context, it has been laid down in A.I.R. 1969 SC 1238, *M.S. Limited v. Dilip Constructions*, that Section 36 does not prohibit a challenge against an instrument that it shall not be acted upon because it is not duly stamped. However, it is stated that there is no bar against an instrument not duely stamped being acted upon after payment of the stamp duty and penalty according to the procedure prescribed by the Act. Thus, the decision in AIR 1969 SC 1238 lays down that the document may be acted upon if the deficit stamp duty and penalty is paid. In fact, this is the purpose of Section 42 of Stamp Act. In a decision A.I.R. 1982 A.P. 240, *P.Narasimhaswamy Patrudu v. Bank of Baroda*, wherein the Hon'ble Justice *Seetharama Reddy*, has laid down that even where an insufficiently stamped document has been admitted in evidence, the question whether it should be acted upon or not is still *res integra*, and therefore it is open to the Court to decide whether it should be acted upon or given effect to and that to hold otherwise would be rendering the provision enacted in Section 42(2) of the Stamp Act, *otiose*.

However, in the case of a promissory note, admittedly, the subsequent collection of stamp duty and penalty does not arise. In fact in a decision 1997 (6) ALT 9 *K. Seethamma v. N.Nageswara Rao*, it is laid down that the proposition of law that once a document is marked in evidence, no objection can be raised later on about insufficiency of stamp duty on document, is not applicable in case of pronotes. Yet, in some of the decisions, it is laid down that once a pronote is marked, the admissibility cannot be questioned. It is respectfully submitted that while laying down the said proposition no reference has been made to the second limb of Section 35 pertaining to "acting upon."

Hence, it is necessary to decide whether a pronote which is not duly stamped and which defect cannot be cured under law, can be acted upon even though such admission cannot be questioned under law. It is also essential to decide whether any other insufficiently stamped document, admitted in evidence by the inadvertence of the party, can be acted upon by the Court in ignorance of the provisions of Section 35 of Stamp Act. I am of the humble opinion that a party who has not been alert while marking the document, is not entitled to challenge such admission, while a Public Officer has every right to refuse to act upon such insufficiently stamped document.

ELECTORAL REFORMS IN INDIA - A COMMENT ON SOME RECENT JUDICIAL DECISIONS

By

—**Dr. G.B. REDDY**, Assistant Professor,
University College of Law,
Osmania University, Hyderabad

India has been characterized as the largest democracy in the world because of the colossal nature of the elections held in the country. At every general election, an electorate of millions of people goes to polls to elect members of Lok Sabha, State Legislative Assemblies and the Legislatures of the Union territories, apart from the local Self-Government bodies like Municipal Corporations and Panchayats. Republican and Democratic form of Government and Parliamentary form of Government has been recognized as the basic features of our Constitution. [See *Keshavananda Bharathi v.*

State of Kerala, AIR 1973 SC 1461; *Kihoto Hollohan v. Zachillu*, AIR 1993 SC 412 *etc*]. Free and Fair elections are a *sine qua* non for sustaining the democracy and they are also recognized as basic features of the Constitution. [See AIR 1975 SC 2229].

The Constitution of India contains number of provisions dealing with the elections. They include Part XV dealing with superintendence, direction and control of elections consisting of Articles 324 to 329 and Part XVI dealing with special provisions relating to certain classes contained in Articles 330, 331, 332, 333 and 334. The other provisions relevant are Articles 75, 79 to 84 relating to Parliament, Articles 164, 168 to 172 relating to State Legislatures, Articles 101 to 104 relating to disqualification of members of Parliament, Articles 190 to 193 relating to the Panchayats and Municipalities and the X Schedule containing provisions as to disqualification on grounds of defection. It may be stated here that this list is only illustrative and not exhaustive in nature. Similarly there are number of legislations dealing with the elections, most important of which are the Representative of Peoples Act, 1950 and 1951.

