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CORPORATE FUNDING OF POLITICAL PARTIES UNDER NEW COMPANY LAW

MINNY NARANG
ASST. PROFESSOR
DEPARTMENT OF COMMERCE
DELHI SCHOOL OF ECONOMICS
UNIVERSITY OF DELHI
DELHI

ABSTRACT

The Companies Bill has been passed by both the houses of Parliament, Lok Sabha passed it on December 18, 2012 and Rajya Sabha passed it recently on August 08, 2013. The bill has been welcomed with open arms by almost all the Indians. The bill seeks to replace more than half century old Companies Act, 1956 enacted on the lines of English Company Law. The bill consists of number of provisions aimed at strengthening Corporate Governance framework of India and giving greater protection to minority shareholders while protecting the democracy of all the stakeholders. Amongst such worthy and admirable provisions is a provision on Corporate funding of Political Parties which needs substantial attention. The fascinating clause is the increase in the limit of political contribution by corporations in an environment which is widely accepted as being highly corrupted. This paper seeks to find out how relevant this increase is for the modern India.

KEYWORDS

Companies Bill, Corporate Funding, Political Funding, Political Party.

INTRODUCTION

The wait was finally over for India when on August 08, 2013, the Rajya Sabha passed the much-awaited Companies Bill after it was passed by Lok Sabha last year on December 18, 2012. With the passage of the Bill, India looks forward to being globalized in true sense. The existing Companies Act, 1956 is almost six-decades old and has become obsolete in the light of changing business environment of the modern India. Once the President of India gives his assent, the Bill will be enacted as a law, making the outmoded Companies Act, 1956 redundant. However, the journey was neither short nor smooth. It took almost 20 years to this bill to take birth. The process started long back in 1993 when a Working Group was established to make a comprehensive review and revision of the Companies Act after India announced liberalization of its economy in 1991. The Companies Act, 1956 was amended as many as 25 times to keep pace with the liberalized and globalized business environment but a complete overhauling of the Act was the need of the hour. The process was steered by the setting up of the J.J. Irani Committee in 2004 and later by the Satyam Scam of 2009, the largest scam in India till date.

Since the day the bill has been introduced, it is receiving constant praise and support for its emphasis on strengthening the corporate governance. The Bill for the first time introduced the formation and registration of One Person Company, duties of the directors have been clearly stated, independent directors have been defined and the concept like Corporate Social Responsibility grabbed the attention of all the Indians whether or not having a direct interest in the provisions. A brief account of various provisions of the Companies Bill has been given below:

- A private company can have a maximum of 200 members, which previously was 50 in the Companies Act, 1956.
- The concept of One Person Company introduced. It means only one person can form a company in comparison to minimum two shareholder previously. It will be a private limited company only.
- Concept of dormant companies introduced. It can be formed for a future project or to hold an asset or intellectual property.
- Money raised through a prospectus cannot be used for dealing in equity shares of another company. If a company changes terms of the prospectus or objects for which money is raised, it shall provide dissenting shareholders an exit opportunity.
- Apart from existing shareholders, if the Company having share capital at any time proposes to increase its subscribed capital by issue of further shares, such shares may also be offered to employees by way of ESOP, subject to the approval of shareholders by way of Special Resolution.
- NBFCs not covered by the provisions relating to acceptance of deposits. They will be governed by Reserve Bank of India Rules.
- Companies can accept deposits only from its members, that too after obtaining shareholders approval.
- Acceptance of deposit also subject to compliance with certain conditions -
- Public companies can accept deposit from public on complying certain conditions like credit rating.
- Listed companies required to file a return in a prescribed form with the Registrar regarding any change in the number of shares held by promoters and top 10 shareholders of such company, within 15 days of such change.
- Postal Ballot to be applicable to all the companies, whether listed or unlisted.
- Interim dividend in a current financial cannot exceed the average rate of dividend of the preceding three years if a company has incurred loss up to the end of the quarter immediately preceding the declaration of such dividend.
- Every company is required at its first annual general meeting (AGM) to appoint an individual or a firm as an auditor. The auditor shall hold office from the conclusion of that meeting till the conclusion of its sixth AGM and thereafter till the conclusion of every sixth meeting. The appointment of the auditor is to be ratified at every AGM.
- Individual auditors are to be compulsorily rotated every 5 years and audit firm every 10 years in listed companies & certain other classes of companies, as may be prescribed.
- A partner or partners of the audit firm and the firm shall be jointly and severally responsible for the liability, whether civil or criminal, as provided in this Bill or in any other law for the time being in force. If it is proved that the partner or partners of the audit firm has or have acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its directors or officers, then such partner or partners of the firm shall also be punishable in the manner provided in clause 447.
- Prescribed class or classes of companies are required to appoint at least one woman director.
- At least one director should be a person who is an ordinary resident in India in previous calendar year
- At least one-third of the total number of directors of a listed public company should be independent directors.
- Existing companies to get a transition period of one year to comply.
- Liability of independent directors and non-executive directors not being promoter or key managerial personnel to be limited.
- A person can hold directorship of up to 20 companies (previously 15 companies), of which not more than 10 can be public companies.
- Companies with more than 1,000 shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year to constitute a Stakeholders Relationship Committee, with a non-executive director as a chairperson and such other members as may be decided by the board.
- No permission of central government required to give a loan to a director.

