013].

ignored and continues to be in circulation in the system. It is used to buy electorates, fix elections, and bribe opposition parties. High-risk investments of black money are made during elections in the hope of the party coming to power and fermenting individual interests giving rise to a vicious cycle that ultimately weakens the democracy.

While this malevolence has been recognized and criticized by the Election Commission and Supreme Court, it continues to plague India and can only be eradicated by extremely stringent electoral laws accompanied by transparent implementation and transparent accounting. The lack of state spending on campaigns is often cited as a cause of this black money cycle.

### **MONEY-WINNING CAUSAL RELATIONSHIP SOWING THE SEEDS OF CORRUPTION**

In the above discussion, the symbiotic relationship between politicians and their financiers has been brought to light thereby illuminating upon the consequent corruption that erodes the country's resources. This vicious cycle of corruption had almost become the face of disgraced Indian Electoral system. Primarily the objective of such heavy financing of elections is to win the vote banks. In India this is done either by distribution of free goods, often liquor, rice and electronics to win the votes of an illiterate voter who is incapable of making an informed choice. He then votes for a party that gives him a momentary material gain.<sup>68</sup>

This luring is similar to bribing and wipes away any rationality in the minds of the poor voter who feels obliged to vote for the party giving him a bigger "bribe". This further catalyzes the role of heavy financing in elections as political parties try to out weight the free goods of cash, kind and services to the populous.<sup>69</sup> The bribery is often so blatant that political parties distribute cash to the voters in demand of their votes. According to the election Commission Rs. 3400 crores is distributed as bribes to voters<sup>70</sup> and this is

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<sup>68</sup> 'Free liquor to woo voters, keep party workers happy', *Live Mint*, April 26, 2009, available at <http://www.livemint.com/Politics/aSgEYX34RK9hdJjFmjiNfP/Free-liquor-to-woo-voters-keep-party-workers-happy.html> [accessed on: 29 August 2013].

<sup>69</sup> Editorial, 'Corruption and Fairy Tale Elections', *Economic and Political Weekly*, Vol 47 No.1, Jan 7, 2012, Also available at <http://www.epw.in/editorials/corruption-and-fairy-tale-elections.html> [accessed on: 29 August 2013].

<sup>70</sup> Kumar, Shailendra, *Countervailing Black Money*, August 23, 2012, available at [http://www.taxindiaonline.com/RC2/inside2.php3?filename=bnews\\_detail.php3&newsid=15698](http://www.taxindiaonline.com/RC2/inside2.php3?filename=bnews_detail.php3&newsid=15698) [accessed on: 29 August 2013].

an appalling amount. However the cost of distribution of such benefits is a mere fraction of the benefits, further then both the financial and political parties reap after the elections.

Another tactic of winning election is the use of manpower. Where bribery and the direct avail of money fails, political parties resort to violence in the form of manhandling voters, threatening to cause hurt to them, their families and their property. In certain states the same manpower is used to capture election booths and caste votes in favor of the party. This is possible only when the political parties and leaders maintains a close relationship with goons and criminals. Often candidates themselves have a personal background of criminality.<sup>71</sup> Such a close relationship between criminals and politicians can only be maintained by interdependent monetary benefits. Elections are often seen as an apposite opportunity for criminals to enter politics. The abundance of their unaccounted wealth resources facilitates this, as political parties are willing to give them tickets, in order to cement a win.

The root cause of this is the availability of money to finance such illicit electoral activities. The money that flows in such transactions is often the taxpayer's money that has been pocketed by the political nexus through the lax implementation of welfare policies.<sup>72</sup> With the increase in the tax payers base the money available for elections also increases proportionately. This gives an incentive to politicians to boost the economy as the money available to them increases and their other funders including corporates and contractors are equally benefited by this robust economic growth.<sup>73</sup> This narrows the scope of our democracy to a puppet show run by money and controlled by this nexus of politicians and their financiers.

