

FINANCING OF ELECTIONS

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FOREWORD

The electoral reforms have evoked a great deal of interest in recent years because of the dangers of the present system, especially in relation to election funding. Admittedly, election funding is not the only answer to the issue of electoral reforms. But it is an important one.

The Chief Election Commissioner has recently made some major recommendations on this issue. In 1977 at the request of the Prime Minister, the Centre for Policy Research had prepared a paper, which is now being circulated as part of the documentation on the topic.

We have no doubt it will be of interest to you.

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-By

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The legitimacy of the political regime depends, to a large extent, on the proper functioning of the electoral mechanism. If the verdict of the people, which forms the basis of the propriety and legitimacy of the centralized political authority, is vitiated by unsalutary methods, the faith of the people in the political system will be shaken. To the extent that this happens, the moral basis of state power shrinks irreparably.

Apart from the question of legitimacy, there is also the consideration of equal opportunity for all citizens - either singly or in organized groups - to influence the electoral process by methods that are legitimate, proper and fair. The working of the principle of equal opportunity cannot be assured if an individual and/or a political party have undue advantage over the other by reason of access to larger resour-

ces. The access to larger resources is certain to promote better campaign organization, better voter contact, and wider image projection of the party. All this tends to increase the possibility of a party endowed with larger resources getting more votes than a party relatively poorer in resources. This is not to argue that larger resources will certainly win an election; what is emphasized is the likelihood of larger resources influencing the outcome of election.

The question whether access to larger resources does make a difference in elections is important. But even more important is the belief that such an access is necessary to win elections. Prevalence of this belief has led various parties, in general, and the Congress party, in particular, to attempt to control and lately to monopolize as much resources as possible for use both for normal party functions and elections. This has brought to the fore the role of big money in party and electoral affairs. The nexus between big industrial houses and political parties and the consequent

injection of big money in party and electoral affairs augur ill for the sanctity of democratic processes. The unrestrained use of big money leads inexorably to corruption and distortion of political processes since it offers greater advantage to the rich and the affluent who constitute only a fraction of the Indian society. This has the pernicious effect of big money in playing a decisive role in controlling the democratic process in the country.

The experience of the last thirty years effectively demonstrates the distortions in the democratic processes generated by the inflow of big money in elections. The role of the big money can, to some extent, be circumscribed by putting a ceiling on electoral expenses. However, our experience, again, shows that laws controlling election expenses have not worked well. As the case of Amar Nath Chawla convincingly shows, returns of electoral expenses by candidates invariably understate the expenses. Also, expenses incurred by the party of a candidate on campaign activities are not usually covered by such returns. This simply means

that a party with greater resources can with impunity contravene the spirit of laws controlling election expenses. The ordinance on election expenses issued by the Congress Government taking any expenditure by a party or any group for campaign activities out of the ken of the law has reduced the election expenses law to a farce.

A law on ceilings on election expenditure can take care of only excessive expenditure. It cannot remove unequal access to resources. The persistence of this inequality will, again, lead to the distortion of democratic process. The persistence of this phenomenon is in itself a very strong indicator of the fact that some parties find it very difficult to mobilize enough resources to fight elections. This problem cannot be handled by leaving its resolution to the natural process of support mobilization. This is a structural problem that aggravates the tendency towards cumulative inequality in which weaker parties get weaker because of the lack of financial sustenance and strong parties get stronger because they can attract or get hold of ever larger resources. As long as structural imbalances in our society continue, the state has to intervene to provide a corrective.

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Given these considerations, it is desirable to separate the question of party funding from election funding. Party funding may

be allowed through private and corporate contributions subject to the restrictions indicated later. One of the prerequisites for such reform is the need for public audit of party funds by agencies appointed or approved by the Election Commission.

On the question of election funding, the questions that need to be answered are : (a) Should the state be the sole financier of elections? (b) What should be the mechanism of financing elections or controlling election finances? and (c) What other measures should the state take to make electioneering corruption free and less expensive.

Insofar as the question of state financing of elections is concerned, there is no doubt that in the existing condition, the state has to intervene not only to impose a ceiling on election expenses but also to insure equal opportunity in respect of access to resources. The nexus between big money and elections has to be broken. This can be done only by determined state action.