- The provisions on inter-corporate loans and investment (372A of Companies Act 1956) extended to include loan and investment to any person.
- No central government approval required for entering into any related party transactions.
- No central government approval required for appointment of any director or any other person to any office or place of profit in the company or its subsidiary.
- The Bill makes provision for cross border amalgamations between Indian Companies and companies incorporated in the jurisdictions of such countries as may be notified from time to time by the Central Government.
- The Bill provides provisions related to Corporate Social Responsibility (CSR).
- The National Company Law Appellate Tribunal shall now consist of a combination of technical and judicial members not exceeding 11, instead of 2 as provided in the Companies Act, 1956.
- The Central Government may establish as many special courts as may be necessary to provide speedy trial of offences.
- Every company having net worth of rupees 5000 crore or more, or turnover of rupees 1000 crore or more or a net profit of rupees 5 crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board. The Board of every company shall ensure that the company spends in every financial year at least 2% of the average net profits of the company made during the three immediately preceding financial years in pursuance of its CSR policy. In event of failure, the Board shall in its report specify the reasons thereof.
- The new legislation has more provisions to guard interest of employees. It mandates 2 year salary payment to employee in case of company is shutting down its operations.

The above provisions undoubtedly ensure the democracy of all the stakeholders and attempt to make India's Corporate Governance framework at par with the corporate governance practices of the developed world.

But does this mean all is good with the new Companies Law?

Not really. The law still has certain issues unresolved and certain others left ambiguous. One such provision is the "Corporate Funding of Political Parties".

CORPORATE FUNDING OF POLITICAL PARTIES

It is not a new phenomenon. The corporations have been making contributions to the various political parties even before the emergence of democracy and the enactment of the Companies Act, 1956. Even the pre-independence era witnessed financing of the Indian National Congress by various big business houses such as the Birlas. Similarly, in 1957-58, the Tatas contributed a huge sum of Rs. 3,00,000 to the Congress Party. The corporate funding includes all the expenditures and contributions made to political parties whether in cash or in kind. Typically, it includes -

- any direct or indirect contributions or expenditures made on behalf of a candidate for public office,
- any direct or indirect contributions or expenditures made on behalf of a candidate contesting for elections.
- any direct or indirect payments made to the political party before during or after the elections or otherwise.
- Contributions to or expenditures on behalf of political committees and other
- political parties and entities organized and registered under Section 29A of the Representation of the People Act, 1951 .
- all payments for advertisements, printing and other campaign expenses of the political parties.
- all donations of company products or services to a political organization
- reimbursing someone for making a political contributions.

