

POLITICAL PARTY FUNDING AND CORRUPTION

AN ANALYSIS OF THE ELECTION AND OTHER RELATED LAWS (AMENDMENT) ACT AND ITS POSSIBLE IMPACT

Submitted To: LOK SATTA
Submitted By: Kiran J Prakash
II year B.A.B.L;(Hons.)
NALSAR University
Of Law, Shamirpet

DATE: 16-12-2005

TABLE OF CONTENTS

| | |
|--|-----------|
| ACKNOWLEDGEMENTS..... | 3 |
| 1.INTRODUCTION..... | 4 |
| 2.RESEARCH METHODOLOGY..... | 7 |
| 3.SOURCES OF PARTY FUNDING..... | 8 |
| 4.AN ANALYSIS OF THE ELECTION AND OTHER RELATED LAWS (AMENDMENT) ACT..... | 11 |
| 5. COMPARISON OF THE 2003 ACT WITH SIMILAR REFORMS IN OTHER COUNTRIES..... | 16 |
| 6.CONCLUSION..... | 18 |
| Appendix-I The Election and Other Related Laws (Amendment) Act, 2003..... | 21 |
| Appendix –II Contribution Report of Political Parties for the year 2003-2004..... | 26 |

ACKNOWLEDGEMENTS

I am highly grateful to Dr. Jayaprakash Narayan for giving me an opportunity to work in this organization. I would also like to thank Mr. Karthik, Mr. Ramesh and Ms. Fathima for guiding me through out this research and for their valuable advice and help. Lastly, I would like to convey my thanks to all the members of Lok Satta, as it has been a wonderful experience working here.

CHAPTER I- INTRODUCTION

Sustainable democracy depends to a large extent on the electoral process. Democracies face both external and internal threats to a healthy electoral process. The external threats are more visible possibly due to the reason that they appeal to the spirit of nationalism. For example the American government has been accused of influencing the electoral processes of a great many countries particularly with the strong-arm tactics of the CIA. Similarly the former KGB of the Soviet Union has been accused of similar tactics during the Cold War era. This has received wide media attention in India after the publishing of the Mitrokhin diaries.

The internal threats are less conspicuous and therefore harder to pinpoint and root out. These can include misrepresentation, strong-arm tactics like booth capturing, luring the voters with immediate and material benefits and a plethora of other ways. The corrosion of the electoral processes may be due to the prevalence of money power, muscle power, mafia power (the so called 3 MP's) media power, ministerial power, caste and religious bigotry.¹ These factors have undoubtedly led to the criminal element in our electoral process thus eroding the roots of democracy.

The rise to prominence of the money power factor is quite simple. The disillusion with the successive governments who promised the high heavens

but delivered next to nothing, has taken the life out of the concept of elections. The general populace is quite docile when it comes to voting, influenced as they are by the flagrant use of money power. This is at least partly due to the general opinion that whoever wins the election; it is they, the general populace who ultimately lose out. For example instead of promises that will probably not be fulfilled, a layman may prefer a bottle of liquor or a dhoti being doled out during the election campaign. Can a country where the well being of the people does not concur with the choice of the people be truly called a democracy? Or has the electoral process degenerated to such an extent as to lead to the dissolution of the concept so central to a democracy- the will of the people? If so how can the situation be rectified?

To weed out the manipulation of the voter populace by money power, it is important to understand the flow of capital in the political structure and how politicians going hand in hand with unscrupulous entities foster corruption. The root of the problem is our own electoral system, which combined with the difficulty of overseeing the activities of political parties in a multi-party system has contributed to the situation spiralling out of control. Money power in the electoral process poses a significant threat to the democratic ideals of our nation. This threat cannot be removed unless we regulate the flow of money that circulates in Indian politics. So it is important to understand how and why money flows into the hands of politicians or political parties, and the manner in which it is used.

The donor may be corporate entities or syndicates of bodies having common interests. An example of the latter may be a business cartel of cigarette manufacturers who certainly do not wish their business to be hampered by an anti tobacco legislation. Such manufacturers would obviously want a party that “sympathizes” with them, in power. In such cases ideology has very little role to play. The corporate bodies care only for profits. Political connections can help in cutting down the opposition especially by carefully doctored delays in government permission for new ventures by competitors.² Good political connections also aid investment, as investors prefer a corporate, which is in favour with the ruling party.

