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Indian Elections – Campaign Finance Reform

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The health of a democracy depends on the choice of representatives and leaders, which in turn is directly linked to the way political parties function and elections are conducted.

While we have outstanding men and women in public life, flawed electoral process is increasingly alienating public-spirited citizens from the political and electoral arena. The persons best equipped to represent the people find it impossible to be elected by adhering to law and propriety. If elected, decent citizens cannot survive for long in elective public office without resorting to, or conniving in, dishonest methods. Even if they survive in office, their ability to promote public good is severely restricted.

Indian people have often been changing governments and elected representatives. However, this change of players has little real impact on the nature of governance. Even if all those elected lose, and all losers are elected, the outcome is not substantially altered. This sad situation calls for a change in the rules of the game, and citizens cannot be content with mere change of players.

Election expenditure - root cause of corruption

Excessive, illegal and illegitimate expenditure in elections is the root cause of corruption. Often the expenditure is 10 to 15 times the legal ceiling prescribed. Among elected representatives, almost everyone violates expenditure ceiling laws. Most election expenditure is illegitimate and is incurred in buying votes, hiring hoodlums or bribing officials. Abnormal election expenditure has to be recouped in multiples to sustain the system. The high risk involved in election expenditure (winner-take-all process), the long gestation period required for most politicians who aspire for legislative office, the higher cost of future elections, the need to involve the vast bureaucracy in the web of corruption (with 90% shared by the large number of employees) - all these mean that for every rupee of expenditure, fifty to hundred rupees has to be recovered to sustain the system. One rupee election expenditure normally entails at least a five-fold return to the politician. To share five rupees with the political class, the rent-seeking bureaucracy has to recover about Rs.50. In order to extort Rs.50 from the public, there should be delay, inefficiency, harassment, humiliation and indignity worth Rs.500 heaped on the innocent citizens! To take the example of a major State, it is estimated that about Rs.600 crores (6 billion) has been spent by the major political parties in the recent general elections for Parliament and Legislative Assembly in 1999. This expenditure can be sustained only when the returns are of the order of at least Rs.3000 crores (30 billion), which in turn is translated as extortion of Rs.30000 crores (300 billion) from the public by the vast bureaucracy. The inconvenience, humiliation, the lost opportunities and the distortion of market forces are often worth ten times the actual corruption. Unaccounted and illegitimate election expenditure is thus translated into huge corruption siphoning off money at every level. In addition, this ubiquitous corruption alters the nature of political and administrative power, and undermines market forces, efficiency and trust on a much larger scale, retarding economic growth and distorting democracy. Cleansing elections is the most important route through which corruption and maladministration can be curbed.

US - India comparison

The expenditure incurred by parties, candidates and political action committees in the recently concluded elections for the presidency, both houses of congress and gubernatorial offices in the United States is estimated to be of the order of \$ 3 billions. About half of this is for issue advertising, and half is the actual campaign expenditure. There is much criticism and debate on this high cost of electioneering in the U.S, and campaign finance reform is a strong and recurrent theme in American politics. However, two facts should be remembered while analysing the U.S elections – all campaign financing is fully accounted for and disclosed; and all expenditure is legitimate and open, over 90% spent on television advertising. The Indian situation presents a depressing contrast. The expenditure for parliament and State legislature elections in India is estimated to be of the order of \$ 1.5 billion (Rs. 7000 crores) at current exchange value. In purchasing power terms, it means that the Indian election expenses are probably five times those in the U.S, making our per capita expenditure higher than in the U.S! Considering our low income per capita, this is an absurd situation. And more importantly, almost all this campaign finance is undisclosed and illegal, and worse still, most of it is spent illegitimately – for buying votes, hiring hoodlums and bribing election officials! Prime Minister Vajpayee has gone on record several times stating that most elected politicians start their careers with a big lie – by signing an affidavit that their election expenditure has not exceeded that ceiling prescribed by law, while the actual expenditure is often ten to twenty times the ceiling limit!

It must be added however, that high expenditure in itself will not guarantee election. But in most elections when there is no sharp contrast between parties and candidates, and no emotional issues are involved, the candidates who do not incur high and illegal expenditure are almost certain to lose the election. Thus all parties and candidates are dragged into a vicious cycle of high election expenditure and endemic corruption. In the process, no matter which candidate or party wins, the people end up losing always!