The list is not exhaustive and can include any kind of expenditures made for and on behalf of the political parties.

PROVISIONS IN THE COMPANIES BILL, 2012

Clause 182 of the Bill deals with prohibitions and restrictions regarding political contributions. It also provides the manner in which every company shall disclose in its profit and loss account any amount so contributed by it during any financial year. According to this clause, any company, other than a Government company and a company which has been in existence for less than three financial years, may contribute any amount directly or indirectly to any political party subject to the following:

- (1) The aggregate of the amount which may be so contributed by the company in any financial year shall not exceed seven and a half per cent of its average net profits during the three immediately preceding financial years.
- (2) No such contribution shall be made by a company unless a resolution authorizing the making of such contribution is passed at a meeting of the Board of Directors and such resolution shall, subject to the other provisions of this section, be deemed to be justification in law for the making and the acceptance of the contribution authorized by it.
- (3) Without prejudice to the generality of the provisions of sub-section (1),—
 - a. a donation or subscription or payment caused to be given by a company on its behalf or on its account to a person who, to its knowledge, is carrying on any activity which, at the time at which such donation or subscription or payment was given or made, can reasonably be regarded as likely to affect public support for a Company to contribute to bona fide and charitable funds, etc. political party shall also be deemed to be contribution of the amount of such donation, subscription or payment to such person for a political purpose;
 - b. the amount of expenditure incurred, directly or indirectly, by a company on an advertisement in any publication, being a publication in the nature of a souvenir, brochure, tract, pamphlet or the like, shall also be deemed to be a contribution for a political purpose.—
 - (i) where such publication is by or on behalf of a political party, to be a contribution of such amount to such political party, and
 - (ii) where such publication is not by or on behalf of, but for the advantage of a political party,
- (4) Every company shall disclose in its profit and loss account any amount or amounts contributed by it to any political party during the financial year to which that account relates, giving particulars of the total amount contributed and the name of the party to which such amount has been contributed.
- (5) If a company makes any contribution in contravention of the provisions of this section, the company shall be punishable with fine which may extend to five times the amount so contributed and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months and with fine which may extend to five times the amount so contributed.

The rules for making political contributions seem to have been made more stringent and comprehensive. One of the interesting provisions in the new law is the increase in the percentage of contribution that the companies can make.

Section 293A of the Companies Act, 1956 provides that the amount or the aggregate of the amounts which may be contributed by a company in any financial year shall not exceed five per cent of its average net profits determined in accordance with the provisions of sections 349 and 350 during the three immediately preceding financial years.

The percentage of contribution has, thus, been increased from 5% to 7%. Despite the high degree of corruption prevalent in India, this legislation seeks to legitimate the corporate funding of political parties. The Parliamentary Standing Committee in its report supports this provision on the ground that the number of political parties has increased and that such donations are not made every financial year. The political parties can raise the funds from a number of sources including the central funding, state funding, donations and grants. Still the corporate funding accounts for a major portion because it is in the mutual interest of both the corporates and the political parties.

In a country like India which, as a measure of reducing corruption, opened up its economy in 1991 reducing and removing almost all the trade barriers, reducing the tax rates and allowing more private enterprises to control and appropriately use the economic resources, the corruption is still widely spread and pervasive. It is not uncommon to find a minister being jailed for corruption charges and a corporate tycoon paying crores of rupees as bribes. Perhaps one of the reasons can be a loophole in the laws which enable the parties and politicians to use the government's discretionary powers over resource allocation for their own self-

interest. Even one of the first Companies legislations, the Companies Act, 1913 did not have any provision restricting the contributions made by companies to political parties though it was recognized every now and then that it could endanger the total system of democracy.

Despite the warning bell stroked by a number of judges of the High Courts and Supreme Court, no action was unfortunately taken. High taxation regime along with the stricter regulatory framework led to the problem of black money. A portion of such black money was thus granted by the big corporate houses to the political parties and politicians while lobbying for favorable regulatory environment. As a measure of restricting the amount of funding, the Parliament in 1960 added Sec.293A to the Companies Act permitting a political contribution to the extent of 5% of net profits. However, not much of a resort was provided by this provision. In fact, such a legal provision pumped up the total contribution made to political parties legally and illegally. Thus a need for total ban on donations by companies to political parties was recognized by the Santhanam Committee Report, 1962.

