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Interviewee: Baijayant “Jay” Panda

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MAJEED: This is Rushda Majeed, November 19 2010, and I am with Baijayant “Jay” Panda who is a Member of Parliament. Can you speak a little bit about your current position and your experiences that have brought you to this position?

PANDA: *OK, I am a member of the Lok Sabha, which is the lower house of parliament, representing Kendrapara constituency of Orissa state. I was elected last year but before that I was in the upper house, the Rajya Sabha, for nine years. I belong to a regional party called the Biju Janata Dal (BJD); I'm one of the founding members. This party was founded in the late '90s and has won elections three times in a row. We run the state government. We were part of the alliance led by (Atal Bihari) Vajpayee at the center. We continued to have an alliance with BJP (Bharatiya Janata Party) until last year and then we broke with them on a certain issue. We had some riots in Orissa and then we had a difference of policies and we broke with the BJP.*

We have continued to gain seats in the Lok Sabha and in the Rajya Sabha. I think we are a typical example of the growth of regional politics in Orissa, I mean in India. We represent regional aspirations which we believe were neglected by the national parties which have, in the past, led to regional disparities in terms of investment, in terms of development and so on. We, along with other parties in Bihar, for instance, are part of a turnaround story, which is being noticed around the world for the first time in many decades. Our part of the country is actually growing at the rate which is faster than the national average. So that is just to give you a background.

I myself come from a nonpolitical family and, like many politicians in India, I come from a business background. I was in the US for many years as a student, even after my studies.

MAJEED: Which university?

PANDA: *I was at Michigan Tech; I studied engineering and management. I came back in the '90s to run the family company and I found it very frustrating. Apart from the culture shock, what was really frustrating was that I was spending most of my time running after government clearances and permissions, and was very frustrated and would complain about it all the time. My friends would tell me what they have done well or not so well, and to either shut up or to do something about it. That's how I got active in trying to bring about some change and I got involved in the founding of this party.*

MAJEED: I see. We wanted to discuss a little bit about the Election Commission of India and its model code of conduct. As somebody who belongs to a political party and has helped start it, can you comment a little bit on your perception of the Election Commission itself and its independence because that seems to be an issue that many of the countries around the world are grappling with in terms of commission being politicized or not. In the context of India what would you say?

PANDA: *I think the Election Commission of India is, and is perceived to be, one of the strongest institutions of the country. It hasn't always been this way. I believe it underwent a revival over the past twenty years, starting with about the tenure of Mr. (Tirunellai Narayana, T.N.) Seshan, who was a bit of a bull in a china shop but he did assert himself and assert the institution. It has led to a series of election commissioners who have been held in high esteem by the public.*

The Commission has, over these past two decades I think, built up a reputation which I do not recall it having when I was in school, for instance. But I think that's true of the country as a whole because if you go back to the '70s and '80s, my impression is that the Election Commission was considered—people had an ambivalent attitude about it. The world had an ambivalent attitude about Indian democracy.

It is only in the last two decades, in my opinion, that the world has started celebrating Indian democracy, and I think the Election Commission has played a part in that. You continue to have minor allegations by losing candidates or parties, but usually these are dismissed as sour grapes. The Election Commission, in my opinion, is held in very high esteem, and ranks with major institutions like the judiciary and other institutions in terms of what people value and cherish in the country.

MAJEED: In terms of the model code of conduct, that's one of the tools at the Election Commission's disposal in terms of conducting free, fair and peaceful elections in the country.

PANDA: *Um-hum.*

MAJEED: As somebody who has campaigned and someone who is a Member of Parliament, what do you think of the model code of conduct?

PANDA: *I think it is a bit too much of a good thing. It is a bit of a pain in the neck actually. But, it does serve the purpose of establishing a degree of fairness and a perception of fairness, which is important for any democracy.*

MAJEED: When you say perception of fairness?