The donor may also be an individual. This is particularly prevalent in cadre-based parties like the Shiv Sena who have an army of cadets and supporters.³ These cadets usually donate a substantial amount to the party. Other individuals like criminals and tax evaders also have an interest in giving

donations to political parties. A person seeking membership also is expected to pay his dues to the party, as are MP's and MLA's.

The donor may also be a foreign interest.⁴ This is more common in the communist parties though the collapse of the Soviet Union has weakened that interest.

Political parties also generate income from publishing newspapers, books, magazines etc. For example the Communist Party of India (CPI) maintains a publishing house and a chain of bookstores.

So the sources of party funding are quite varied. But there are certain problems with this money that flows in. For one the corporates usually don't tell their investors that they have used the investor's money to curry favour. So the dealings are hasty, well covered up and done in secret. The other issue is that of black money. There is no better place to hide black money than the wallet of a politician. In return for this money the corporates make ten times the profit. So black money has proved to be very convenient for businessmen.

In India The People's Representation Act of 1951 prescribes regulations for conducting elections in India. But it is silent on the issue of this flow of money. The Companies Act permits a company to make contributions up to 5 per cent of the average profit for the three preceding years. The decision to contribute must be passed by a resolution of the Board of Directors and proper accounts must be maintained. Needless to say this rule flouted more often than not. Only recently has there been an active role in on the part of the legislative to regulate this flow of cash. The Election and other related laws (amendment) Act was enacted in 2003. This Act has made a few changes in matters relating to election funding among others. The changes are long due and can be seen as a sincere attempt to reform the system. The questions regarding party funding have been discussed. But many fundamental issues remain untouched.

RESEARCH METHODOLOGY

The research methodology employed during this project is doctrinal. Most of the information has been taken from the Internet and from the library of Lok Satta.

CHAPTER II- SOURCES OF PARTY FINANCE

As explained before sources of party finance are many and varied. As with other factors in our electoral system, they haven't been untouched by the power mongering and constant bickering of the politicians. Parties need to generate income to finance not just their electoral campaigns but also their running costs as political institutions with a role to play between elections. Hence to understand the sources of election finance today, it is important to delve into their history in independent India.

Under Jawaharlal Nehru, there was a tolerant policy to the issue of election finance. Companies were allowed to donate funds to political parties. This constituted what the companies called a premium for "political insurance". Even at that time corruption was rampant. In fact corruption in the Congress party dated from pre-independence. Mahatma Gandhi himself had remarked way back in 1939 that "I would go to the length of giving the whole Congress a decent burial, rather than put up with the corruption that is rampant".⁵ It is not clear what Nehru's thoughts were on this matter, but it is clear that he defended his ministers when they were accused of corruption. In a report on public administration submitted in 1951 by A.D.Gorwala there was a blunt remark- "the government went out of its way to shield its (corrupt) ministers".⁶ This was seen in the infamous jeep scandal, which related to the purchase of jeeps for the Indian Army. The government actively defended V.K.Krishna Menon, the accused. Then the government rejected the demand for judicial inquiry. Menon promptly returned to the cabinet as a minister without portfolio.⁷ The Congress dominated the political scenario and was flush with funds.

The situation began to change with the formation of the Swatantra Party in 1959. It gave importance to liberty over equality thus breaking free of the mould of the Nehru's brand of socialism. It advocated free enterprise and low taxes. Gradually industrialists were impressed and began donating funds to Swatantra party.⁸ This reached a crescendo in the late 60's. The Congress government under Indira became concerned. After the Congress split Indira Gandhi took the momentous decision to ban company donations. Then came the emergency

The repercussions of this move can be seen even today. Faced with political pressure and threat of selective raids and nationalisation the companies took

recourse to a number of measures like black market operations and tax evasions to bypass controls. Black money began to flow into Congress coffers. This was the era of big time briefcase politics. Licences and permits were traded for hard cash. Many industrialists were forced to see eye to eye with the Congress, in the race for survival.⁹ It was only in 1985 that the Rajiv Gandhi government removed the ban and imposed a limitation of five percent of net profits.¹⁰ But the damage to the system was done. The Rajiv Gandhi government itself was hit by a number of scandals most notably the Bofors scam which involved howitzer guns from Sweden. The slew of scandals followed in the P.V.Narasimha Rao government most notable the Hawala scam. There is no doubt that the Indira Gandhi government's decision has had far reaching consequences.