A serious effort was then made in 1968 when Prime Minister Indira Gandhi completely banned corporate donations to political parties to prevent the large business houses from exercising undue influence. But this could not continue for long as the total ban on corporate funding was not replaced by the state-funding of the political parties.

A well-functioning political party requires huge amount of financial resources and the amendments in the RPA Act such as those made in 1975 making the limit on expenditure by the political parties during elections practically ineffective and exempting the parties from income tax and wealth tax triggered them to raise the funds from every possible source available and the funds from the big corporate houses were, all the times, the most easiest to access and obtain. Thus in 1985, the ban was removed and the board of directors was once again allowed to make contributions to the political parties up to 5% of the average net profit of the previous three years and disclose the same in the audited annual accounts of the company. This situation is still continuing.

Perhaps one of the major incentives for corporations to make such significant political contributions is the tax-deductibility. The National Democratic Alliance (NDA) government passed Election and Other Related Laws (Amendment) Act in September 2003 which made company and individual contributions to a political party 100% tax-deductible under Sections 80 GGB and 80 GGC of the Income Tax Act respectively.

INCOME OF POLITICAL PARTIES FROM FY 2004-05 TO FY 2010-11

Over this seven years period, the total income of almost all the political parties has increased. Amongst the National Parties, the total income of INC went from Rs 222 crores in FY 2004-05 to Rs 307.08 crores in FY 2010-11 followed by BJP (Rs 104 crores in FY 2004-05 to Rs 168 crores) and BSP (4.2 crores in FY 2004-05 to Rs 115.7 crores in FY 2010-11). The table below gives an account of the income from FY 2004-2005 to 2010-011 as –

TABLE 1: INCOME OF POLITICAL PARTIES FROM FY 2004-05 TO FY 2010-11

Party	Income for FY 2004-2005 (Rs. In Lacs)	Income for FY 2005-2006 (Rs. In Lacs)	Income for FY 2006-2007 (Rs. In Lacs)	Income for FY 2007-2008 (Rs. In Lacs)	Income for FY 2008-2009 (Rs. In Lacs)	Income for FY 2009-2010 (Rs. In Lacs)	INCOME FOR FY 2010-2011 (RS. IN LACS)	Total
Indian National Congress (INC)	22207	12493	16936	22081	49688	46757.87	30708.87	200,871.74
Bharatiya Janata Party (BJP)	10412	3834	8249	12378	22002	25800.75	16800.92	99,476.67
Bahujan Samaj Party (BSP)	420	976	4588.67	6974	18202	5697.5	11570.34	48,428.61
Nationalist Congress Party (NCP)	1210	737	1580	1739	4001	4484.76	2330.59	16,082.35
Communist Party of India (CPI)	50	53	68	59	106	129.37	212.23	677.6
Communist Party of India (Marxist) (CPM)	3988	4160	6340	5970	6283	7328.15	7657	41,726.15
Jammu & Kashmir National Congress (J&K NC)	RTI response awaited	RTI response awaited	113.8	331.34	1170.87	543.19	RTI response awaited	2,159.2
All India Anna Dravida Munnetra Kazhagam (AIADMK)	117.56	1295.38	640.05	299.51	1250.21	974.24	1420.35	5,997.3
Shiromani Akali Dal (SAD)	RTI Response awaited	19.62	951.7	802.82	155.91	637.38	RTI Response awaited	2,567.43
Samajwadi Party (SP)	2854	4835	8705	3230	3900	2810.43	1521.22	27,855.65
Janata Dal (United) (JD(U))	50.93	133.84	54.51	21.84	931.47	1133.04	342.16	2,667.69
Telugu Desam Party (TDP)	742.87	219.22	892.44	498.87	1230.08	1192.04	615.06	5,390.58
Rashtriya Janata Dal (RJD)	367.6	255.41	119.08	215.20	405.01	444.69	310.9	2,117.89
Dravida Munnetra Kazhagam (DMK)	214.83	415.68	266.96	1681.75	1206.15	RTI Response awaited	642.84	4,428.21
All India Trinamool Congress (AITC)	RTI Response awaited	RTI Response awaited	69.07	68.97	RTI Response awaited	195.97	616.2	950.21
All India Forward Block (AIFB)	RTI Response awaited	RTI Response awaited	21.35	20.00	23.35	34.12	RTI Response awaited	98.82
Sikkim Democratic Front (SDF)	In complete ITR	In complete ITR	In complete ITR	In complete ITR	In complete ITR	In complete ITR	92.55	92.55
Shiv Sena	355.18	820.66	183.24	RTI response awaited	271.28	1347.58	312.41	3,290.35
Lok Janshakti Party (LJP)	RTI response awaited	RTI response awaited	78.49	RTI response awaited	64.90	120.34	139.85	403.58
Telangana Rashtra Samiti (TRS)	16.16	41.78	36.96	87.51	183.59	296.96	374.19	1,037.15
Shiv Sena	355.18	820.66	183.24	RTI response awaited	271.28	1347.58	312.41	3,290.35
Lok Janshakti Party (LJP)	RTI response awaited	RTI response awaited	78.49	RTI response awaited	64.90	120.34	139.85	403.58
Telangana Rashtra Samiti (TRS)	16.16	41.78	36.96	87.51	183.59	296.96	374.19	1,037.15