Given the desirability of state intervention, the question then arises : Should the state be the exclusive source of election finance? There is one very weighty argument against the state being the sole source of election finances. The argument pertains to protest movements that may arise because of the ossification of the

party system which, even while there is alternation, does not respond to the interests and aspirations of certain sections of the society. It is frequently argued that ^atwo party system is the best guarantor of democratic processes. However, this argument takes into consideration the experience of only a very few Western democracies - viz., England and USA - that have worked with an alternating two party system. Other Western democracies have successfully operated with multi-party system. Even the experience of England and USA shows that to break the rigidity induced by duopoly of political power, third party movements become inevitable.

It can, however, be recognized in the Indian context that the existence of a plethora of political parties, most of which enjoy only regional support, does vitiate the electoral mechanism in the sense that a party gets a large number of seats even while it polls only a small fraction of total votes. As such, the reduction in the number of parties becomes essential. A law regulating election finance can certainly initiate a process that may, over the years, check the tendency towards party proliferation and induce coalescence; but it cannot by itself make a two-party system possible. If despite this, the tendency towards more than two party system persists, or the emergence of a third or a fourth party becomes necessary, the state should not outlaw it or make it virtually impossible for genuine protest movements to rise.

In the light of these considerations, it is worth considering whether, while state funding of election expenses is envisaged, individual contributions to especially new parties entering the electoral contest for the first time be legally stopped. Two points need to be noted in this regard. First, a new party begins with an initial disadvantage in the sense that it may not have yet established a stable support base for resource mobilization. It may, therefore, have to depend on individual contributions for financing election campaign. Second, forbidding individual contributions may be treated as an infringement of the fundamental right of the individual since such contributions are usually treated as a form of political expression and a device contributing to the dissemination of political views. In all, barring of individual contributions may prove discriminatory to minor or new parties.

As against this, it should be recognized that private contributions especially to election activities may open up avenues for infusion of wealth and monied interests into the electoral process. One way to prevent it from happening is to make a distinction between individual contributions to parties and that to candidates for electoral campaign. While the latter can be prevented, the former should not be.

In order to check the influence of big money on the electoral process public funding of elections seems desirable. But Governmental funding must be so designed that it helps serious candidates and discourages frivolous ones. The goal of government financing of elections should be to assist serious candidates, yet retain enough flexibility to permit opportunity to challenge those in power without, at the same time, supporting with significant tax money candidates who are merely seeking free publicity, and without attracting so many candidates that the electoral process is degraded.

In order to achieve this goal, it is necessary to recognize three sets of contestants : nominees of established political parties, that of new parties entering electoral contest for the first time, and non-party candidates. While in the case of well established parties, pre-election funding is possible, this is not so in the case of either a new party or non-party candidates. But before any of these categories of contestants can be given financial assistance the criterion of eligibility will have to be defined.

It is not necessary to have one fixed criterion of eligibility applicable to all these categories. One fixed criterion may prove discriminatory against minor and new parties as well as

non-party candidates. If, for example, eligibility criterion were defined in terms of, say, the obtaining of national average of 4 per cent of popular votes polled, it will be easier for national or major parties to pass this test but very difficult for minor or new parties. It is, therefore, advisable to prescribe a stiffer criterion for national or major parties, say 15 or 20 per cent of votes polled in the Parliamentary elections and not so stiff one in the case of minor or new parties, say 5 per cent. In the case of non-party candidates, the fixing of eligibility criterion might be simply the polling of one-eighth or one-tenth of all valid votes polled in a constituency.

Once the eligibility criterion has been defined, the question of who should be given money out of public fund for election campaign must be answered. Should the election fund be allocated to parties or to candidates directly? Election subsidies in countries with parliamentary systems, with the exception of Canada, are made to political parties, not to candidates. Reasons for this are not far to seek. In the first place, payment of public fund to candidates directly may accelerate the trend towards candidate independence and could diminish the role of major parties. In the second place, parties will tend, in case candidates are directly given public funds, to put up candidates even in those constituencies where traditionally they never did. And,

lastly, ~~icular~~ encourage the proliferation of frivolous candidature. In the ~~comy in~~ of rampant defections and the need to strengthen parties, direct payments to candidates will be harmful in the long run.

As against this, there is the weightier argument of a party discriminating against its own nominees. If the fund is given directly to a party which will then distribute the fund among its nominees, the likelihood is greater that it may concentrate larger resources in some constituencies as against others. This will again vitiate equal access to resources. It is desirable therefore to (a) prescribe eligibility criterion for parties to be eligible for state financial assistance; and (b) determine the basis on which a party is allocated its share of state fund for election purposes. The party nominee should then receive state fund directly.

