Political funding and scope of Right to Know: An analysis.

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Abstract

Every single activity concerning our day to day life is somehow related to money. Similarly, if the political parties have to sell themselves as brand i.e. to get votes they need to make people aware about their agendas. This can be done only and only if they have ample of financial resources. It is not always possible for them to put together such huge amounts from their own pockets therefore with a motive to financially backup the advertisement and other miscellaneous expenses the issue of funding comes into picture. Political funding activity can be performed in numerous ways in which funding by individual persons, public funding and corporate funding is worth noticeable. Other modes like donation by peoples during rallies, relief funds, the sale of coupons and miscellaneous funding may be the criticized ways but not the illegal one. Article 19(1)(a) of Indian Constitution has provided an effective tool i.e. Right to Information into the hands of the people of this country which may keep a regular eye on the funding being made to these political parties but majority of the political parties have opposed the same. By virtue of Section 29C of the Representation of the People Act,1951, “political parties are not required to reveal the name of the person or the company making donations to them if such amount does not exceed Rs.20,000/- and as a result they break up the donations from various questionable sources into part.” Rules regarding political funding are flawed in India and Law Commission of India in 1999 has given a report that democracy and accountability should be the main vision of all the political parties in India and must bind them together. Hence there is a requirement of legislative intent to cover all political parties under the scope of Right of Information Act, 2005. The author in the present paper will access the constitutional guarantee of right to know in a democratic set up and reasonable differentiation of exclusion of political funding from the scope of RTI. The author will also access the international practice followed into the developed countries.

Key Words- Political funding, right to know, democracy.

Introduction

Right to know is exemplary part of right to think, right to make choice, right to express and right to live with self-respect and the availability of the same will make an Indian citizen as proud accomplice of the democratic system. However, the struggle to have this scared right has undergone a tough journey.

Indian Judiciary has ensured time and again since 1997 “that Articles 19(1) (a) and 21 of the Constitution of India include right to information.” If people’s right to know is trimmed it will result in deprivation of right to live. The preamble of the Act also acknowledges this as a prerequisite for foundation of an learned electorates, to curb corruption and boost the answerability and pellucidity in the functioning of the every public authority.

Over the past two decades, for defending the environment and public health right to know have turned out to be the most valuable and effectual tool. “These laws, also known as information disclosure statute, serve number of board and important societal interests.” It also furthers democratic decision making and powers of ordinary citizens.

Historical aspect of RTI

Origin of demand concerning right to information can be traced from the oppression of basic human rights, suppression of information, abuse of authority and press censorship during the proclamation of national emergency in 1975. Janta Party Government in 1977 in its election manifesto for Lok Sabha election vowed “an open government” and to ensure the same the then Prime Minister Morarji Desai appointed a committee to suggest amendment to “Official Secrets Act, 1923” but the committee suggested no change in the existing
provisions shutting down all the doors for access to free flow of information. The Supreme Court in Mr. Kulwal v. Jaipur Municipal Corporation has held that access to information is corollary to free speech and expression.

Peoples frustration over the failure by the proceeding governments resulted in the commitment by the National Front Government in 1989 towards free access to right to know. The then Prime Minister V.P. Singh in its first broadcast towards the nation reiterated the same commitment regarding right to know. But all these assurances turned out to be futile as no attempt to bring transparency into the system was made.

In 1994 a protest lead by an organization named as Mazdur Kisan Shakti Sangathan working for the rights of the workers in village named “Devdungri of Rajasmand district of Central Rajasthan” resulted in passing of “Right to Information Act in state of Rajasthan in 2000.” Amid this protest Tamilnadu became the first state to pass Right to Information Act in 1997 and was followed by Goa (1997), Maharashtra and Karnataka (2000), and Delhi (2001).

Meanwhile NDA as a result of its commitment to ensure access to information at central level introduced “Freedom of Information Bill,2000” and it got passed from parliament in December 2002 and became an Act in 2003 with the assent of the President.

But “in 2004 National Advisory Council appointed by the UPA government” suggested changes in the existing provisions of the Freedom of Information Act 2002 and made provisions for getting information from central government only. The same was criticized heavily by the NCPRI and other organizations on the ground that state governments were left out from the ambit of the proposed legislation to which government has to abide and finally with more than 150 amendments present Act of 2005 came into effect.