Source : Analysis of Income Tax Returns Filed and Donations Received By Political Parties, A Report by National Election Watch & Association for Democratic Reforms.

It was found that sale of coupons has been listed by most of the major political parties as one of the major sources of income. Out of the total income, Indian National Congress obtained Rs 57347 lacs from the sale of coupons. On the other hand, Janta Dal (United) received Rs 1415.56lacs from the sale of coupons. Voluntary contributions and donations have been listed as the next major source of Income by the various National and Regional parties.

SHARE OF DONATIONS IN TOTAL INCOME

Since donations account for second or third major sources of income for almost all the political parties, it is important to have a check on the amount received by the way of donations so as to prevent the political parties from exercising undue influence on the people to donate huge sums of money to them. Table 2 below presents the information on the percentage share of donations from total income.

TABLE 2: SHARE OF DONATIONS IN TOTAL INCOME FOR FY 2009-2010 AND 2010-2011

Party	Total (Rs in Lacs)	Total Donation (Rs in Lacs)	% Share of Donations from Total Income
INC	77466.74	11173.48	14.42%
BJP	42601.67	34707.5	81.47%
BSP	17267.84	9963	57.70%
NCP	6815.35	418.11	6.13%
CPI	341.60	160.96	47.12%
CPM	14985.15	6456.15	43.08%
AIADMK	2394.59	1938.23	80.94%
SP	4331.65	1827.84	42.20%
JD(U)	1475.20	1415.56	95.96%
TDP	1807.10	1137.42	62.94%
RJD	755.59	573.11	75.85%
AITC	812.17	487.11	59.98%
Shiv Sena	1659.99	1130.35	68.09%
LJP	260.19	233.85	89.88%
TRS	671.15	670.99	99.98%
RLD	436.60	0	0.00
DMK (FY 2010-2011 only)	642.84	24.33	3.78%
SDF (FY 2010-2011 only)	92.55	66	71.31%
BPF (FY 2010-2011 only)	117.50	113.6	96.68%
J&K NC (FY.2009-2010 only)	543.19	318.41	58.62%
SAD (FY 2009-2010 only)	637.38	0	0.00
AIFB (FY 2009-2010 only)	34.12	19.15	56.13%
INLD (FY 2009-2010 only)	251.56	45.45	18.07%

Source :Analysis of Income Tax Returns Filed and Donations Received By Political Parties, A Report by National Election Watch & Association for Democratic Reforms.