PANDA: *This is one of the tools because of which the Election Commission is perceived to be fair. The Election Commission is perceived to be powerful and capable of delivering free and fair elections because it can impose such things as the code of conduct. So when elections are near, you can hear politicians make speeches which say, well, "I would do this but for the election code of conduct." People generally recognize that the Election Commission is not a toothless tiger. It is capable of enforcing rules and thus it gives it teeth. If it were a toothless tiger, it would weaken the institution.*

But it does go a bit too far because the Indian elections take such a long time to conduct. Because of the logistics, for quite a long time all work comes to a grinding halt. Now my own personal experience goes back to last year when on the eve of elections, a remote village in my constituency was devastated by a cyclone, a hurricane. We rushed there with party workers to do relief work and we were prohibited, by the election commission, to do the relief work. So I think that sort of extends the thing of it too much.

But all-in-all, I consider the Election Commission fair. I consider the tools at its disposal mostly necessary. But as far as the code of conduct goes, I think it is largely a good thing but sometimes I think it goes beyond a logical point and seems a little ludicrous.

MAJEED: Can you give me an example? One example, of course, you gave right now.

PANDA: Yes.

MAJEED: Have there been instances where you or people in your party have protested against a code, or have issued or sent a formal complaint to the Election Commission, or expressed reservations?

PANDA: *Well, this time, I gave you this one example because the elections were in progress, the Election Commission—I was in the constituency and I could reach there earlier than the state government authority. Because my party was in the state government, the Election Commission decided that I should be treated as part of the state government, which is not correct because I was not a part of the state government; I was a candidate for elections. So in prohibiting my party workers and me from distributing relief, we thought that was ludicrous.*

Then they listed that restriction only the next morning, when opposition parties went ahead and started distributing relief. We wrote and faxed protests to the Election Commission that we couldn't be prohibited from social work when people have been killed and houses have been damaged. So it was a bit ludicrous. We put it in writing and they took nearly a full day to remove that restraint. But for a whole night and for a whole morning we were standing there spinning our wheels with available relief materials but unable to actually conduct relief operations.

So, as I said, sometimes it can stretch into the ludicrous but overall it is a good thing that the code of conduct prevents misuse of official machinery for electioneering.

MAJEED: The code itself doesn't have statutory backing, even though the Supreme Court has held up the code in different cases. Why do you think the political parties adhere to the code, if they do?

PANDA: *To be honest, this is news to me because most politicians probably don't go into the genesis of how these rules have evolved. I've been in politics for a little more than ten years and the code has been around for much longer than that. So we've always sort of taken it as it is; we've assumed that it is part and parcel of the process. I'm sure a lot of my colleagues don't know that this is not a statutory requirement. I'm sure that sooner or later there might be a credible challenge to it in the courts. I know there have been some challenges in the counts which have not been withstood; but if it is not statutory, I suppose it is possible that there can be a credible challenge. I think it is too much of a good thing. I think it is required, but perhaps not to the extent that it is used, because for months, altogether, all work comes to a halt. I don't think that's a good thing for the country.*

MAJEED: Looking at more of the operational aspect of the code during campaigning, when the election is around the corner, how do you or others in your party, your team—how do you ensure that people are aware of the code and adhere to it? What are the mechanisms that take place within the party?

PANDA: *In my campaign I had one experienced dedicated person as a sort of compliance officer. So the only work that this person had to do was to sit in my campaign headquarters and do paperwork. Now he is a senior person. I could have used him in the campaign, but he was handling only this one aspect of the back office which was to maintain the accounts, to maintain the registers, to maintain the certifications that we had to give to the commission. This was a senior person with a couple of assistants and that was their full-time job to ensure compliance because there is a whole plethora of regulations. To be honest, it is impossible for anyone including the candidate himself or herself, to go through all of that and*

ensure that everything is complied with. So you have to have somebody authorized and senior to sort of make sure that you are in compliance.

I'm sure many candidates commit violations. I'm sure sometimes books get cooked. But since this was my first Lok Sabha election, although I'd been in the Rajya before, I was taking no chances and I had a senior person ensure on a day-to-day basis. We'd have a sitting every single day to ensure that we were in compliance and taking steps for it.