An analysis of the working of our electoral system during the past half-century shows that, debate on constitutional and parliamentary reforms has been raging for a long time. As pointed out by the Report of the National Commission to Review the working of the Constitution (NCRWC), on occasions these have also become part of political campaign. The ideas of a fixed term for Parliament, proportional system of representation, changes in the first part the post system, negative voting, state funding of elections, disqualifications from electoral contest, anti-defection measures have all been debated endlessly. [The Report of NCRWC, Vol.1, 2002 Universal Publishing Co. Pvt. Ltd., New Delhi, p.37]. It is now almost undisputed that there has been a political decay in electoral process due to (i) the failure to keep out criminal, anti-social and undesirable elements from participating in and even dominating the political scene and polluting the electoral and parliamentary process (ii) inadequate representation of women in public affairs and decision-making processes (iii) enormity of the costs of elections and electoral corruption having a deleterious effect on national progress (iv) political parties receiving party funds from criminal elements (v) absence of legal instrumentalities or set of law regulating the conduct of the political processes, legitimacy of fund raising; (vi) increasing criminalization and exploitation of the political climate (vii) defections and (viii) caste and communal hatred.

In this paper an attempt is made to discuss a few important and landmark decisions of the Indian Courts relating to the electoral reforms and also the consequential action taken by the Government. It may however be remembered that judicial response cannot be the panacea for the maladies afflicting the system of elections in India. Such a response can only act as a catalyst in activating the political organs of the state and the citizens in prompting them to secure the goal of free and fair elections.

(1) Changing the composition of Election Commission :—Until 1989, the Election Commission consisted of only the Chief Election Commissioner. In 1989, the Central Government changed the composition of the Election Commission by issuing a notification under Article 324(2) fixing the number of Election Commissioners at two, besides the CEC. The move was made probably to curb the powers of the CEC who was single-handedly exercising the powers of the EC. However in 1990, the President issued two notifications rescinding the 1989 notifications creating the two posts of Election Commissioners and appointing two persons to these posts. In this way, from 1990, the Election Commission was again reverted to a one-man body.

In *S.S.Dhanoa v. Union of India*, AIR 1991 SC 1745, the petitioner who was one of the two Election Commissioners appointed under the 1989 notification challenged, the 1990 notification reducing the number of Commissioners to only the CEC. After an analysis of the provisions of Article 324, and review of debates held in the Constituent Assembly on the matter at issue, the Supreme Court upheld the validity of the 1990 notifications on the ground that "the power to create the posts is unfettered. So also is the power to reduce or abolish them." However the Apex Court did observe that when an institution like the EC is entrusted with vital functions and is armed with exclusive and uncontrolled powers to execute them, it is both necessary and desirable that the powers are not exercised by one individual, however wise he may be. From the tenor of the *Dhanoa* decision, it is clear that the Supreme Court has shown preference for a multi-member EC rather than a single member body.

Whether it is this opinion of the Court or some other reason, but since 1993, the Central Government has converted the EC into a multi-member body. It was again challenged in the case of *T.N. Seshan v. Union of India,* AIR 1995 SC 852, where the incumbent CEC challenged the notifications as well as the changes made in the Chief Election Commissioner and other Election Commissioners (Conditions of Service) Act, 1991 on the ground that either there should not be a multi-member EC or that he as the CEC should have the sole decision making power and that the other ECs should act merely as advisors. The Supreme Court however rejected this argument and upheld the appointment of the ECs as well as of the provision in the Act requiring a unanimous decision, failing which a majority decision by the Commission on all matters coming before it. As a result of the above decisions, the EC is a multi-member body having one CEC and 2 ECs. There are however several differences between the CEC, on the one hand and the ECs, on the other regarding their security of office and conditions of service.

