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COMMITTEE ON STATE FUNDING OF ELECTIONS



REPORT

December, 1998

GOVERNMENT OF INDIA
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
LEGISLATIVE DEPARTMENT
NEW DELHI

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REPORT

CHAPTER – I

INTRODUCTORY

Electoral Reforms

1.1 Electoral reforms have been on the agenda of every successive Government at the Centre during the last three decades or so. The National Agenda of the present coalition Government at the Centre also has electoral reforms as one of its important items. These reforms have been considered to be an on-going process and the election law has been amended from time to time to meet the immediate demands of the electoral system. The last such occasion when some significant changes were made in the election law was in August, 1996 when Parliament enacted the Representation of the People (Amendment) Act, 1996. But no system can ever be said to be perfect. Therefore, in the resolution passed by the Lok Sabha, in its special session

held in August, 1997 commemorating the golden jubilee of the country's independence, electoral reforms again found a prime place. The resolution sought to achieve, *inter alia*:

"We, the Members of Lok Sabha, meeting in a specially convened Golden Jubilee Session of both Houses of Parliament, to commemorate the completion of half a century of freedom:

Having remembered with gratitude the great sacrifices made and the salutary service rendered by our freedom fighters:

Having recalled with deep satisfaction and pride the maturity of our people in vigilantly preserving democracy and safeguarding the unity of the nation and the valour of our soldiers, sailors and airmen, including ex-servicemen, in service to the country:

Having reflected upon the state of the nation with the Preamble to the Constitution as the guide:

Having then, specifically deliberated upon matters concerning our current political life, state of democracy in the country, our economy, infrastructure, science, technology and human development:

Do now solemnly affirm our joint and unanimous commitment to the issues hereinafter mentioned, and we also do solemnly resolve and direct that they be adopted as minimum tasks, constituting our "Agenda for India" on this historic occasion:

*That meaningful **electoral reforms** be carried out so that our Parliament and other legislative bodies be balanced and effective instruments of democracy, and further that political life and processes be free of the adverse impact on governance of undesirable extraneous factors, including criminalisation:*

1.2 In his address to joint session of Parliament at the beginning of the Budget Session in March, 1998, the Hon'ble President also laid stress on the

need for electoral reforms in the following terms:

"..... One of the causes of corruption and corrosion of values in our polity, as well as criminalisation of politics, stems from flaws in the electoral process. To ensure free, fair and fearless elections and to prevent the use of money and muscle power, Government will introduce a comprehensive Electoral Reforms Bill for which considerable ground work has already been done....."

2. For the purpose of fulfilling the above assurance given to the nation by the President and Parliament, an all party meet was held on 22nd May, 1998 under the chairmanship of Shri L.K. Advani, Union Home Minister. The meet went into the question of comprehensive electoral reforms and deliberated upon a host of proposals made by the Goswami Committee on Electoral Reforms in 1990 and by the Election Commission from time to time, which had been engaging the attention of Government and Parliament but could not be readily implemented because of divergence of opinion of political parties on the core issues involved in them. In that meeting, apart from other matters, one matter about which all parties, without exception, felt seriously concerned was the mounting election expenses of political parties and candidates and the corrupting role of money power, particularly black money, in the electoral field. Many felt that State funding of elections, which was being advocated by various committees of Parliament and Government in the past, would be a potent remedy for curing the above malaise afflicting the electoral system. It was, therefore, unanimously decided that an expert committee be constituted to go into all aspects of the

above issues and to recommend concrete measures aimed at placing effective curbs on the vitiating role of money power in elections.

Constituion of the Committee

3.1 In pursuance of the above decision of the all party meet on 22nd May, 1998, the Government of India in the Ministry of Law, Justice and Company Affairs, Legislative Department, constituted the present Committee by their Notification No. F.7(8)/98-Leg.II, dated the 3rd June, 1998. The Committee *initially* consisted of seven members (all members of Parliament) as follows:

Shri Indrajit Gupta, Chairman
 Shri Somnath Chatterjee
 Dr. Manmohan Singh
 Shri Madhukar Sarpotdar
 Prof. Vijay Kumar Malhotra
 Shri R. Muthiah, and
 Shri Digvijay Singh.

3.2 Subsequently, the Committee was expanded by the inclusion of one more member of Parliament, namely, Prof. Ram Gopal Yadav, on 6th August, 1998.

3.3 Services of Shri S.K. Mendiratta, a former Director (Law) and Principal Secretary to the Election Commission, were provided to assist the Committee as its Secretary.

Its terms of reference

4.1 The Committee was assigned the following task, by its terms of

reference as contained in the aforesaid Government notification dated 3rd June, 1998:-

"The Committee will:-

- (a) examine the pattern of State funding in other countries where it is in vogue and suggest concrete proposals for providing State funding to candidates set up by recognised political parties, and*
- (b) examine, in detail, the following related proposals and make suitable recommendations on:*
 - (i) maintenance of accounts by political parties and audit thereof;*
 - (ii) ban on donations by companies to political parties;*
 - (iii) inclusion of expenses of political parties in the election expenses of candidates for the purposes of ceiling on election expenses; and*
 - (iv) empowering of the Election Commission of India to fix ceiling on election expenses before every general election."*

4.2 The Committee was initially asked to complete its deliberations and submit its report by the end of August, 1998. It could not, however, complete its task within the aforesaid period, for the reasons explained fully in the Committee's letters dated 24th August, 1998 and 30th October, 1998 to the Union Home Minister and Union Law Minister (*Annexures I and I.1 hereto*). Its term was, therefore, extended, first, upto the end of October, 1998 (*vide* Ministry of Law, Justice and Company Affairs, Legislative Department, Notification No.F.7(8)/98-Leg.II, dated 18th September, 1998) and, then, upto the 31st December, 1998, (*vide* that Ministry's notification

dated 4th December, 1998).

Its internal meetings

5.1 Soon after its constitution on 3rd June, 1998, the Committee set upon its assigned task. It met, for its first meeting, on 5th June, 1998. Thereafter, it held seven more formal meetings on 10th July, 17th July, 29th July, 21st October, 6th December, 1998, 21st and 22nd December, 1998. The minutes of these meetings of the Committee are annexed hereto as **Annexure-II**.

5.2 In its meeting on 17th July, 1998, the Committee had the benefit of expert views of Dr. E. Sridharan, Academic Director, University of Pennsylvania Institute for the Advanced Study of India, and Shri D.S. Bagga (presently posted as Advisor to the Inter State Council under the Ministry of Home Affairs). Whereas Dr. Sridharan had conducted a study of the system of State Funding as in vogue in certain foreign countries while employed in the Centre for Policy Research, New Delhi, Shri Bagga had made a similar study as member of a special task force set up by the Commonwealth Secretariat to assist the Republic of South Africa in the framing of their Constitution.

Committee's interaction with political parties, general public, etc.

6.1 For enabling it to formulate, concretise and finalise its proposals and recommendations to the Government, the Committee liked to be benefited of

the views of the main role players, i.e., political parties, voters' voluntary organisations and fora representing general voters and public at large, trade and commerce organisations representing business and industry houses and other prominent persons in public life. The Chairman, therefore, personally addressed letters (**Annexure-III**) on 20th July, 1998 to the Presiding Officers of all Houses of State Legislatures appealing to them to request all political parties represented in those Houses to send their considered views to the Committee by 7th August, 1998. The Committee also issued a public notice (**Annexure-IV**) which was published in several leading newspapers throughout the country on 6th August, 1998, inviting all those who were interested in sharing their views with the Committee to send the same to the Committee by 17th August, 1998.

