Equity in Political Financing: A Need for Stringent Regime to Safeguard Democratic Setup in India

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Abstract

Elections in a democratic setup is now a costly affair. Political parties and candidates contesting elections raise funds from both known and unknown sources. Hence, political financing has serious ramifications to the democratic integrity of our country. Prior to the Union Budget of 2017 that introduced electoral bonds lifting the cap on corporate financing to national political parties in India, the Companies Act, 2013 mandated only 7.5 % of the average net profits of the preceding three years to be donated to a political party fund. The said change in law has resulted in the recent statistical trend showcasing large influx of corporate money into the political parties. Many of the developed countries such as Germany and United Kingdom have strengthened their election financing laws by bringing in accountability and transparency thereby reducing dependence on money. In lieu of the same, this paper endeavors to address the compelling need to regulate the flow of money into the political system by suggesting certain measures such as cap on election expenditure by political parties, mandatory disclosure of donation details, corporations disclosing their contributions made to political parties in the public domain and partial state funding. These measures are intended to provide a level playing field to all political parties in order to protect and preserve our democratic fabric.

Keywords: Electronics, Political Financing, Democracy

Introduction

The most devastating attack on the fundamentals of democracy is the large inflow of money in politics and the inability of the elected governments in regulating the same.[1] Conducting elections is a cornerstone practice adopted

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[1] PIPPA NORRIS AND ANDREA ABEL VAN ES, CHECKBOOK ELECTIONS? POLITICAL FINANCE IN COMPARATIVE PERSPECTIVE (OUP: 2016).

by democratic states to account to the will of the people and it is impossible to conceive a democratic form of government in the absence of free and fair electoral process. However, at the same time, it is important to know that financial resources play a significant role in elections. Kerr Pollock in his study of political funding in France, Germany and United Kingdom concluded by stating that: ‘The relation between money and politics has come to be one of the greatest problems of democratic government.’[2]

The reasons for the focus on elections and the financial link relating to the political finance reforms are three fold: Firstly, there is an increase in dependency of political parties on external sources of political finance due to weakening cadre based politics on a global scale. Secondly, income inequalities have resulted in concentration of wealth with only a fraction of the society, in turn, leading to concentration of power favoring the wealthy section of the society.[3] Lastly, political polarization is the root cause for many democracies, enhancing the stakes of election to greater heights.[4]

The Centre for Media Studies (CMS) estimated that around 5-billion dollars was spent in total on election-related activities, much higher than the price tag CMS had placed on the previous national election in 2009.[5]Due to the recent affiliation of money with politics and the unregulated concentration of wealth among a marginal section of the society has led to plethora of studies on the consequences of money power in democratic countries. Raising of money from the supporters to contest elections will provide an incentive for post poll kickbacks in terms of devising public policies favoring the ones who have funded the political party elected to power. The modern developed nations have efficient mechanisms such as cap on individual candidate and part spending, revealing identity of the donor and cap on funding by business entities in order to track the illicit funds spent on political propaganda. Well established accounting measures and restrictions on party spending will reduce the trade of votes leading to an unhealthy democracy.

The role of money in politics is not an exception in India. However, for the sake of convenience in understanding the various regulatory reforms over the span of 70 years from 1947 to 2017 shall be divided into three phases.[6]

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[2]JAMES KERR POLLOCK, MONEY AND POLITICS ABROAD (Alfred A. Knopf:1932).

[3]THOMAS PICKETTY, CAPITAL IN TWENTY-FIRST CENTURY (HUP: 2014).

[4]DANIELA GIANNETTI AND KENNETH BENOIT, INFRA POLITICAL PARTIES AND COALITION GOVERNMENTS (Routledge:2009).

[5]Niraj Sheth, *Corruption Mars Image of Change in India Elections,* WALL STREET JOURNAL, 9th April, 2009.

[6]DEVESH KAPUR AND MILAN VAISHNAV, COSTS OF DEMOCRACY:POLITICAL FINANCE IN INDIA (OUP: 2018).

Phase I (1947-1990)

The first phase beginning from 1947 to 1990 witnessed a slight transformation from traditional means of financing through membership dues to corporate contributions, with private companies giving money to parties in exchange of regulatory favors. The institutionalization of this practice raised concerns about the nexus between black money and political funding. In view of the same, two committees were appointed, the Santhanam Committee on Prevention of Corruption (1964) and the Wanchoo Direct Taxes Inquiry Committee (1971). Both reports supported the claims made regarding the seeping of large amounts of money into the political system. Owing to these findings, corporate donations were banned.

