



From Democracy to Kleptocracy

Extracts from the Affidavit Submitted to the Venkatswamy Commission

by
Prem Shankar Jha

...The *Tehelka* tapes provided the first incontrovertible, visual proof of what was common knowledge among journalists and others involved in public affairs that agents continued to operate as intermediaries in defence contracts, and that kickbacks on Defence and, by inference other foreign contracts had become one of the principal methods of meeting the need of political parties for funds to fight elections and to meet their running expenses.

Till March 13 this year the evidence available had been indirect and inferential. There was a disclosure in *The Statesman* in the mid-eighties of the out of court settlement of a demand by a Swiss company, Compagnie Noga d' Exportation Importation, against the

State Trading Corporation of India for refund of kickbacks amounting to \$6 million, on three contracts to purchase sugar from it, for a total sum of \$45 million, that the STC had dishonoured. In 1987 we received the first incontrovertible evidence of kickbacks in the Bofors gun and HDW submarine deals. These were the high points that, seen against the backdrop of periodic reports of the Comptroller and Auditor-General's (CAG's) office, made me conclude that the cloud of assertions, rumours and gossip about kickbacks on virtually every transaction that involved the government, contained more than a grain of truth.

What made all of these entirely believable was the fact that all of us could see more and more money

being spent on each election even as elections themselves became more and more frequent, as the stability of governments diminished, and especially after the separation of Central from State elections in 1971. But there was no legally permissible method for raising more than a tiny fraction of the sums that were being spent. Where was the rest of the money coming from?...

The root of the all-pervasive corruption exposed by *Tehelka* lies in a lacuna in the Indian Constitution.

This is the lack of any provision for meeting the cost of running a democracy. This lacuna stems directly from our adoption of Westminster democracy as our model for the Indian Constitution. The British constitution is unwritten but very well understood. It makes

no mention of the need to meet the expenses of candidates, and political parties. In fact, it does not recognise the existence of political parties at all. The Indian Constitution follows this model and has both these lacunae. In Britain this did not matter too much as the average size of a parliamentary constituency is around 80,000 people and contains 50 to 60,000 voters. A candidate can stay at home, get into his car every morning, and visit virtually every village and small town in his constituency in as little as two weeks. Local party organisations make the arrangements for his speeches, and meet the costs from donations by their members. Money is not, therefore, a crucial obstacle to being a candidate.

In India, on the other hand, the typical constituency covers 6,000 sq. kms, contains 1.8 million people and one million voters and has 1,000 to 1200 polling booths. Just manning these on polling day requires between 8,000 and 10,000 workers, all of whom have at least to be fed and offered transport. One sitting MP told me recently that it cost her at least Rs, 5,000 to man each polling booth on the election day. The candidate cannot provide this money openly, as it is far in excess of the prescribed ceiling in the Representation of the People Act. It has to be provided by the political party.

Under Indian law there exists no legal method for political parties to raise more than a small fraction of the amount they need.

Various decisions and enactments over the last three decades have on the one hand made it progressively more difficult to raise political funds legally, and on the other vastly increased the political parties' need for funds.



In 1970, the Government banned company donations to political parties. But it did not create any alternative channel for legal political funding. This left political parties with no option but to raise money through clandestine methods and in cash.

Those who provided the cash were not altruists, so they demanded favours in return. Over the last four decades this has criminalised the political system and done immense harm to the country. In this affidavit I have space only to mention the salient points of the damage that has been done... But apart from the fact that there is a very large volume of circumstantial evidence from which inferences can be drawn, the following developments follow logically from the absence of legal sources of offunding.

- (i) It has brought into the legislatures and into the government people with access to large sums of black money and muscle power.
- (ii) It has made kickbacks on government contracts a universal phenomenon. MPs, MLAs and ministers who have raised money to fight elections have to pay it back. They do so either by doing favours, or by recovering the money from government expenses.

- (iii) This practice has filtered down to the bureaucracy. The result has been a destruction of accountability in a bureaucracy that already had too little accountability.

- (iv) Clandestine funding, no matter what the source, has destroyed the party system in India.

- (v) Kickbacks have also ensured that India places orders with the less technically qualified firms, often for substandard or as yet untested equipment. In the area of defence procurement this is especially harmful to the nation.

- (v) Kickbacks inflate the capital cost of projects and make it more difficult for Indian goods to compete in world markets.

Criminalisation of Politics

Corruption is not a private but a public vice that can completely undermine the rule of law and make governance impossible. In India, over the past three decades, it has handed the political system over to criminals, and, as Mr. Gujral correctly saw, legitimised the wholesale extortion of money from millions of poor and middle class citizens of the country. The latter two developments have all but robbed Indian democracy of its moral legitimacy. Corruption has thus become a dire threat to India's continued survival as a nation.