6.2 There was practically no word from the political parties in response to the Committee's communications to the Presiding Officers of the State Legislatures requesting for the views of the parties represented in those Houses. It was, therefore, considered desirable to address each recognised National and State party individually for their views in the matter. Accordingly, all recognised National and State parties were again requested *vide* Committee's letter dated 24th August, 1998 (**Annexure-V**) to enlighten the Committee with their views on the issues which were of vital interest to

them by 7th September, 1998. Simultaneously, all State Governments were also made a similar request (*vide Annexure-VI*) as they too were vitally concerned in the matter, being the authorities who may also have to share a part of the financial and administrative burden involved in the State funding. To facilitate their task, a questionnaire (*Annexure-VII*) which focussed on the main issues was also sent to them.

6.3 Yet again, there was a very poor response from the political parties, that too in a matter which so significantly affects them. Therefore, they were again reminded on 30th October, 1998 to give their views by 23rd November, 1998. Out of the seven recognised National parties, only five parties, namely, Bharatiya Janata Party, Communist Party of India, Communist Party of India (Marxist), Indian National Congress and Janata Dal, ultimately gave the benefit of their views to the Committee. And out of 43 recognised State parties, only 12 parties, namely, All India Forward Bloc, All India Trinamool Congress, Asom Gana Parishad, Dravida Munnetra Kazhagam, Hill State People's Democratic Party, Janata Party, Lok Shakti, Maharashtra Gomantak Party, Samajwadi Janata Party (Rashtriya), Sikkim Democratic Front, Tripura Upajati Juba Samity and United Goans Democratic Party, responded in the matter.

6.4 Response from the State Governments was also equally disappointing.

Only nine State Governments of Arunachal Pradesh, Goa, Himachal Pradesh, Jammu & Kashmir, Madhya Pradesh, Manipur, Meghalaya, Mizoram, West Bengal and three Governments of National Capital Territory of Delhi and Union Territories of Chandigarh and Pondicherry favoured the Committee with their views.

Visit of the Committee to Mumbai, Chennai and Calcutta

7.1 The Committee also decided to visit some of the important centres in the country and have a direct dialogue with the political parties and other interested groups. To begin with, it was decided to visit Mumbai, Chennai and Calcutta on 3rd, 4th and 5th August, 1998 respectively for public sittings of the Committee. However, due to extension of the then on-going Parliament Session upto 6th August, 1998, the proposed visit was postponed. Subsequently, the Committee could visit Mumbai and Chennai on 16th and 17th August, 1998 and Calcutta on 8th September, 1998.

7.2 The Committee also proposed to visit Patna and Lucknow and fixed public sittings there on 23rd and 24th September, 1998. However, the sittings in those places had to be cancelled at the last minute because of certain unforeseen political developments there in the wake of the Central Government's move to impose President's rule in Bihar and the

preoccupation of the Uttar Pradesh Legislative Assembly with the Uttaranchal Statehood Bill.

Interaction with Election Commission of India

8. The Committee also visited the Election Commission of India on 18th December, 1998 and had a long discussion with Dr. M.S. Gill, Chief Election Commissioner, on all aspects of the issues under its consideration and ascertained the Commission's views thereon.

CHAPTER – II

STATE FUNDING OF ELECTIONS

WHY STATE FUNDING?

1. During the visits of the Committee to Mumbai, Chennai and Calcutta, and also in the various letters and representations which the Committee received in response to its public notice, several persons, parties and organisations raised a basic question as to why there should be State Funding of elections. Strictly speaking, the Committee could skip this fundamental question or evade an answer thereto, because its terms of reference as contained in the Government Notification dated 3rd June, 1998 (reproduced in para 4.1 of Chapter-I) proceed on the assumption that there should be State funding to candidates set up by recognised political parties and the task assigned to the Committee is to suggest concrete proposals therefor. Nevertheless, the Committee considered it desirable and appropriate to go into this issue, specifically addressed to it and which it had to squarely face at its aforementioned public sittings at Mumbai, Chennai and Calcutta.

2. Opinion seems to be divided on this fundamental issue, though a majority of the political parties, representatives of trade and commerce organisations and prominent public personalities who have either written to

the Committee or appeared before it at its public sittings expressed themselves in favour of State funding.

3. The school of thought which is opposed to the very concept of any subvention being given to political parties is of the view that political parties are voluntary associations of citizens of India and the very purpose of formation of such associations is to take up and pursue political activities with the ultimate object of achieving or sharing State power, through the medium of elections. Contesting elections, either at the apex levels to Parliament and State Legislatures or at the lower echelons to the Local Government bodies, is the primary purpose for which political organisations come into being. Therefore, for undertaking that very activity why should the State coffers be made to bear a burden, either wholly or partially. Political parties, apart from being politically viable, should be financially viable too. Such financial viability for the parties would come, it is argued, if they are broad based and that would make them go for bigger enrolment drives of their memberships. It is contended that State funds should be utilised for the welfare and common good of the people and not for the benefit of a few, following political pursuits. It is further argued that any State grant to political parties would make them look to Govt. for financial favours making them dependent on the Govt. and also accountable to it.

This would erode their independence, as they would then be answerable even for their internal functioning and management of funds. It is also argued that any State funds to them would mean addition to their private funds and increased capacity to spend on their election campaigns, which are already very costly. This would make elections even more costly and would be a retrograde step. Another point being made is that any Govt. grants to political parties may encourage mushrooming of parties, as such grants would be a great incentive for even non-serious and frivolous organisations to call themselves as political outfits. A question is also being asked as to why State grants for political purposes are being thought of now, particularly when the Indian economy is already under stress, though the political parties have been contesting elections atleast for fifty years since independence, if not more.

4. The other school of thought which advocates State funding of elections makes the counter argument that political parties, though voluntary associations of individual citizens, are performing vital public function of sustaining democracy to which this country is wedded. And for performing such public function of great importance, they need to be financed from public funds. They also argue that State funding of elections would be in great public interest. Political parties require huge funds for carrying out

Why?

their legitimate electioneering campaigns during elections, apart from the funds for meeting their running expenses on their day-to-day political activities during non-election period. Contributions to such funds of political parties from State coffers would make them less dependent on private contributions, which mostly come from big business houses and industrialists on *quid pro quo* basis, and this would serve a great public cause and interest of removing corruption. Public funding of elections would also bring about an *equality of opportunity* in electoral contests, even for those parties which represent socially and economically weaker sections of society and who often have less access to big donors.

5. The Committee has carefully examined the *pros* and *cons* of the above fundamental issue. In its considered opinion, the *pros* in favour of State funding of political parties and their candidates for contesting elections far outweigh the *cons* against such funding, for the reasons which presently follow.

6.1 India is a sovereign socialist secular democratic republic. Democracy forms unalterable part of basic structure of the Constitution of India. It is now well recognised in all modern democracies that political parties play essential roles in any form of democratic governance and their existence is a *sine qua non* for sustaining a representative democracy.

They act as channels for participation of citizens in the governance of their country. Competition among them in political field makes the government of the day answerable and accountable to the citizenry and provides them with ideological alternatives at the time of elections to remould their destiny. Such competing political parties, on one hand, inform and educate common people about the policies and programmes of the government and, on the other hand, point out the shortcomings and deficiencies in such policies and programmes and echo the aspirations and expectations of the people. They, thus, serve as conduits between the common people and the government. Viewed from this angle, they also perform public functions and may even be regarded as important limbs of the administrative structures of the country. Their political activities and pursuits thus subserve a great public purpose. There is, therefore, every justification for their legitimate activities being financed, if not wholly atleast partially, from public funds. That would be a very small price for the sustenance and healthy growth of democracy. In this context, it may not be out of place to mention that Government is now helping financially several Non-government Organisations (NGOs) which are promoting various Governments programmes and activities among certain communities or groups. If such NGOs can be financed from public funds, why not political parties which are performing public functions of far

greater importance and of relevance to whole of the country.