In *Kanwar Lal Gupta v. Amar Nath*[7] case, Supreme Court of India ruled that the political party spending on behalf of a candidate should be included in calculating that candidate's election expenses in order to ascertain whether the election expenditure cap has been violated and prove it's accountability. But this was nullified by amendments introduced by Parliament to Representation of the People Act (RPA), 1951 in 1975.

Subsequently in 1979, a key development was the exemption of parties from income and wealth taxes on the condition that they file annual tax returns, followed by introduction of a limit of 5% on corporate donations to parties under Companies Act, 1985 (later increased to 7.5% in the Companies Act, 2013).

Phase II (1990-2003)

In the second phase covering the period between 1990 and 2003, several electoral reforms were initiated beginning with recommendations by the Dinesh Goswami Committee, 1990. Certain resources such as vehicle fuel, rental charges for microphones, the issuance of voter identity slips and electoral rolls were the specific suggestions made by this committee to political candidates contesting elections.

The national radio channels and state-owned television networks allocated certain time to political parties in the form of government subsidy to endorse their party manifestos in the year 1998, as per the recommendations of the Indrajit Gupta Committee on 'Partial State Funding'. This was an incentive to political parties discouraging them to indulge in raising funds from other sources and to restrict the flow of money in election campaigning.

[7]Kanwar Lal Gupta v. Amar Nath, AIR 1975 SC 308.

Phase III (2003-2017)

The period ranging from 2003 to 2017 constitutes the third phase in the evolution of India's political finance system, characterized by greater efforts towards transparency. The Election and Other Related Laws (Amendment) Act, passed in 2003, made company and individual contributions to a political party 100% tax-deductible, thereby making companies/individual donors to donate openly by cheque. Disclosure of details of all donations above Rs 20,000 to the Election Commission of India (ECI) on annual basis became mandatory. The amendment to the Companies Act, 1956 was made in 2013 by increasing the cap on corporate donations to 7.5 % from 5% of average net profits of the preceding three years. Most recently, in 2017, the ruling government took several initiatives in liberalising laws relating to political finance which opened the floodgate of funds to parties by way of digital/cheque payments. They were having the various reforms adopted by the government include introduction of the anonymous Electoral Bonds,[8] eliminating limits on corporate donations to parties and the mandatory practice of the declaration of political contributions on their profit and loss statements was eradicated, and the amendments to Foreign Contribution Regulation Act, 2010 (FCRA), that will now allow any foreign subsidiary established in India to contribute indefinitely.

Political parties are mandated under Law to submit details of donors who have contributed above Rs 20,000 in a financial year (between 1st April and 31st March) to the ECI, each financial year. Political parties provide details of the name, address, PAN, mode of payment and amount contributed by each donor who has made donation above Rs 20,000 in their submission. The notable development was the ECI's new transparency guidelines of August 2014, under which the parties must identify all the donors and amounts with exception of petty sums raised at rallies.

However, these guidelines do not yet have the full force of law since apart from the extraordinary step of deregulating the party, the ECI has no power to find or de-register a part, that violates the new guidelines. In principle, the government seems to live up to its rhetoric and introduce several political finance reforms measures in the 2017 Finance Bill. The core of the government's approach centred on 3 objectives are strengthening limits

[8]Definition: It is a financial instrument (similar to a promissory note) for making donations to political parties. These are issued by Scheduled Commercial banks upon authorization from the Central Government to intending donors, but only against cheque and digital payments (it cannot be purchased by paying cash). These bonds shall be redeemable in the designated account of a registered political party within the prescribed time limit from issuance of bond.

on cash giving, tightening income tax provisions and introducing a new instrument known as electoral bonds.[9]

Financial Year 2004-2005 to Financial Year 2011-2012

The total amount of contributions to national political parties from various business was Rs. 379.89 Cr. out of which 87% was mobilized by known sources. During this period there was still a cap on the corporate donations as 7.5% of the company's average net profits of the preceding three years.

Financial Year 2012-2013 to Financial Year 2015-2016

The gross value of the contributions through corporations was Rs. 956.77 cr. The known sources amounted upto 89% of the donations made. But the fact that should be noted in that there was a change in government replacing INC with the BJP. Further, a strong analogy can be drawn regarding the change in leadership and the trends respectively.

Financial Year 2016-2017 to Financial Year 2017 -2018

The abolition of the cap on donations through an amendment to the Companies Act, 2013 in 2017 by the introduction of electoral bonds opened the gates wide open without any restrictions to fund the national politics. The latest survey conducted by ADR reports that a whooping amount of Rs.985.18 Cr[10] of corporate donations was pooled into the national political parties. But, another achievement which the ruling government deserve credit is with respect to the object of electoral bonds.

