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NEWSLETTER

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Political funding: Who pays for the party? Election funding in India remains an opaque, black money-driven exercise, and the 'reforms' have only made it worse.

Extracted from Kaushik Deka's article in India Today (ISSUE DATE: November 19, 2018)

On January 7, 2017, two months after he had announced a ban on the circulation of Rs 500 and Rs 1,000 currency notes, Prime Minister Narendra Modi, addressing the national executive meeting of the BJP in Delhi, said there was a need to make political funding more transparent and that his party was in favour of electoral reforms.

This government has introduced three major changes since in the mechanics of political funding in India- political parties can now receive foreign funds; any company can donate any amount of money to any political party; and any individual, group of people or company can donate money anonymously to any party through electoral bonds.

All three provisions, it has been argued, instead of increasing transparency, have made the process even more opaque than earlier. Of course, the government has yielded to the long-standing demand of the Election Commission of India (ECI) to lower the limit for anonymous cash donations from Rs 20,000 to Rs 2,000, but this provision, its critics argue, will not change anything on the ground. "It is meaningless without a cap on the amount of money that can be collected anonymously through cash," says Lalit Panda, a research fellow at the Delhi-based Vidhi Centre for Legal Policy. Congress research cell head Rajeev Gowda agrees: "Now parties

will have to show 10 times more entries of less than Rs,00 20."

However, both the Congress and the BJP have benefitted from this year's Finance Bill, which made an amendment with retrospective effect to validate any foreign funds received by any political party since 1976. In 2014, the Delhi High Court had found both the parties guilty of accepting donations from a foreign company, in breach of the Foreign Contribution Regulation Act (FCRA), 2010, the newer version of the now repealed FCRA, 1976. The modification of the definition of a "foreign company" rendered the verdict null and void. With the amendment, the Modi government has ensured that funds received by political parties since 1976 cannot be investigated, a stand that has made even the EC uneasy. "The EC has been of the view that no foreign funding for elections should be allowed," opined former Chief Election Commissioner O.P. Rawat.

Foreign funds in elections are a controversial issue across the world. In France, former president Nicolas Sarkozy is being investigated over allegations that Libyan dictator Muammar Gaddafi funded his 2007 campaign. The controversy over Russia influencing Donald Trump's presidential campaign in the US is still not over. "This provision may open the floodgates for external influence on key policies, and potentially affect the country's strategic interests," says Niranjana Sahoo, senior research fellow at the Observer Research Foundation in Delhi.

Fortunately, Indian elections have so far remained free of any known foreign influence, but there is no denying that money, especially unaccounted cash flowing from groups and individuals with business interests, has often played a sinister role in the campaigns of candidates. And, according to experts and the opposition parties, the removal of a cap on corporate donations and introduction of electoral bonds have

further strengthened corporate influence in political decision-making. Among the known sources of donations to parties, between 2012 and 2016, corporate contributions formed a staggering 89 per cent of the total funds.

The 2017 Finance Act lifted the cap on corporate contributions from 7.5 per cent of the net profit of a company's past three financial years and removed the obligation to report such contributions in the company's profit and loss account. Besides, such donations do not require the approval of a company's board of directors. This provision is a convenient loophole for unscrupulous elements to route black money through bogus companies.

BJP leaders, however, claim that this criticism doesn't hold given the transparency drive the Modi government has launched in the corporate world. "All companies come under the government's Registrar of Companies (RoC, that deals with the administration of companies). Look at the number of shell companies the government has shut down. So if a company is bogus, it will be exposed," says BJP national general secretary Bhupender Yadav.

Yet several observers believe that the influence of large industrial houses in election funding is just one part of a much larger financial alliance, which happens mostly at regional and individual levels and invariably in cash and kind, undetected by any agency. In a survey she conducted between 2011 and 2014 among 2,500 incumbent politicians in Bihar, Jharkhand and Uttar Pradesh, Jennifer Bussell, assistant professor of political science and public policy at the University of California, Berkeley, found that individual donors accounted for the highest share in the total funds received by the candidates- 32 per cent for Lok Sabha MPs and 29 per cent for MLAs.

But the bigger worry for the opposition parties is the electoral bond launched this year. An individual, a group of people or a corporate can buy these bonds from designated branches of the State Bank of India (SBI) within the first 10 days of every month. The bonds, with a validity of 15 days, are issued in multiples of Rs 1,000, Rs 10,000, Rs 1 lakh, Rs 10 lakh and Rs 1 crore. These cannot be bought with cash, and the buyer must submit KYC to the bank. Parties can encash these bonds in their designated SBI accounts. The donor does not need to disclose which party he has donated to and the party does not need to reveal from whom it got the bonds.