6.2 Public funding of political parties is also in keeping with the Declaration on Free and Fair Elections adopted unanimously by the Inter-Parliamentary Council (represented by 129 Parliaments) at its 154th Session at Paris on 26th March, 1994, in which representatives of 112 Parliaments, including Indian Parliament, participated. Para 4 of that Declaration (stressing upon the Rights and Responsibilities of States) laid down, *inter alia*, that:

*"States should take the necessary legislative steps and other measures, in accordance with constitutional process**** to**** provide for the formation and free functioning of political parties, possibly regulate the funding of political parties and electoral campaigns, ensure the separation of party and State and establish the conditions for competition in legislative elections on equal basis."*

6.3 By providing funds to political parties from public exchequer, Government would in fact be discharging its obligations under the aforesaid Declaration to which our country made the commitment in 1994.

6.4 State funding is also justified in larger public interest. It cannot be denied that elections have become too costly. There are several factors for such mounting costs, like, extensive election campaigns owing to keen competition among political parties many of whom now see a better chance to come to power because of the changed political scenario in the country too well known to be described here in any detail, increase in the electorate.

Why?

general rise in the prices of essential items of electioneering, particularly POL and printing costs, use of new techniques and modern gadgets for election propaganda, and the like. For meeting such huge costs on their election campaigns, political parties require huge funds, which at present come mostly from private sources, often through questionable means. Big business houses and entrepreneurs contribute to funds of political parties, primarily keeping their own interests in view. They consider these contributions as investment capable of yielding rich returns in time to come, as that would provide them with easy access to political powers that be. In many cases, they may even be able to influence Government decisions because of their political clout. This is giving rise to political corruption. The earlier it is rooted out, the better it is for the health of the nation. And State funding would be a right step in that direction, for that would make political parties less and less dependent on such money bags who make political contributions on quid pro quo basis.

Why?

Who accepts?

6.5 State funding of political parties and their candidates would also tend to provide a 'level playing field' even for those weaker political parties which may not be having easy access to big business or industrial houses or may not be enjoying patronage of such big donors because of their political ideologies and policies or philosophy which they seek to pursue.

State support to such parties would afford them with a reasonably equal opportunity of contesting elections with a fair chance of success against those parties who have superior financial power. This would seek to 'establish the conditions for competition in legislative elections on an equal basis', as envisaged in the above referred Paris Declaration on Free and Fair Elections.

6.6 The point made against State funding on the ground that such funds may become mere additions to political parties' own funds raised from private sources and make the elections even costlier can be taken care of by regulation of raising of private funds by them and strict monitoring of their spendings. Any public funding of political parties has to be combined with such regulatory measures as may bring complete transparency in the financial management of party funds howsoever raised.

Yes.
First

6.7 In fact, even if there be no State support to party funds, State regulation of such funds is the pressing need of the hour. The whole country is feeling concerned about the pernicious role of black money in elections. Even the Supreme Court has expressed its serious concern in the matter more than once and observed that the electoral system is getting corrupted by money power [see *Gadakh Yashwantrao Kankarrao vs. EV alias Balasaheb Vikhe Patil* {1994 (Suppl) 3 SCC 170}, *C. Narayana Swamy vs.*

CK Jaffer Sharief {1994 (1) SCC 682}, etc.]. The apex court of the land has repeatedly urged upon Parliament to tighten the law on the subject as the existing law does not measure upto the existing realities. This, incidentally, answers the criticism that State funding may bring with it the State regulation of party accounts eroding the independent functioning of political parties. State regulation is even otherwise urgently called for.

6.8 The apprehension that State funding may give impetus to mushroom growth of political parties is also not well-founded. It is not that every association or organisation calling itself a political party will become entitled to financial support from the State as soon as it is formed. State support has to be confined only to such political parties as have a real base among the electorate and they will have to wait till they demonstrate such electoral support at elections. A point has been made in this context that this may benefit only the incumbent parties and the new parties may be in a disadvantageous position as they may have to contest elections to prove their credentials without any State support. This is unavoidable in any scheme of things, as precious public funds cannot be doled out to any group, association or body calling itself a political party, without first verifying its credentials and popular base for which elections are the only sure means.

6.9 In so far as the objection raised as to why State funding is being

considered now is concerned, there is a historical reason. Though under the parliamentary system of governance which our country adopted on achievement of independence fifty years ago, existence of political parties was implicit and essential and they had in fact been functioning even during pre-independence period. the Constitution of India was silent in regard to such political ground reality. It was only in 1985 that the Constitution, for the first time, recognised the existence of political parties in the electoral field, when the Tenth Schedule (popularly known as anti-defection law) was added to the Constitution by the Constitution (Fifty-second Amendment) Act, 1985. Now that the political parties are constitutionally recognised entities, they have to be given such State support as may enable them to discharge their constitutional duties and responsibilities of sustaining and nurturing democracy in the country.

6.10 The Committee has observed that even before the aforesaid constitutional recognition of political parties in 1985, State funding of elections has been the focus of attention of several Committees, set up by Parliament or Government or even by private institutions or fora interested in public welfare. For example, the Joint Committee of Parliament on Amendments to Election Law, set up in 1971 under the chairmanship of Shri Jagannath Rao, observed in its Report dated the 18th January, 1972 to

Parliament that:

".... The Committee, however, consider that basically the problem of election expenses, which has not only agitated the minds of the candidates and the thinking of political parties but also of the general public, can be solved only if it is accepted in principle that all election expenses ought to be a legitimate charge on the public funds and efforts should be made to achieve that end. The Committee feel that a process should be initiated whereby the burden of legitimate election expenses at present borne by the candidate or the political party would be progressively shifted to the State."

(vide para 17.1, Chapter XVII of Part I)

6.11 Again, the Goswami Committee on Electoral Reforms, set up by the Government in 1990, recommended the grant of State assistance in kind to candidates set up by recognised political parties (vide Chapter VIII of its Report presented in May, 1990). The Committee has noted that even some legislative steps were initiated in this direction by the introduction of the Representation of the People (Amendment) Bill, 1990 (25 of 1990) in Rajya Sabha, but that Bill was withdrawn in June, 1993 with a view to introducing a more comprehensive Bill.

6.12 The present (15th) Law Commission has also, in a very recent paper produced in September, 1998, on electoral reforms recommended State funding.

let us see details.

6.13 In 1974 and 1977, the Citizens for Democracy, a voluntary organisation under the patronage of late Shri Jayaprakash Narayan, set up two Committees, under the chairmanship of Shri V.M. Tarkunde, to consider

the question of electoral reforms and mounting election expenses. Both the Committees, in their reports published in 1975 and 1978 respectively, also recommended the provision of assistance from public exchequer to meet a considerable part of the candidates' election expenses

6.14 The Committee, therefore, sees full justification - constitutional, legal as well as on grounds of public interest - for grant of State subvention to political parties, so as to establish such conditions where even the parties with modest financial resources may be able to compete with those who have superior financial resources, on a level playing field and with a fair chance of success at the hustings.

PATTERN OF STATE FUNDING IN FOREIGN COUNTRIES

7.1 The Committee has studied the system and pattern of State funding as in vogue in certain foreign countries following democratic system of Government. It has observed that several developed and developing democracies have introduced and are operating systems of comprehensive or partial State funding of elections. But such funding has only been a recent phenomenon and gained strength mostly during the last three decades or so.

7.2 The following countries have introduced State funding in one form or other, in the years shown in brackets:

Germany (1959), Austria (1963), France (1965), Sweden (1966), Finland (1967), Denmark (1969), Israel (1969), Norway (1970).

Netherlands (1972), Italy (1974), Canada (1974), United States (1976, for Presidential elections only), Japan (1976), Spain (1977), Australia (1984) and South Korea (1989).

Britain also practises partial State funding of political parties for sustaining and strengthening its parliamentary system of governance. There are some other countries also, like, Mexico, Portugal, Malawi, Namibia, Zimbabwe and South Africa who have either adopted State funding or are in the process of introducing it in their electoral systems, for the healthy growth of democracy in their countries.