The entire essence of introducing electoral bonds was to emphasize more on transparency by legalising political contributions without any barriers and an open bank system. The share of BJP alone is Rs. 915.59 Cr followed by INC, Rs. 55.36 Cr. and lastly NCP with Rs. 7.73 Cr. However, there were a marginal portion of finance, which did not have any valid source or known source.

Impact on the Political Structure of India Due to Unregulated Political Financing

Absence of a stringent system of inner-party democracy and financial reporting within parties reinforces corrupt fund-raising and the lack of

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[9]MILAN VAISHNAV AND REBECCA BROWN, CRAFTY INDIAN POLITICIANS CAN GAME THE NEW POLITICAL FUNDING RULES EVEN IN THEIR STEP (CARNIEGE ENDOWMENT FOR INTERNATIONAL PEACE: 2019).

[10]Association for Democratic Reforms, *Analysis of Donations from Corporates & Business Houses to National Parties for FY 2016-17 & 2017-18* (2018).

financial accountability. Within India, parties follow a top-down approach and operate as dynasties in most cases. A weak political financing regime can have an adverse impact on the overall electoral politics of the country.

Ever-increasing costs of election campaigns result in circumvention of expenditure limits, demand for black money, thereby driving campaign expenses underground. According to a recently conducted study by the CMS, a total of Rs 60,000 crores was spent in the General Elections of 2019. The study reveals that there are at least 75-85 seats where individual candidates spent more than Rs 40 crores, over 50 times the expenditure limit of Rs 70 lakhs.

There is also the factor of Political parties' preference for candidates who can finance their own elections, given the magnitude of resources required for campaigning. The wealthiest 20 per cent of the total candidates that contested elections in the last Lok Sabha elections were more than twenty times more likely to win an election than the poorest 20 per cent.[11] The personal wealth of the candidates contesting for elections have been neglected in various studies conducted on electoral jurisprudence, but it is to be noted that candidate's individual financial capacities play an important role in being selected as the face of the particular political party.

The personal financial capacity of candidate's all over the world over is less consequential in most electoral democracies, this is because the political financing unlike in India is heavily regulated in many developed countries. In a study of 52 democracies, Van Biezen and Kopecay report that only India, Switzerland, Latvia, Jamaica, Botswana, Mauritius and Senegal neither provides state funding for parties nor explicitly regulate party finances. This leads us to the conclusion that neither the government is detrimental in creating a framework of law to regulate the finances nor are they providing for resources to maintain a level playing field among political parties.

There is a reason to believe that the scale of funds raised explicitly for a particular candidate's campaign from outside sources is likely to be low in India. With little adherence to spending limits imposed by the state, self-financing candidates emerge as potentially critical to successful political parties for two reasons;

i. They fill party coffers- money paid by candidates is often used to finance otherwise cash- strapped parties and

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[11]Anon, *Power to the Rich: India Needs to Talk About Money in Politics*, HINDUSTAN TIMES, 23th July, 2018.

ii. Money wins on the campaign trail- campaigns are expensive, and with little assistance from larger party funds or outside sources, candidates must use their own money to run a good campaign.

There are reasons to be concerned by an increasing trend on dependence on self-financing candidates. Firstly, if the candidates must be personally wealthy in order to have some chance of winning an election it would lead to concentration of political power with the wealthy class of the society leading to a highly non representative population of legislators. Secondly, if the political party conveniently selects candidates primarily based on wealth as opposed to other factors such as education or previous service, then the population of legislators will be under qualified in terms of constituency representation. Finally, if campaigns must be self-financed by the candidates themselves, it melts down to an economic investment leading to greater levels of corruption in office as legislators try to recoup the cost of contesting elections.

At the outset, it is important to note that the parties in India have very little, 'intra-party democracy'. In other words, across parties in India most candidates are selected by a small group of elite party functionaries rather that a process that explicitly incorporates the views of general party members or the population at large.