From the above table it can be seen that out of the 6 National Parties, Bhartiya JantaParty has declared maximum percentage share of donations as part of its total income (81.47%) while Indian National Congress has declared the least share of contribution from donations (14.42%). Telangana Rashtra Samiti (TRS) has received 99.98% of its income from donations followed by Janta Dal (United) with 95.96% and Lok Janshakti Party with 89.88% amongst the Regional Parties.

TOP DONORS OF POLITICAL PARTIES

The top donors of various National and Regional Parties can be found out from the following table:

TABLE 3: TOP DONORS OF PARTIES FOR FY 2003-2004 TO FY 2010-11

PARTY	TOP DONORS	AMOUNT (Rs. In Lacs)
National Parties		
INC	GENERAL ELECTORAL TRUST	3641
	TORRENT POWER LTD	1415
	BHARTI ELECTORAL TRUST	1100
BJP	GENERAL ELECTORAL TRUST	2607
	TORRENT POWER LTD	1300
	ASIANET V HOLDING PVT LTD	1000
CPM	SOUTHERN ENGINEERING WORKS (SEW)	35
	SEW INFRASTRUCTURE LTD	25
	NUZIVEEDU SEEDS PVT LTD	10
CPI	A.B. BARDHAN (COLLECTION)	65
	COMMUNIST PARTY OF INDIA	21.61
	D. RAJA (Collection)	21.45
NCP	TORRENT POWER LTD	100
	VIDEOCON INDUSTRIES LTD	100
	SATYA ELECTORAL TRUST	100
BSP	NO DONATIONS ABOVE RS. 20000	-
REGIONAL PARTIES		
JD (U)	VIDEOCON INDUSTRIES LTD	150
	SUSHMA MARINE SERVICES	68.5
	ELECTORAL TRUST	30.54
SP	ELECTORAL TRUST	158.02
	ITC LTD	78
	GENERAL ELECTORAL TRUST	50
AIADMK	ANNA TOZHIR SANGA PEROVVAL	200
	ITC	55
	DR. V NEDUMARAN	27
SAD	AMBUJA CEMENT	75
	BHARATI ELECTORAL TRUST	50
	TRIG GUARDI FORCE LTD	21
BJD	NITIN MATHURIA, HON'BLE SECRETARY GENERAL TRUST	500
TDP	SOUTHERN ENGINEERING WORKS (SEW) INFRASTRUCTURE LTD	125
	NIPPON INVESTMENT AND FIN. CO. PVT LTD	100
	SRINIVASA RAJU CHALAPATHI	100
	TECKARE INDIA PVT. LTD.	100
	M/S BHARATI ELECTORAL TRUST	100
SHIVSENA	WONDERLAND ESTATE DEVELOPERS LTD	200
	VIDEOCON INTERNATIONAL LTD	145
	MAHINDRA & MAHINDRA	95
JD(S)	LAKSHMINARASHIMA ENTERPRISE	110
LJP	BHARATI ELECTORAL TRUST	50
	ALI'S CONSTRUCTION	10
	GOLRO ENTERPRISES PVT. LTD.	10
MNS	WADHAVA CONSTRUCTION	25
	ICICI BANDRA	25
	CRESENT SHIPPING AGENCY (INDIA) LTD	5
RLD	PUBLIC MEETING OF CH AJITH SINGH	50.23
	JAYANTH CHOUDARY	31.08
	ASHTO ESTATE PVT LTD	20
HARYANA JANHIT CONGRESS	NIL	-
AIUDF	GPS & ASSOCIATES	15
	SUKHBIR SINGH SAHNI	10
	BADRUDDIN AJMAL	1

Source :Analysis of Income Tax Returns Filed and Donations Received By Political Parties, A Report by National Election Watch & Association for Democratic Reforms.

