Needed: full disclosure on electoral bonds

Moves to promote anonymity:

In 2014, the Delhi High Court held that both the Congress and the Bharatiya Janata Party (BJP) were guilty of illegally accepting donations from two companies registered in India but whose controlling shareholder was Vedanta, a foreign company. The court held that this was in contravention of the Foreign Contribution (Regulation) Act (FCRA), 1976, as the donations accrued from "foreign sources" within the meaning of the law.

Following this indictment, the two parties came together in the last memorable bipartisan move. In 2016 and 2018, the government amended the FCRA through the annual Finance Bills, to retrospectively legalise the violations. The amendments and subsequent changes brought in by the current government enabled new and regressive pathways that afford full anonymity to corporate and foreign political donors.

A new form of anonymity

1. While recently hearing a Public Interest Litigation (PIL) by the Association of Democratic Reforms (ADR), the Supreme Court downplayed the concerns of the corrupting influence of anonymous corporate and foreign money. It offered us, voters, the suggestion of "match the following".
2. Earlier, only profit-making domestic companies could contribute to political parties; now loss-making companies can too.
3. Earlier, foreign companies or companies where the controlling stake was held by a foreign company couldn't contribute; now they can. India's political parties could theoretically be fully funded by a foreign company operating in India or by a foreign entity through a shell company.
4. In 2017, the then Finance Minister said anonymous cash donations to political parties would be reduced from ₹20,000 to ₹2,000 to ensure greater transparency in political funding. However, the concurrent introduction of electoral bonds brought a new form of anonymity to thousands of crores of donations.
5. It drastically reduced public and legislative oversight. Only the ruling party via the State Bank of India (SBI) has a full account of all donations being made via electoral bonds, to itself and to Opposition parties. Parliament, the

Election Commission and the Opposition parties do not have this information, nor do the public.

The Challenge to Electoral bonds:

1. The ADR PIL challenges electoral bonds as unconstitutional.
2. The Supreme Court refused to stay the sale of electoral bonds before the West Bengal elections. Instead, the judgment listed several documents which supposedly establish a paper trail on donations — "all that is required is a little more effort to cull out such information from both sides (purchaser of bond and political party) and do some 'match the following'."
3. This is impractical and plainly incorrect. The Right to Information (RTI) Act of 2005 enables easier access to information held by public authorities. No ordinary person has the resources to navigate documents on obfuscating government websites or pore over income tax returns.
4. The few civic and non-profit organisations that attempt to simplify information to enable accountability have been systematically delegitimised.

Wrong Approach:

1. Suggesting a "match the following" is incorrect for three reasons. If we set aside individual donors and focus just on registered entities, we will find that the full scale of registered entities is unknown.
2. Even if registered companies filed annual financial statements, many do not disclose political donations. Crucially, political parties do not need to disclose their electoral bond donors either.
3. According to back-of-the-envelope calculations, there are close to 25 lakh potential donors comprising just companies and firms. This includes about 12.6 lakh active private limited companies as of January 31, 2021.
4. Unlike what is stated in the judgment, the annual reports of all these companies are not readily accessible on the website of the Ministry of Corporate Affairs. More than 12 lakh firms filed income tax returns for the assessment year 2018-19.
5. Firms, unlike companies, have no regulatory mandate to submit their annual reports except for filing their annual tax returns, since their functioning is regulated by Acts other than the Companies Act of 2013.

Unlike the tall claims of electoral bonds enabling transparency, it is only RTI applications with the SBI that offer a glimpse into the crores of money funding political parties, and therefore influencing public policies. If they chose to, the Supreme Court or the legislature could order full and real-time disclosure, to the actual benefit of transparency and accountability. Instead, meagre civil society resources are expended in filing PILs and RTI applications, at significant personal risk.

Winners and losers

1. In effect, electoral bonds give political power to companies, wealthy individual donors, and foreign entities, thus diluting the universal franchise of one voter-one vote.
2. Every vote is not equally valuable if companies can influence policies through hidden donations. The winner of this arrangement is the ruling party, whether at the Centre or in a State, and the loser is the average voter.
3. Companies and political parties could exercise moral leadership and voluntarily disclose the identity of recipients and donors, as the Jharkhand Mukti Morcha recently did.
4. Till then, voters are stuck with a ruling party with war chests of resources, being subject to relentless election campaigns, while donors surreptitiously and directly influence policy.

Embracing cryptocurrency

In June, El Salvador became the first country in the world to adopt bitcoin as legal tender. This is illustrative of the rising global trend of embracing cryptocurrencies with all their attendant risks. While not every country's approach has been as open as El Salvador's, the dominant theme has been to permit the growth of the cryptocurrency market subject to certain safeguards. As India finds itself at a crossroads of prohibition and regulation in its tryst with cryptocurrencies, globally, the inclination towards permissive regulation recognises the freedom of choice given to people for using a medium of exchange other than a central bank-backed fiat currency.

Swinging between extremes

1. The cryptocurrency market in India has developed in a large laissez-faire regulatory space since the first recorded cryptocurrency transaction in 2010. Between 2013 and 2018, the government's response to the rise of virtual currencies was cautionary, alerting users to the potential risks posed by cryptocurrency transactions.
2. These fears were legitimate and stemmed from cryptocurrencies' volatility, their susceptibility to hacking, and the fact that they could potentially facilitate criminal activities such as money laundering, terrorist financing and tax evasion.
3. Instead of developing a regulatory framework to address these issues, the Reserve Bank of India (RBI), in April 2018, effectively imposed a ban on cryptocurrency trading. This ban was overturned by the Supreme Court in 2020.
4. The court reasoned that there were alternative regulatory measures short of an outright ban through which the RBI could have achieved its objective of curbing the risks associated with cryptocurrency trading.
5. While the court had an opportunity to put a label on the legal nature of cryptocurrencies, it stopped short of doing so.
6. After swinging between the extremes of non-interference and prohibition, a clue as to India's next move lies in the draft Cryptocurrency and Regulation of Official Digital Currency Bill, 2021.
7. The draft Bill proposes to criminalise all private cryptocurrencies while also laying down the regulatory framework for an RBI-backed digital currency.

Lessons from other countries

1. There are lessons in this regard from the U.K., Singapore and the U.S. The U.K. has classified cryptocurrency as property and this has paved the way for cryptocurrencies to be encompassed within a regulated legal framework in the country's economy.
2. The U.K. has sought to regulate the functioning of crypto-businesses while still imposing some restrictions to protect the interests of investors.

3. On the other hand, while there is no exact legal classification of cryptocurrency in Singapore, the amenability of cryptocurrency transactions to the contract law framework of the country has been firmly established and there is now a legal framework for cryptocurrency trading.
4. In the U.S., the open approach taken by the authorities has resulted in the trade-in cryptocurrency being both taxed and appropriately regulated. While the approaches are specific to the countries' economic realities and cannot be blindly implemented in India, the global regulatory attitude towards cryptocurrencies offers valuable insights into the alternative ways to achieve balanced regulation.

In India, the absence of an existing legal classification of cryptocurrency should not be the impetus to prohibit its use. The government should use this as an opportunity to allow private individuals the freedom to harness a powerful new technology with appropriate regulatory standards.