Finally the legislative recognized the need for regulating party funding. The Election Commission had made quite a few reform proposals in 1982 and again in 1986.¹¹ It actually came close to implementing them in 1989. But before that the V.P Singh government lost power. Over the next decade a few reforms were accepted. The plea of the election commission to include contributions of friends or parties in calculating the ceiling of election expenditure by a candidate fell on deaf ears. In 1997 I.K Gujral's government raised the ceiling from Rs 6 lakhs to Rs. 15 lakhs. Also the candidate will have to give details of expenditure on various accounts and these were to be tallied with the returns of the parties.¹² This was the only notable reform in the decade. In 1996 there was a Supreme Court judgment that mandated companies to give details of funding.

Then in 1998, a committee was formed under Mr. Indrajit Gupta to look into the issue of state funding of elections. The report was in favour of such a step. State funding is an impractical concept for reasons that will be dealt with later on. The committee also proposed that company donation must be made only with the approval of general membership at the annual general meeting and not by the board of directors. According to the committee this step would be more indicative of the inclination of the general members.¹³

With the BJP government in power in 1999, there an active attempt to reform the electoral process. With this objective in mind, the Election and other related laws (amendment) Act was passed in 2003. The Act makes a number of changes of or relating to the elections. So active steps by the legislative took a long time in coming.

But this is not to suggest that the corporate sector was a mute spectator to the proceedings. Faced with liberalisation and the era of coalition politics industries realised the need to form electoral trusts that were neutral and could be used to channel funds for political purposes. In 1998 the Tata group floated an electoral trust for such a purpose. The Aditya Birla group followed suit. These trusts were limited in their success either because they were not available to companies outside the group or as in the case of the Tata group because other companies were reluctant to give money to a “neutral” trust.¹⁴ It is clear that the companies would prefer to deal with political parties on a one to one basis. The question is whether the legislature makes such a transaction easier? And whether the Act of 2003 addresses these problems?

Another crucial issue is that of the criminalisation of politics. We have ex- mafia dons, goons and murderers being candidates for the post of the people’s representative the defining factors is money. These anti social elements provided much needed capital for the party fund. Of course after being sworn in they can make much more. There is a tacit understanding between parties and criminals. Those who believe that such practices are restricted to the badlands of Bihar and U.P should take a look at Mumbai where an ex- Don has floated his own party. Besides directly participating in the electoral process the dons also give hard cash and ilk in return for political insurance. Does the 2003 Act make headway into any of these issues? Also is the issue of black money addressed at all?

CHAPTER III- ANALYSIS OF THE 2003 ACT

The Act passed in 2003 does not amend any single Act. It amends three separate Acts namely The Representation of the People Act, The Companies Act and the Income-tax Act. The focus of the 2003 Act is not entirely fixed on the issue of election funding. But it does make some important changes in the regulation of election funding. Firstly the acceptance of contribution has been incorporated in the Representation of the People Act of 1951. The political parties may accept contributions from any person or company. This is a clear step to make the 1951 Act a comprehensive Act that regulates elections. Another change is apparent- a clear attempt to regulate corporate funding. Section 29B has been inserted for this purpose. This implies an acceptance that corporate interests are intertwined with political interests and that one necessarily complements the other. But the factor that drove these interests apart was not moral or ideological- it was purely the market forces at work.

The corporate support to Swatantra party was not borne of any ill will towards the Congress party. It was merely more profitable to support a party, which supported free enterprise and low taxes. The early 20th century Indian industrialists supported the Congress for a similar reason- more profits. It is not possible to brand it as corporate greed- it is a reality of the capitalistic system. Instead of pacifying those market forces, the Congress party sought to remove them altogether from the scene. But politics is not a poor mans game. Funding is absolutely essential. So the Congress party began to use strong-arm tactics on the corporate sectors. The corporate sector responded accordingly and the result was the infusion of black money and incredible damage to the electoral system.

Section 29B also contains a notable exception to possible donors- a government company. The purpose is to avoid any undue influence of the ruling party on such companies.

But perhaps the most important change is the insertion of Section 29C.

29C. Declaration of donation received by the political parties.-

(1) The treasurer of a political party shall, in each financial year, prepare a report in respect of the following, namely:-

(a) the donation received by such political party from any person in that financial year;

(b) the donation received by such political party from companies other than Government companies in that financial year; and

(c) the details of expenditure incurred by the political party out of such donation.

(2) The report under sub-section (1) shall be in such form as may be prescribed and shall specifically certify that each donor from whom donation has been received is eligible under the law for the time being in force to so donate to the political party.