Given these circumstances, we need to study the present status of election finance, identify the precise problems, and identify the areas of reform.

Curbing unaccountable use of money power:

Present Status:

- 1) Expenditure ceilings: A candidate is allowed to spend a maximum of Rs.6,00,000 in an Assembly election Rs.15,00,000 for Lok Sabha (in Andhra Pradesh). These new ceilings came into effect in December 1997 in place of the earlier ceilings of Rs.1,50,000 and Rs.4,50,000 respectively. In reality, the actual expenditure is often 15 to 20 times the present ceiling.
- 2) Prior to 1969, Section 293 of the Indian Companies Act permitted contributions to political parties. Such contributions could be upto 5% of the profit with the approval of the Board of Directors and unlimited with the approval of the shareholders.
In 1969, corporate contributions were banned.
In 1985, again companies were permitted to contribute upto 5% of the profit.
In reality, there are believed to be huge undisclosed and unaccounted corporate Contributions to political parties and candidates.

- 3) Section 13A of the Income Tax Act (IT Act) exempts from tax the income of a party from house property, other sources and voluntary contributions.
- 4) Parties are bound by law to maintain accounts regularly, record and disclose the names of all donors contributing more than Rs.10,000 and have the accounts audited by a qualified accountant as defined in Section 288(2) of the IT Act.
- 5) In 1978, Section 139(4B) was added to the IT Act by the Janata Government. This provision, read with Section 13A, makes it mandatory for the political party to furnish return of income every year.
Every major party is said to have violated this statutory requirement of furnishing returns if its income exceeded the normal taxable limit.
- 6) In general, no party is believed to insist on accepting contributions only by cheque. Some time ago, BJP made an announcement that they would like to accept contributions by cheque. But it is believed that most contributions after that were undisclosed.
Obviously contributions to parties by cheque are exceptional, and the bulk of the funding is undisclosed.
- 7) The press reported that on Supreme Court's directives in a public interest litigation filed by the Delhi-based Common Cause, the income tax officials have sent notice to all political parties to file tax returns disclosing the receipts and sources of contributions. So far there is no evidence of parties having submitted these returns. Nothing further is known of the outcome of this initiative.
- 8) The uncorroborated Jain Hawala scandal reports suggest that large amounts of tainted money from highly questionable sources is flowing into party coffers.
- 9) Legal penalty for not filing election expenditure returns is disqualification for three years. If the expenditure exceeds the ceiling prescribed, the penalty is six years' disqualification.
- 10) By an ordinance in 1969, later made into law in 1974, the expenditure incurred by the party or an association or a friend is exempt from expenditure ceilings.
- 11) Candidate should report the expenses to the District Election Officer within 30 days of completion of elections. The accounts have to cover the period from the date of notification to the conclusion of election.

Problems:

- 1) It is generally acknowledged that the expenditure in elections is astronomical. In some States, the expenditure of Rs.1 crore for Assembly election and Rs.3 - 4 crores for Lok Sabha is common.
- 2) The expenditure is not only above the ceilings prescribed, but most of it is for illegitimate purposes and is illegal. Often such undisclosed expenditure is incurred in inducing voters through money and alcohol, bribing election officials, polling staff or police personnel for favours and partisan conduct, and hiring hoodlums and 'workers' to indulge in large scale personation, booth capturing and rigging. Often criminal gangs are hired to browbeat the voters or prevent them from voting.