(2) Election Expenses and Judicial Response :—As has been pointed out in the preceding paragraphs, the elections in India are now mostly fought with money power and the present constitutional and legal regimes are not so effective in controlling the expenses incurred by political parties during the elections. There has also been criticism that there is always a naked display of black money in elections. In response to this state of affairs, Common Cause, the well-known NGO from Delhi, which has been waging a lone battle on this issue, filed a case before the Supreme Court. In *Common Cause, a Registered Society v. Union of India*, (1996) 2 SCC 752, it was argued that elections in India are fought with money power and so the people must know the sources of the expenditure incurred by the political parties and the candidates in the powers of election. In this case, the Court ruled that the purity of election is fundamental to democracy and the Commission can ask the candidates about the expenditure incurred by the candidates and by a political party for this purpose. The Court therefore ruled that under Article 324, the Commission could issue suitable directions to maintain the purity of election and to bring transparency in the process of election. The result of this judgment is that the power of the EC came to be recognized, to issue directions requiring the political parties to submit to the Election Commission, for its scrutiny, the details of the expenditure incurred or authorized by the parties in connection with the election of their respective candidates.

It may be noted that under the provision of Representation of People Act, limits on expenditure by candidates standing for elections were prescribed many years ago. These were Rs.4,50,000/- and Rs.1,50,000/-

respectively for election to Lok Sabha and a State Assembly. These limits have now been raised to Rs.15 lakhs and Rs.6 lakhs respectively. The limits apparently continue to be under review by the EC and are linked to the cost of living index. Unfortunately, the political parties, recognizing that their objective is to 'win' the elections, adopt all sorts of means of raising money, and of spending it to the extent of even buying votes, distributing liquor and other goodies, bribing officials, and utilizing rowdies and '*goondas*' of the locality. This evil practice needs to be curbed but the judiciary alone will not be effective in offering any solution, unless the Government itself takes an active role.

(3) Practice of appointing Non-Legislators as Ministers - Prevention of abuse :—The Constitution of India permits the appointment of even a Non-Legislator as a Minister provided he/she gets elected to the Legislature, whether of the Union or of the State. Under Article 75(5) in case of Union Council of Ministers and under Article 164(4) in case of State Council of Ministers. Article 164(4) can in fact trace its lineage to Section 10(2) of the Government of India Act, 1935 which reads:

> "A Minister who for any period of six consecutive months is not a member of either chamber of the Federal Legislature shall at the expiry of the period cease to be a Minister."

The contentious issue that was agitated before the Courts regarding this provision was relating to the validity of appointment of non-members as Ministers. However the Supreme Court has consistently upheld such appointments as constitutional in many a decisions. [See *Har Sharan Verma v. Tribhuvan Narain Singh, Chief Minister*, AIR 1971 SC 1331; *Har Sharan Verma v. State of UP*, AIR 1985 SC 282; and *S.P.Anand Indore v. H.D.Deve Gowda*, AIR 1997 SC 272 *etc.*]

Another dimension of this provision came up for discussion before the Supreme Court recently in the case of *S.R.Chawdhari v. State of Punjab,* AIR 2001 SC 2707. The issue in the case arose out of the following set of facts. Sri *Tej Prakash Singh* was appointed as a Minister in the State of Punjab on the advice of Chief Minister, *Sardar Harcharan Singh Brar* on 9.9.1995. At the time of his appointment as a Minister, he was not a Member of State Legislative Assembly of Punjab. He failed to get himself elected as a member of State Legislature within 6 months and submitted his resignation from the Council of Ministers on 8.3.1996. During the term of the same Assembly, there was a change in the leadership of the ruling party. Smt. *Rajinder Kaur Bhattal* on her election as leader of the Ruling Party, was appointed as Chief Minister of Punjab on 21.11.1996. Sri *Tej Prakash Singh*, who had not been elected as a member of the Legislature even till then, was once again appointed as a Minister with effect from 23.11.1996. When the appellant filed originally a writ petition challenging the Minister's appointment before a Division Bench of the High Court, it was dismissed *in limini*. In the Special Leave Petition before the Supreme Court, the Supreme Court speaking through the then Chief Justice Dr.*A.S.Anand* (for a Division Bench of 3-Judges) held that:

> "It would be subverting the Constitution to permit an individual who is not a member of the Legislature, to be appointed a Minister repeatedly for a term of six consecutive months without getting himself elected in the meanwhile. The practice would be clearly derogatory to the constitutional scheme, improper, undemocratic and invalid."