7.3 The Committee has observed that though advantage can usefully be taken of the experience of those countries, our country will have to evolve a system of its own suitable to its own requirements and environment, because of its own peculiar problems. Most of the countries where State funding is prevalent in one form or the other are following the proportional representation system of elections where the electioneering is generally in the hands of party rather than its candidates. In India, the position is otherwise, where direct elections are held to the House of the People and State Legislative Assemblies from territorial constituencies under the 'first-past-the post' system. Further, in those countries, there are much smaller electorates and the number of political parties in the electoral arena is also very limited. But India has the largest electorate in the world.

now exceeding 60 crores. The number of political parties is also very large, with 7 recognised National parties and 43 recognised State parties, apart from nearly 675 registered-unrecognised political parties. In the next place, we have also to keep our financial resources and budgetary constraints in view. All these have to be the guiding factors in evolving our own system of State funding of elections.

STATE FUNDING - FOR WHOM IN INDIA?

8.1 Having accepted the need and justification for State funding of elections, the connected question for consideration is who should be entitled for such subsidy at State cost.

8.2 This question has already been partially answered above in reply to the apprehension that State funding may give impetus to mushroom growth of political parties. State funds cannot be provided to every association or organisation calling itself a political party and as soon as it is formed. At present, there are more than 675 associations or bodies of persons calling themselves as political parties registered with the Election Commission under section 29A of the Representation of the People Act, 1951. Reports published by the Commission show that more than two hundred of such parties have not contested even a single general election after their registration. State financial support has, therefore, to be confined

only to such political parties as are actively participating in electoral activities and have a real base among the electorate. Nor can such funds be doled out to independent candidates, an overwhelming majority of whom, with a very miniscule exception, just join the bandwagon for fun and cheap personal popularity. The latest figures released by the Election Commission relating to the general elections to the House of the People and to the Legislative Assemblies of five States held earlier this year bear ample testimony to this. Out of 1900 independent candidates who contested the last parliamentary election in 1998, only 6 (0.65%) succeeded to win and 1883 lost their security deposits. Likewise, out of 10,635 independent candidates who contested the 1996 parliamentary election, only 9 (0.08%) such candidates won and 10,603 (99.70%) forfeited their deposits. Similar was the fate of independents contesting the last round of assembly elections in four States National Capital Territory of Delhi in November, 1998 where only 19 (0.99%) out of 1910 independents could reach the post. The records would further show that most of these independents were also really not independent but rebels of certain established parties and who were supported by rival parties.

8.3 The only authentic index to judge the popular support that a political party enjoys is its poll performance at the previous elections. The

Election Commission has already fixed certain norms and yardsticks for judging the poll performance of all political parties registered with it under section 29A of the Representation of the People Act, 1951. Such norms form the basis for their recognition as National parties and State parties under the Election Symbols (Reservation and Allotment) Order, 1968. Therefore, only such of the registered parties as have secured **recognition** as National and State parties under the Symbols Order on the manifest demonstration of their popular support among the electorate and their candidates should alone be made eligible for State subvention.

8.4 The Committee has observed that in foreign countries also where the system of State funding of elections is in vogue, certain cut-off points have been prescribed and the political parties whose poll performance falls short of those laid down minimum standards are not eligible for such State financial assistance.

8.5 The Committee has also examined the legal implications of the State funds being provided only to the recognised political parties and their candidates, and not to others. The Committee has noted that the Supreme Court has held in *Ramakant Pandey vs. Union of India and others* (AIR 1993 SC 776) that the candidates of recognised political parties form a class by themselves and any discrimination made between them and others is not

violative of equality clause in Article 14 of the Constitution of India. The Supreme Court negated the contention that such discrimination between them was artificial or inconsistent with the spirit of the election law or that the recognition of political parties was itself detrimental to the cause of real democracy. This case arose out of the amendment made to section 52 of the Representation of the People Act, 1951 in 1992, whereby it was provided that an election would be countermanded only in the event of death before poll of a candidate set up by a recognised political party and not on the death of any other candidate. The Committee has further noted that several High Courts have also upheld the grant of certain facilities only to recognised parties and not to others. For example, the High Courts of Allahabad, Karnataka and Madras in the cases of *Hari Shankar Jain vs. Chief Election Commissioner (Writ Petition No.5790/84)*, *Raghunath Mal vs. Election Commission of India (Writ Petition No.19367/84)* and *P.T. Srinivasan vs. Union of India and others (Writ Petition No.12378/84)* respectively held that the grant of facilities of broadcasts/telecasts over All India Radio Doordarshan to recognised political parties or supply of copies of electoral rolls free of cost to them, and not to other candidates, was not violative of the Constitution of India.

STATE FUNDING - WHETHER FULL OR PARTIAL AND WHETHER FOR ALL POLITICAL PURPOSES OR ONLY FOR ELECTIONS

9.1 Ideally speaking, political parties should be so financed or funded by Government that they have not to look to others (except their members for nominal subscriptions or membership fee) to raise their financial resources to run their party affairs, propagate their political policies and programmes and conduct their electioneering campaigns. But it may not always be possible to achieve the ideal. Given the budgetary constraints and financial stringency being faced currently by the country, compounded by the recent economic sanctions imposed by certain foreign countries, sparing or diverting from the meagre financial resources of the country at this juncture, huge funds that may be required to provide full State funding to political parties will neither be advisable nor feasible. A harmonious balance has to be struck. Therefore, to begin with, political parties may have to contend with only partial funding by the State.

9.2 The Committee accordingly recommends that, for the present, only part of the financial burden of political parties may be shifted to the State. This should be so done that it provides them relief not only in carrying out their electoral activities and meeting partly the cost of essential items of electioneering campaigns of their candidates, but also helps them partially in

the current administration of their day to day functioning during non-election period. Gradually, more and more of their expenses' burden can be progressively shifted to the State so that ultimately all their legitimate expenses become a charge on the State.

STATE FUNDING - WHETHER IN CASH OR KIND

10.1 The preponderance of opinion that was expressed before the Committee by the parties either in their written communications or in their oral submissions is that initially State funding should be provided only in kind and not in cash. They are of the opinion that any subsidies in cash will not only require maintenance and rendition of detailed and separate accounts of such cash subsidies received by the political parties, but also are capable of being misappropriated or used for purposes other than those for which the same were granted.

10.2 The Committee also agrees with this opinion. Accordingly, it recommends that, to begin with, State subvention may be given only in kind, in the form of certain facilities (which are discussed in detail herinafter) to the recognised political parties and their candidates.

CHAPTER - III

FACILITIES TO RECOGNISED POLITICAL PARTIES AND THEIR CANDIDATES AT STATE COST

1. The Committee has recommended in the previous Chapter that, to begin with, the recognised political parties and their candidates may be given some State subsidy, in kind, to off-load some of their legitimate expenses in running their party affairs and conducting their election campaigns. Accordingly, the Committee suggests the following facilities to be provided to them at State cost.

For recognised political parties

2.1 Every recognised National party may be allotted in the National Capital at Delhi a suitable accommodation for its national headquarters. It should be rent-free accommodation.

2.2 One rent-free telephone, with STD facility, may also be provided to each party at such premises. In addition, each party may also be allowed the facility of a specified number of telephone calls at State cost, over and above the free telephone calls normally available to any telephone subscriber.

2.3 Similar facilities of rent-free accommodation, with one rent-free telephone and a specified number of free calls, may also be provided to each recognised State party in the State in which its headquarters is situate.

3.1 At the time of every general election to the House of the People or to a State Legislative Assembly, the recognised National and State parties may be granted sufficient free air time on the State owned Doordarshan and All India Radio (DD & AIR) for their election propaganda over the electronic media.