Milan Vaishnav, argues that the increasing costs of election campaigns has pushed parties towards self- financing candidates for two reasons. First, the actual cost of running a campaign implies that unless the candidates bears a significant portion of the cost, the candidate will have a difficult time winning the constituency. Second, the finite party coffers in an increasingly expensive electoral word and wealthy candidates are required to supply funds to the party.[12]

The elimination of cap on corporate funding, diluting the requirement for private business houses to disclose political giving in their financial statements and introduction of anonymity of donors through Electoral Bonds, corporate can now legally donate unlimited sums to political parties without having to disclose a single rupee. Customer identification entails verification of the customer's credentials by using reliable, independent source documents, data or information. In case of natural persons, the banks are duty bound to obtain sufficient identification data to verify the identity of the customer, like address/location, and also recent photograph. For corporations and

[12]MILAN VAISHNAV., WHEN CRIME PAYS: MONEY AND MUSCLE IN INDIAN POLITICS (YUP: 2017).

companies and other legal persons or entities, the bank should (i) verify the legal status of the legal person/entity by going through the charter documents and other relevant documents; (ii) verify that any agent acting on behalf of the legal person/entity is so authorised and verify the identity of that person; (iii) understand the ownership and control structure of the customer and determine who are the natural persons ultimately in charge of the legal person.[13] Hence, the disclosure of the identity of the donor contravenes the basic norms of RBI's customer identification procedure that is mandatory for all banks to comply.

Lacunae and Measures to Regulate Political Funding

No regulatory framework guarantees effective enforcement of political finance regulations given that in a democracy, laws controlling political finance are passed by politicians themselves. The way in which a political party manages the funds lays the foundation for the political finance regime of a democratic country. In order to name a system as truly democratic, it is essential that it must consider the political and socioeconomic aspirations of its people and then alter the system accordingly. Free and fair elections are the foundation of any democracy and in our country it falls within the basic structure of our Constitution and is often reminded by the Constitutional Courts in various cases. However, this can be achieved only when there is an absence of influence of money in the corrupt electoral process. It is unfortunate that those who are interested in the idea of building a welfare society and who are capable of not indulging in any such corrupt practices are side-lined and are treated as ineligible for participating in the electoral process merely because entry into political parties recently has become dependent on the self-financing ability of the candidate. In absence of any regulations relating to election financing or an under regulation of political finance, leads to two scenarios.

First, it involves cases where private entities use money to ensure less stringent regulation and favourable policies. Secondly, it involves cases of deeper capture, where through their self-serving influence, entities absorb not just regulators, but also the views of ordinary citizens and what they deem to be public interest.[14] The rationale behind limiting expenditure is to eliminate the influence of large stakes of money in the electoral process. In addition to political will it shall also consider strong institutional oversight.

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[13] Master Circular on Know Your Customer (KYC) norms/Anti-Money Laundering (AML) standards/Combating of Financing of Terrorism (CFT)/Obligation of banks under Prevention of Money Laundering Act, (PMLA) (2002).

[14] The Hans India, Electoral and Political Funding : How India Fares on a Global Comparison, Association of Democratic Reforms (2019).

Organizations responsible for enforcement of political finance regulations must be independent,capable, with inclusive and transparent leadership appointments and a secured tenure. These characteristics are integral for effective implementation and enforcement.

Measures Suggested

In light of the same, the following measures are suggested by the author to bring in transparency and accountability to the current regime of election financing laws.

As it does not directly limit the election expenditure of political parties this has given rise to the question of third party expenditure, namely the financing of a candidate's campaign by political parties, corporate donors or well-wishers. Section 77 of the Representation of People's Act (RPA), 1951, imposes ceiling on election expenses of a candidate from the date of nomination to the date of declaration of results and it does not include any period before nomination, even though it constitutes a major chunk of the candidates' expenses. An amendment to section 77 by enhancing its scope as suggested above may be a better solution. The sole objective of this section is only to regulate the election expenses of candidates.

However, political parties are free to spend any amount as long as it is for the general party propaganda, and not towards an independent candidate. Thus, there is no ceiling on party expenditure. This should be amended to extend from the date of notification of the elections to the date of declaration of results, given that many candidates file their nominations only on the last date of filing, to prevent the application of section 77 limiting their expenses. Officially, India has limits on election spending, that is Rs. 50 lakhs -70 lakhs per Lok Sabha candidate, and Rs 20 lakhs -28 lakhs per assembly candidates, depending on the state. The author suggests to evolve a party expenditure cap by determining the number of candidates contesting for Lok Sabha elections and State elections respectively.

Illustration: If part A fields 150 MP candidates to contest for Lok Sabha Elections then the party expenditure shall be within (150 x 50 lakhs as lower limit and 150 x 70 lakhs as upper limit) Rs. 75 lakhs- 105 Crores. Such a figure is not only sufficient but also a practical reality in its true spirit.

The authorisation of corporate contribution through a mere resolution passed by the Board of Directors under section 182(1), Companies Act, 2013, should be amended to empower a larger group of people, such as the company's shareholders, in determining the amount and manner in which the funds of a company shall be used for political contributions. A special resolution which is considered to act as a restriction on the capricious and arbitrary powers of the Board should be a mandatory requirement to finalise such contributions made by the corporations.

