Still hanging fire on transparency

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

Criminal Lawmakers:

1. 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.
2. 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.
3. 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.
4. 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 the right to know

1. This is not the first instance where political parties have shown total contempt for peoples' right to information.
2. 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.
3. 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.

4. 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 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.
5. 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

1. 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.
2. It introduced the electoral bond scheme in 2018, opening the floodgates of unlimited anonymous funding to political parties by Indian and foreign sources.
3. 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.
4. 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 has been seriously undermined.
5. 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.
6. It is no surprise that the lion's share of donations through bonds have been cornered by the BJP.
7. Unfortunately, the case has not received the urgent attention it requires and the petition has been languishing for nearly four years.

Political Parties and Democracies:

1. Political parties are at the heart of our democracy. They form governments that make policies that have a profound impact on peoples' lives. In the legislature, elected representatives make laws that govern us.
2. 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.

Courts must be more proactive

1. The Supreme Court needs to urgently hear the matter of the electoral bond and the challenge to the refusal of political parties to comply with the CIC's order.
2. 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 a fine of a few lakh rupees is likely to deter parties that declare incomes worth hundreds of crores every year.
3. The judiciary could consider putting in place a mechanism to monitor compliance with its directions prior to all State and general elections and debar 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.

A monetisation move that doesn't tick most boxes

The Government has launched a National Monetisation Pipeline, or NMP to sell revenue rights of public assets over the next four years. The pipeline mostly includes railway stations, freight corridors, airports, and renovated national highway segments (yielding toll revenue) amounting to ₹6-lakh crore, or 3% of GDP in 2020-21.

As outlined in the Union Budget, the NMP aims to mobilise resources for financing infrastructure. The other two methods of raising resources are: setting up a development finance institution (DFI) and raising the share of infrastructure investment in the central and State Budgets.

Historic missteps

1. The NMP outlines mainly two modes of implementing monetisation: public-private partnership (PPP) and "structured financing" to tap the stock market.
2. PPP in infrastructure has been a financial disaster in India, as evident from what happened after the economic boom of 2003-08. Surely, India did create world-class airports in Mumbai and Delhi and speeded up highway road reconstruction.
3. However, after the 2008 financial crisis, as the world economy and trade plummeted, and as India's GDP growth rate slowed down sharply, hurting demand (and revenues for the indebted companies), many PPP projects failed to repay bank loans. Banks were left holding the non-performing assets (NPAs).
4. Further, as the bulk of the lending was done to politically connected corporate houses and firms (Bollygarchs as picturesquely described by James Crabtree in his book, The Billionaire Raj), debt resolution came in the cross-hairs of the political and banking system. India is still reeling from the legacy of that period without any easy and credible solutions in sight.

Fire Sell

1. In 2020-21, the economy contracted by 8% due to the pandemic and lockdown, as in the annual report of the Reserve Bank of India (RBI). The current year is at best likely to regain the pre-pandemic GDP level.
2. Aggregate saving and investment rates (that is, as ratios of GDP) have (expectedly) contracted. The stock market is however booming, dancing to short-term foreign capital inflows, with little connection with the real economy. Given its distressed state, the asset monetisation effort appears nothing short of a fire sale.
3. The main instruments proposed for implementing the NMP are public-private partnerships and a stock market-based investment trust (InvIT). Both have serious shortcomings, as experience demonstrates.
4. The NMP document seems silent on how to overcome past mistakes. Hence, the NMP appears like a fire sale which may not help realise the best social value for public assets to kick-start investment demand.

5. If reviving investment demand quickly is the real goal, debt monetisation seems a better option than asset monetisation. It is a "wholesale" business with lower operating and transaction costs, and at a currently negative interest rate.
6. With excess liquidity in the financial markets and low aggregate demand, the inflationary threat seems minimal. Such targeted borrowing, if quickly funnelled into infrastructure investment projects, could crowd-in (or bring in) private investment igniting a virtuous cycle of investment-led economic revival.

Other solutions

1. Thus, instead of assets monetisation, why not monetise debt, with committed borrowing from the market and the central bank? With the financial system flush with liquidity with no takers for bank credit, why not finance the proposed investment — as envisaged in the Budget — by government borrowing.
2. The usual objections against such an idea are three: cost of borrowing, "crowding-out" of private investment, and the inflationary threat.
3. The RBI's annual report shows the weighted average cost of central government borrowings in 2020-21 was 5.8%. And the inflation rate as measured by the consumer price index (CPI-combined) was 6.2%. Thus, with a negative 0.4% real interest rate (real interest rate is nominal interest rate minus inflation rate), domestic borrowing in home currency is a steal.
4. Chances of crowding-out private investments are remote with a liquidity overhang in the market. Inflation risk is also limited with little aggregate demand pressures (barring temporary bottlenecks due to localised lockdowns).
5. The rising public debt to GDP ratio is often red-flagged as a potential risk to rating downgrade by bond rating agencies. If the debt is productively used to expand GDP (the denominator), such risks seem minimal.
6. Moreover, rising external debt by fickle portfolio investors perhaps carries a greater risk to external instability. Foreign portfolio investment has skyrocketed by 6,800% in 2020-21, over the previous year, to $38 billion (as per RBI data released in May).

7. This, perhaps, poses a greater financial hazard than the potential rise in debt monetisation in domestic currency used for productive purposes.

In perspective

To sum up, the NMP is an ambitious "retail" sale or lease of revenue yielding public capital projects — with the potential threats of allegations of corruption and cronyism derailing the process — to revive investment demand and to halt the economic decline.