MAJEED: Do you think that is a trend—it might be hard to say, but do you think there is a trend within your party or others, of having somebody on the team, on the staff, who is looking to the code and making sure it is not violated?

PANDA: *My party in particular—because my party's founder and leader and the party itself have campaigned and have had a consistent platform of good governance and transparency. So if we were found to be in violation it would hurt us politically much more than it would hurt the average people, because most parties don't try to make such a virtue of good governance. So our party headquarters' instructions to every candidate were that if you are in violation we will hang you out to dry; we will not back you up. Do not violate—in fact the party gave written guidelines, sort of do's and don'ts to every candidate. So our party takes it more seriously than most, but every party ultimately has to take it seriously because the commission has the teeth to enforce.*

For example, one of our senior candidates was disqualified because there was an anomaly in his filing, his nomination. The matter went to court but he couldn't contest the election so he became—he was a senior member of the state assembly for many terms. He was a minister in the state government, but he was disqualified because of an anomaly in the paperwork. He is still fighting in the courts, but he is not a member of the assembly.

So we know for a fact that violation of commission guidelines can pinch you badly.

MAJEED: In that particular instance can you talk a little bit about, again, the operational side of things, because we are always interested in what happens when a certain event occurs. So, for example, if the Election Commission issued a notice, then what would happen from the party side? Would you appeal, or would that particular candidate appeal? What are some of the steps that happen?

PANDA: *It would depend. Yes, in most cases we would—in almost all cases we would appeal, and we would take legal help and have representation at the headquarters of the Election Commission, at both the state headquarters as well as the national headquarters.*

In the particular case I was talking about, it was unfortunately a fait accompli because the paperwork was dismissed at the last minute of the scrutiny and the deadline for applications went by. So there was no opportunity for the person to correct his paperwork. That was one of the arguments in our appeal. Part of the problem was clerical scrutiny of the Commission itself in the district. They should be partially responsible for that because you can't just cancel someone's candidature at the 11th hour, 59th minute. It doesn't hurt the commission, it only hurts the candidate.

So that is what is being argued before the court; it's going on, it is in the Supreme Court today.

MAJEED: So basically there was no room for appeal because it was just last minute.

PANDA: *Yes. So what has happened in this particular case is our formal candidate has got a favorable order from the high court, but the matter has now gone to the Supreme Court and the Supreme Court has to take a call on it. But even if the Supreme Court were to rule in his favor, by the time he gets a decision, half the term is over, or maybe the full term is over. So there are a few such instances.*

If you go back the past few elections you will find—of course, there are not a large number of cases, only a handful of cases, where losing candidates or disqualified candidates appeal against the commission and occasionally they prevail. But they prevail at such a late stage that it is a pyrrhic victory. But fortunately these are just very stray cases. They're not common and they don't happen very often.

In our case we have fought different elections, both state and parliament, and hundreds of seats in these three elections have been contested and this is just one instance where somebody has been disqualified.

MAJEED: In terms of—you've said you've been in politics for the past ten years, you've been contesting elections, based on when you started and now, do you think there is, in terms of evolution of the code, do you think there is more adherence now, or it has continued, has it evolved over time?

PANDA: *There is more adherence now. I think part of the reason is the growth of media. Certainly over the last twenty years and particularly over the last ten years, media in India has exploded. There are hundreds of television channels today which report live from every district. So whenever there is any incident it is instantly all over the place. For example, if there is a violation somewhere—now in my constituency there was a minor incident in two of the voting booths. So there was a scuffle between some opposing party people. Even as the scuffle happened, it got reported on regional television, and the Election Commission became aware of it in minutes.*

So they immediately took action, halted the voting process in those two booths for several hours, ordered the police to move in extra reinforcements into those two booths, and then reopened those booths for voting and extended the voting hours. The voting is supposed to end at a certain time but they extended it by two or three hours to make up for the lost time. So obviously the adherence is there. In the old days, who knows, I don't know how it was handled, but in the old days such an incident would not have come to light until the next day's morning when the newspapers would have reported it. Then there would have been a challenge that because of the scuffle some party would have claimed that their votes were mismanaged and then either the votes would have been countermanded in those two booths and then held again.

