

14th Annual National Conference on Electoral and Political Reforms

Date and Venue: 10th-11th March, 2018 at Indian Institute of Management (IIM), Bangalore

Background Note

Session: Legal Advocacy: A tool for Electoral Reforms

“At the bottom of all tributes paid to democracy is the little man, walking into a little booth, with a little pencil, making a little cross on a little bit of paper – no amount of rhetoric or voluminous discussion can possibly diminish the overwhelming importance of the point.” **Winston Churchill**

In May 2002, the Supreme Court ordered disclosure of criminal, financial and educational details by candidates contesting elections to Parliament and State Assemblies in the *Association for Democratic Reforms* (2002) case¹.

In July, 2013 in the Lily Thomas case², the Supreme Court declared Section 8(4) of the Representation of People Act unconstitutional, which allowed a Member of the Parliament and State Legislative Assemblies to retain their membership of the House they were elected to, for three months to enable them to file an appeal in the higher court.

In June, 2013³, highest statutory authority in the country for the implementation of the RTI Act, the Central Information Commission (CIC), in an effort towards making political parties transparent as well as accountable in their functioning, declared the six national parties as public authorities, thus bringing them under the purview of the RTI Act 2005. All the six parties refused to comply with this decision of the CIC. A petition⁴ has since been filed in the Supreme Court to get the “final and binding” order of the CIC implemented.

In March, 2014⁵, the Delhi High Court held BJP and the Congress guilty of violating the Foreign Contributions Regulation Act, 1976 and directed the Union of India to “take action within a period of six months. The Central government through the Finance Act 2016, amended the Foreign Contribution (Regulation) Act, 2010 and changed the definition of a “foreign source” to quietly let BJP and the Congress off the legal hook of the Delhi High Court judgment. Since BJP and INC were guilty of taking foreign donations prior to 2009, the Central Government realised that amending the FCRA, 2010 did not serve the purpose of absolving BJP and INC. Hence in the Finance Bill, 2018, the Central Government has amended the FCRA, 1976 with retrospective effect.

In February, 2017, the Finance Act, 2017, which was enacted as a money bill introduced a system of electoral bonds to be issued by any scheduled bank for the purpose of electoral funding. The Act has also removed the previous limit of 7.5 per cent of the company’s average three-year net profit for political donations with the result that a company is no longer required to name the parties to which such contributions are made. In January, 2018, the Government also notified the Electoral Bond Scheme to enhance “transparency in political funding” whereas on the contrary it will increase opaqueness as the identity of the donors is hidden from the public. Corporate funding will increase manifold as there is no limit to how much the companies can donate. This has increased the danger of quid pro quo between the Government and the corporates. A petition⁶ has been filed in the Supreme Court by ADR along with Common Cause against the new Finance Act, 2017 challenging the electoral bonds as well as the removal of the 7.5% of the company’s average three-year net profit for political donations.

¹ (2002)5 SCC 294

² (2013) 7 SCC 653

³ CIC/SM/C/2011/001386&000838

⁴ W.P (C) No. 333/2015

⁵ 2014 SCC Online Del 1321

⁶ W.P (C) No. 000880/2017

The common theme in the above issues is that the Government and the entire political class join hands and attempt to oppose the judgments of the Courts by all means, fair or foul. Over a period, we have observed criminalization, burgeoning election expenditure, political party funding, and inadequate reporting and disclosure laws. Whatever few electoral reforms have been initiated over the last two-three decades have been due to legal advocacy and judicial activism.

There is a complete agreement that change is needed, but there are serious differences on how to go about it. We may be at the centre or vortex of a whirlpool of events. Good governance is possible only by the strengthening of democracy with robust, transparent, internally democratic and accountable political parties. Transparency is essential for accountability, both of which are in turn the quintessential cornerstones of good governance. ADR hopes this panel discussion will provide a platform to examine aspects of electoral and political reforms with a specific focus on its relation to good governance. Good governance is, ultimately, the true manifestation of a successful democracy.

By Shivani Kapoor
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