3.2 The Committee has taken note of the scheme of election related telecasts/broadcasts over DD & AIR, as evolved by the Election Commission of India during the last round of general elections to the House of the People and certain State Legislative Assemblies held this year. According to that scheme, all recognised parties are allowed a certain uniform base time, both on DD & AIR. Further, certain additional time is allowed to each such recognised party on the basis of votes polled by it at the last round of parliamentary and assembly general elections. The same scheme may continue, with such modifications and further improvements as the Election Commission may, in consultation with political parties and the Prasar Bharati, decide in future from time to time. One such modification needed, in the Committee's opinion, is to permit the parties to use their allotted time for their propaganda in the manner they like and not necessarily for political speeches alone.

3.3 Other private channels operating in India, including Cable Operators,

may also be required to like-wise make sufficient free air time available for use by the recognised National and State parties, during general elections. Further, the functioning of these private channels may be so regulated that they make a fair and balanced presentation of the views of all parties in their other election related programmes.

Facilities to candidates of recognised parties

4.1 The Committee has analysed the main items of electioneering campaign on which all parties and candidates, by and large, incur a major portion of their election expenses, although individual campaigning methods may vary from State to State, from one constituency to another and from one candidate to another. The principal items of such expenditure appear to be (a) motor vehicles used by candidates and their agents for canvassing during the election period; (b) holding of large public meetings, particularly those with loudspeaker arrangements; (c) arranging public processions and demonstrations; (d) various forms of entertainments; (e) display of streamers and banners, posters, placards and similar forms of publicity; (f) paid canvassers and agents; (g) payments of incidental expenses to voluntary helpers, including polling and counting agents; (h) printing of election manifestos, pamphlets and identity slips and distribution thereof; and (j) personal canvassing before and on the polling day, including putting up of

booths by candidates outside the polling stations for issuing identity slips to voters.

4.2 Keeping the above in view, the Committee suggests the provision of the following facilities, at State cost, to the candidates set up by recognised National and State parties to share a part of their financial burden on the above items of election expenditure:-

- (i) Each candidate of a recognised National or State party may be provided with a certain specified quantity of petrol or diesel for vehicles used by him in his election campaign. For this purpose, he may be required to register with the Returning Officer of his constituency all vehicles which he is using for his election propaganda.
- (ii) These candidates may also be supplied with a certain specified quantity of paper for printing their election literature and also for the printing of unofficial identity slips which each candidate normally issues to voters in his constituency.
- (iii) Each such candidate may also be supplied with postal stamps of a certain specified amount to enable him to communicate with the election authorities and also with his voters.
- (iv) Each such candidate may be supplied with five copies of electoral roll of his constituency. These will be in addition to the copies of the electoral

rolls which are being supplied presently to the recognised political parties at the time of preparation and revision of electoral rolls under the provisions of the Registration of Electors Rules, 1960.

(v) Each such candidate for an assembly election may also be supplied with one set of loudspeakers (i.e., one micro-phone and two loudspeakers).

A parliamentary election candidate may be supplied with one such set of loudspeakers for every assembly segment of the parliamentary constituency, but subject to the maximum of six such sets.

(vi) Each candidate at an assembly election may also be provided with one telephone at his main campaign office in the constituency during the election campaign period, i.e., from the last date for withdrawal of candidatures till the date of completion of election. For such telephone, no compulsory deposit from the candidate need be asked for. In addition, he may also be permitted to make a specified number of free calls.

(vii) Similar facility of free telephones should also be extended to the candidates at parliamentary election, at the rate of one telephone for every assembly segment comprised in the parliamentary constituency, but subject to a maximum of six telephones for the entire constituency.

(viii) On the day of poll, some minimum arrangements may be made at State cost for the candidates' camps beyond the prescribed distance at each

Polling Station.

(ix) On the day of counting, provision should be made for supply of refreshments and food packets to the counting agents of candidates inside the counting hall, as is made for the official counting staff.

4.3 The quantity of petrol/diesel, paper and postal stamps which may be supplied, free of charge, to the candidates will have to be worked out realistically and separately fixed for each State/Union Territory, depending upon the geographical features, like, hilly terrain, deserts, riverine areas, and means of communication available, etc. Even within the same State, the quantity so worked out may vary from constituency to constituency, depending upon its territorial extent, geographical features and the size of electorate, which are at present quite disproportionate to each other. Obviously, no uniform standards or scales can be laid down in this behalf which may be applicable in relation to all States and Union Territories and to all parliamentary and assembly constituencies within them. This task may be entrusted to the Election Commission of India, who may accomplish it in consultation with the recognised political parties and Government.

5. For the removal of any doubt, the Committee would like to clarify that the facilities recommended above for the candidates would be available to the candidates of recognised State parties only in the State or States in which

they are recognised as such State parties, and not in other States. The candidates of recognised National parties would, however, be eligible for the said facilities in all States, wherever they are so set up. The Committee went into the question whether any distinctions could be drawn amongst the candidates of National parties in the matter of grant of above facilities on the basis of the past poll performance of the existing National parties in various States. But such distinction was considered neither desirable nor expedient in the interest of healthy growth of political system and the Committee decided that all recognised National parties may be treated at par in this behalf.

CHAPTER-IV

REGULATORY MEASURES SO AS TO BRING TRANSPARENCY AND MONITORING OF EXCESSIVE EXPENSES

MAINTENANCE OF ACCOUNTS BY POLITICAL PARTIES

1. One of the reasons for which State funding has been recommended for the recognised political parties is to curb the role of money power, particularly black money, in elections. Thus, there is a greater need for transparency in the raising of party funds by political parties and in the manner of their spending. Therefore, in the Committee's considered opinion, they should be obliged under the law to comply with each of the following requirements:-

- (a) Every recognised political party must be compulsorily required to maintain and submit its annual return of receipts and expenditure to the Income Tax authorities by the prescribed due dates. No political party which has failed to submit its annual return for the previous assessment year under the Income Tax Act should be eligible for any State funding.
- (b) Such annual return should be duly audited and certified to be correct and complete in all respects by a Chartered Accountant who may be selected by the political party itself. Income Tax authorities will,

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however, be free to have a further check of such returns by their own agencies, wherever considered appropriate by them.

- (c) Each political party receiving State subsidy should also file a complete account of its election expenditure during the election period, at every general election, to the Election Commission of India, as observed by the Supreme Court in the case of *Common Cause Vs. Union of India and Others* (AIR 1996 S.C. 3081). Such account should show the receipts and expenditure, both on the general party propaganda and on individual candidates, in the formats as may be prescribed by the Election Commission.

- (d) All subscriptions, donations received by a political party above the amount of Rs. 10,000/- by any subscriber or donor should be accepted only by means of a cheque/bank draft. The names of all such individual subscribers/donors should be fully disclosed by the party in its party accounts.

REGULATORY MEASURES TO MONITOR EXCESSIVE ELECTION EXPENSES.

2.1 In order to curb the mounting election expenses of parties and candidates and with a view to ensuring that the parties and candidates with large monetary resources do not sway or cloud the rational thinking and judgement of electors with the extravagant and ostentatious use of money

power placing the parties and candidates with lower financial resources at a disadvantageous position, certain regulatory measures are considered essential by the Committee.

2.2 These regulatory measures may take the form of reasonable restrictions on all or any of the following matters:

- (i) wall writings,
- (ii) display of cut-outs, hoardings, banners;
- (iii) hoisting of flags (except at party offices, public meetings and other specified places);
- (iv) use of more than a specified number of vehicles for election campaigns and for processions;
- (v) announcements or publicity by more than a specified number of moving vehicles;
- (vi) holding of public meetings beyond the specified hours;
- (vii) display of posters at places, other than those specified by the district/electoral authorities.