The company's equity shareholders are the real owners of the company and any major investment made by the company or any major donation made by the company shall not only be an internal decision made within the Board but also made in the larger interest of the investors as well. In United Kingdom with respect to corporate contributions, it is important to note that they require prior shareholder approval. Hence, a similar mechanism can be brought about in the Indian regime as well, to make the shareholders and investors aware about the actions of the company leading to an inclusive decisions making process.

The time span of when political parties and/or candidates get public funds varies between countries. This timing is based to two factors: what parties and/or candidates are supposed or allowed to use the public funds for and how the public funds are distributed between parties and candidates. The idea of state funding has always been a measure suggested by every researcher on this topic. There have been instances where the State has implemented this measure once in 1998 by broadcasting the part advertisement in state funded media channels and radio channels. As proposed by 255thLaw Commission Report, given the high cost of elections and improbability of being able to replace the actual demand for money, absolute state funding may not be feasible. The existing system of giving indirect in- kind subsidies should continue. Any reform in state funding should be preceded by reforms such as decriminalisation of politics, introduction of inner-party democracy, electoral finance reform, transparency and accountability in political funding etc. so as to reduce incentive to raise money and abuse power.

The taxation regime with regard to political parties remained unchanged since last 15-20 years. There are absolutely no efforts made by the legislature to bring about simultaneous changes in tax after amending the Companies Act in 2017. While political parties in India are tax exempt, under prevailing law, political parties are required to keep updated financial account, for maintaining records of the names and addresses attached to large contributions, submit the accounts for audit and file their income tax returns on an annual basis (in exchange for receiving the tax exempt status). The income earned by political parties by virtue of letting out property is also exempt under section 13A, of the Income Tax Act,1961.

Considering the elimination of the cap on corporate giving, the dropping of the requirement that firms disclose political giving on their financial statements, and the introduction of Electoral Bonds will now result in corporations flushing unlimited sums without disclosing a single penny.

Transparency within the political parties is the fundamental political reform that is necessary before introducing any other meaningful electoral reforms. Major chunk of the donations is currently from undisclosed sources and unaccounted. The introduction of Electoral Bonds has diluted the financial transparency, making it even more opaque than earlier. Political parties should be mandated to maintain proper accounts in predetermined account heads and such accounts shall be audited by the auditors recommended and approved by the Comptroller and Auditor General of India (CAG), and remain a public document. In order to bring discipline and systematic electoral conduct among political parties the income, expenditure, formation and functioning of political parties shall be scrutinised at various levels.

Conclusion

In conclusion, India is indeed a diverse and vibrant country with a number of regional political parties as well as prominent national parties none of whom prescribe any effective ceiling on party spending, donations and public funding (except for the limited time on electronic media owned by the State). The complete non existence of a system that breeds accountability by virtue of reporting and disclosure is clearly an indication of a lack of transparency and the accumulation of cash in Indian politics. India certainly has a very long way to go in this regard. Inspite of the Apex Court being vocal and the significant efforts by the ECI, the election financing regime continues to flourish time and time again. To end these practices, there is an urgent need to strengthen the ECI, in order to punish errant politicians and defiant political parties. Maintaining the sanctity and transparency in the electoral process is essential to the world's largest democracy and requires a multi-pronged approach, which includes the removal of the criminal elements and an end to briefcase politics, disposing poll petitions, introducing internal democracy and ensuring financial transparency in the functioning of the political parties of the country.

Free and fair election process is indeed the very basis of a healthy democracy and forms a part of the Basic Structure of the Constitution of India. The entry of candidates with notable criminal records in the electoral process must be restricted. Even after significant efforts in appointing a number of specialized committees and commissions to scrutinise the background of these candidates participating in elections, the results have been futile. The recent amendment made to Companies Act, 2013 has prominent implications not only on the amount of money that will flow into the political circuit but also its implications on the tax exemptions, transparency and intra politics. It is clear, that the roots of the problem lie in the very foundation of the political system of the country, and there is no political will to tackle the problem. Elections are the soul of any democracy, that not only ensures the faith of the common man in the ideals of democracy but also guards the nation from the ever looming threat of authoritarian politics and a weak electoral system is the most significant threat not only to the national integration but also to the democratic consolidation of India. Electoral reforms of radical nature can only save this glorious nation from political deterioration. Sanctity and purity of elections must be protected at any cost, as the future of India depends on it.