Right to Know and its Constitutional aspects

As cited earlier “Article 19(1) (a) of the Constitution guarantees the fundamental right to free speech and expression.” Understanding and information are the pre-requisites for availing this right. Whereas, nonexistence of reliable data concerning issues of public interest will only push desolate gossips, speculation and needless accusation against persons and organizations. For that reason, the privilege to have information turn out to be a fundamental right, being a facet of right to free speech and expression which covers the right to have information and will further support the performance of “fundamental duties of citizens as mentioned in Article 51A of the Indian Constitution.”

Need for right to information

“Soli Sorabjee stressing on the need of right to know aim at bringing transparency in administration and public life, says Lack of transparency was one of the main causes for all pervading corruption and right to information would lead to openness, accountability and integrity.”

According to P.B. Sawant, “the barrier to information is the single most cause responsible for corruption in society. It facilitates clandestine deals, arbitrary decisions, manipulation and embezzlements. Transparency in dealings, with their every detail exposes to the public view, should go a long way in curtailing corruption in public life.”

Existence of true democracy depends upon availability of the dynamic information. Public at large have to be kept conversant about contemporary affairs along with wide-ranging political, social and economic issues. Unrestricted interchange of opinions and information are the elementary necessities for a fair administration of a democratic nation. In the contemporary era of information, its significance as a perilous element in socio-cultural, economic and political advancement is growing gradually. Easy accessibility of information has to be secured in the fastest and easiest ways in a fast emerging country like India, and it is very significant as availability of information effects every developmental process.

In “State of Uttar Pradesh v. Raj Narain & others”, Justice Mathew held that Indian citizens have right to know about all otherwise veil of secrecy will curtail their basic right to be aware about each public act being undertaken by the public functionaries.

In “Reliance Petrochemicals Ltd v. Proprietors of Indian Express Newspapers Bombay Pvt. Ltd. & others” it was affirmed that Article 21 embraces in its sphere right to information.
In “Secretary, Ministry of Information & Broadcasting, Govt. of India and Ors. v. Cricket Association of Bengal and Ors.” it was reiterated by the court that right to obtain information and to publicize it are the paramount features of free speech and expression.

Based on its earlier decisions in the referred judgements in “People's Union for Civil Liberties and Anr. v. Union of India and Ors.” it was reiterated by the Apex Court that right to know is the pious right and is indispensable part of free speech and expression.

Political funding in India and right to know

In “Namit Sharma v. Union of India” emphasizing on the objects and reasons of Freedom of Information Act, 2002 court ruled that this act has been brought into effect to ensure openness in the working of the government as existing democratic structure is suffering from various flaws such as lack of infrastructure and ideology to keep major decisions secret.

Central Information Commission in 2013 took a step further for ensuring transparency in political funding by bringing 6 national political parties in the ambit of RTI, Act, 2005 which was contradicted by the Election Commission. Here it is pertinent to mention that order of CIC could have been challenged only in Supreme Court which means Election Commission has no authority to intervene in the decision of the CIC which brought political parties into ambit of RTI.

“Election funding in India remains an opaque, black money-driven exercise, and the 'reforms' have only made it worse.”

Citizens should be well aware about all the issues with respect to which they are required to express their views otherwise right to vote and contribute in the matters of the nation will loss all its significance. It will lead to mockery of democracy in case one sided information, distorted information, unrealistic information is provided to the citizens as citizens should be informed about all the affairs in which government is involved.

In India, the large chunk of duties discharged by the political parties are of political character i.e. they possess the authority to choose how government should work and to structure policies that directly touch the lives of masses. Political parties must ensure transparency of their fiscal actions to the public as their policies effect the interest of the masses. They share committed and binding relationship with the public at large and for the same reason can be referred as life and blood of the whole constitutional system.

Financial requirements of these political parties are being satisfied in numerous ways like free air time on government TV channels during elections, distribution of lands and accommodation in prime locations etc. by the Union and State Governments respectively which is accompanied by very nominal charges. Further to entertain political elites their maintenance, up gradation, renovation, restoration, etc. are also undertaken by the state.

Hundreds of crores are being used on ensuring amenities to these political parties. It is very difficult to anticipate from the political parties the maintenance of all democratic ethics in their core working. With such extensive consequences of their actions on the public, now the question is whether they should be exempted from the ambit of public answerability? For sure not! as the complete political system in India resolves around only nominal leading political parties.

Political Funding

Political parties use to raise money for campaign through various ways i.e. Political funding. This subject is also called political finance. Notwithstanding suggestions form appointing committees and commissions at different time periods strong resistance have been put up by the political parties against the electoral reforms.