In fact, I'm aware that happened in a couple of other places where there was some technical trouble at one—I think the EVM (electronic voting machine) was not working or there was some malfunction. So the voting in that particular booth was countermanded and then it was re-held a week or two later, just for that one booth. So it is effective; there is no doubt about it.

MAJEED: You mentioned—actually before we talk about the media, has your party ever complained about other political parties or violations of the code? Because one of

the things that have come up in many conversations is that media is one institution that plays a vigilant role, but also other political parties are also there.

PANDA: *Indeed.*

MAJEED: Can you comment a little bit on that?

PANDA: *Yes. For most of our existence of the last twelve or thirteen years we have been the governing party. So there are more allegations against us. It is very typical for opposition candidates to allege that the ruling party is misusing its authority, but that's not true. We make allegations against opposition parties too, that they often resort to hooliganism, to intimidation. For example, in a certain part of my constituency we filed a complaint against one of the opposition parties that they had goons and hooligans to try and intimidate certain voters to not turn up at the voting polls. So these kinds of allegations are fairly typical, but most of them are fairly minor, at least in Orissa are fairly minor. I don't know how states like Bihar and all have handled it in the past.*

But I know for a fact that since the last two elections there has been a tremendous improvement in credibility, even in places like Bihar, which used to have a bad reputation.

MAJEED: One of the—in looking at countries around the world, one of the real threats or real concerns is that sometimes parties in power will use certain codes like this to clamp down on opposition and to control the process. But in India how do you think—?

PANDA: *No, because during the elections the administrative machinery doesn't report to the government; it reports to the Election Commission. In fact, I was going to answer this in your last question. The Election Commission has the authority to transfer officers, and it exercises this authority extensively. They transfer superintendents of police who are in charge of a district. They transfer local police officers from a particular thana (police station) or a particular ilaqa (area). They transfer administrative officers, and they transfer collectors. They—from a ruling party's point of view, the Election Commission wreaks havoc on the state government's administration. So it is very effective.*

MAJEED: In terms of the media, and talking about the role of the media, how do you think that has played out? Of course there is the mushrooming of different media outlets and so on, and it has started playing a more vigilant role. Do you think the effect has been mostly positive?

PANDA: *I think it is mostly positive, but all media are not the same. Some are more professional than others. There are lots of sort of, how should I call this, fly-by-night, small media operations, which do not have any commitment to journalistic ethics, and they report completely slanted, one-sided stories. So you have those examples where a local media organization will claim a completely one-sided—will broadcast a completely one-sided story. But our experience has been that the Election Commission by and large is fair, and they immediately take stock of the situation and they take a call on what is a frivolous allegation and what is not a frivolous allegation.*

MAJEED: Do you think that their method for determining if it is frivolous or not is fairly rigorous? What are the means they use?

PANDA: It basically depends upon ensuring that the people who run the operation at the ground level are outsiders. So for example, they have observers. They take officers from—they take civil servants from Orissa and put them in Himachal Pradesh. They take people from Tamil Nadu and put them in Orissa and they yank people all over the place. So the basic reliance is on a principle that they have outside observers who take the final call. The assumption is that since they have no connection to local politicians they will be fair, and by and large they are.

MAJEED: Within the code itself there is, and we are interested in this particularly, there is a clause on hate speech.

PANDA: Yes.

MAJEED: And instigating violence on the basis of caste, religion, language or region. How do you think that particular clause works because there have been recently very—some high-profile cases, and the Commission has taken certain steps. But do you think the code itself has been effective in dampening that or dampening violence as a whole?

PANDA: Yes, to some extent. We all know the high profile cases at the national level, but at local levels it does happen. In my constituency we had a few examples of some candidates trying to incite either communal feelings or violence and as I said allegations were filed and counter-filed. There were some frivolous allegations, but some of them were genuine. We found that the Commission did take action and ensure that—.

In fact, if anything, the commission is overzealous. That is the point I am trying to make. My experience has been that the Commission does a good job but perhaps sometimes it extends into the ludicrous. Even on frivolous allegations they immediately take some action and then try to correct it if they find it is frivolous. So, if anything, they are a bit overzealous.