It is beyond doubt that the purpose of election finance legislation should be to insure equal opportunity. The discontinu- . .
ance of individual contributions for election purposes will protect equal opportunity to only a limited extent. Two situations may work against the operation of equal opportunity. First, parties with large resources may supplement state subsidies to their candidates. Second, voluntary organizations, such as, political committees, citizen's groups, etc, may on their own or at the behest of a particular party mobilize resources for helping the election of

particular candidates. These two situations are likely to lead to inequality in access to resources. While it is easier to deal with the former, it is not so with the latter. One can make a distinction between normal party functions and functions that bear on election campaign. But there will be twilight zones where this distinction will break. For instance, it can be argued that the propagation of ideology, programmes, etc. is a part of normal party functions but the discharge of such functions during election campaign will undoubtedly add to campaign efforts.

The political committees are a different matter. It is a democratic right of every one to form associations and propagate his viewpoints, even campaign for particular candidates. To prevent such committees from participating in electoral process may be tantamount to curtailing democratic rights; while such rights cannot be snatched away, they can certainly be regulated. The objective of such regulation should be to balance the integrity of the electoral process and the preservation of democratic rights.

One way to do so would be to impose a ceiling on election expenses incurred by a candidate. There is already a law on the statute-books which limits election expenses. This ceiling varies from Rs. 6000 in Dadra and Nagar Haveli to Rs. 10000 in Delhi and Rs. 35000 in bigger states like Andhra Pradesh, U.P., Assam etc. These ceilings are too low and are maintained only in their breach.

It is therefore desirable to raise the ceiling from time to time keeping in view the current costs. It should be Rs.100000 or more in the case of Lok Sabha Elections. Given this ceiling, party activities in support of the election campaign of its candidates and campaign activities mounted by political committees should come under this ceiling.

The regulation of such activities can be effective only when parties and political committees are required by law to keep strict accounts of their income and expenditure, and report to appropriate authorities. Their accounts should be audited by an approved authority designated by the Election Commission.

In case of political committees, it can also be required of them, following the American practice, to register themselves with the Election Commission. Moreover, parties and political committees can also be required to deposit all their receipts in specified banks and meet their expenses of, say, more than Rs. 100 through cheques. This may be made applicable also to candidates. In the case of political committees, it might even be advisable to legally prevent them in mounting campaign in favour of a party nominee or a non-partisan candidate.

One of the gravest dangers to democratic process arises from contributions by corporations to political parties. It is desirable to ban corporate contribution to election expenses. In the

case of corporate contributions to political parties, it will be necessary to impose ceilings on such contributions. Such ceilings should be based both on capital and reserves of the corporation and on absolute amounts of say Rs. 50,000 per annum. In addition, the prior consent of shareholders should be made mandatory before a corporation makes a contribution to any political party. Similarly, individual contributions to political parties should also be placed under a ceiling not exceeding, say, Rs. 5,000 per annum.

Recognising the necessity of public funding of elections, it is necessary to estimate the total allocation in this regard and to determine the method of election financing. There are two ways in which this estimate can be made. One, assuming four candidates per parliamentary constituency and given the ceiling of Rs. 1,00,000 per candidate, the total expenditure will come to about Rs. 22 crores. Two, one can estimate the total cost on the basis of one rupee per vote. This will mean a total outlay of about Rs. 33 crores. However, assuming a 60 per cent turnout, the effective cost will not be more than Rs. 20 crores. In any case, the total cost of the financing of parliamentary elections is not expected to be more than Rs. 22 crores (at 1977 costs).

This fund should be placed either with the Election Commission or a specially created state funding agency for meeting election expenses.

As has been pointed out earlier, it is desirable to make payments to candidates than to parties. Once a party fulfils the eligibility criterion, block grants can be allocated to various political parties on the basis of the percentage of votes secured by each of them. The quantum of the grant to each party can be calculated either on the basis of its performance in the last election, that is, its national percentage of votes polled or its performance in the current one or both. If the money is to be apportioned to a party before elections, then the amount of the grant must be determined on the basis of the party's performance in the preceding election with a ceiling of say Rs. 100,000 per candidate. For instance, a party obtaining 42 per cent of votes in Lok Sabha Election will get 42 per cent of the public fund but with a ceiling of Rs.5.42 crores, i.e. 542 candidates x Rs.100,000 and the party getting only 5 per cent will receive only 5 per cent. The same principle should apply to the disbursement of funds if the performance in the current election forms the basis of this disbursement.

