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Restriction on Political Lobbying by the Companies

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Introduction

Historically, political interference by the companies can be traced back to the 17th century, when East India Company was given Charter by the British Government to trade in India, as far back as 1600 A.D. In England, the idea of forming corporate bodies for the purpose of trade was prevalent in the 17th century, and the companies carrying on the trade outside the England were given number of privileges by the British Government, both governmental and trading and one of such company was East India Company. In course of time East India Company started ruling the territories of India, till the responsibility to Government of India was transferred to the Crown in 1858.

History of the Company Act

In India, so far as Company Law is concerned the first act was passed in the year 1850, which was known as Joint Stock Companies Act. In India prior to the enactment of 1913 which was extensively amended from time to time there were several Acts passed from 1850 onwards. The act of 1913 was however repealed by the present Act of 1956 and there have been number of amendments since 1956. The first amendment was by the Act No. 65 of 1960, thereafter Acts No. 43 of 1962, Act No. 53 of 1963, Act No. 32 of 1964, Act No. 31 of 1965, Act No. 37 of 1966, 34 of 1966, and Act No. 17 of 1967, were enacted. Now a bill to amend further the Companies Act has been introduced in the Parliament seeking to replace the existing Section 293 A which restricts companies at their General meetings and their boards of Directors to contribute funds to political parties or for political purposes not exceeding 25,000/- or 5 per cent of the average net profits of three immediately preceding years, whichever is greater, in one

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financial year. A company can act within the limits of Section 293 A only if it is so authorized by its memorandum as otherwise the funds of the companies cannot be used for this purpose. That is why we find that after 1960, when section 293A was introduced, many companies included such provision their object clauses. Prior to 1960 there was no specific section for political contributions but the companies used to take advantage of section 293(1)(e) which restricts boards power, inter alia, to contribute to charitable and other funds not directly relating to the business and welfare of the employees, the limit of contributions being as in the section 293A mentioned above. Political contributions could naturally be included in this 'other funds.'

### Proposed amendment

The relevant provision of the Bill is section which provides "8 For section 293A of the companies Act, 1956 (hereinafter, referred to, as the Principal Act) the following section shall be substituted namely,

"293A(i) notwithstanding any thing contained in this Act neither a company in general meeting nor its Board of directors shall, after the commencement of the companies (Amendment) Act, 1968 contribute any amount or amounts (a) to any political party or (b) for any political purpose to any individual or body (2) if a company contravenes of sub-section (1) then (i) the company shall be punishable with fine which may extend to five thousand rupees; and (ii) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine."

### Object of the Amendment

The question of banning the Limited Companies from contributing to the funds of political parties has been agitating the public minds for a long long time. It was the Congress party which was till now opposed to such a blanket ban pleaded vigorously by the opposition parties. It was criticized inside and outside Parliament and was considered as legal means to achieve illegal purpose. There is some truth in the allegations. Apparently, it is unfair if the benefit of such contributions goes primarily to one party in power. Besides, a company is owned by a large number of shareholders who might possess different political views but if Board decided to contribute to one party, they are helpless.

## Criticism

### Right to take part

G.W. Paton has observed that "Participation in Government is an essential personal right. It was Lock's merit to stress that ruler was under a trust to regard the welfare of his subjects. It is not enough, however, to emphasise that State exists for the benefit of men and not men for the glory of state. A doctrine of philosopher king may easily lead to the despotism however benevolent it may be the dignity of human personality demands that the individual take part in the selection of the fundamental policies which are to guide the welfare of the state." When a right to take part in the formation of national policies is available to nature person, it should also be available to the artificial person. This is a democratic country and in a democratic setup, there is need for political parties and parties need finance for popularising their manifesto and for fighting elections. Leaving aside companies and other corporate bodies and firms, there remain individuals who definitely cannot be a source of such a large amount of finance. Companies contributions are, therefore, essential if democracy in this country is to be looked after, tended and nurtured so that it should rise to its full and proper stature. As observed by Chagla, J. (Jayantilal Ranchhoddas v. Tata Iron and Steel Co., A.I.R.1958 Bom.155) "Democracy is a political system which ensures decisions by discussions and debate, but the discussion and debate must be conducted honestly and objectively and the decisions must be arrived at on merits without being influenced or actuated by an extraneous considerations. On the first impression it would appear that any attempt on the part of anyone to finance a political party is likely to contaminate the very springs of democracy. Democracy would be vitiated if results were to be arrived at not on their merits but because money played a part in the bringing about those decisions. The form and trappings of democracy may continue but the spirits underlying democratic institutions will disappear. History of democracy has proved that in other countries democracy has been smothered by big business and money bags playing an important part in the working of democratic institutions and it is the duty not only of politicals not only of citizens, but even of court of law to prevent any influence being exercised upon the voter which is improper influence or which may be looked at from any point of view as a corrupt influence. The very basis of democracy is the voter and when in India we are dealing with adult suffrage it is even more important than elsewhere that not only the integrity of the representative who is ultimately elected to Parliament is safeguarded, but that the integrity of