On 3 October 2017, in response to public interest litigation filed by “two prominent democracy watchdogs: namely the Association of Democratic Reforms (ADR), and Common Cause to challenge five amendments made to the statutes in Finance Act, 2016 and Finance Act, 2017 providing easy access for unrestricted corporate funding to politics and anonymous funding by Indian and foreign
enterprises”, series of notices were issued by the Supreme Court Union government and Election Commission of India. Further complete ban on cash donation was also sought in the present PIL.

First ever an attempt was made in 2017-18 when in the Union Budget whole section was devoted on concerns related to political funding. Suggestions such as lessening of monetary donations up to Rs.2,000/- per individual and the adoption of electoral bonds were the key highlights. Going behind the background of demonetization, majority assumed it to be the seriousness of the government in curbing black money issues in political funding.

Lots of curiosity and high hopes ignited by new proposals were full of loopholes and contradictions. Firstly, though restrictions were imposed on cash donations, but ample scope was left for them to misappropriate the revised provisions at the cost of increasing the count of fabricated contributors. Secondly, though voluminous greeted electoral bond as an innovative technique to “infuse democratic processes with white money” as it is designed to keep a check on digital payments warranting the distinctiveness of contributors, its most evident let down was secrecy. Irrespective of the challenges this pattern carries more value as identities of the unknown contributors are preserved in the form of cheques and digital transactions.

Petitioners’ major contention that modifications introduced via “Finance Act 2017 would open floodgates for unrestricted corporate funding is based on strong evidence, even if much of it is not trustworthy.” Corporate funding amounted to staggering 89 percent of total funding in the form of donation to parties between 2012-16 leading to a strong apprehension that private business players will sponsor total election drives in India “(i.e. the Reddy brothers in Karnataka)”. Indian states preserve substantial authority on economy and governing policies hence they cannot afford to offend political elites.

Developed democracies like the “United States and Japan” also faces this scratchy phenomenon means India alone is not the sufferer. The crucial dissimilarity, is where in developed democracies corporates using lawful and transparent mode, but illegal or hawala routes are used in India for the same purpose. Irrespective of the fact that enormous tax benefits under “Section 80GGB of the Income Tax Act” can be claimed by the corporate houses for donations to political parties, still most business prefer ‘safer’ illegal routes.

Henceforth, use of an electoral bond with its secrecy provision as accurately claimed by the petitioners will further the unobstructed corporate donation for quid pro quo. “With the government having allowed (again through Finance Bill 2016) political donation under the Foreign Contribution (Regulation) Act, 2010, raising the prospects of outside influence, electoral bond in its present form further accelerates the role of private money in democratic process.”

It is pertinent to mention that judicial activism has contributed in bringing all major electoral reforms in India. Courageous electoral transformations mainly “revelation of criminal backgrounds, submission of party accounts, disentitlement of convicted MLAs/MPs, the introduction of NOTA (none of the above) among others came through judicial involvements.”

When it comes to political parties they always stand united against electoral reforms keeping aside their conflict in political ideologies and there is a long history of delay, deception, dilution by consecutive governments at the centre to stop any possible broadminded reforms to bring more limpidity and accountability in political donations and their expenses. It is no wonder that it took more than a decade-long fight by election watchdogs, activists, lawyers and public-spirited persons to get “The Election and Other Related Bill (dealing with key issues of state funding of elections, tax rebate to political donors, etc) passed in 2003.”

Currently, “showing a rare unity, political parties opposed the Central Information Commission’s directive to bring political parties including their donations under the ambit of the Right to Information Act. Even electoral trusts and their sources of contribution suffer from opacity, and no government of the day has shown the political will to end the anonymity.”x
Lack of transparency in political funding

The issue of transparency in political funding has always been a matter of great concern and electoral reforms bonds instead of resolving the same have made it worse. In a true spirited democracy, political power depends upon the fair election results. But in reality, this system is regularly slanted by a number of issues, and the most noticeable of them is the financial power. Nowadays policies of the political parties are shaped to please the funders ignoring the desires of the voters.

To minimize the role of money in electoral politics, countries globally strive to promote the system to ensure transparent political funding, so that voters can see who is funding their politicians and can exercise their voting rights carefully. Unfortunately, evident flaws in the election funding system in India permits moneyed interest groups to secretly guide the political parties.

"Under Indian law, not only are donors of amounts below Rs 20,000 allowed to be kept hidden legally, in the 2017 Union budget the Modi government announced an electoral bond scheme that even allowed large-scale anonymous donations. As a result, more than half of all the income of national parties in India is derived from unknown sources."