The criterion of the performance in the preceding elections assures the availability of funds to the candidates when it is most needed. However, there is no reason to believe that a party will be able to repeat its performance in the current one. If it obtains less or more votes compared to the preceding election, allocation

of funds on the basis of past performance may not be equitable. If, on the other hand, the performance in the current elections forms the basis of fund disbursement, the funds might be available to the parties only after the elections. Unless alternative arrangements for funds are made, the candidates, debarred from access to other sources of funding, may find it difficult to run their campaigns.

One of the greatest disadvantage of taking the previous election as the base for determining the share of a party in the state subsidy lies in the fact that a party trying to break out of its regional shell and contest elections in areas where traditionally it has been weak or non-existent will find it difficult to do so. The criterion of past performance will limit its share of state fund and will not allow it to contest more seats than possible on the basis of the criterion of past performance. Since other funding sources will be legally barred, this will virtually amount to freezing the relative electoral strength of different parties. This situation is bound to affect adversely the possibility of alternation in party system which is the kernel of a democratic system.

Keeping this in view, it is advisable to arrange for long-term loans, subsidies, etc. for parties which propose to put up more candidates than possible under the proposed scheme of disbursement of election fund.

Another dysfunctional consequence of this pertains to the possibility of party candidates contesting elections as independents and later returning to the party fold after they win at the polls. This is bound to encourage concealed defection. In order to prevent this phenomenon from recurring, it is essential to tie up the question of election financing with anti-defection law.

In order to avoid the demerits of these methods, it may be advisable to combine both the pre- and post- election criterion. In this case, 50 per cent of the funds will be released on the basis of the performance in the preceding election and the rest on the basis of the performance of the party in the current one. This method will take care of the fund requirements of new parties as well as of non-party candidates.

Once the quantum of the block grant to a party has been determined, grants should be directly given to various candidates on the basis of party nominations. The accounts of expenditures should be maintained strictly by the individuals and they should be audited and be made available for public scrutiny. The authority to administer the allocations to candidates should preferably vest in the Election Commission which should also be responsible for scrutinizing the candidates' election expenses.

In order to make electioneering less costly, various other steps need to be taken. First, equal time sharing on radio and television by different parties and/or candidates should be encouraged. And, instead of separate public meetings by parties and/or candidates, joint meetings could be encouraged.

In the light of the discussion above, we suggest that the following measures be considered to be taken:

1. A law controlling party funding and election finances may be enacted.
 - a. A group consisting of a few political scientists, legal practitioners, and members of parliament may be constituted to consider and recommend the details of such an enactment including the question of legally permissible ceiling on election expenses.
 - b. The bill on election finances should be referred for wider debate and discussion preferably through a Select Committee of the Parliament.
2. Such a law should be enacted by the Parliament covering elections both to parliament and state assemblies.
3. Such a law should consist of the following elements:
 - a. Party funding may be allowed through private and corporate institutions subject to ceilings discussed earlier. These funds should be subjected to public audit through agencies nominated by the Election Commission.

- b. The state should undertake exclusively the financing of Central and State level elections.
 - i) The Central Government should finance Parliamentary Elections.
 - ii) The State Governments should finance elections to State assemblies, and at lower levels.
- c. Three categories of contestants should be recognized for election purpose: well-established national or major parties, minor or new parties, and non-party or independent candidates.
- d. The following should be the criteria of eligibility for public funding of elections:
 - i) National or major parties - 20 per cent of national votes cast in parliamentary election;
 - ii) Minor or new parties - 10 per cent of national votes cast in parliamentary elections; and
 - iii) Non-party candidates - one-eighth or one-tenth of votes cast in the parliamentary constituencies.
- e. Candidates should be given election fund directly on the basis of nominations by the Parties. Independent candidates can be paid after the election subject to their receiving at least 12 or 10 per cent votes and with the same ceilings as applicable to party candidates.

- f. Estimate of the cost of public funding of elections.
- a) The ceiling on election expenses for parliamentary constituencies should be raised to optimum levels say Rs. 1,00,000 or Rs. 1,50,000 each. Assuming 4 candidates per constituency, the entire cost is estimated to be Rs. 22 crores
- or
- b) Calculating the subsidy of one rupee per vote polled and assuming a 60 per cent voting turn out the cost at present levels will come to about Rs. 20 crores.
- g. A special funding agency or the Election Commission should administer the funds.
- h. The parties and candidates should be given funds on the basis of their performance. 50 per cent of the subsidy to the parties, except in the case of a new party, should be given on the basis of the performance in the preceding election and the rest on the basis of the performance in the current one. A party obtaining, say, 42 per cent of national votes will be entitled to 42 per cent of the total allocation for funding elections with ceiling of Rs.100,000 per candidate or a maximum of Rs.5.42 crores for present size of the Lok Sabha.