the voter is also safeguarded, and it may be said that it is difficult to accept the position that the integrity of the voter and of the representative is safeguarded if large industrial concerns are permitted to contribute to political funds to bring about a particular result. On the other hand, we must not also overlook a circumstance which is inseparable from the way the world has developed and democratic institutions have evolved. We are no longer dealing with a city State where democracy flourished among the few thousand citizens who knew each other, who knew the representatives, who knew the conflicting policies which they had to adjudicate upon. We are now dealing with a democracy which is spread over a whole continent; we are dealing with millions of voters; and whether it is desirable or undesirable result, the result has undoubtedly come about that you need large organizations, you need large political parties, you need modern methods of carrying on propaganda, and all that requires money and funds, and money and funds are to be obtained and normally they are obtained by the party from its sympathisers and supporters. While it is true that the **danger of the corrupting influence of money** must not be allowed to increase in this country and it must be curbed. But it must also be remembered that the flow of main spring, necessary in tending and nurturing the democracy so that it should rise to its full and proper stature, is not barred in a manner which is likely to stangle that democracy almost in its cradle."

There are, of course, obvious differences between such evils (viz. payment to political parties) and those arising from grosser forms of assistance, more usually associated with secrecy, bribery and corruption direct or subtle. But it is not necessary to stop to point these out or discuss them, except to say that any asserted beneficial tendency of restrictions upon expenditures for publicizing political view, whether of a group or of an individual, is certainly counter-balanced to some extent by the loss for democratic processes resulting from the restrictions upon free and full public discussions. The claimed evil is not unlinked with good. And its suppression destroys the good with the bad unless precise measures are taken to prevent this. In other words, democracy requires free and full public discussions and free and full public discussions may not be possible unless various parties are financed to put their view before the public. The question is, how to draw the line between money contributed in order to help the democratic process of free and full public discussion and highly undemocratic and corruptive influence of influencing policies of political parties by means of moneys lavishly contributed to its political funds.

Thus in spite of the fact that there is a great danger inherent in permitting companies to make contribution to

to the funds of political parties a danger which may grow space and which may ultimately overwhelm and even throttle democracy in this country, proper remedial measures have to be found out in order to harness this evil in a manner that instead of being a danger it would help a healthy growth of democracy. It is no doubt true that section 293 is not a sufficient check on this evil, but the question of question is whether the proposed provision in the Bill would make an undesirable discrimination between the body corporate registered under the Companies Act, and other registered bodies under other Acts, such as Societies Act, whose contributions to political parties are not banned by this enactment. The bill will even fail to ban political contributions totally, for which it is meant, because the wordings of the new provision being 'neither a company in general meeting nor its board of directors shall contribute etc. cannot stop contributions of a company whose memorandum authorises such contributions as in that case the company does not have a general meeting or board meeting. It may also give rise to fresh unfair means in place of the old ones. Further a total ban of political contributions would destroy the good with the evil in the sense that without funds political parties would not be able to popularise their manifesto effectively with the result that the democracy in this country would be able to achieve full and proper stature. It is, therefore, necessary that the entire question should be carefully examined and suitable solution to the problem should be found out keeping in view the importance of money in public life and the danger that accompany its free flow. The correct approach to the problem is not to avoid it but it lies in minimising it so that if properly harnessed, it may not give rise to political corruptions.

### Conclusion

It is thus clear that the problem is not free from difficulty and calls for a careful handling. I venture to put forward some suggestions, which in my opinion would not completely ban the political contributions and would also put a check on the danger inherent in permitting companies to make contributions to the funds of political parties:

1) There should not be a total ban on political contributions and there should be a limitation on the companies contributions, as at present, but the power to contribute should not be conferred on the Directors. Experience shows that in large number of cases Directors control the company or some powerful person holds some large block of shares so as to control the voting. The least that can be done is to provide that sanction of High Court (Company Judge) is necessary before a contribution is made to a political party.

- 2) There should not be any discrimination between the corporate body registered under companies Act and others registered under other Acts. The restrictions should be imposed on all the corporate bodies whether registered under Companies Act or other Acts.
- 3) In case of corporate bodies registered under Companies Act, it should be provided that the voice of the majority of the shareholders of the company may be ascertained and thereafter the resolution be submitted for the sanction of the High Court.
- 4) Some guideline may be fixed under which the permission be refused by the High Court.
- 5) There should not be any discrimination between major political parties. In other words, if a political parties is given contribution by any company, all other major political parties on All-India basis should get their due share in proportion to their strength and popularity. This would remove the chances of 'Political corruption' which is rooted in the fact that the contributions go to only the ruling party.
- 6) Companies running in a loss should not be allowed to contribute.

In the end I once again emphasise the fact that the solution to the problem does not lie in running away from the danger but it lies in facing it and solving it. If the danger is great the problem need a delicate handling. But to avoid it is no answer to the problem. I earnestly hope that some solution would be found out which would not only harness the danger but would make it beneficial for the country. The suggestions made above may not completely solve the question.