From the table, it can be observed that –

- General Electoral Trust is a major donor for INC (Rs 3646 lacs) , BJP (Rs 2607 lacs) and SP (Rs 50 lacs) for the Financial Years 2003-04 to 2010-11.
- Torrent Power donated Rs 1415 lacs to INC, Rs 1300 lacs to BJP and NCP received Rs 100 lacs.
- Southern Engineering Works (SEW) is a major contributor to the INC (200 lacs) and CPM (35 lacs).
- Videocon Industries has donated Rs 525.59 lacs to BJP, Rs 100 lacs to NCP and Rs 150 lacs to JD(U). Shiv Sena has received Rs 145 lacs from Videocon Industries between FY 2003-04 and FY 2010-11.

It was also reported that among the donors who contributed above Rs. 50 Lakhs to National Parties. General Electoral Trust was leader with contributions of Rs 36.41 crores to INC and Rs 26.07 crores to BJP between Financial years 2003-04 and 2010-11.

Second on the list is Torrent Power Limited which has contributed a total of Rs 14.15 crores to INC and Rs 13croresto BJP between FY 2003-04 and FY 2010-11 Sterlite Industries, a subsidiary of the Vedanta Group, has donated Rs 6 Crores to INC during FY 2004-05 and FY 2009-10 while The Madras Aluminium Co Ltd, also a subsidiary of the Vedanta Group had contributed Rs 3.5 Crores to BJP.

The Public and Political awareness Trust had made an overall contribution of Rs 9.5 Crores to BJP during the FYs 2003-04 and 2004-05. SEW Constructions, SEW Infrastructure and Videocon Industries are other major donors who contributed to INC, BJP, CPI and NCP.

However, for Regional Parties, Electoral Trust is one of the major donors donating Rs 158 lacs to Samajwadi Party during the FY 2004-05 and FY 2009-10. ITC is also a major donor making contributions to SP (Rs 78 lacs), AIADMK (Rs 55 Lacs) and to RJD (Rs 33 lacs) between FY 2003-04 and FY 2010-11.

Similar to the National Parties General Electoral Trust and Videocon Industries are other major donors for the Regional Parties. However, compared to the National Parties, individual donations form a major part of the overall income of the Regional Parties¹.

Thus, the Political Parties depend heavily on funds received by way of donations from various sources. Germany was the first country to start this practice of donating money to political parties. India soon followed the suit with big corporate houses such as Tatas and Birlas. Several reports published over time establish a relationship between the donations to Political Parties and corruption. In the light of the recent coal scam, as per the Comptroller and Auditor General of India, Tata Power is one of the major beneficiaries and it was also one of the major donors to political parties during that period, donating Rs 9.79 crore through its Electoral Trust. The Congress was given Rs 5.64 crore while the BJP got Rs 4.14 crore.

Samachar.com on August 28, 2012 reported that Anil Bhariwal, the convenor of the National Election Watch, says that they have found that many companies and large corporations have been funding political parties irrespective of which party is in power. "We feel that only smaller contributions are shown on paper while the bigger amounts are not declared. I am not sure what we can draw out of this. One needs to look into this and also find out whether these contributions are leading to any favours," says Bhariwal.

The first time the National Election Watch sought details of political donations, both the Congress and the Communist Party of India-Marxist stated that they were not public authorities defined under the Right to Information Act and hence were not compelled to reveal the details. The Nationalist Congress Party on the other hand told them it did not have people to compile data, while the Bharatiya Janata party and the Bahujan Samaj Party failed to respond to the request, which prompted them to approach the Chief Information Commissioner and argue their case.

Thus, whatever be the reason of the contribution by corporations whether a generous attempt or a scheme for being in the good books of political parties, one thing is the fact that such contributions have increased tremendously over the period. However, there is another aspect to the problem that is, the money that remains unaccounted for in the books of account.

Section 29C of the Representation of People Act, 1951 requires the political parties to submit the details of the contributions received in excess of Rs 20,000 from any person or a company. The provision means that all the contributions received over and above Rs. 20,000 whether as a single donation or as multiple donations should be reported. But it is often interpreted by the parties to report only the single donation exceeding Rs. 20,000 received at one time.