(3) The report for a financial year under sub-section (1) shall be submitted by the treasurer of every political party before the end of that financial year, to the Election Commission.

(4) Where the treasurer of any political party fails to submit a report under sub-section (3), then, notwithstanding anything contained under the Income-tax Act, 1961 (43 of 1961), such political party shall not be entitled to any tax relief under that Act.

The section makes it mandatory for political parties to submit contribution and expenditure reports in every financial year in order to avail of tax benefits. All donors will have to be certified. Such a report will have to be submitted to the election commission. The reports of various parties are maintained on the election commission website. http://www.eci.gov.in/MiscStats/misc_fs.htm (See Appendix 2)

All these provisions are laudable indeed. But an analysis of the contribution reports provided a different picture. For one thing most contributors are party members themselves. In other words most of the sources shown are secondary sources. The money may have come from rallies, meetings, individual donors or companies. The purpose of this Act was to legitimise

and regulate the party funding exercise and to account for the money flowing under the table. But the figures show that the parties are reluctant to name such donors. For example according to the figures submitted to the Election Commission the General Secretary of the Communist Party of India Mr. A.B.Bardhan himself is the biggest donor to his party. But the source of such a donation is not mentioned. The lists of donors are littered with party members. It is too much to suppose that these members had contributed in their individual capacity. They were more likely puppet donors, while the real donor remains anonymous. These puppet donors have not even submitted their PAN numbers. How then do these distinguished members file their Income Tax returns if they do so at all? Some of them have not even submitted their names instead preferring the pompous title of “District President of Samajwadi Party, District of Etah”. These donors have made a mockery of the Act.

This is not to suggest that the primary donors are completely absent. But they are not present in the volume that they are expected to be present. This is probably because black money is involved. In such a case the parties cannot and would not disclose the sources. Besides this there were several parties who were absent in the contribution report like the BJP.

So what is the penalty for not submitting such a report? It is non-exemption of political parties from income tax. The companies also have the incentive to donate amounts that will be exempt from tax. So this is a very laudable step to make under-table transactions come over the table. But the figures show otherwise. Those were the figures for 2003-04, which was an election year. One would expect companies to figure more prominently. One would expect companies to come out more openly but something is holding them back.

Of course the Act is only two years old and up to this day the election commission has not posted the contribution report of the parties for the year 2004-05. All that can be speculated that the Act is a positive step and definitely more companies will come out in the open. Another positive step is that even individuals can avail of the tax benefits. This will definitely mean an increase in the general public donating in favour of the parties that they support.

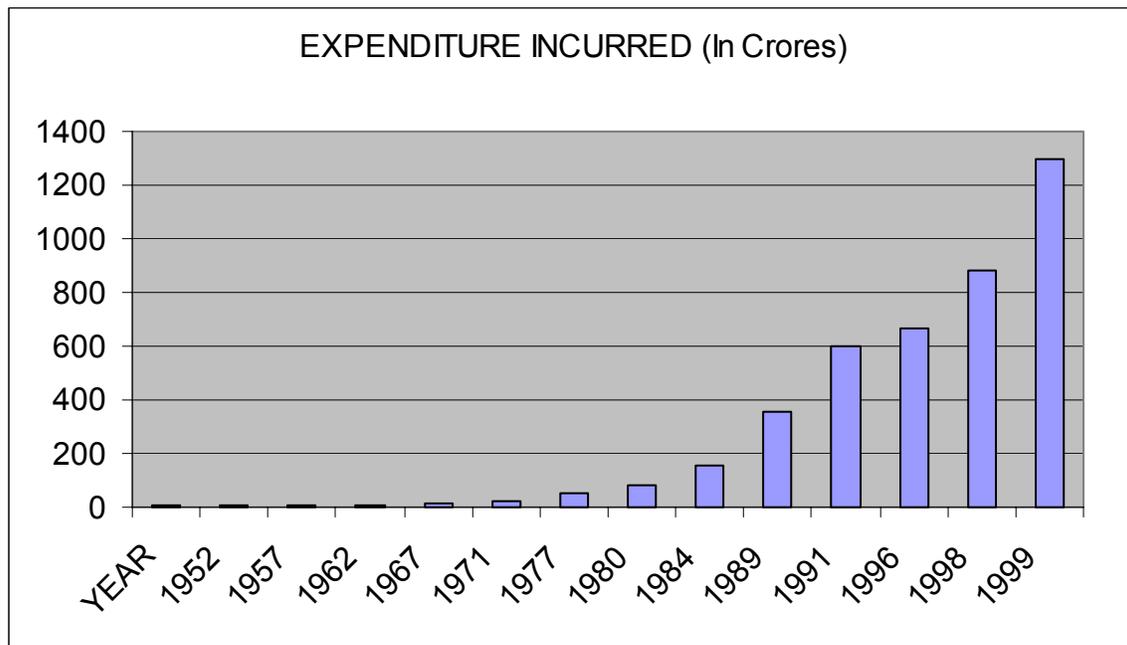
It is important to note that the Act makes no mention of any move make public spending feasible, at least in the near future. There is no doubt that the recommendations of the Indrajit Gupta committee have been considered and found wanting. The reasons were two fold. Firstly India is a developing country and the government doesn't have the capital to finance the spending of the array of political parties. There are other areas that need