Once in power, the leaders have the authority to formulate the laws and also look into its implementation. This gives them a compounded opportunity to indulge in malpractices and this has been solicited by the various scams that India has recently

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<sup>71</sup> Verma, Arvind, 'Policing Elections in India', *India Review*, 2005, available at <http://indiandemocracy08.berkeley.edu/docs/Verma-PolicingElectionsIndia.pdf> [accessed on: 3 September 2013].

<sup>72</sup> Vaishnav, Milan, 'Resizing the State', *Caravan*, October 1, 2012, available at <http://caravanmagazine.in/perspectives/resizing-state> [accessed on: 3 September 2013].

<sup>73</sup> Sasidharan, Keerthik, 'Funding Democracy', *Caravan*, January 1, 2012, available at <http://caravanmagazine.in/perspectives/funding-democracy> [accessed on: 3 September 2013].

witnessed like the 2G Scam and the Coalgate scam. The leaders control the laws that challenge their authority or pose a threat to the interests of the groups that brought them to power. Also the chance of making money through frauds or pocketing a fraction of the expenditure of Government schemes comes to them on a silver platter. The recent Food Security Bill scheme and its resource allocation audits show the presence of politicians and their puppets eating away the tax payers' money thereby synthesizing the country's downfall<sup>74</sup>. This catena between corruption and frauds caters for the ample generation of black money. This black money is further invested in realty projects or business innovations of the financing nexus (mentioned earlier ) and the growth of this capital is invested in the next elections. This makes the stakes of every election rise while the quality of the democratic setup suffers. On the other hand, this system ensures a steady source of funding to political parties who in a term of power make enough black money to feed the financing nexus and fund a portion of their electoral expenditure.

### **INCREASING CONTROL EXERCISED BY THE LEGISLATURE TO CONTROL THE SITUATION**

In India, the Election Commission of India is the apex authority that has the power to control and regulate elections and electoral spending<sup>75</sup>. It is an autonomous and independent body that upholds the virtues of a democracy. The improvement in the current situation is only possible by the diligence of the election commissions. The strict laws are passed by the legislation aid this. However the laxity lies in their implementation. Be that as it may, there has been a slow but constant metamorphosis of the Indian electoral system assisted by the legislature and the Election Commission.

An attempt to treat such malaises can be seen by the evolution of laws ranging from the Representation of People Act 1950, 1951, Presidential and Vice Presidential Act 1952, Conduct of Election Rules 1961.<sup>76</sup> However these acts failed to address key issues of the flow of money in elections and the use of manpower to win elections. Section 58(A) of

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<sup>74</sup> Tej, Krishna, *Food Security Bill 2011*, [http://www.indialawjournal.com/volume6/issue\\_1/article10.html](http://www.indialawjournal.com/volume6/issue_1/article10.html), [accessed on: 3 September 2013].

<sup>75</sup> Chief Election Commissioner of India, *2009 General Elections: Challenges and Opportunities*, [http://eci.gov.in/ECL\\_Main/DJ/Speech%20for%20European%20Business%20Group.%20Mumbai%20-%2012.01.2010.pdf](http://eci.gov.in/ECL_Main/DJ/Speech%20for%20European%20Business%20Group.%20Mumbai%20-%2012.01.2010.pdf), [accessed on: 3 September 2013].

<sup>76</sup> Chopra, Joginder K., *Politics of Election Reforms in India*, Mittal Publications, 1998 Edition, at p. 293.

the RPA<sup>77</sup> allows for the punishment of the offenders. The Election Commission endorsed this following the Justice Tarkunde Report and the Dinesh Goswami Commission Report.<sup>78</sup> The 61<sup>st</sup> Constitution Amendment Act 1988 introduced the prohibition on distribution of free liquor to voters in the polling area. Following this in 1989, an amendment made to Act 1 of Section 58 of the Representation of Peoples Act demanded the adjournment of polling in cases of booth capture.<sup>79</sup>