There is no society without some corruption. What has made it spread like a galloping cancer in India is the tacit blessing it has received from all political parties. This can be traced to a single decision that Mrs. Gandhi's government took in 1970: to ban company donations to political parties. When fund gathering was a legal enterprise, individual politicians could be corrupt but there was no need for the official leadership of a party to be corrupt. The ban choked off the legal flow of funds and forced political parties to look for donors who were capable of, and willing to contribute black money. Since black money could only be generated through criminal activities ranging from tax evasion to smuggling, bootlegging, and murder, this made all political parties accessories to crime.

With alarming rapidity a new hierarchy emerged: at the top were large companies which continued to fund the party in power, albeit with increasing reluctance. Further down the line were small and medium-sized traders and entrepreneurs, who found in the new situation an opportunity to trade funds for licenses and permissions that would facilitate their growth. At the bottom of the pyramid were criminals who initially supplied muscle power in exchange for protection from the law, but have gradually infiltrated the party system. The less political power a party commanded, the lower down was it forced to go in this hierarchy to raise the necessary funds to fight elections. This is the main reason why the links of the opposition parties to organised crime are somewhat more pronounced than those of the Congress, even today.

Mr. GVG Krishnamurthy of the Election Commission revealed the



depth to which the country's politics has been criminalised. According to the EC's statistics, more than 100 criminal gangs are active in Bihar politics. He also revealed that there are 100 gangs with more than 5,000 members in Uttar Pradesh, and 110 in supposedly well governed Maharashtra, of whom no less than 55 are in Mumbai. Nearly 1,500 of the 13,952 candidates in the last general elections (1996) had a record, not of petty crime but of murder, dacoity, rape or extortion. Worse still, over 700 out of today's 4,072 elected MLAs have criminal cases pending against them in 25 states.

Last year, Taslimuddin, a known Bihar hoodlum with murder and rape charges against him, was not only elected to the Lok Sabha on a Janata Dal ticket from North Bihar, but



briefly became a member of the Deve Gowda cabinet on the recommendation of Mr. Laloo Yadav, before public anger in Bihar forced an embarrassed Mr. Deve Gowda to prevail upon him to resign.

In UP in October 1996, the Bahujan Samaj Party not only gave a ticket to a known hoodlum, Mukhtar Ansari, but when the Bihar Police obtained a confession last month from a criminal arrested in Bangalore that he belonged to Ansari's gang and that Ansari was behind the kidnapping and murder of a Vishwa Hindu Parishad treasurer, Nand Lal Rungta, in January this year, the chief minister, Mayawati, transferred the DIG of police who had flown down to Bangalore to record the confession.

But why blame only Smt. Mayawati? In 1997, When the BJP chief minister of UP, Mr. Kalyan Singh, staved off a challenge to his government by inducting 34 defectors from the Congress and the BSP, it was found that 19 out of the 34 defectors had records of violent crime. Hari Shankar Tiwari, ex-Congress MLA who Kalyan Singh appointed Minister for Science and Technology, was implicated or indicted in no less than 37 murders. These people needed no inducement to defect. They had joined the Congress or BSP earlier solely because they needed immunity from the law. They defected to protect that immunity.

The concentration of criminal gangs in Mumbai is not a reflection solely of the city's wealth, but also of the close links that they have forged with the dominant political parties in the city, the Congress and the Shivsena. By Bal Thackeray's own admission, three notorious underworld dons, the late Rama Naik, the late Babu Reshim and Arun

Gawli, had all been members of his party. Although we do not have the benefit of a similar confession from a senior Congressman, all of Bombay seems convinced that Dawood Ibrahim and his various lieutenants in Bombay had close links with the Congress.

According to Mr. Thackeray, Gawli set up his own 'party' the Akhil Bharatiya Sena, to fight the Shiv Sena when the BJP-Shivsena government reportedly refused to give him police protection. Interestingly, the demand for police protection was made on his behalf by yet another Shivsena MP Mohan Rawle!

Party System Destroyed

While the criminalisation of politics has drawn considerable attention over the years, most people are only dimly aware of the extent to which driving fund raising underground by imposing a ban on company donations, has destroyed the party system in India. The way in which it has done this is to destroy the party leaders' access to, and control over, funds. When private donations to political parties were legal, the money came directly to the party treasurer, was duly accounted for, and dispensed by him under instructions from the party president and the High Command.

Control of funds, therefore, made the elected, official leadership all powerful within the party. It could choose the candidates for elections because it, and it alone, had the capacity to meet some or all of their expenses and direct the rank and file to work for him. It had a good reason, moreover, to enforce a code of conduct on party members and discourage corruption because, among other things, the financial clout that corruption gave to a party

member made it possible for him or her to challenge the authority of the party high command.