According to a recent report by the Association for Democratic Reforms, “for the six national parties, excluding the Communist Party of India (Marxist), 53% of funding or Rs 689.44 crore was from unknown sources in 2017-’18. Known donors contributed Rs 467.13 crore or 36% of party income. The rest 11% came from other known sources such as sale of assets or membership fees.”

Recent developments by government to improve transparency in political funding

Healthy democracy depends upon the energetic political parties and competitive election campaigns by them. To be effective in competitive electoral marketplace political parties needs sufficient financial resources. Idyllically, these funds should be raised and spent transparently, between and during elections. Further, corporate contributions should not be the sole source for the political parties. Small donations from the supporters should be a good alternative and they must explore other lawful means to get the required funds i.e. fair means should be used to contest elections by all political parties. In furtherance of attaining same outcomes India has brought numerous regulations affecting political party funding’s.

To advance the transparency of party funding and political donations India has implemented a new type of electoral funding system in place of present practice of making cash donations to political parties and the same was appreciated by the then finance minister Arun Jaitely in the sense that same will make political funding’s in India more transparent. Electoral bonds will be made available by the India’s biggest state-owned banks keeping a comprehensive record of who is donating to whom and how much.

But critics of the scheme argue that electoral bonds will make no difference, and that the public as well as India’s state-run election commission still have no way of discovering the source of most of the money that flows into various party coffers. Political financing in India is famously opaque. In its last report on political funding, published in 2014, Global Integrity, a non-profit organisation based in Washington DC ranked India 42nd out of 54 countries surveyed on various transparency metrics. India scored 31 out of 100 on these metrics, placing it one rank above Bolivia but six ranks below neighbouring Pakistan.

Hence, Electoral bonds have made the things even more shoddier. “An electoral bond is a promissory note similar to a bank note. It can be purchased from State Bank of India branches in multiples of Rs 1,000, Rs 10,000, Rs 1 lakh, Rs 10 lakh and Rs 1 crore. Unusually for an instrument that permits such large amounts, electoral bonds can be nameless. Individuals and companies can make donations to a party without having their identities revealed to the Indian voter. The BJP dominates electoral bonds, garnering 95% of the total value of the bonds purchased in 2017-18.”

Authorization of unidentified donations at large-scale is major step back in establishing transparent system of political funding. “Former Chief Election Commissioner Navin Chawla pointed out that the electoral bond scheme has in fact emerged as a greater method of concealment when it came to the use of black money in politics.”

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International perspective

Money plays major role around the word also when it comes to politics. In March, 2012 International IDEA launched its Political Finance Database, containing data on political finance provisions in practice in 180 countries highlighting key findings, emphasizing global trends and regional variations. Around 40 countries have made provisions concerning compulsory disclosure of income sources, donations, assets and liabilities, expenditure made on political campaigns. Political parties in Sweden and Turkey have a facility to voluntary open up their records to masses. State funding is the major source for the political parties whereas in large number of cases their counterparts receive both public funding and private contributions.\textsuperscript{xi} To mention further “nations like USA, UK, Belgium, Canada, Australia, New Zealand and South Africa amongst other have embraced this model of revelation of details of political party and election campaign financing. However, in India the regulatory bodies are not obliged to proactively disclose any financial information that political parties submit to it.”

Conclusion

It is unfortunate to mention here that in spite of Supreme Court’s verdict in Indira Gandhi v. Raj Narain\textsuperscript{xiv} case 40 years ago, the phantom of dubious electoral funding has not gone away even today. The Association of Democratic Reforms has been obtaining such details and has recently discovered that about two-third of the political parties’ fund come from unaccounted sources. Among the national parties, 83 percent of the total income of the Congress and 65 percent of the BJP came from unknown sources.\textsuperscript{xv} As political parties are not required to keep any accounts of who has donated the money or how much has been donated, they simply report that they received a lump sum amount as cash donation from undisclosed donors. And as a result parties are accepting a lot of black money in large amounts from various donors as mentioned in the Birla-Sahara diaries also. Though Central Commission of India has ruled that political parties are ‘Public Authorities’ within the meaning of RTI Act, and therefore are subjected to its jurisdiction. But ironically all the political parties have flouted this rule, with the result that no citizen can ask the political parties about any information that they might have even about the donors or the expenses. The norm of transparency of political funding is gradually getting international recognition. As an alternative of opposing this trend by amending the RTI Act, 2005, political parties in India must act on civil society’s demand for greater transparency in their affairs which will lead to restoration of people’s confidence in political institutions.

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