the government's equal attention such as poverty alleviation. Secondly even in countries where the state-funding concept has been implemented there are instances where parties seek other avenues as well.¹⁵ Such a situation would render state funding to be a meaningless concept.

The focus of this Act would seem to be in encouraging more contributions to the party coffers. So is such a change necessary?

Unfortunately the answer is yes. Big money plays a great role in the elections. Speeches, rallies, posters, banners, life size cutouts, transportation and accommodation of party leaders all this costs a great deal of money. If money is not forthcoming, parties use devious means. So this Act is an attempt to make the whole process more transparent. However there is a crucial need to bring down the demand as it far exceeds any supply legitimate in nature.

Here we will see how the expenditure by the government for Lok Sabha elections has been rising over the years.



Source: Election Commission of India (<http://www.eci.gov.in>)

We can detect a sharp increase in the election expenditures right from 1977. In 2004 this reached a staggering amount of Rs. 1300 crore. If the expenses by government have reached this proportion the parties cannot be far behind. An analysis of the parties' accounts reveals just this. The Congress itself "officially" spent more than Rs. 16 crore in the recent assembly elections. It spent Rs. 19 crore in the 2004 elections. Smaller parties spent anywhere in

the region of 50 lakhs to a few crores in the recent assembly elections. Therefore big money is a must for most parties.

The current ceiling as per as the relevant rules framed by the Government of India is 25 lakhs for a parliamentary constituency (although there are some exceptions). But this ceiling is violated almost in every case. To straighten their accounts the candidates use black money. There is a bit of a balancing Act to be carried out here. The ceiling should be reasonable so as to be realistic and just so as to be fair to those not backed by big money. The current ceiling is quite adequate and serves both the purposes. But again there are violations. Stringent laws against such violations as well as more powers to the election commission for auditing accounts should be given. The media too must continue to play its role as a watchdog of the general populace.

But one obvious consequence of encouraging transparent contributions as this Act has done will be to lessen the reliance of the parties on mafia dons and their ilk. For if capital is available in a transparent and legal manner, no party would choose a way that may raise a stink in the future. In any case after the Tehelka expose politics has not remained the same. There is an active fear of a media expose. Undue media attention can severely damage a party's image as was witnessed recently in the Natwar Singh case and in Operation Duryodhan.

CHAPTER IV- COMPARISON OF THE 2003 ACT WITH SIMILAR REFORMS IN OTHER COUNTRIES

In the Anglo-Saxon orbit i.e. Canada, U.K, U.S and Australia the major issue is not the availability of money, but where it comes from. There is a clear distinction between grass roots financing and plutocratic financing. In of the above-mentioned countries grass root financing plays a major role. In the United States for example donations from individuals accounted for almost two-thirds of the funds for Senate elections and over one-half for the House of Representatives elections in 1996.¹⁶

A comparison can be made of the tax benefits available in India with those available in these countries. Canada and Australia both have provided incentives for tax financing by individuals while India has provided incentives for both individuals and companies. In Australia donations up to AUD 100 are exempt from tax. In Canada tax benefits are available in the range of CAD 200 to CAD 500. In U.K a suggestion by the Neill committee for tax relief of donation by individuals was rejected as it “would amount to general state aid by another route” and would be too expensive. In U.S such tax benefits were abolished as part of the Reagan tax cut in 1986.¹⁷

Like in India plutocratic financing has been the cause of major scandals. Formerly the parties in all of the above countries used to depend to a large extent on plutocratic financing, which includes company donations. For example in the mid 1980's over 50% of the U.K's conservative party's income came from corporate sources. This is now down to 20%.¹⁸ However this reduction was not on the basis of any reform. It is merely because conservatives are now sitting in the opposition. Like in India the advantages of state funding have been discussed and found wanting in the U.K.