The EC also raised concerns about the possibility of

foreign funds coming into Indian polls or bogus and bankrupt companies donating funds to parties. "We are now examining the contribution reports of political parties submitted after the launch of these bonds to check if the government has addressed our concerns. We will get to know the level of transparency soon," says Rawat. However, Major political parties like the Congress and the BJP are yet to report contribution from electoral bonds.

Finance minister Arun Jaitley, however, justifies the provision of non-disclosure of sources in electoral bonds. "Every political party in its returns will have to disclose the amount of donations it has received through electoral bonds to the EC. All transactions would be through banking instruments. As against total non-transparency in the present system of cash donations where the donor, the donee, the quantum of donations and the nature of expenditure are all undisclosed, some element of transparency will be introduced in as much as all donors declare in their accounts the amount of bonds they have purchased and all parties declare the quantum of bonds that they have received," Jaitley said while launching these bonds. The finance minister also claimed that past experience showed that lack of anonymity forces donors to "go back to the less desirable option of donating in cash".

The argument does not convince the experts. A senior EC official says that it is a sad commentary on the state of Indian democracy that donating money to one political party may invite retribution from another. "Electoral bonds may be a step towards getting rid of black money in political funding, but we need transparency too," he says. According to Sahoo, the non-disclosure clause will more or less legalise anonymous donations and crony capitalism. "While money will now be subjected to a digital paper trail, media, civil society and public will not know who pays whom," he says.

Introduced in 2013, electoral trusts were the UPA government's way of creating a layer of opacity in the process of corporate donations to parties. These trusts could receive contributions from various companies and disburse them to various parties, leaving the public none the wiser about which company was really channelling funds to which party or any quid pro quo transactions. In 2017-18, 86 per cent of the contributions to the 22 registered electoral trusts went to the ruling party. Between 2013 and 2016, donations from trusts accounted for one-third of all funding that parties disclosed.

It is, therefore, hardly surprising that the quantum of

donations received by the BJP in 2016-17 is nine times more than the five other national parties combined received. According to the party's critics, the unrivalled financial dominance is the reason behind the saffron party's refusal to accept the EC's suggestion to put a cap on election expenditure by political parties.

The BJP received Rs 251 crore- 70 per cent of the total Rs 365 crore received by 10 political parties- and spent, more than Rs 131 crore- 80 per cent of the total expenditure of the 10 parties- in the Gujarat and Himachal Pradesh assembly elections last year, according to an analysis by the Association for Democratic Reforms (ADR), an organisation that researches electoral reforms. The Congress stood second with Rs 71.2 crore in collections and an expenditure of over Rs 20 crore in the two elections.

Notes for votes

Elections in India are indeed routinely conducted as festivals- of unaccounted cash. According to the Centre for Media Studies (CMS), a Delhi-based research organisation, Rs 35,000 crore was spent in the 2014 Lok Sabha election, though the official estimate is just Rs 7,000-8,000 crore, which suggests the rest- Rs 27,000 crore- was unaccounted for. In the coming general election, the expenditure may go up to Rs 50,000-60,000 crore, says CMS.

The CMS estimate for 2014 did not include the money that changes hands in the process of getting a party nomination, as several parties sell tickets almost openly. For instance, in the 2014 general election, candidates in Uttar Pradesh used nearly Rs 500 crore to get tickets, organise rallies and woo voters, reveals an officer of the state EC's financial intelligence unit.

Such revelations make the cap fixed by the EC on expenditure by individual candidates irrelevant. A candidate is allowed to spend Rs 70 lakh in 533 big Lok Sabha constituencies and Rs 54 lakh in 10 small constituencies. According to a US diplomatic cable released by WikiLeaks, one sitting Lok Sabha member had casually said in 2009 that he spends an amount equivalent to the total legal limit on the election day itself. Rawat believes a cap on the expenditure of political parties will go a long way in cleaning up electoral finances. "As there is no cap on party expenses, many a time a candidate's expenditure is shown in party accounts," says Rawat. Panda says Indian electoral laws are exceptional, as they do not recognise political

parties as central players needing regulation. "Countries like Germany even entrench the need for transparency in party funds in their constitution itself," he says. The CEC also points out that the unaccounted expenses occur either before election notification or after the results. According to a CMS report, in the 2014 Lok Sabha poll, cash started flowing long before the code of conduct was announced on February 5. Wherever candidates were sure of getting party nominations, they went about disbursing big sums to local mid-level workers or outlets like provision candidate gives cash against these coupons after the results. The EC has no role in that period," says Rawat.

Candidates also come up with innovative ways to tie funds to electoral success and make those whom they pay 'accountable'. A senior leader from Madhya Pradesh, who changed his constituency, gave out bikes to key people in every village in the last election, but said that the registration would be done only after determining if he got the promised votes.