The Court went on to hold that Article 164(4) is at best only in the nature of an exception to normal rule of only members of the Legislature being Ministers, restricted to a short period of six consecutive months. The clear mandate of Article 164(4) would

amount to ignoring the electorate in having its say as to who should represent it - a position that is wholly unacceptable. The seductive temptations to cling to office regardless of constitutional restraint must be totally eschewed. Will of the people cannot be permitted to be subordinated to political expediency of the Prime Minister or the Chief Minister as the case may be, to have in his cabinet a Non-Legislator as a Minister for an indefinite period by repeated reappointments without the individual seeking popular mandate of the electorate."

(4) Appointment of Convicted Person/ Non-Legislator as Chief Minister - validity thereof:—It has been already pointed out that there has been a rampant criminalization of politics in recent times. This may arise due to any one of the following (i) a criminal becoming a politician and (ii) a politician becoming a criminal, on conviction for an offence. It is with regard to the latter category that the Supreme Court has delivered a landmark judgment in the case of *B.R.Kapur v. State of T.N.*, 2001 (7) Supreme 1, where a Constitution Bench of the Supreme Court dealt with the question - "Whether a person who has been convicted of a criminal offence and whose conviction has not been suspended pending appeal can be sworn in and can continue to function as the Chief Minister of a State."

In the instant case, Ms. *J.Jayalalitha,* was Chief Minister of Tamil Nadu between 1991 and 1996. In respect of that tenure in office, she was convicted for offence punishable under Section 120-B of the IPC read with Sections 13(1)(c), 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 and for offence under Section 409 of IPC (Criminal Breach of Trust), she was sentenced to undergo 3 years rigorous imprisonment and pay a fine of Rs.10,000/- in the first case and to undergo 2 years rigorous imprisonment and pay a fine of Rs.5,000/- in the second case. After paying the fine, she preferred appeals against her conviction before the Madras High Court. The High Court suspended the sentences of imprisonment and directed the release of *Jayalalitha* on bail conditionally. Therefore her sentence was suspended during the pendency of appeals but not her conviction. In the elections to Tamil Nadu Assembly, held in May, 2001, she filed her nomination papers in April 2001 to contest from four constituencies. Three nomination papers were rejected on account of her disqualification under Section 8(3) of the Representation of Peoples Act, 1951 by reason of her conviction and sentence in the two criminal cases. The fourth nomination paper was rejected for the reason that she had filed her nomination for more than two seats. The result was that she could not contest in the general elections.

In the elections, the results were announced on 13th May, 2001, the AIADMK party, which had projected her as its Chief Ministerial candidate won by a large majority and elected her as its leader. She was sworn in as the Chief Minister of Tamil Nadu on 14.5.2001. The present case was the culmination of the writ petitions and appeals, which were filed contending that *Jayalalitha* could not have been sworn in as the Chief Minister and that she could not continue to function as such.

The Supreme Court has held in this case very appropriately that

> "With regard to the disqualifications the respondent (*Jayalalitha*) has incurred, which prevents her for not being chosen as a member of Legislative Assembly, it would be a blatant violation of constitutional laws to allow her to be continued as the Chief Minister to allow her to be continued as the Chief Minister of a State, howsoever short the period may be, on the theory that the majority of the elected members of the Legislative Assembly have elected her as the leader and that is the expression of the will of the people…"

The Court has therefore paved way for excluding the persons convicted for a criminal offence and sentenced to imprisonment for a period of not less than 2 years cannot be appointed the Chief Minister of a State under Article 164(1) read with (4) of the Constitution of India cannot continue to function as such.