In Australia there has been a policy of hiding large donations from public scrutiny. Only fact is known for sure- that the Australian Labour Party is heavily supported by trade unions while companies prefer Liberal and National parties. As a result scandals are neatly avoided as nobody has any idea of the donations.¹⁹

In U.S.A there are limits for contributions and certain individuals and corporations are prohibited from donating. The Federal Election Campaign

Act (FECA) regulates this funding. But this Act has been neatly sidestepped, either by bundling money in the name of all one's relatives or by means of PAC (Political Action Committee) which are just interest groups who bundle money to contribute. PAC's are a major factor in the American electoral process. And of course the ruling party benefits from "Toll-gating" and "slush funds" which are literally spoils of power. The U.S Supreme Court has also played its part by striking down compulsory spending limits in the case of Buckley v. Valeo in 1976 as infringing on the right to freedom of expression.²⁰ Spending unlimited money for a political purpose is protected by the constitution. But FECA remains to this day an important legislation. Besides this, "soft money"(indirect, unregulated money) was allowed for party-building and administrative purposes due to a 1979 amendment. This was only banned in 2002.²¹

Canada is the only country, which has successfully worked out a solution to the problem of excessive plutocratic financing due to enthusiastic response to a tax benefit scheme for donations from individuals.

However the closest comparison to the Indian amendment is the Political Parties, Elections and Referendums Act enacted in the U.K in 2000. <http://www.opsi.gov.uk/acts/acts2000/20000041.htm>

This Act is much more comprehensive than the Indian one. Except for the issue of tax benefits there are a lot of common features. This Act also calls for control mechanisms on donations, reporting of donations, limits of campaign expenditure etc. But the differences are also apparent. The Indian Act is merely a window to tax benefits for the party while the U.K Act is much more stricter. It makes account keeping and submitting reports as mandatory. The newly created electoral commission has wide powers dealing with supervision of donations to parties. There are no incentives for such a submission only retribution for failing to comply. Of course there are differences in the level of black money going around in India and U.K just as there are differences in the political milieu. But a criminal penalty for non-submission of reports is the way to go for India in the future.

CONCLUSION

This Act took a long time in coming. The overall posture of the Act has been positive but idealistic. Only one year after its passing political parties used dummy donors and the ilk. The original donors were not to be identified. In the future there may be many more instances where political parties bend these amendments to suit their own purposes. This Act does not mean the end of political corruption. Much more remains to be done. All these steps merely constitute a diversion of flow. In some ways politics is comparable to an arms race. There is if-they-spend-more-so-should-we kind of undercurrent developing. There is an overall shift towards earning and spending more than your competitor. Politicians concentrate more on party funds rather than governance. This makes politicians find ways to get around any legal provisions. The situation cannot change unless the concept of power in India and who wields it is changed. The key is decentralisation i.e. giving power back to the people from whom you derive it. Lessen the importance of bureaucrats and increase the involvement of NGO's and civil rights groups in day-to-day governance. Tackling corruption on a warpath basis is absolutely necessary. There should be checks and counterchecks on every individual involved in the working of the system.

There are other questions that the amendment Act doesn't answer. For example the Indrajit Gupta Committee suggestion on the approval of donations by the general membership of a company at the annual general meeting should be implemented. This would bring transparency and help in cleansing the system. The issue of black money too cannot be put off so easily. The issue is whether the politicians who benefit from black money will play an active part in cleansing the system. For this end the right kind of pressure will have to be exerted by NGO's and interest groups. Elimination of black money will take a long time. But a realistic short-term goal is that the supply of black money to political parties should be cut off. Controls have to be placed on party expenditure. Mere provisions prescribing ceilings will not suffice. This is because of the complexity of the electoral process, which involves so many different methods of wooing the voters. Each method will have to be examined in order to properly judge the whole expenditure. The researcher suggests that each factor in campaigning like banners, posters, rallies etc. have to be regulated and restrictions imposed. Without making this whole process seem autocratic, surely ways can be worked out to limit the excesses and decadence, which is the hallmark of election campaigning India. A reasonable limit can be worked out with the help of a dialogue with the political parties.