- 3) The expenditure of major parties in the general election for Lok Sabha and Legislative Assembly in Andhra Pradesh in 1999 has been estimated (anecdotal evidence) at about Rs.600 crores.
- 4) The expenditure of candidates for the municipal elections in AP in 2000 is estimated at Rs.100 crores (anecdotal evidence). The total annual income of the 107 municipalities (excluding municipal corporations) probably does not exceed Rs.100 crores!
- 5) In the absence of strong legislative framework, the Election Commission's efforts to curb expenditure have merely pushed most expenditure underground. The ostentatious expenditure for visible campaigning is on the decline, whereas the illegitimate expenditure has been on the rise.
- 6) In the absence of strict disclosure norms, parties are not inclined to receive contributions openly. Almost always political contributions are obtained through extortion, or received as a consideration for past or future favours out of turn.
- 7) The Tatas groups made a genuine effort to create a fund for campaign contributions. However, in the absence of an enabling climate, and the difficulty in providing corporate funding to all parties on objective criteria, the initiative did not make any progress.
- 8) Unaccounted election expenditure has become the root cause of corruption. Political funding and corruption are inextricably linked.
- 9) The entry of honest citizens into political and electoral arena is rendered almost impossible on account of the inexhaustible appetite of the political system for unaccounted funding.
- 10) Honest citizens and corporate groups have no incentive to fund political activity.
- 11) Candidates are often chosen on the basis of their capacity to spend in elections, rather than their ability to serve the public. Good candidates with limited means are discouraged from seeking public office. Disparities in campaign resources have reduced electoral competition.
- 12) Parties in power use public money with impurity for personal aggrandizement and for publicity to individuals and the parties.
- 13) Large scale mass mobilization is the norm, involving huge expenditure and little political education or public awareness. A large political rally involving about 100, 000 people typically costs Rs.3-4 cores.
- 14) Abuse of power is common in raising resources or organizing political rallies and meetings.
- 15) Party finances are neither regulated nor transparent.

- 16) Party workers are no longer volunteers inspired by ideology, great leaders or good goals, but hired supporters

Proposals for campaign funding reform

A) Measures to encourage political funding:

- 1) All individual contributions to individuals or parties for political and election activity shall be exempt from income tax subject to a ceiling of, say Rs.10,000
- 2) All corporate contributions from companies upto a ceiling of 5% of the net profit shall be exempt from corporate tax
- 3) Companies may contribute subject to the following norms
 - a) No contribution shall be made above 5% of the profit
 - b) A company which receives state subsidy or has a decision or contract or license pending with government shall not contribute

B) Measures to prevent abuse of office

- 4) Government shall not issue any advertisements containing the name of a person or party or photograph of any leader
- 5) No government advertisement shall be issued listing any achievements of a particular government.
- 6) Government transport or infrastructure shall not be used for political campaigning
- 7) No contribution shall be received from any person or corporate body in respect of whom any decision or license or contract or claim of subsidy or concession of any nature is pending with the government.

C) Measures to enforce disclosure and accountability

- 8) Every individual contribution exceeding Rs.1000/- and every corporate contribution shall be disclosed to the Election Commission and the Income Tax authorities. Penalty for non-disclosure will be fine equal to ten times the contribution and in addition case of corporate bodies, imprisonment for six months.
- 9) Every political party and candidate shall get the receipts and expenditure fully audited and make the audited accounts for the financial year public by Sept 30.
- 10) The audited statement of accounts shall be submitted to the Election Commission as well as the Income Tax authorities in the prescribed proforma. **(Annexure I)** Copies shall be made available to any member of the public by the Election Commission on payment of a nominal fee.
- 11) Along with the audited statement of accounts, the party or candidate shall submit a complete list of all contributions exceeding Rs.1000/- with the full identity, address and other details of the donors. These lists shall be made public and furnished to the Election Commission and Income tax authorities. Election Commission shall make available to the public this list on demand for a nominal fee.
- 12) Penalties for not furnishing audited accounts by a candidate will be disqualification for a period of six years or until accounts are furnished, whichever is later.

Penalties for non-disclosure of donations by a candidate will be disqualification and a fine equivalent to ten times the amount covered by non-disclosure, disqualification for six years and imprisonment for one year.

- 13) Penalties for not furnishing audited statement of accounts shall be derecognition of the political party until accounts are furnished. Penalties for non-disclosure of donations by a party will be a fine equivalent to ten times the amount covered by non-disclosure, imprisonment of the persons responsible for a period of three years and derecognition of the party for a period of upto five years.

D) Measures to limit campaign expenditure

- 14) There shall be a reasonable ceiling on expenditure in elections as decided by Election Commission from time to time. All expenditure including that incurred by a political party or any individual or group to further the electoral prospects of a candidate shall be included in the election expenditure.