(5) Voters' Right to know and Judicial Activism :—The most important judgment that has been rendered by the Supreme Court in recent times pertaining to the voters' right to know the antecedents of the candidates is in *Union of India v. Association for Democratic Reforms*, (2002) 5 SCC 294 = AIR 2002 SC 2112. In this case, the Supreme Court while affirming the Delhi High Court decision, from which this appeal was made, held that, the Election Commission is empowered to call for information on affidavit by issuing necessary order in exercise of its power under Article 324 of the Constitution of India from each candidate seeking election to Parliament or a State Legislature as a necessary part of his nomination paper, furnishing therein information on the following aspects in relation to his/her candidature:-

(i) Particulars of any conviction/acquittal/ discharge in respect of a criminal offence in the past and the consequent punishment of imprisonment or fine

(ii) Particulars of accusation against any candidate, of any offence punishable with imprisonment for two years or more, during the period of six months before filing nomination.

(iii) Particulars of framing of charges or taking of cognizance in the above case

(iv) The assets (immovable, movable, bank balance *etc.*) of a candidate and of his/her spouse and that of the dependants

(v) The liabilities more particularly overdues to Government or financial institutions; and

(vi) Educational qualifications of the candidate.

It is gratifying to note that the Right to Information has been included in the Representation of Peoples Act 1951, as a result of recent amendment, under the newly added Section 33-A, giving effect to the above judgment in part. But an all political party meeting convened after the judgment attempted to dilute the judgment and the result has been the *non-obstante* clause under Section 33-B of the Act which provides that notwithstanding anything contained in any judgment, decree or order of any Court or any direction, order or any other instruction issued by the Election Commission, no candidate shall be liable to disclose or furnish any such information, which is not required to be disclosed under this Act or the Rules made thereunder."

It is heartening to know that the Supreme Court has taken a serious view of the above development and in the case of *PUCL and others v. Union of India,* (2003) 4 SCC 399, struck down Section 33-B, as inserted by the Representation of the People (3rd Amendment) Act, 2002 as illegal, null and void on the following among the other grounds:

(i) The Legislature cannot declare that decision rendered by the Court is not binding or is of no effect

(ii) Section 33-B, on the face of it is beyond the legislative competence as it violates the Citizens right to know under Article 19(1)(b)

(iii) The judgment rendered in Association for Democratic Reforms has attained finality

(iv) Voters' right to know the antecedents of the candidates is independent of any statutory rights under the Election Law; and

(v) That the section does not pass the test of Constitutionality.

By far, this judgment appears to be the most significant judgment relating to electoral reforms in recent times. Now it is for the Government to ensure that it is implemented in its letter and spirit in the interest of transparency in elections.

(6) Other judgments relevant to electoral reforms :—Apart from the above few notable decisions, there are many more decisions rendered by the Indian Courts, relating to the electoral reforms. They are

(i) *Digvijay Mote v. Union of India,* (1993) 4 SCC 175, where the Court held the order of the Election Commission limiting the hours for using loudspeakers for electioneering purposes between 8 a.m. to 7 p.m., as too restrictive and banned the use of loudspeakers during 10 p.m., to 6 a.m., and notified the order issued by Election Commission accordingly.

(ii) In *re Gujarath Assembly Elections*, (2002) 8 SCC 237, where on a presidential reference under Article 143(1) of the Constitution, the Supreme Court held that, on the premature dissolution of the Assembly, the Election Commission is required to initiate immediate steps for holding election for constituting Legislative Assembly on the first occasion and in any case within six months from the date of premature dissolution of the Assembly. The Court further held that effort should be to hold the election and not to defer holding the election. Only when there is an 'act of God' can the election be postponed beyond six months. But man-made obstructions in the way of elections should be sternly dealt with and should not be allowed to defer the elections.