The problem is further aggravated by the "Coupon System" which is widely used by the political parties these days. Under this system, the political parties collect the funds from the donors in cash and in return, they are issued coupons in lieu of receipts. Since such donations are received in cash, it becomes difficult to establish the identity of the donor and thus such cash donations remain unaccounted for in the books because only those transactions are generally recorded for which some voucher in the form of receipt are issued.

In such situations where the corruption is at its peak, the procedures are complex and disclosures are inadequate, the increase, as per Companies Bill, 2012, in the legitimate contribution to political parties is a progressive step or the regressive one is to be seen. However, the increase from 5% to 7.5% has largely been criticized.

In a letter to the Hon'ble President of India dated August 08, 2013, the day when the Companies Bill was passed by Rajya Sabha, Sh. Gopal Krishna of Citizens Forum for Civil Liberties (CFCL) expressed concerns over the issue. He contends that this clause will work against the State funding of Elections and the prevention of menace of black money since corporate funding of election is the major root for various corporate crimes in the country such as impunity, environmental destruction, food poisoning and human rights violation. A supporter of the State Funding of the political parties and reducing their dependence on non-state actors, he made an appeal to the President saying that so long as these actors will continue to shape the outcome, democracy cannot be a winner as the deformed political system is turning legislature into a forum for legalized bribery. The way out could be to recommend that these very corporate donations be pooled into an electoral fund which can be used for state funding of elections. Therefore the provision for corporate funding of political parties be removed from the Companies Bill, 2012 and substituted by the provision of the state funding for political parties².

CONCLUSION AND RECOMMENDATIONS

Political Parties are indeed a necessity for any democratic society. India has 6 National Parties and 46 recognized State Parties. They represent the people and work for their interest by providing a vision and developing and adopting the suitable strategies and policy actions. For carrying out these tasks effectively, they need sufficient funds to meet the huge amount of expenses on election campaigns and the daily routine functions. More than the regulation required on the amount of funds, the need is to place a check on the way these funds are raised by the political parties. An immediate remedy would be a check and control on the corporate funding of political parties to prevent abuse and undue influence on political parties by the large business conglomerates and wealthy industrialists.

Thus, a limit on contributions and donations might work in restoring the confidence of general public in various political parties. A check on such undesirable funding will also help in saving the huge amount of country's resources and funds that are exuberantly spent by the political parties during elections. Equally important is the disclosure and transparency of such donations by both the companies and the political parties. There is no denying to the fact that largely such donations remain anonymous because of over Rs. 20,000 disclosure requirement and the coupon system. Mostly, the public is unaware of who contributed how much and to whom. Voters must have sufficient and timely information about the credibility of the political parties for making an informed decision. Therefore, Mr. S.Y. Quraishi, Chief Election Commissioner (CEC) also advocated the transparency in the corporate financing of political parties. According to him, payments should be made by cheques and there should be proper audit of these transactions. Audit reports should be put up online. Such donations should be disclosed to the Election Commission of India, the Income Tax Department and the public, he added further³.

However, though the limit on political contribution has been increased from 5% to 7.5% in the Companies Bill, the new company legislation does promise to ensure greater transparency by requiring the companies to disclose such donations and contributions to the shareholders and other stakeholders. Contravention of these provisions shall invite hefty fine and penalty. How effective such provisions are, remains to be seen. Their actual effect can only be determined on their implementation. Till then, India awaits the signing of bill by the President and its enactment into law.

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¹ A Report on Analysis of Income Tax Returns Filed and Donations Received By Political Parties, National Election Watch & Association for Democratic Reforms available online at <http://adrindia.org/sites/default/files/Report%20donations.pdf>

² Letter available for open access with the subject "Companies Bill facilitates corporate funding for political parties and co-option of NGOs" online at <http://www.toxicwatch.org/2013/08/companies-bill-facilitates-corporate.html>

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