The destruction of intra-party democracy and their conversion from cadre parties to caucus parties dominated by a small number of warlords, was an unintended consequence of the ban on company donations. The party High Command, especially when headed by the prime minister, had neither the time, nor the necessary anonymity, to raise large sums of black money. It had, therefore, to delegate the task to others within the party. What is



more, since the money was not accounted for, the High Command no longer had any way of knowing how much the new 'tax gatherers' were actually collecting. Inevitably, those with scruples or restraint were elbowed out by those without them. In politics as in the economy, bad money began to drive out the good.

Over a period of time, within every political party, the ban on company donations emasculated the official leadership whom the public recognised and held accountable, and empowered a new class of fundraisers who lived, or had forged close links with those who lived, on the fringes of the law. As the need for funds rose, the power of the party High Command was forced to turn a blind eye more and more, to who was raising the money the party needed and how he was doing

so. Its capacity to discriminate between 'good' and 'bad' fundraisers thus declined rapidly. In time therefore, these fund raisers emerged as the new "leaders" of the party. The gates to the criminalisation of politics were wide open.

A second consequence, even less foreseen than the first, was the disappearance of trust. Camaraderie and team spirit, which is necessary for a party to work coherently as a single political unit, disappeared completely once the official leadership began to weaken, and no one knew who was raising how much money, from whom, and for what purpose. It was replaced by suspicion, and endless scheming to checkmate the real or imagined designs of others. Needless to say, this is the kind of atmosphere in which sycophants, who seek to ingratiate themselves with party leaders by inflaming their mistrust of powerful rivals, flourish.

Democracy to Kleptocracy

Corruption is also the main reason why no political party has the capacity to reform itself even in the face of the mounting anger of the public. Indian politics is vastly different from that of the older democracies of Europe and America. A majority of active politicians in India have no other occupation or source of funds, and literally live off politics, by exchanging favours for money. As governments have become less and less stable, faced with the prospect of losing power, more and more of them have gone on fund collecting sprees to see them through the hard times they foresee. Chief among the expenses that they have to recoup, and provide for in the future is the cost of fighting elections. Thus the lacuna in our Constitution I referred

to has given a powerful push to predatory behaviour by the leaders of the country, in which they have turned the wealth and income of the State itself into spoils for distribution among themselves. Political scientists who have studied the African emerging nations are familiar with this behaviour and have called such states Kleptocracies. This is why although the threat of Hawala prosecutions resulting from the Jain diaries affected leaders of all major non-Left political parties, not one of them championed the reform of the party funding.

Extortion by Bureaucracy

The naked emergence of a predator State has legitimised the extortion at lower levels of the bureaucracy. Complaints against the routine harassment of ordinary people by petty bureaucrats who refuse to perform their basic duties till their palms have been greased, are so widespread and appear so regularly in the daily news papers, that I will refrain from going into details. Between corruption at the top and extortion below, the ordinary people cannot be blamed for concluding that the rule of law itself has broken down and that their lives will only remain secure if they find themselves a powerful protector. That is the genesis of the Robin Hood phenomenon in which criminals like Gawli and the late Smt. Phoolan Devi are canonised as protectors and avengers of the poor. That is why Gawli was able to attract 75,000 persons to his inaugural *morcha* at Shivaji Park in Mumbai, in 1997 and why he is shaping to become a political force in Mumbai today. As a perceptive journalist, Aroon Tikekar wrote in *The Indian Express* in 1997, "Gawli is doing no more than the Shiv sena itself did two decades ago".



Two former Law Ministers-Shanti Bhushan and Ram Jethmalani at a press conference to protest the obstruction of justice in the *Tehelka* case.

There is a great deal more I would like to say, especially about the impact of all-pervasive corruption on foreign direct investment in India, the purchase of sub-standard equipment and weaponry for the army and so on. The most recent CAG report on the purchase of weapons and munitions for the Army during the Kargil war has exposed gross improprieties in about

two-thirds of the deals (by value of purchases) placed by the Ministry of Defence in the weeks after the war broke out...

I would respectfully like to conclude by urging the commission once more to weigh the 'cost' of *Tehelka's* sting operation against the 'benefit' that the nation will derive from its vindication, in coming to its conclusions. □

Now Available in Paperback

Off the Beaten Track

rethinking gender justice for indian women

Collection of essays By **Madhu Kishwar**

- Themes covered :**
- the role of marriage payments and dowry
 - unwanted daughters ● the denial of inheritance rights to women
 - women's land rights ● women's marginal role in politics
 - love, sex and marriage ● sexual harassment
 - the culture of beauty contests ● living identities vs acquired ones
 - why certain traditional icons continue to be important ideals for Indian women ● co-ownership rights for wives ● the politics and culture of sati

290 pages, Price: Rs 295 Overseas Price: US \$ 10 (including postage)

ISBN 0 19 564846 1

Send advance payment to **MANUSHI TRUST**