(iii) In *K.Prabhakaran v. P.Jayarajan*, (2002) 8 SCC 79, a 3-Judges Division Bench of the Supreme Court doubted the view taken that setting aside of the conviction and sentence in appeal has the effect of wiping out retrospectively the disqualification in *Manni Lal v. Parmai Lal,* (1970) 2 SCC 462 - 2 Judges and *Vidya Charan Shukla v. Purushotham Lal Kaushik,* (1981) 2 SCC 84 - 3 Judges, and referred the matter to the Chief Justice to be dealt with by a Constitution Bench. Similarly in recent times number of judgments relating to abuse of election process, AIR 2001 SC 1098 and cross voting by horse trading in elections to Rajya Sabha, AIR 2001 SC 2992, AIR 2000 SC 694 and AIR 2000 SC 388 and Anti Defection Laws, AIR 1983 SC 412 and AIR 1998 SC 3340 have been rendered by the Supreme Court, which have a bearing on the electoral reforms in India. They are not dealt with in this paper.

Conclusion:

In the light of the above discussion, it may be concluded that the judiciary has been playing a vital role in the election process and electoral reforms. This role however has not proved itself to be very effective because of the lackadaisical approach of the political parties and political organs of the State. As rightly pointed out by Justice *V.R.Krishna Iyer* - "Adult Suffrage, which we largely (not wholly) enjoy as a constitutional right, has a revolutionary potential but has been so drugged or damped at the functional levels, by a call girl political culture that "operation overhaul' is an urgent national agenda." As the Constitutional provisions are so inadequate and inarticulate, legislations regarding representation of the people through elections so dysfunctional and liable to distortion that ballot democracy has been benumbed by

most parties - each according to its ability to abuse. [*V.R.Krishna Iyer*, Constitutional Miscelleny, 2nd Edition, 2003, EBC, Lucknow, p.139].

In this scenario, the only silver lining is the positive role played by the judiciary in awakening the voters from their self-induced slumber.

———————

VIOLENCE AGAINST WOMEN : VIOLATION OF HUMAN RIGHTS

[A response to Protection from Domestic Violence Bill, 2002][1]

By

—Dr. Y. PADMAVATI,
Advocate, A.P. High Court
and Secretary, Indian Federation
of Women Lawyers, A.P. Branch

In September 2000, the United Nations Population Fund (UNPF) reported that across the world one in three women had been physically assaulted or abused in some ways, typically by someone she knew, such her husband or other male member of the family. In response, Governments publicly condemned violence against women and committed to provide political and financial support for its eradication, but their performance in practice failed miserably to meet women's needs. Whether in Peru or in Jordan, the United States or South Africa, or in other States, men who beat their female family members to restore 'family honour' or sexually assaulted females or raped women in their homes or in state custody, or who murdered students, were all too often able to do so with impunity. In Pakistan, successive civilian and military led Governments alike have treated violence against women as a low priority. [Human Rights Watch World Report, 2001: Women's Human Rights].

At Beijing +5, Pakistan along with several other obstructionist countries, lobbied successfully to delete language that identified customary laws and practices, such as early marriages, polygamy, Female Genital Mutilation (F.G.M.) and honour killings as violations of women's human rights from the final conference document that outlined future initiatives and actions to implement the Beijing Declaration and the Platform for Action.

In 1999, Russian Police reported that, as of 1997 they had registered over four million men potential abusers of members of their families. Yet Russia did not pass legislation specially criminalizing domestic violence, and did not provide federal funding for crisis centres to assist their work.

South African Women's rights activists reported that the country suffered from one of the highest levels of violence against

1. Based on a paper presented at a Symposium on the subject conducted by the IFWL, A.P. Branch, at ICADR, on 26-12-2004. Informal discussions on the subject with Prof. *V. Nageshwar Rao*, Academic Advisor, ICFAI, Prof. *Sudharshan Rao,* Principal, AMS Law College for Women, Sri *G.B.V.S. Nageshwar Rao,* Deputy Secretary, Law Department, Dr. *Rahul A. Shastri,* Joint Director, National Akademi of Development, Smt. *Anita Chandra*, Hyderabad Law Officer, Dr. *G.B. Reddy*, Vice-Principal, OU College of Law, *A. Srihari Reddy*, Secretary, Social Cause, were useful in finalising the view expressed in this paper.