Since 1971, the Election Commission has issued a Model Code of Conduct that tabulates how parties and leaders must behave during elections. It prohibits the launching of new financial or welfare schemes and keeps a check on the use of Government machinery.<sup>80</sup> The 2003 Amendment to Representations of Peoples Act guided by the Vohra committee Report mandates candidates to disclose their criminal records if any and declare the assets of his spouse, children and him.<sup>81</sup>

To ensure transparency, Section 29 (A) of RPA under Article VIII of rule 3(i) rule 3(xix) mandate financial audit of parties by the ECI.<sup>82</sup> The expenses of elections is regulated by Section 77 of the RPA and prohibits any form of excess expenditure, thereby keeping a check on the illicit financing of elections by black money and the nexus of corruption. Unfortunately Explanation 1 of this act does not include expenditures made by people apart from the candidate like his party or supporters. This subverts the scope and strength of the said section and must be amended.

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<sup>77</sup> The Representation of the People Act, 1951, Section 57(A).

<sup>78</sup> See *supra* n.3.

<sup>79</sup> Sharma, Smita, *Electoral Reforms in India*, <http://www.preservearticles.com/2011100314425/comprehensive-essays-on-the-electoral-reforms-in-india.html>, [accessed on: 2 September 2013].

<sup>80</sup> See *supra* n.17.

<sup>81</sup> 'Help us contain crime in Politics', *The Times of India*, July 20, 2003, available at [http://articles.timesofindia.indiatimes.com/2003-07-30/patna/27179998\\_1\\_amendment-political-parties-entry-tax](http://articles.timesofindia.indiatimes.com/2003-07-30/patna/27179998_1_amendment-political-parties-entry-tax) [accessed on: 4 September 2013].

<sup>82</sup> Mishra, Nripendra and Nidhi Sen, *Political Party reforms: Bedrock for the way ahead on electoral reforms*, March 2, 2012, available at <http://publicinterestfoundation.com/2012/03/02/political-party-reforms-bedrock-for-the-way-ahead-on-electoral-reforms/> [accessed on: 4 September 2013].

In 1985 of the Indian Companies Act 1969, an amendment made to section 293, allowing 5 percent donations of net profits of three years to the election funds provided such donations must be mandatorily disclosed.<sup>83</sup> Though this proves to be an impediment in democratic process as in most cases since donors want to maintain their political inclination unexposed and secret, it should be considered as a right step to unless and until a better method is identified.

## JUDICIAL INTERVENTION

The Judiciary in India especially the Supreme Court of India has assumed a position of great importance in this increasingly controlling environment associated with the interconnected world of politics and finance. It has exemplified its autonomous status as a reformatory institution in several cases. The Supreme Court in *Kanwar Lal Gupta v. Amar Nath Chawla* interpreted Section 77 of the Representation of Peoples Act such that as to include the candidates personal expenses in his total election expenses while the section provides for a separate account for this. This is in contravention with the object of the section and has been interpreted by the Supreme Court to include all expenses. Following this judgment in 1975, the RPA was amended and Explanation 1 was appended which stated that the expenditure of an unauthorized party should not be within the ambit of total electoral expenditure of the candidate.<sup>84</sup>

This was challenged in *P. Nalla Thampy Terah v. Union of India*<sup>85</sup> where the court agreed that the presence of Explanation 1 weekend Section 77, but it was not for the Court to lay down policies with respect to elections. It was held to be a valid amendment, as it did not violate any Constitutional provisions. However in *C. Narayanswamy v. C.L Jaffer Sharief*<sup>86</sup> held that Section 123 (6) of the RPA makes Explanation 1 repugnant if it is in contravention with Section 77. The court also urged the parliament to take note of this repugnancy and formulate much needed amendments to the act. This judgment was reiterated in *Gajanan Bapat v. Dattaji Meghe*, which further endorsed that political parties must disclose their finances and their sources and how this money was spent. Explanation 1 of Section 77 was in the news again with

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<sup>83</sup> See *supra* n.7.