Did Demonetisation help?

The November 8, 2016, demonetisation exercise- less than six months before elections took place in five states, including the most politically significant one, Uttar Pradesh- was seen by many at the time as a decisive step towards weeding out corruption from elections. But ground reports from successive elections since indicate that demonetisation failed to free Indian politics and governance from the politician-businessman nexus. "If you look at the 2017 Uttar Pradesh election, cash seizures increased threefold," says Vaishnav.

On April 30, in the run-up to the Karnataka assembly poll, an EC release said that the probe wing of the state income tax department had seized Rs 19.69 crore in cash, four times what the agencies had seized in the 2013 state election. In May 2016, in an unprecedented move, the EC was forced to rescind the poll notification for two assembly constituencies in Tamil Nadu, where EC officials reported large-scale distribution of money and gifts to electors. Again, in April 2017, the EC cancelled the bypoll in RK Nagar constituency in Chennai amidst allegations that the state health minister may have distributed cash to voters.

According to a CMS report, the Karnataka assembly election in May this year was the most expensive state poll ever held in the country. Political parties and their candidates spent Rs 9,500-10,500 crore, more than twice the expenditure in the 2013 state poll.

State funding a solution?

The Prime Minister has been known to advocate State funding of elections to clean the electoral system, though his colleague Jaitley said last year in Parliament that it was not consistent with Indian reality to presume that no private donations would be used if the State funded elections. Even the EC has opposed the idea. "State funding without any check on corporate donations and black money in elections won't cleanse the system," says Rawat. Various government committees and commissions have recommended that state funding of elections be considered only after some prerequisites, such as internal democracy in political parties and complete transparency in their financial affairs, are met.

Direct state funding of political parties is practised in 86 per cent of the European countries, 71 per cent in Africa, 63 per cent in the Americas and 58 per cent in Asia. Its supporters say that public finance can help protect the political process from direct, quid pro quo kickbacks or corruption and create a level playing field for parties, candidates with less resources and new entrants. There is, however, no guarantee that public finance will reduce election expenditure. In countries like Italy, Israel and Finland, which have experimented with public funding, there has been no significant drop in expenses. In the US, election expenditure continues to soar. Only a handful of countries like Germany and Japan have been able to reduce their poll expenditure by any significant extent. Besides, despite public finance, the reliance on private donations has not decreased in countries such as the US and Israel.

"The success stories of Canada, Sweden and, to some extent, Japan, tell that an effective public funding model has two elements: reducing the dependency on corporate or private money by strict restrictions on expenditure limits, strong regulations and disclosures, and infusing white money through state funding or incentivising other funding options, such as tax-free donation," says Sahoo.

Evidence from the global experience also suggests that public subsidies in fostering competition depend on how they are distributed. In countries like Russia, public political funding has been used to stifle political competition and promote authoritarianism. "In fact, the 2001 public funding law in Russia has led to a situation where it is almost impossible to challenge the ruling party," says Sahoo. Canada and Finland have tasted

moderate success while it has resulted in intense competition from newer parties in countries like Israel, Italy and Mexico.

What next?

In December 2016, the EC sent a long list of suggestions for electoral reforms to the Union government. This is not the first time the body has written to a central government on the issue. Like in the past, the government has taken little action on the suggestions related to electoral funding- except in limiting cash donations to Rs 2,000. "India's political finance reform has been stymied by two major factors: a lack of political will for reform, and an economy in which the State exerts a heavy hand, thus incentivising illicit funding," says E. Sridharan, academic director of the University of Pennsylvania stores, temples, chit fund offices and hawala dealers for distribution down the line. "We have been told about coupons distributed by candidates. The winning Institute for the Advanced Study of India in Delhi.

The roots of the proliferation of unaccounted money in elections can be traced to the structure of political funding, which allows parties to rig their books any way they want. According to ADR, the six national parties declared an income of Rs 1,559 crore in 2016-17, of which Rs 711 crore, or 46 per cent, came in donations from unknown sources, such as 'sale of coupons', 'relief fund', 'miscellaneous income', 'voluntary contributions', and 'contribution from meetings'. The details of makers of such voluntary contributions are not available in the public domain. The Bahujan Samaj Party has been declaring for the past 11 years that it has not received any donations above Rs 20,000. It is apparent that full transparency should be paired with better enforcement, independent audits of the accounts of political parties and a zero tolerance policy towards those who lie or obfuscate their official campaign expenditure statements. The apparent disdain for transparency was evident when political parties rejected the Central Information Commission order of June 3, 2014, bringing them under the purview of the Right to Information Act. If the present government really means business, bringing political parties under the RTI would be the first big step in that direction.

- with Rahul Noronha

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