- i. Contributions to election activities by individual and corporations should be strictly banned. However, individuals and corporations may contribute to political parties. Individual contributions should not in any one year exceed Rs.5000. The ceiling on corporate contributions to political parties should be based on their capital and reserves with an absolute ceiling of Rs.50,000 per annum. Prior approval of shareholders should be mandatory.
- j. The cost of campaign activities of political parties for helping their candidates should be included in the ceiling on election expenses.
- k. If political committees are not to be stopped from engaging in campaign activities, they should then be required to :
 - i. register themselves with the Election Commission;
 - ii. keep strict accounts of their expenses and submit detailed reports to the Election Commission;
 - iii. payments of over Rs.100 should be made through cheques and they should be required to deposit their money in specified banks. Their accounts should be audited and be available for public scrutiny. This should also apply to political parties and candidates.

4. Other complementary measures can also be taken:
 - a. Equal time sharing by national parties and/or candidates on radio and TV;
 - b. Joint public meetings; provisions by the State of facilities for holding meetings, etc.
 - c. Shortening of campaign period.
5. These provisions should, mutatis mutandis apply to elections to State assemblies.

Financing of Elections

Summary

The question of financing political parties must be separated from that of election funding.

Party Funding

Party funding may be allowed through private and corporate contribution subject to the following ceilings to be enacted by law:

Private contribution: Ceiling of Rs.5000/- per annum with benefits of tax deduction, e.g. under 80(G) of Income Tax Act.

Corporate contribution : Ceiling as a percentage of capital and reserve subject to a further ceiling of Rs.50,000 per annum also with tax deduction benefits. Such contributions should be subject to approval by share holders at the annual general meeting.

All accounts of the political parties should be subject to public audit by agencies approved or appointed by the Election Commission.

Election Funding

On the election funding a law should be enacted covering both election to the Parliament and State Assemblies consisting of the following elements:

1. The State should undertake exclusively the responsibility of financing elections.
 - (a) The Central Government should finance the Parliament Elections, and
 - (b) the State Governments should finance the Elections to the State Assemblies and lower bodies.
2. An Election Fund should be created on the basis of one rupee per voter according to the votes polled in the last elections. Thus if 20 crore persons voted in 1977 Lok Sabha Elections, a total fund of Rs.20 crores be created for the next elections.
3. A special funding agency should be created for the purpose of administering the fund. Alternatively the Election Commission should administer the Fund.

4. The ceiling of election expenses for Parliamentary constituencies should be raised to optimum levels say, of Rs.100,000 or Rs.150,000 per candidate.
5. The parties should be apportioned the total fund on the basis of their performance. Fifty per cent of the amount, except in the case of a new party, should be given on the basis of performance in the preceding election and the rest on the basis of performance in the current one.
6. There should be a ceiling on the amount given to a party on the basis of the ceilings applicable to candidates. Thus, a party receiving 42 per cent of the 200 million votes polled will be eligible for a maximum support of Rs.5.42 crores if the ceiling per candidate is Rs.100,000.
7. The amount should be released to individual candidates (and not to the political parties) on the basis of nominations made by the party.
8. Every candidate should be required to maintain detailed accounts and these accounts should be subject to audit by the Election Commission.
9. The cost of campaigning activities of political parties for helping their candidates should be included in the ceiling of election expenses.
10. If political committees are not to be stopped from engaging in campaigning activities they should be required to:
 - (a) Register themselves with the Election Commission,
 - (b) keep strict accounts of their expenses and submit detailed reports to the Election Commission, and
 - (c) payments of over Rs.100/- should be audited and be available for public scrutiny. The bank account should be required to be made through cheques.
11. Non-party individual or independent candidates should be provided funds after the elections provided they secure at least 10 per cent of the votes. The ceiling applicable to the candidates of political parties should also apply to independents.

12. Anti-defection law should be made an integral part of this scheme of State funding of election expenses.
13. Other complementary measures to be taken are:
 - (a) equal time-sharing by national parties and/or candidates on radio and/or T.V.
 - (b) provision by the State of facilities of holding joint public meetings etc.
 - (c) shortening of the campaign period.
14. These provisions should with appropriate modifications be applied to Election to State Assemblies.
15. The proposed Law should be referred to a Joint Select Committee of Parliament for wider discussion and debate.