- 15) Penalty for violation of ceiling shall be a fine equal to five times the excess expenditure. Penalty for wilful non-disclosure of any expenditure shall be disqualification of the candidate for six years, fine equal to ten times the non-disclosed amount and imprisonment for six months.

- 16) There shall be reasonable ceilings fixed on television/radio/newspaper advertisements.

- 17) During election time, rallies held under covered roofs alone shall be permitted, and outdoor public rallies shall be prohibited. However, there shall be no restrictions on all other campaign related individual or group activities.

E) Measures for public funding

- 18) Free television and radio time shall be given in state media to recognised parties as prescribed by the Election Commission

- 19) Private electronic media shall earmark time for recognised parties as prescribed by the Election Commission for election-related campaign

- 20) There shall be election debates telecast and broadcast live by all electronic media as per the directions of the Election Commission

- 21) Every candidate/party obtaining 10% of the valid votes polled in a constituency shall be entitled to receive public funding to a tune of Rs.5 or Rs.10 per vote. The Election Commission shall receive these claims, ensure the candidates and party's compliance with all norms of auditing, disclosure, and expenditure ceilings, and award the public funds.

Miscellaneous

- 22) The Election Commission shall be the final authority to determine compliance or otherwise of these norms, and to impose penalties.

- 23) Public funding to party candidates shall be contingent upon the party candidates being selected democratically by secret ballot by members of the party or an assembly of elected representatives of the party members in the constituency.
- 24) Any expenditure to give inducements to voters, distribute gifts, bribe public officials involved in conduct of election, or hire any workers or gangs for any unlawful activity shall be unlawful. Penalties for such unlawful expenditure shall be disqualification of the candidate for six years, a fine equivalent to ten times the expenditure incurred and imprisonment for three years.
- 25) Every candidate shall make a declaration of his/her income and property at the time of nomination, along with income and properties of the members of his family. The proposed form of declaration is given in **Annexure II**. False or incomplete declaration shall invite disqualification for six years and imprisonment for one year. Non-declaration will invite automatic disqualification.

The Election Commission shall determine the compliance of this provision and make public these declarations. The EC shall be the final authority to decide on complaints of false declaration.

Why do people vote badly?

The above proposals will go a long way towards cleansing our electoral process, and ensuring accountable and fair use of money in elections. However, we still need to answer two questions – Why are citizens selling their vote for money? What is the guarantee that these reforms will change large scale vote buying?

As a net result of several distortions, elections have lost their real meaning as far as the people are concerned. It is often tempting to blame the illiterate and poor citizens for this plight of our democracy. But in reality it is the democratic vigor and enthusiastic participation of the countless poor and illiterate voters, which has sustained our democracy so far. However, most people have realized with experience that the outcome of elections is of little consequence to their lives in the long run. If, by a miracle, all winners in an election lose, and all their immediate rivals are elected instead, there will still be no real improvement in the quality of governance. This remarkable inertia and the seeming intractability of the governance process have convinced citizens that there is no real long-term stake involved in electoral politics. Therefore many poor citizens are forced to take a rational decision to maximise their short-term gains. As a result the vote has become a purchasable commodity for money or liquor. More often it is a sign of assertion of primordial loyalties of caste, religion, group, ethnicity, region or language. Very often without even any material inducement or emotional outburst based on prejudices, the sheer anger against the dysfunctional governance process makes most voters reject the status quo. Often this rejection of the government of the day is indiscriminate and there is no rational evaluation of the alternatives offered. In short, even the illiterate, ordinary voter is making a rational assumption that the vote has no serious long-term consequences and the choice is between Tweedledom and Tweedledee. Therefore he is attempting to maximise his short-term material or emotional gain!

This situation can be corrected only by decentralizing power, and exercising authority as close to the citizen as possible in an accountable manner. When there is a clear link between their vote and public good, and when taxes can be directly translated to the public services, people will start using vote as an effective tool to make fine political judgements and elect their servants.