MAJEED: Can you elaborate a little bit on one of the examples of how their candidates have made inflammatory speeches? You mentioned in your constituency or state and what happened.

PANDA: My own experience was, for instance, there was an old allegation against me in which a PIL (public interest litigation) had been filed. The high court had ruled in my favor and then the matter ended. This was two or three years before the election. One of my opponents brought up the matter and made the allegations against me without mentioning that I had won the high court case alleged against me. So we filed a case with the Election Commission.

In this case we actually, we didn't get relief from the Election Commission, but even though the Election Commission did not take action, we found that the candidate sort of stopped making the allegations as soon as we filed the complaint. So that had an effect.

MAJEED: Again, in terms of the code, how do you think the public views the code? Is there an awareness it is there?

PANDA: The public pretty much has the same impression that I just told you. The public thinks it is effective, but they think it is a bit much. For weeks, and sometimes a couple of months, the entire administrative machinery grinds to a halt. No roads are built, and no work is done. Files don't move; everything comes to a halt.

MAJEED: Apart from that comment which seems to be an issue with the overzealousness of the commission as you describe, do you think there are other issues with the code, looking at it from your perspective, from a political party perspective that need to be clarified or resolved, or are there any problems associated with—?

PANDA: *Not so much with the code, but I have a problem with fundamentals. For example, the Election Commission has certain limits of expenditure that candidates can spend. I personally have a problem with that. Even though those get revised from time to time they are still unrealistic and virtually every candidate flouts those limits by somehow managing. I, and many candidates, have a belief that these limits a) are artificial and b) are unnecessary. I firmly believe that money alone, or big budgets alone, cannot win elections. If that were the case only rich people would have won elections.*

But the fact is that elections in India have empowered the under-classes, the poorer castes, I mean the lower castes and poorer people to be empowered in a way that was not possible before we had democracy. I don't think financial limits have anything to do in helping that process. I would much rather have something like what prevails in the US for instance, where candidates are free to spend their own money. I strongly believe that we need streamlining of election funding. I strongly believe we need some kind of state funding so that the average Indian citizen can, if he or she thinks he can mobilize public opinion, can access public funds and run for election.

So these are fundamental issues, not so much with the code but related to the code in the sense that there is an approach of a nanny state when the Election Commission decides that spending too much money is not good for you. That's ridiculous because if somebody has earned his or her money in a legitimate manner, they should not be prevented from spending it.

We know in California recently somebody spent 150 million dollars of her money and still didn't win. That's how democracy works because people don't get—even poor people in India have repeatedly shown that they're smart when it comes to casting their vote and that large expenditures by certain candidates do not sway their votes ultimately across the board.

So I think we should do away with limits; we need to have audits to ensure that it is legitimate money, it is not drug money, it is not black money. We do need those audits but I think we need to do away with limits and I think we need to institute state funding.

MAJEED: One final question just to wrap up. Do you think the code itself has helped political life in India, and if so, how, and if not, why not?

PANDA: *I think it has helped India; I don't think it has helped political life. It has made our life miserable in trying to adhere to it. It has helped India because it has improved the credibility of our democracy. So again I'll repeat what I have been saying. I think the commission overall does a great job. I think the code helps in asserting the commission's credibility. I just think they sometimes cross the line into what is pragmatic and practical and go to ridiculous and ludicrous lengths. I think they just need to—this was needed to establish the credibility of the organization. Perhaps they need to sort of step back just a wee bit so it is more practical.*

MAJEED: Thank you so much. Is there anything else you would like to add?

PANDA: *I think we have covered just about everything as far as the code is concerned, as far as the commission is concerned. There is a much bigger subject about electoral reform, about the system. There are a lot of changes that are being mooted in the parliamentary system that we need to look at. Some people, like me, think we should have had a presidential system. Obviously that is not going to happen any time soon, but there are many amendments proposed which would make us a more stable, more responsive polity than what we are.*

MAJEED: Thank you so much.