2.3 While placing any such restrictions, due regard shall have to be paid to the various forms of electioneering campaigns adopted by political parties and candidates in different States (and in different areas within the same State) for their election propaganda. To achieve this object, suitable

provision can be profitably made in the Representation of the People Act, 1951, reserving the power to prescribe such restrictions by rules made under that Act.

CHAPTER- V

POLITICAL DONATIONS BY COMPANIES

Ban on donations – views, for and against

1. An allied issue with the State funding is whether political donations by companies and other corporate bodies should be banned or such contributions by them may also be allowed to be continued, side by side.
2. Opinion on this issue is sharply divided, even amongst the members of the Committee.
3. Some of the parties have demanded a complete ban on donations of any kind by companies and other corporate bodies. Shri Indrajit Gupta, Shri Somnath Chatterjee and Shri R. Muthiah fully endorse this demand. They consider such donations as the root cause of corruption and evil influence of money power not only in elections but also in the general governance of the country, because such donations are often made on *quid pro quo* basis in the expectation of financial favours and concessions from the political powers that be. They apprehend that such corporate donations generally go to big parties, as the weaker political parties or parties following ideologies and policies opposed to the interests of big business or industrial houses may not enjoy the patronage of big donors. This disturbs greatly '*the level playing field*'. Their apprehensions cannot be lightly brushed aside, as that would be turning blind eye to the realities on

the ground.

4. But other members of the Committee, namely, Dr. Manmohan Singh, Shri Madhukar Sarpotdar, Prof. V.K. Malhotra, Shri Digvijay Singh and Prof. Ram Gopal Yadav, echoing the views of their parties, point out to the other hard reality that political parties require huge funds for managing their day to day affairs and for contesting elections. The Committee has recommended only partial subsidy to political parties from State coffers. For the rest, they will necessarily have to look to some one else. Subscriptions and contributions by their own members alone may not suffice to meet the huge expenses that the political parties have now to incur to sustain their political activities during the non-election period and to carry out their electioneering campaigns during the election period. Therefore, according to them, imposing complete ban on corporate funding for political purposes would equally be turning blind eye to the ground realities.

Why shd. it be huge?

5.1 The Committee has noted that a complete prohibition on political donations by companies was placed by inserting section 293A in the Companies Act, 1956, by the amending Act 17 of 1969. But political contributions continued to be made by them, though not directly but in some indirect forms, like, advertisements in souvenirs and other brochures brought out by political parties and so on. Thus what was being done previously in

an open manner continued to take place, but clandestinely. The law was, therefore, changed in 1985 by Act 35 of 1985 and the amended section 293A of the Companies Act now permits corporate donations for political purposes but subject to certain prescribed restrictions.

5.2 The Committee has also noted that corporate donations or private funding of political parties is regarded as part of their freedom of expression. It is argued that when corporate bodies are permitted to make contributions for other social causes why they should be prohibited from making contributions for political purposes. Such embargo may also not be in the interests of transparency in the financial dealings of the companies and the public accounting of political parties, as the money may then find way to the coffers of political parties through underhand dealings and indirect and questionable means. Further, if political parties are not stopped from receiving contributions from trade unions or other social, religious or other organisations and if corporate bodies are not prevented from making contributions to such unions or organisations, those contributions may ultimately enrich the funds of political parties. In the ultimate analysis, the ban on corporate donations for political purposes may prove to be counter productive. In other developed and developing democracies also, political parties are free to approach corporate bodies for raising their funds and the

latter are permitted, subject to prescribed limitations, to make political contributions.

6. However, in view of the divided opinion of the members of the Committee, it would like to leave the matter to the collective wisdom of Government and Parliament to take appropriate decision in the matter.

Regulation of corporate donations

7.1 In the event of Government and Parliament ultimately deciding not to ban altogether the donations by companies and corporate bodies for political purposes, the Committee feels that the law on the subject may be further tightened so that such corporate contributions are fully regulated and made on more rational and transparent basis.

7.2 At present, all Government companies as defined under the Companies Act are prohibited from making contributions for political purposes. This embargo must continue.

7.3 In respect of other companies, only such of the companies as have been in existence for at least three years are now permitted to make contributions to political parties for political purposes. This dispensation may be changed a little and only the companies with at least five years existence may be permitted to make political contributions. This will safeguard the interests of newly established companies and their

shareholders, as they will be immune from approaches for political contributions. Further, political contributions can at present be made by resolution of Board of Directors of a company, subject to overall limit of five percent (5%) of its average net profits during the last three financial years. Whereas the overall limit of five percent may continue as at present, any political contributions that may be made by a company (with at least five years existence) the same should be made only with the approval of the general membership of the company at its annual general meeting and not by a mere resolution of the Board of Directors. The Board of Directors of a company may not always be truly reflective of political inclinations of its general members. Approval at the annual general meeting will ensure a decisive say of the general members of the company in any contributions made by it for political purposes. In the interests of transparency in the functioning of companies, it would be desirable if the members forming the Board of Directors are also made to disclose their affiliations, if any, to political parties at the annual general meeting which considers the proposals for political contributions.

CHAPTER - VI

INCLUSION OF EXPENSES OF PARTIES AND FRIENDS IN CANDIDATE'S EXPENSES

1. The next issue that falls for consideration of the Committee is whether the expenses incurred by political parties in connection with the election of candidates set up by them should be included in the candidates' account and form part of their expenses which are subject to prescribed ceilings under the law. It is also for consideration whether the same proposition should apply in the case of expenditure incurred by friends and supporters of the candidates.

2. Every candidate at an election to the House of the People or a State Legislative Assembly is required by sub-section (1) of section 77 of the Representation of the People Act, 1951 to keep a separate and correct account of all expenditure incurred or authorized by him or by his election agent between the date on which he was nominated and the date of declaration of the result of election, both dates inclusive. The total of the said expenditure shall not exceed such amount as may be prescribed under sub-section (3) of the said section 77. Incurring or authorizing of election expenditure by any candidate in excess of such prescribed limit is a corrupt practice under clause (6) of section 123 of the above Act, which will result in his election being declared void. The avowed object of these provisions is to ensure that the purity of the election process is not sullied by money.

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3. In 1974, an important exception was made to the above requirement. An explanation was inserted as Explanation (1) to the said sub-section (1) of section 77 by Act 58 of 1974 (w.e.f. 19.10.1974) to the effect that any expenditure incurred or authorized in connection with the election of a candidate by a political party or by any other association or body of persons or by any individual (other than the candidate of his election agent) shall not be deemed to be expenditure in connection with the election incurred or authorized by the candidate or by his election agent for the purposes of the said sub-section. This Explanation was added in the wake of the judgement of the Supreme Court in the case of *Kamwar Lal Gupta vs. Amar Nath Chawla* [1975 (3) SCC 646] whereby the Supreme Court, interpreting the provisions of the said section 77(1), held that when a political party sponsoring a candidate incurs expenditure in connection with his election, as distinguished from expenditure on general party propaganda, and the candidate knowingly takes advantage of it, it would be reasonable to infer that he impliedly authorized the political party to incur such expenditure. The Supreme Court further held that the same proposition must also hold good in the case of expenditure incurred by friends and supporters directly in connection with the election of the candidate. Further, in 1975, another

explanation was added as Explanation (3) to the said section 77(1) by Act 40 of 1975, to the effect that any expenditure incurred in respect of any arrangements made, facilities provided or any other act or thing done for any candidate (whether by reason of the office held by the candidate or for any other reason) by any person in the service of the Government in the discharge or purported discharge of his official duty shall not be deemed to be expenditure incurred or authorized by the candidate or his election agent.