<sup>84</sup> *Ibid.*

<sup>85</sup> 1985 AIR 1133.

<sup>86</sup> SCC 170 1994.

respect to the Common Cause v. Union of India case that dealt with the transparency of fund collection and expenditure of parties. The Supreme Court asked all political parties to submit their accounts of expenditure for every candidate and mandated the filing of Income Tax returns.<sup>87</sup> This matrix of Supreme Court decisions shows the involvement of the courts as a balancing agent and guardian angel of the democratic set up in India.

The judiciary has also played a quintessential role in electoral reforms in India as seen in Peoples Union for Civil Liberties & anr. v. Union of India<sup>88</sup> in which under the direction of the Supreme Court the Election Commission made it mandatory for the electoral office to submit affidavits disclosing the assets and liabilities of candidates.

On the filing of a Public Interest Litigation by the Association for Democratic Reforms the Supreme Court made it mandatory for all candidates to provide for affidavits containing information on assets as mentioned in the People's Union Case.<sup>89</sup> Section 125 A of the RPA enables this. The Supreme Court has also laid down that convicts who are serving a term in prison cannot stand for elections. With the help of the Right to Information Act and the constant effort of individuals and NGO's the Supreme Court has been able to instill a limited degree of transparency into the electoral system. This will echo to the lower courts as well. Hence while the role of courts is laudable, we are still miles behind from the goal of a free and fair democratic election.

### **A FRESH APPROACH TOWARD THE CURRENT SCENARIO**

To ameliorate the grim reality of Indian polity and its electoral system and practices it is paramount to instill greater transparency in the system. Transparency at every level of the election process must be instituted with the public's demand for stricter laws, amendments to current incompetent law and an active role of the judiciary in safeguarding the rights and interests of the common man. A few suggestions towards the same with respect to the theme of this paper have been mentioned below. Firstly, the nature of the democracy must be reflected upon and people must be educated about their right to make an informed choice especially in rural areas with a high illiteracy rate.

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<sup>87</sup> See *supra* n.3.

<sup>88</sup> 2003 SCC 399.

<sup>89</sup> Anand, Rahul, *Ushering democratic and electoral reforms*, February 22, 2011, available at <http://www.thebetterindia.com/2432/association-for-democratic-reforms/> [accessed on: 3 September 2013].

The ethos of the polity in India needs to be refurbished and this is possible only by imposing a stronger Model Code of Conduct. This should be given statutory status<sup>90</sup> and be penal in nature. While it may be safe to assume that moral and humane duties are blatantly ignored, it would be much tougher to ignore a Model Code of Conduct that is penalizing. Next the candidates' criminal record must be scrutinized and those with past criminal records must not be allowed to stand for elections.<sup>91</sup>

Presently, the Supreme Court has held that those in prison are banned from standing for elections but this must be extended to those with criminal records as well. To begin with we could start this prohibition on those who have committed more heinous crimes like murder and rape. If such candidates are put up in the candidate list the party should be disqualified from taking part in the elections. If no criminal case has been filed 6 months prior to the elections the candidate can contest elections provided he has no prior record. If there is a false fact stated in the affidavit the candidate must not be allowed to stand for elections for a minimum of five years<sup>92</sup>. On the implementation of stricter rules, there will surely be a great opposition but in the long run it will prove to be fruitful in changing the persona of India's electoral system.

Secondly, issues regarding the financing of political parties must be audited and scrutinized by not just the government agencies but must be made public so that it is accessible to the common man. Here a controversial change in the system would be to ban or restrict the contributions of corporate donations, contractor's donation and money granted by individuals. Instead there could be a state funding of elections in which every recognized national and state party is given funding from the state in the form of kind and not cash which can be used to furnish election expenses. This will ensure a more transparent system along with terminating the concept of "buying" elections.<sup>93</sup>This is in consonance with the constitution too. This can also support the

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<sup>90</sup> *Electoral Reforms in India: An urgent Need*, January 2, 2012, available at [http://www.policyproposalsforindia.com/article.php?article\\_id=79&languageid=1](http://www.policyproposalsforindia.com/article.php?article_id=79&languageid=1) [accessed on: 3 September 2013].

