

The clear message in the Court's 'no' to electoral bonds

The judgment of the Supreme Court of India, on February 15, 2024, striking down the electoral bonds scheme, is a landmark moment. Democracy requires transparency and the fact is that the electoral bonds scheme was opaque.

Voters in India have no idea who has been funding political parties and the amounts given. In all leading democracies, transparency is the basis of campaign funding. The Court has restored that transparency.

Funding limits removed

There are other legal issues. The first is the limit on funding by a corporate house or organisation. Again, the world over, this amount is limited to prevent undue influence on the government. We had such a provision in India before electoral bonds were introduced. The judgment says: "The chief reason for corporate funding of political parties is to influence the political process which may in turn improve the company's business performance..."

Electoral bonds also removed the earlier limits on how much of its profits a company could donate to political parties. The scheme even allowed loss-making companies to make donations. This could have opened the door for shell companies to be formed with the purpose of channelling funds to political parties. The Election Commission of India has said, "This opens up the possibility of shell companies being set up for the sole purpose of making donations to political parties." This too has been reversed by the Court.

Democracies went through a phase of crony capitalism, where big money funded political parties. In return, laws, policies, schemes and incentives were made for the benefit of the donors. In a limited way, the Supreme Court's judgment prevents this from happening in India.

There was an Amendment to the Finance Bill. In any country, the central bank alone has the authority to issue currency such as notes and bonds. Section 31 of the Reserve Bank of India



Trilochan Sastry

is Chairman and Founder, Association for Democratic Reforms (ADR) and Professor, Indian Institute of Management Bangalore

The landmark judgment of the Supreme Court of India is a reminder that citizens need to be ever watchful in a democracy

(RBI) Act says "only the RBI or the Central Government authorized by the RBI Act shall draw, accept, make or issue any bill of exchange or promissory note for payment of money to the bearers of the note or bond".

The Government amended the RBI Act using a Finance Act, and allowed under a new clause 31(3), the central government to authorise any scheduled bank to issue electoral bonds. This amendment to the Finance Act too has been struck down.

A well thought-out plan

We need to pause for a minute to understand a few issues. The Amendment to the RBI Act was passed in a Finance Bill as this does not have to be passed by the Rajya Sabha. At the time of the introduction of the electoral bonds scheme, the ruling party did not have a majority in the Rajya Sabha and wanted to avoid a vote in the Upper House. But can any issue be inserted into a Finance Bill? Electoral bonds have nothing to do with the provisions for a Finance Bill. Again, a number of laws were amended to introduce the electoral bonds such as the RBI Act 1934, the Representation of the People Act (RPA), 1951, the Income Tax Act 1961, and the Companies Act 2013. It was carefully thought-out. It was in response to a Central Information Commission (CIC) ruling that political parties have to be completely transparent about their funding. The electoral bonds were introduced to bypass the CIC ruling. But why are political parties afraid of transparency?

The legal system remains opaque to the so-called ordinary citizen and voter. When four laws are amended to introduce a scheme that strikes at the root of democracy, namely transparency, layers of obfuscation are drawn over the scheme so that the citizen gives up trying to understand it. But these are not technical issues. These are issues that affect the very basis of democracy.

This also raises fundamental issues in a democracy. Any government with a majority can

pass any Bill, which becomes law. There is no concept of an independent vote in India and ruling party members have to vote in favour of the government unlike in the United States. This means that a few people at the top of a ruling party can get almost any law they want passed. In the case of electoral bonds, processes for public consultation, and discussions in Parliament were not followed.

The essence of the judgment

The Supreme Court judgment can be summarised as follows. The electoral bonds scheme has been struck down. All Amendments to the RPA Act, the Finance Act 2017, and the Companies Act 2013 are violative of Articles 19 and 14 of the Constitution. Article 19 refers to the right to information, and Article 14 to the right to equality, where arbitrariness in law is not permissible. These Articles are part of the Fundamental Rights in the Indian Constitution, and cannot be violated. The Supreme Court has directed the State Bank of India (SBI), the sole bank receiving funds in exchange for electoral bonds, to stop issuing them. The SBI has to submit the full details of all electoral bonds that have been issued so far, to the Election Commission of India (ECI) by March 6, 2024. In turn, the ECI has to publish this information on its website within two weeks.

We need to note that two constitutional bodies, the ECI and the Supreme Court, have acted in favour of democracy. The power of judicial review of laws passed by Parliament on the basis of the Constitution is precious. We need to applaud the Constitution and those who framed it.

The issue of money in elections, which includes the use of black money and bribing of voters using campaign funds and freebies, remains. It is said that the price of democracy is eternal vigilance. The Supreme Court's judgment is the outcome of vigilance by citizens. We need political parties, but it is up to us to ensure that they work for the good of society and the nation.

EVA STALIN

A chance to stop the laundry cycle of Pakistan's elections

With the results of last week's elections in Pakistan, voters there have delivered their politicians a unique moment in history – one which could present the polity an opportunity to change the endless cycles of the past. These cycles have always brought those favoured by the military establishment to power in the country, followed by a period of tensions and fracture between the military and the political rulers, the dismissal of that government, the appointment of another, and then another election. Rinse, repeat.

The consistency with which each of the periods of political governments in Pakistan has met its end has produced three constants: first, none of the country's 30 Prime Ministers thus far has completed a full term in office. Second, every current major political party, i.e., Bhutto's Pakistan People's Party (PPP), Sharif's Pakistan Muslim League (Nawaz), and Imran Khan's Pakistan Tehreek-e-Insaf (PTI), has at some point been the military's "favourite" in an election. And third, each of those parties has by turn fallen out of favour as well, and its leaders have found themselves imprisoned or 'exiled' from the country.