Political parties – money – federal law:

It is obvious that we cannot regulate party funding in isolation. Openness, accountability, disclosure and democracy are indivisible, and there has to be an effective legislation to regulate the conduct of political parties in respect of democratic norms in membership, leadership choice, funding and choice of candidates for elective office. The German federal law regulating the conduct of political parties is a good model to emulate in our quest to democratise parties and cleanse electoral process

From a bird's eye view of Indian political parties, it is clear that we, as a people, have stakes in their functioning and future. The moment they seek power over us, and control over state apparatus, they forfeit their claim to immunity from public scrutiny and state regulation based on reasonable restraints. This is particularly true in a climate in which they have proved to be utterly irresponsible, unaccountable and autocratic, perpetuating individual control over levers of power and political organization, entirely for personal aggrandizement, pelf and privilege. Therefore, in a deep sense, the crisis in political parties is a national crisis, and has to be resolved by a national effort. This leads us to the inescapable conclusion that there should be internal democracy in parties, regulated by law, and monitored and supervised by statutory authorities. Every party, by law, should be obligated to practice internal democracy in all respects. The details of functioning can be left to the party's own constitution, but it should conform to the broad principles of democracy stated clearly in law. The actual practice of internal democracy should be verifiable by an external agency, say the Election Commission. Mandatory publication of membership rolls of political parties at local level, election of leadership at every level by secret ballot supervised by the Election Commission, a comprehensive prohibition on nominations of office bearers or expulsion of rivals, a well-established system to challenge the leadership of incumbents at every level, and justiciability of these internal democratic processes through special tribunals – all these measures could form the basis of any meaningful reform and regulation of political parties. Extreme care and caution should, however, be exercised to ensure that a party's democratic choices of leadership or its espousal of policies are not in any way directly or indirectly influenced by law or external monitoring agencies. The party leaders and its policies should be judged only by the public, in the market place of ideas and in elections.

Compulsions of first-past-the-post system

In addition to the electoral irregularities, use of unaccounted money power and criminalisation of politics, the first-past-the-post (FPTP) system in a plural society added to the decline in political culture. On the one hand the largest party is likely to obtain disproportionate presence in legislature, with consequent marginalisation of large segments of public opinion. In a plural society such a majoritarianism has evidently led to ghettoization of numerically important groups like minorities and dalits.

On the other hand, in the FPTP system, there is desperation to somehow win the election in a constituency by all means fair or foul, as each seat becomes critical in the legislative numbers game to form government or acquire influence in the Westminster model. The ugly practices adopted by a party at the constituency level becomes somehow acceptable in this quest for electoral success. Once a candidate obtains party nomination, he and his caste or group often make it an issue of personal prestige to be elected in the winner-take-all electoral and power game. As election in each constituency runs on similar lines, the parties and candidates are not inhibited by the fear that their illegitimate efforts to win a few constituencies might undermine the larger objective of enhancing the voting share in a whole state or the nation.

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

Clearly, the exclusive reliance on the first-past-the-post system coupled with the Westminster model has enhanced the stakes in the constituency elections. High election expenditure, buying of votes and polling irregularities have become the norm in order to gain electoral advantage in the Westminster model. Therefore a shift towards proportional representation in which a party's representation depends on the overall percentage of votes in each State is worth considering. Such a shift will act as a disincentive to polling irregularities, as any effort of a candidate to gain unfair advantage locally may run counter to the party's objective of maximizing its vote in a whole State. The proportional representation may also help force reform in political parties, as credible challenge is mounted by influential sections of public opinion which might otherwise be ignored in a first-past-the-post system. Similarly, a shift towards direct election of the head of the government at the local and State levels is likely to help reduce election expenditure and polling irregularities, and ultimately defections and corruption.

Any campaign finance reform must be viewed holistically, and integrated with the other electoral reforms curbing polling irregularities, preventing criminalization of politics, eliminating the scourge of defections for personal gain, and democratizing political parties. The time for comprehensive electoral reforms is near at hand. Any complacency in this vital task of electoral reforms will be disastrous to our polity and public interest. The people of India deserve a political process which brings the best out of our citizens and cleanses the governance process. Electoral reform should be the first and vital step in our struggle for holistic democratic reform to build a strong, self-governing, just India with all citizens enjoying peace, freedom, harmony and dignity.