<sup>91</sup> Election Commission of India, *Proposed Electoral Reforms*, 2004, available at [http://eci.nic.in/eci\\_main/PROPOSED\\_ELECTORAL\\_REFORMS.pdf](http://eci.nic.in/eci_main/PROPOSED_ELECTORAL_REFORMS.pdf) [accessed on: 4 September 2013].

<sup>92</sup> See *supra* n.12.

<sup>93</sup> Shah, Sabir, 'Election Commission yet to check finances of political parties', *The News*, April 1, 2013, available at <http://www.thenews.com.pk/Todays-News-2-168699-Election-Commission-yet-to-check-finances-of-political-parties> [accessed on: 30 August 2013].

revoking of Explanation 1 of Section 77 of the Representation to Persons Act as it does not restrict individual contributions of unauthorized sources in the total electoral budget of the candidate, thereby offsetting the section itself<sup>94</sup>. There must be an auditing mechanism that analyzed the sources of income, expenditure and payment of tax by political parties.<sup>95</sup> An echelon system of auditing overlooked by the Auditor General should be established to maintain checks and balances and check corruption in the auditing system. These accounts should be made public for greater scrutiny. All resources received by the parties must be included in the candidate's expenses and must be taxed. There should also be an upper limit on such expenses and the auditing bodies to ensure these funds are not misappropriated to win elections should scrutinize the reasons of expenditure.

Lastly and most importantly people must be educated about their rights and must be coaxed to cast their vote or this democracy shall fail at the grass root level without countering any of the malpractices in the system.

## CONCLUSION

J.P. Naik said that *“Power is the spoiler of men and it is more so in a country like India, where the hungry stomachs produce power hungry politicians ”* and very rightly so. This statement is apt to describe the power hunger of Indian politicians. Power in India is not just in reference to political and societal influence but resonates to soaring financial gains. This is where the Indian polity and the electoral system are flawed. Politics, power, money is substitutive and this brings the nexus of political leaders and their financial supporters together. Each of them has the sole objective of multiplying his power – financial or political. In India it is often both. The major chunk of the vote bank remains illiterate even today and can be bought over by the distribution of freebies that only ridicules the democratic setup. However no law or its instrumentation can encounter the powerful nexus of leaders and funders that share a symbiotic relationship of monetary gain through elections and coming to power. The rampant corruption in India, as exposed by the recent scams and the abundance of black money sources from tax havens abetted by the taxing regime in India further provide resources to this nexus to protect its interests while clomping upon the basic epitome of the Indian Democracy.

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<sup>94</sup> See *supra* n.17.

<sup>95</sup> See *supra* n.43.

It is only unto the public, the common man who is still the majority in the country and has the power to oust this nexus by uniting and demanding stricter laws, auditing and transparency in the electoral system. Voters must be educated of their rights in a democracy and be made vigilant to recognize any discrepancy. Education of this must be granted in schools, colleges and advocated through the media by radio or television ads along with unbiased newspaper articles.

India is still the world's largest democracy but it will take great effort on the behalf of the people, the Government and the political nexus to make it the World's most successful democracy. The power lies within us and we must discern this possibility and make it our reality.

# Critique

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**Paternity – Presumption or Truth? : *Nandlal Wasudeo Badwaik v. Lata Nandlal Badwik & Anr***  
[2014 STPL(Web) 6 SC ]

*P S Janardhanan, GLC Thrissur*

**Doctrine of *Stare Decisis v. Per Incuriam*** with Special Reference  
to *Basheer M Picha v. Indian Bank* [2013(2) KLT 951]

*A K Mariamma, GLC Calicut*