The objective has to be to work out a way to involve the public in election funding and lessen the reliance on criminals. The reliance on corporate funding is understandably unethical and biased, but there is no help for it. The pressing need is to make the whole process more transparent, and therefore cut down on black money. But above all the politics in our country must be centred on policy and governance, not on money. Mechanism to encourage this must be implemented. It is imperative to reduce the importance of money in elections. And this can only happen if the people are willing to vote candidates on the basis of merit, not on the basis of fear or gratitude. Power corrupts, as Lord Acton famously observed, and absolute power corrupts absolutely. But in India's case, *it is the corrupt that get power and the absolutely corrupt get absolute power.*²²

¹ Abhaya Kashyap, *Criminalisation, Role of Money, Muscle Power and Electoral Malpractices*, NATIONAL RESURGENCE THROUGH ELECTORAL REFORMS, Shipra Publications, Delhi

² R.B.Jain, *Political Financing in India*, ELECTORAL REFORMS IN INDIA, Concept Publishing Company, New Delhi

³ Supra n.1

⁴ <http://www.aceproject.org/main/english/pc/pcd02h.htm>

⁵ R. Upadhyay, *Political Corruption in India: An Analysis*
www.saaq.org/papers3/paper219.htm

⁶ Sunil Sondhi, *Combating Corruption in India*,
<http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN019103.pdf>

⁷ Supra n.5

⁸ Supra n.2

⁹ <http://india.eu.org/3378.html>

¹⁰ Ibid.

¹¹ Supra n.2

¹² Ibid.

¹³ Id.

¹⁴ Supra n.9

¹⁵ http://www.tutor2u.net/politics/content/topics/political_parties/party_funding.htm

¹⁶ Reginald Austin and Maja Tjernström ed., *Funding of Political Parties and Election Campaigns*

http://www.idea.int/publications/funding_parties/upload/full.pdf

¹⁷ Ibid.

¹⁸ Id.

¹⁹ Id.

²⁰ <http://www.washingtonpost.com/wp-srv/politics/special/campfin/intro3.htm>

²¹ Supra n.16

²² Atanu Dey, *Absolute Corruption and Absolute Power*

<http://www.deeshaa.org/2005/10/31/absolute-corruption-and-absolute-power/>

APPENDIX-I

The Election and Other Related Laws (Amendment) Act, 2003 - Act No. 46 of 2003, effective from 11-9-2003

The following Act of Parliament received the assent of the President on the 11th September 2003:

The Election and Other Related Laws (Amendment) Act, 2003

No. 46 of 2003

An act further to amend the Representation of the People Act, 1951, the Companies Act, 1956 and the Income-tax Act, 2003

Be it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:

Chapter I - Preliminary

1. This Act may be called the Election and Other Related Laws (Amendment) Act, 2003.

Chapter II - Amendments of the Representation of the People Act, 1951

2. **Insertion of new sections 29B and 29C.**- After section 29A of the Representation of the People Act, 1951 (43 of 1951) (hereafter in this Chapter referred to as the principal Act), the following sections shall be inserted, namely:

'29B. *Political parties entitled to accept contribution.*- Subject to the provisions of the Companies Act, 1956 (1 of 1956), every political party may accept any amount of contribution voluntarily offered to it by any person or company other than a Government company:

Provided that no political party shall be eligible to accept any contribution from any foreign source defined under clause (e) of section 2 of the Foreign Contribution (Regulation) Act, 1976 (49 of 1976).

Explanation. - For the purposes of this section and section 29C,-

- (a) "Company" means a company as defined in section 3;
- (b) "Government company" means a company within the meaning of section 617; and
- (c) "contribution" has the meaning assigned to it under section

293A of the Companies Act, 1956 (1 of 1956) and includes any donation or subscription offered by any person to a political party; and

(d) "person" has the meaning assigned to it under clause (31) of section 2 of the Income-tax Act, 1961 (43 of 1961), but does not include Government company, local authority and every artificial juridical person wholly or partially funded by the Government.

29C. Declaration of donation received by the political parties.- (1) The treasurer of a political party or any other person authorized by the political party in this behalf shall, in each financial year, prepare a report in respect of the following, namely:

(a) the contribution in excess of twenty thousand rupees received by such political party from any person in that financial year;

(b) the contribution in excess of twenty thousand rupees received by such political party from companies other than Government companies in that financial year.

(2) The report under sub-section (1) shall be in such form as may be prescribed.