A rotation of the same leaders

While previous decades after 1947 saw a few political governments interspersed between military rule and martial law, since 2008, the military has played its role without actually taking over the reins of government. In this elaborate game of master-puppetry, military chiefs have had the support of all government arms and the judiciary, that have dismissed a number of Prime Ministers in a series of conveniently timed Supreme Court judgments. In 2012, PPP Prime Minister Yousaf Raza Gilani was dismissed for contempt of court for refusing to reopen cases against then-President Asif Ali Zardari, and in 2017, PML-N Prime Minister Nawaz Sharif was dismissed over the Panama Papers leak about a London apartment. Given the limited number of players in Pakistan's polity, however, the same leaders are re-introduced into the political spin cycle by the judiciary as well. So, Mr. Sharif was able to return to Pakistan last year just in time for elections because the cases against him were overturned, and Mr. Zardari's PPP is essaying another term for him as President if it enters into a coalition deal for the next government.

Meanwhile, Imran Khan was dismissed after a no-confidence vote in Parliament, which was ordered by the Supreme Court (it had reversed his dissolution of the house and his call for general elections in April 2022). Mr. Khan has since been convicted on charges that range from corruption to insurrection, and is also serving a seven-year prison term along with his wife Bushra Bibi for an "illegal marriage" (deemed "un-Islamic" by the courts). Apart from Mr.



Sahasini Haidar

Pakistan's polity still has an opportunity to use the unique moment that voters have provided, to change course

Khan's incarceration, the Pakistani courts have passed a slew of verdicts against the PTI, allowing cases against many PTI party members – some of them have quit politics rather than face repeated arrests. The country's media regulator had already banned the PTI leader's speeches from being aired on television. The Supreme Court also endorsed the Election Commission's decision to derecognise the PTI, and take away the party symbol (cricket bat), forcing the party to field all its candidates as Independents.

With the Independents surging ahead in most seats despite all this, the counting of votes, which is normally an exercise that takes some hours in Pakistan, slowed down to a crawl. Days later, the Election Commission showed a three-way result, reversing many of the early leads, which led to the current tally where none of the parties has enough to form a majority on their own; while the PTI Independents have the biggest haul of seats, the single largest party at present is the PML.

Predictably, the PML and PPP have decided to form a government together. The Election Commission will complete the formal notification of these results over the next few days, after which the Independents will have 72 hours to pledge allegiance to one or another political party, or risk losing out on a further share of proportional seats for women and minorities (allotted on a pro-rata basis to parties). One can be sure that each of the elected 93 members is already receiving threats and incentives to break away from the PTI in order to produce the establishment's desired outcome, and perpetuate the rinse, repeat laundry cycle of previous Pakistani elections. However, Pakistan's polity still has a chance to take the unique moment that Pakistan's voters have provided them to change the course of that history, and to break the cycle of the past.

On the Pakistan voter

To begin with, the importance of the Pakistani voter's actions cannot be downplayed, especially those who came to vote despite the cynicism over a pre-selected outcome. This is the voter who knew from past elections that their votes may not be counted and their mandate not respected, but still chose to vote differently from what was expected. If Mr. Khan wants to respect that vote and thwart the establishment, then the answer is not to go it alone and sit in the opposition, but, instead, to find ways to be in the government. For the PML-N and PPP, to form a government that cuts out the PTI would be a travesty of the vote as well, as this was a voter who clearly rejected the previous PML-PPP government, also led by Shahbaz Sharif (2022-2024), before the elections.

Second, each of the three major parties and leaders have suffered in more or less the same way as the others. Nawaz Sharif and Asif Zardari have an even longer history of being jailed along

with their family members, not to mention Benazir Bhutto's struggles after her father was hanged. While none of them is blameless for the crimes they have been charged with thereafter, it is clear that those charges can vanish at the click of the establishment's fingers, when one of the politicians is deemed serviceable or becomes the "laadla" (chosen son). Before he was disqualified for corruption in 2017, Nawaz Sharif had been sentenced to life imprisonment in 2000 on charges of hijacking and terrorism, and yet, returned as Prime Minister in 2013. It would be more pragmatic then, if all of Pakistan's leaders were to decide to be on "the same page" with each other, rather than with the military, and drop the practice of jailing the opposition when they are in power.

Third, given the state of Pakistan's economy, the next government will need to adopt harsher reforms and measures to stay within the International Monetary Fund's programme that has mandated four priorities: severe budget cuts; return to market-determined foreign exchange rates which will plunge imports; a tight monetary policy to curb inflation, and structural reforms particularly for the energy sector. There is little chance that any government, let alone one that has not won the popular vote, will emerge from this process unscathed. The only way forward is for political parties to forge a common economic agenda.

Fight authoritarian forces

There are other lessons going forward for not just Pakistan but also for other "hybrid" democracies around the world, where governance comes from a merging of democratic and authoritarian forces. The first is that an electorate can never be taken for granted. If voters are a part of the system, then no matter what propaganda, pre-poll measures, or post-poll rigging are employed, it is difficult to ensure 100% predictable outcomes. Pakistan's first elections in 1970 were able to show just that, as the Awami League won the elections and insisted on forming the government even though Sheikh Mujibur Rahman was jailed. In choosing to muzzle the people of East Pakistan thereafter, its military rulers lost a large piece of their country.

Another significant outcome in 2024 is the poor showing by religious parties such as the Jamiat Ulema-e-Islam- and Mutatahida Majlis-e-Amal, and the even worse performance of violent extremists such as the Tehreek-e-Labaik, not to mention Lashkar-e-Taiba chief Hafiz Saeed's son Talha Saeed. The real lessons, however, are for the polity globally: in the larger laundry cycle of governance, democratically-minded leaders must learn to hang together against authoritarian forces, or risk being hung out to dry sooner or later.