

Still hanging fire on transparency

Courts need to go beyond appealing to the fictional conscience of our lawmakers



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In a recent judgment, a Supreme Court Bench headed by Justice Rohinton F. Nariman fined eight political parties for being in contempt of the Court's directions to inform citizens about the criminal antecedents of their candidates. In 2004, 24% of the Members of Parliament had criminal cases pending against them. This figure rose to an alarming 43% after the 2019 general elections. In a bid to address this "malignancy" of criminalisation which could be "fatal to democracy", the apex court, in a series of judgments, had directed political parties to declare and widely publicise not just the criminal antecedents of candidates, but also inform the electorate why these candidates were found to be more suitable by the party than those without criminal backgrounds. Anticipating that parties would cite 'winnability' as the criterion, the Court clarified that the reasons for selection shall be with reference to the qualifications, achievements and merit of the candidate concerned. Despite these clear directives, parties have been defiant.

Contempt for right to know

This is not the first instance where political parties have shown total contempt for peoples' right to information. Acting in exemplary unison, after the judgment in *Union of India v. ADR* (2002), wherein all candidates standing for elections were directed to file an affidavit declaring their educational, financial and criminal backgrounds, political parties amended the Representation of the People Act, 1951, to nullify the disclosure requirements. The Court struck down the amendments.

In 2013, the full bench of the Central Information Commission (CIC) declared six national political parties 'public authorities' under the Right to Information (RTI) Act, 2005. Parties were required to appoint Public Information Officers and submit themselves to provisions of the transparency law. So strong was the resolve of parties to not share information about their functioning with citizens that immediately a bill was introduced in Parliament to amend



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the RTI law to exclude political parties from the ambit of the legislation. It was only due to strong public opposition that the amendments were finally dropped. Nevertheless, following the policy of what can only be termed 'uncivil disobedience', without obtaining a stay on the Commission's order from any Court, parties have steadfastly refused to comply with the directive.

The electoral bond scheme

The Bharatiya Janata Party (BJP), which came to power on the plank of transparency and anti-corruption, has taken resistance against transparency to new frontiers. It introduced the electoral bond scheme in 2018, opening the floodgates of unlimited anonymous funding to political parties by Indian and foreign sources. The Indian political system has traditionally been hostile to the idea of transparency in electoral financing. Political parties have zealously opposed any examination of the linkages between their governments' policies and decisions and the interests of their major donors. Electoral bonds have dealt a further blow to people's right to know and consolidated the role of big money in electoral politics. Peoples' ability to engage with political processes in a democratic manner and track donations by corporates to monitor and blow the whistle on quid pro quo have been seriously undermined.

The design of the scheme is such that while citizens and opposition parties have no way of knowing who is donating bonds to which party, it is not difficult for the party in power to access the data. This asymmetry of information in favour of the party in power gives it an undue advantage. It is no surprise that the lion's share of donations through bonds have been cornered by the BJP.

While hearing the challenge to the instrument of electoral bonds, the Supreme Court in 2019 observed that the matter gives "rise to weighty issues which have a tremendous bearing on the sanctity of the electoral process in the country..." Unfortunately, the case

has not received the urgent attention it requires and the petition has been languishing for nearly four years.

Political parties are at the heart of our democracy. They form governments that make policies which have a profound impact on peoples' lives. In the legislature, elected representatives make laws that govern us. People, therefore, have a right to know how political parties are functioning – who is funding them and what principles they are keeping in mind while taking policy decisions, supporting or opposing bills in the legislature, or while selecting candidates for various elections.

The Court has repeatedly appealed to the conscience of lawmakers to take steps to ensure greater transparency of political parties and prohibit involvement of persons with criminal antecedents in polity. However, in the words of Justices Nariman and B.R. Gavai, "All these appeals have fallen on the deaf ears... The nation continues to wait... Cleansing the polluted stream of politics is obviously not one of the immediate pressing concerns of the legislative branch of government."

Courts must be more proactive

It is clear that political parties and their representatives in the legislature have no interest in making themselves answerable to citizens. Keeping in mind the tremendous public interest at stake, perhaps the time has come for the judiciary to play a more proactive role. The Supreme Court needs to urgently hear the electoral bonds matter and the challenge to the refusal of political parties to comply with the CIC's order. Finally, it needs to examine whether a post facto determination of the violation of its directions regarding publicising criminal antecedents of candidates and imposition of fine of a few lakh rupees is likely to deter parties which declare incomes worth hundreds of crores every year. The judiciary could consider putting in place a mechanism to monitor compliance with its directions prior to all State and general elections and debut candidates who violate its orders.

The country can no longer afford courts being passive spectators of the debasement of democracy. Public interest demands that judicial intervention goes beyond appealing to the fictional conscience of our lawmakers.

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