(3) The report for a financial year under sub-section (1) shall be submitted by the treasurer of a political party or any other person authorized by the political party in this behalf before the due date for furnishing a return of its income of that financial year under section 139 of the Income-tax Act, 1961 (43 of 1961) to the Election Commission.

(4) Where the treasurer of any political party or any other person authorized by the political party in this behalf fails to submit a report under sub-section (3), then, notwithstanding anything contained in the Income-tax Act, 1961 (43 of 1961), such political party shall not be entitled to any tax relief under that Act.'

3. Insertion of new section 39A. - After section 39 of the Principal Act, the following section shall be inserted, namely :

"39A. *Application of equitable sharing of time. -*" (not reproduced here, as not relevant)

4. Amendment of section 77. - In section 77 of the Principal Act, in sub-section (1), for *Explanations 1 and 3*, the following *Explanations* shall be substituted, namely:

"Explanations 1 and 3. -" (not reproduced here, as not relevant).

5. After Part V of the Principal Act, the following Part shall be inserted, namely :

"Part VA

Free supply of certain material to candidates of recognised political parties"

(not reproduced here, as not relevant).

Chapter III - Amendment of the Companies Act, 1956

7. Amendment of section 293A - In section 293A of the Companies Act, 1956, after sub-section (5), the following *Explanation* shall be inserted, namely:

'Explanation. - For the purposes of this section, "political party" means a political party registered under section 29A of the Representation of the People Act, 1951 (43 of 1951).'

Note : Section 293A dealing with prohibitions and restrictions regarding political contributions, has been amended as above.

Chapter III - Amendments of the Income-Tax Act, 1961

8. Amendment of section 13A.- In section 13A of the Income-tax Act, 1961 (43 of 1961) (hereafter in this Chapter referred to as the Income-tax Act),-

(i) in the proviso, in clause (b), for the words "ten thousand rupees", the words "twenty thousand rupees" shall be substituted;

Note : The condition of keeping and maintaining a record of each contribution in excess of Rs.10,000 has been amended so as to increase this limit to Rs.20,000.

(ii) after the proviso and before the *Explanation*, the following proviso shall be inserted, namely:

"Provided further that if the treasurer of such political party or any other person authorised by that political party in this behalf fails to submit a report under sub-section (3) of section 29C of the Representation of People Act, 1951 (43 of 1951) for a financial year, no exemption under this section shall be available for that political party for such financial year.";

Note : A further condition has been imposed as above for exemption to income of political parties.

(iii) for the *Explanation*, the following *Explanation* shall be substituted, namely:

'Explanation. - For the purposes of this section, "political party" means a political party registered under section 29A of the Representation of the People Act, 1951 (43 of 1951).'

Note : The definition of a political party for the purpose of section 13A has been substituted as above.

9. Amendment of section 80A. - In section 80A of the Income-tax Act, in sub-section (3), for the word, figures and letters "section 80GGA", the words, figures and letters "section 80GGA or section 80GGC" shall be substituted.

Note : Section 80A is amended to provide that where, in computing the total income of an AOP or BOI, any deduction is admissible under section 80GGC, no deduction under this section shall be made in computing total income of member of AOP or BOI in relation to the share of such member in the income of AOP or BOI.

10. Insertion of new sections 80GGB and 80GGC. - After section 80GGA of the Income-tax Act, the following sections shall be inserted, namely:

'80GGB. *Deduction in respect of contributions given by companies to political parties.*- In computing the total income of an assessee, being an Indian company, there shall be deducted any sum contributed by it, in the previous year to any political party.

Explanation. - For the removal of doubts, it is hereby declared that for the purposes of this section, the word "contribute", with its grammatical variation, has the meaning assigned to it under section 293A of the Companies Act, 1956 (1 of 1951).

80GGC. *Deduction in respect of contributions given by any person to political parties.* - In computing the total income of an assessee, being any person, except local authority and every artificial juridical person wholly or partly funded by the Government, there shall be deducted any amount of contribution made by him, in the previous year, to a political party.

Explanation. - For the purposes of sections 80GGB and 80GGC, "political party" means a political party registered under section 29A of the Representation of the People Act, 1951 (43 of 1951).'

APPENDIX- II

REPORT OF CONTRIBUTION RECEIVED BY POLITICAL PARTIES IN THE FINANCIAL YEAR 2003-2004

Courtesy the Election Commission
(<http://www.eci.gov.in/>)

P.T.O