4. From the beginning itself, these exceptions made in 1974 and 1975 generated a lot of controversy and were even challenged before the Supreme Court. The Supreme Court upheld the legal validity of these amendments in the cases of *Indira Nehru Gandhi vs. Raj Narain* (AIR 1975 SC 2299) and *Nallah Thumpy P. Terah vs. Union of India and others* [AIR 1993 SC 892]. But the apex Court severely criticised these amendments in the cases of *C. Narayana Swamy vs. C.K. Jaffer Sharief* [1994 (Supp) 3 SCC 170] and *Gadakh Yashwantrao vs. Balasaheb Vikhe Patil* [1994 (1) SCC 682]. The Supreme Court observed in the case of *Gadakh Yashwantrao* as follows:

"The existing law does not measure up to the existing realities. The ceiling on expenditure is fixed only in respect of the expenditure incurred or authorized by the candidate himself but the expenditure incurred by the party or anyone else in his election campaign is safely outside the net of legal sanction. The spirit of the provision suffers violation through the escape route. The prescription of ceiling on expenditure by a candidate is a mere eye-wash and no practical check on election expenses for which it was

enacted to attain a meaningful democracy. This lacuna in the law is, however, for the Parliament to fill lest the impression is reinforced that its retention is deliberate for the convenience of everyone. If this be not feasible, it may be advisable to omit the provision to prevent the resort to indirect methods for its circumvention and subversion of the law, accepting without any qualm the role of money power in the elections. This provision has ceased to be even a fig leaf to hide the reality".

5. The Committee has observed that the Goswami Committee on Electoral Reforms had recommended the deletion of the said Explanation (1) to section 77(1). The Government accepted that recommendation and the said Explanation was sought to be deleted by clause 12 of the Representation of the People (Amendment) Bill, 1990 (No.25 of 1990). But the intended amendment could not be carried through as the said Bill was withdrawn in 1993.

6. There are sharp differences of opinion on this issue as well, amongst the parties. The members of the Committee also hold divergent views in the matter. Shri Indrajit Gupta, Shri Somnath Chatterjee, Shri Madhukar Sarpotdar and Shri Digvijay Singh favour the inclusion of the party's expenditure in the candidate's account, whereas Dr. Manmohan Singh, Prof. V.K. Malhotra, Shri R. Muthiah and Prof. Ram Gopal Yadav are opposed to this proposal.

7. Those who favour inclusion of party's expenses in candidates' account are of the view that the shortcomings and deficiencies in the law on

the subject, as pointed out by the highest court of the land, ought to be removed and loopholes plugged at the earliest opportunity if the law is to serve the intended purpose. Therefore, the position of the law as it obtained prior to insertion of Explanations (1) and (3) to sub-section (1) of section 77 of the Representation of the People Act, 1951 in 1974 and 1975 should be restored by deleting those Explanations. However, they feel that in order to remove any ambiguity in the law and to bring it in conformity with the interpretation as placed on it by the Supreme Court in the case of *Kanwar Lal Gupta vs. Amar Nath Chawla (supra)*, it should be specifically clarified in law that only that part of expenses of a party shall form part of its candidate's election expenses which is incurred by it directly in connection with his election, which is exclusively attributable to him and of which he knowingly takes advantage. Any expenses incurred by political parties on general party propaganda, like, tours of their leaders for party campaigns, printing and publication of their election manifestos, pamphlets, leaflets, production and dissemination of audio and video cassettes, advertisements in newspapers, etc., highlighting their achievements and/or failures of their rival parties and so on, should be expressly made exempt by law from inclusion in the election expenses of candidates sponsored by them.

8. Those who are opposed to the above proposal are of the view that the

amendments made in the law in 1974 and 1975 were well considered amendments made by Parliament, after due deliberation, to remove any ambiguity or uncertainty in the law which arose as a result of the Supreme Court's judgment in *Kanwar Lal Gupta Vs. Amar Nath Chawla (Supra)*. It is difficult to apportion expenditure incurred by a political party, particularly at the time of a general election, among the candidates set up by it. Party conducts its election campaign for the common benefit of its candidates who all take advantage of the same and it is well nigh impossible to quantify the party expenditure which may be accounted for by any individual candidate as a part of his election expenses. They also point out that the Supreme Court has already upheld the legal validity of the existing provisions and also provided necessary clarifications pertaining to the existing law in the case of *Common Cause vs. Union of India and Others (AIR 1996 SC 3081)*. They, therefore, advocate the continuance of the existing provisions.

9. Opinion is also divided on the question whether other bodies or associations (other than political parties) or friends and supporters of a candidate should be permitted under the law to incur or authorize any expenses in connection with the election of any candidate without his express authorisation. Whereas some feel that the ceilings on election expenses will have no meaning if even the friends and supporters of a

candidate are allowed to spend as much as they like on his election. others contend as to why there should be any embargo on anyone who voluntarily wishes to work for or against any candidate and spend from his pocket some amount in connection with an election.

10. In view of the above marked differences of opinion, the Committee would like to leave this contentious issue also to the collective wisdom of Government and Parliament for an appropriate decision. In this context, the Committee would, however, like to draw the attention of the Government and Parliament to an apparent contradiction between the existing provisions of section 77(1), Explanation 1, of the Representation of the People Act, 1951 and section 171H of the Indian Penal Code. Whereas the provisions of the said section 77(1), Explanation 1, of the Representation of the People Act, 1951 permit, on the one hand, political parties and all other bodies or associations or individuals to make election expenses for any candidate without his authorisation, the said section 171H of the Indian Penal Code prohibits, on the other hand, any such expenditure by them without the express authorisation from the candidate and makes its violation a penal offence. This conflict in the existing provisions of the two enactments needs in any case to be resolved by necessary amendments thereto.

CHAPTER - VII

PERIODIC REVISION OF LIMITS OF ELECTION EXPENSES

1. As has been mentioned above, the law prescribes a ceiling on the election expenses which may be incurred or authorised by a candidate or his election agent in connection with the election. Under sub-section (3) of section 77 of the Representation of the People Act, 1951, the total of the said expenditure shall not exceed such amount as may be prescribed by rules under that Act. Accordingly, rule 90 of the Conduct of Elections Rules, 1961, framed under the said Act, prescribes the maximum limits of election expenses for the Parliamentary and Assembly constituencies in each State and Union Territory. The limits so fixed are revised periodically by amending the said rule 90.

2. For such periodic revision, the Election Commission works out, from time to time, the revised limits for the Parliamentary and Assembly constituencies in various States on the basis of increase in the electorate, rise in prices of essential items of electioneering campaigns and other relevant considerations. The revised limits so worked out by the Election Commission are duly considered by the Central Government and then notified by the Government with such modifications as deemed appropriate under the said rule 90 by virtue of its rule making power under section 169

of the Representation of the People Act, 1951.

3. It has been suggested that these limits of election expenses for Parliamentary constituencies may be revised before every general election to the House of the People and for Assembly constituencies before every general election to the Legislative Assembly of the State concerned. It has been further suggested that the power to revise these limits may be vested in the Election Commission itself, instead of the Central Government by virtue of its rule making power.

4. The Committee sees no compelling reason to make any change in the existing procedure, which is working quite well. The Representation of the People Act, 1951 vests the rule making power in the Central Government, as all other Central Acts do, and the Committee sees no sufficient justification for making any departure from that established practice. The Central Government may, therefore, continue to revise these limits periodically as and when considered necessary, as at present, in consultation with the Election Commission.

CHAPTER - VIII

CREATION OF A FUND TO PROVIDE STATE FUNDING

1. The proposals made by the Committee for State funding, even though in kind, to recognised political parties and candidates set up by them will put extra burden on the State exchequer. It was suggested by some of the parties to the Committee that an election cess may be levied on the profit making companies to raise part of the funds to meet such additional requirement and a separate Election Fund may be created. Another suggestion made was that part of the funds now provided under the MPs Local Area Development Scheme may be diverted to such Election Fund.
2. The Committee has no firm views on how to raise the required additional funds or what new sources to tap to raise such funds. The Committee, however, recommends the creation of a separate Election Fund.
3. At present, the total electorate in the country is to the tune of about 60 crores. To begin with, the Central Government may contribute at the rate of Rs.10 - per elector, i.e., Rs.600 crores, annually towards the corpus of the above Fund. As State funding is proposed to be provided at the time of elections to State Legislatures also, the State Governments too should make a matching contribution to this Fund, in accordance with the present financial arrangement between the Centre and States whereby all capital

expenses on election items are shared by them on 50:50 basis . Accordingly, the State Governments, all taken together, may also contribute proportionately Rs.600 crores annually to the Election Fund. It may, however, be added that some of the State Governments, in reply to the Committee's questionnaire, have desired that the entire expenditure on State funding of elections should be borne by the Central Government, as the State Governments are already facing a severe financial crunch and may not be able to bear this additional financial burden from their meagre financial resources.

CHAPTER - IX

CONCLUSION AND SUMMARY OF RECOMMENDATIONS

Conclusion

1. Before concluding, the Committee cannot help expressing its considered view that its recommendations being limited in nature and confined to only one of the aspects of the electoral reforms may bring about only some cosmetic changes in the electoral sphere. What is needed, however, is an immediate overhauling of the electoral process whereby elections are freed from evil influence of all vitiating factors, particularly, criminalisation of politics. It goes without saying that money power and muscle power go together to vitiate the electoral process and it is their combined effect which is sullyng the purity of electoral contests and effecting free and fair elections. Meaningful electoral reforms in other spheres of electoral activity are also urgently needed if the present recommendations of the Committee are to serve the intended useful purpose.

Summary of recommendations:

2. For facility of easy reference and quick comprehension, the recommendations of the Committee are summarised as follows:

1. State funding of elections is fully justified - constitutionally, legally and also in the larger public interest. [Chapter II, para 6.14]

2. State funding should be confined only to the parties recognised as National or State parties by the Election Commission of India, and to the candidates set up by such parties. [Chapter II, para 8.3]
3. Given the budgetary constraints and the present financial stringency, only part of the financial burden of political parties may be shifted to the State, for the time being. Gradually, more and more of their expenses' burden can be progressively shifted to the State so that ultimately all their legitimate expenses become a charge on the State. [Chapter II, para 9.2]
4. Any State funding should be in kind, and not in cash. [Chapter II, para 10.2]
5. To begin with, the recognised National and State parties and their candidates may be granted the following facilities, at State cost:-
 - (i) Every recognised National party may be allotted rent-free accommodation in the National Capital at Delhi, with one rent-free telephone. [Chapter III, paras 2.1 & 2.2]
 - (ii) Similar facility of rent-free accommodation and rent-free telephone may be given to each recognised State party in the State in which its headquarters is situate. [Chapter III, para 2.3]
 - (iii) At the time of every general election to the House of the People

or to a State Legislative Assembly, the recognised National and State parties may be granted sufficient free air time on State owned Doordarshan and All India Radio for their election propaganda over the electronic media. [Chapter III, paras 3.1 & 3.2]

(iv) Other private channels, including Cable Operators, may also be required to like-wise make sufficient free air time available for use by the recognised National and State parties, during general election. [Chapter III, para 3.3]

(v) Each candidate of a recognised political party may be provided with -

- (a) a specified quantity of petrol or diesel for vehicles used for his election campaign;
- (b) a specified quantity of paper for printing his election literature and the unofficial identity slips for distribution to voters;
- (c) postal stamps of a specified amount;
- (d) five copies of electoral roll of his constituency;
- (e) one set of loudspeakers (i.e., one micro-phone and two loudspeakers) for every assembly constituency, or for every assembly segment of a parliamentary

constituency, subject to a maximum of six such sets for the entire parliamentary constituency;

- (f) one deposit-free telephone with a specified number of free calls for his main campaign office in every assembly constituency/segment (subject to a maximum of six such telephones for the entire parliamentary constituency);
- (g) some minimum arrangement for his camps outside each Polling Station, on the day of poll;
- (h) refreshments and food packets for his counting agents inside the counting hall, on the day of counting.

[Chapter III, para 4.2]

(vi) The quantities of petrol, diesel, paper and postal stamps to be given to candidates may be worked out by the Election Commission on realistic basis for different States, and for different constituencies within the same State, having regard to territorial extent of constituencies, size of electorate, geographical features of the areas, means of communication available, etc. [Chapter III, para 4.3]

(vii) The facilities recommended above for the candidates would be available to the candidates of recognised State parties only in the State or States in which they are recognised as such State parties, and not in other

States. The candidates of recognised National parties would, however, be eligible for the said facilities in all States, wherever they are so set up.

[Chapter III, para 5]

6. In order to curb the mounting election expenses of parties and candidates and ostentatious show of money power by them, reasonable restrictions may be placed by law on all or any of the following matters:

- (i) wall writings.
- (ii) display of cut-outs, hoardings, banners:
- (iii) hoisting of flags (except at party offices, public meetings and other specified places);
- (iv) use of more than a specified number of vehicles for election campaigns and for processions:
- (v) announcements or publicity by more than a specified number of moving vehicles;
- (vi) holding of public meetings beyond the specified hours:
- (vii) display of posters at places, other than those specified by the district/electoral authorities.

[Chapter IV, para 2.2]

7.1 Political parties should compulsorily submit their annual accounts regularly to the Income Tax authorities, showing all details of their receipts

and expenditure. [Chapter IV, para 1(a)]

7.2 No State funding should be provided to any party or its candidates if the party has failed to submit its annual return for the previous assessment year under the Income Tax Act. [Chapter IV, para 1(a)]

7.3 Political parties should also file a complete account of their election expenditure at every general election to the Election Commission of India. Such account should show the receipts and expenditure, both on the general party propaganda and on individual candidates. [Chapter IV, para 1(c)]

7.4 To bring transparency in party accounts, all donations received by political parties above the amount of Rs.10,000/- (ten thousand) should be accepted only by means of cheques/drafts and the names of such donors should be fully disclosed in their accounts. [Chapter IV, para 1(d)]

7.5 These accounts may be audited by such Chartered Accountants as may be selected by the political parties themselves, which may, however, be further checked by the Income Tax authorities by their own agencies, wherever considered necessary by them. [Chapter IV, para 1(b)]

8.1 Ban on donations by *Government companies* for political purposes should continue. [Chapter V, para 7.2]

8.2 The question whether there should be any ban on donations by other companies and corporate bodies for political purposes may be decided by Government and Parliament in their collective wisdom. [Chapter V, para 6]

9. The question whether election expenses of political parties and other bodies or associations and individuals should be included or not in the accounts of election expenses of candidates may also be decided by the Government/Parliament in their collective wisdom. However, apparent contradiction between the provisions of section 77(1), Explanation (1), Representation of the People Act, 1951 and section 171 H, IPC, needs to be resolved. [Chapter VI, para 10]

10. Periodic revision of election expenses may continue to be done by the Central Government, in consultation with the Election Commission of India, as at present. [Chapter VII, para 4]

11. A separate Election Fund may be created for meeting the expenses on State funding of elections. To begin with, the Central Govt. may contribute Rs. 600 crores annually, at the rate of Rs. 10/- per elector for the total electorate of about 60 crores in the country, towards the corpus of the fund. The State Govts., all taken together, may also contribute proportionately a matching amount of Rs. 600 crores annually, in accordance with the present

financial arrangement between the Centre and States whereby all capital expenses on election items are shared by them on 50:50 basis. [Chapter VIII, para 2 & 3].

(Indrajit Gupta)
Chairman

(Somnath Chatterjee)

(Dr. Manmohan Singh)

(Madhukar Sarpotdar)

(Vijay Kumar Malhotra)

(R. Muthiah)

(Digvijay Singh)

(Ram Gopal Yadav)

New Delhi,

Dated...*30th*...December, 1998