



2G case & Prevention of Corruption Act, 1988

Relevancy

- ✓ G.S. Paper 2
- ✓ The beginning of the case
- ✓ Policy spin-offs
- ✓ Various issues with 2G case and coal scam
- ✓ Legality and effective implementation of the act
- ✓ Issue with license transfers

Recently:

- ❖ Enforcement Directorate (ED) has moved the Delhi High Court in appeal against the acquittals in the trial court verdict on 2G.
- ❖ There were multiple flaws in the spectrum allocations and the prosecution in the trial court that needs further scrutiny.

A brief account of how it all began:-

- In September 2007, the Department of Telecom (DoT) issued just a week's time for companies to apply for mobile phone licences.
- As spectrums were priced artificially low, a mad scramble followed and 575 applications were received, most of which were from little known firms.
- The DoT then issued 122 licences by adopting a controversial 'first-come first-served policy', which privileged those who applied at the earliest.
- A CAG report in 2008 on 2G spectrum allocations, estimated a loss of R1.76 lakh crore to the exchequer.
- Consequently, in 2010, Mr. Raja resigned as telecom minister and he was later arrested in early 2011.
- Notably, the Delhi High Court set up a special court to fast-track the case.

How did the case proceed?

- CBI filed its chargesheet and subsequently DMK MP 'Ms. Kanimozhi' and the MD of "Kalaingar TV" 'Mr. Sharad Kumar' were also arrested in late 2011.
- CBI also filed an FIR against another DMK leader and former telecom minister Dayanidhi Maran and his brother Kalanithi Maran.
- Overall, the trial began against 17 people that included the telecom executives of Unitech, Swan Telecom and Reliance Anil Dhirubhai Ambani Group.
- In 2012, The Supreme Court cancelled all the 122 telecom licences allocated to nine companies in 2007, by holding 'first-come, first-served' policy at fault.
- In 2013 the Income-Tax department submitted to the SC the recordings of 5,800 tapped controversial phone conversations between corporate lobbyist Niira Radia and politicians.
- In 2014 the Enforcement Directorate (ED), in its chargesheet, accused Mr. Raja, and Ms. Kanimozhi of money laundering.
- In 2015, CBI records in court that the Mr. Raja "misled" the then PM Manmohan Singh on policy matters pertaining to 2G spectrum allocation.
- In 2017, the special court concluded its hearing in April 2017, and it recently pronounced its final order, which acquitted all the people.

What are the policy spin-offs from the case?

- SC's order that cancelled all the 122 2G licenses issued in 2008 was perceived as a judicial over-reach into the policy domain.
- Hence, it moved a presidential reference with eight questions that included the rationale of "auction being the only mode for allocation of resources".



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- On hearing the presidential reference, by five-judge constitution bench, the SC concluded upholding the primacy of the government in the policy domain.
- It also explicitly stated that the auctions are not a must for all resource allocations and that maximization of revenue cannot be the sole criterion in all situations.

What are the various issues with 2G case and Coal Scam?

- Cases against impropriety in the coal-block allocations and the 2G spectrum allocations were essentially similar in nature.
- While both involved accusations of wrongful allocation of public resources for private profit, one resulted in conviction and the other in acquittal.
- The difference in verdicts points strongly to the possibility that the trial court misapplied law and misunderstood in terms of the case.

2G case

- First-Come-First-Serve (FCFS) policy was criticized, as it had been unjustly tampered to benefit certain players at the cost of the exchequer.
- While the Supreme Court (SC) held that the tweaks were arbitrary, it had been muted on the substantive merit of the FCFS policy itself.
- Subsequently, conviction of the accused couldn't be secured as malafide intentions were not established beyond doubt.

Coal Scam

- Contrarily, the court held that in the allocation of coal-blocks, reasonable precautions to preclude losses were not exercised.
- Coal secretary H.C.Gupta was convicted under the Prevention of Corruption Act (PoCA)1988 for his non-diligence which led to a loss of public money.
- Logically, if lack of due diligence to prevent exchequer losses is a valid ground for conviction, then the 2G case should have also resulted in conviction.

Was Prevention of Corruption Act, 1988 effectively employed?

- Prevention of Corruption Act (PoCA) of 1988 explicitly states that contravention of "public interest" is also a corrupt practice, along with "abusive use of office for pecuniary gains".
- Hence, the burden of proof to show that all the safeguards and precautions were exercised to ensure no public loss lies clearly on the accused.
- But the prosecution failed to press on this and rather the debates were centered on the charges of whether money was laundered to tweak FCFS.
- This formed the crux of why the case was dismissed for lack of evidence, and speaks volumes on the incompetence of the prosecution.

What is the legality of the FCFS policy?

- FCFS has been a long standing state policy in allocating natural resources.
- Despite its misuse in the spectrum issue, the SC has not denounced it.
- SC has stated that it respects the prerogative of the state to determine policy and that any policy must be tenably based on desired outcomes.
- FCFS's allocative channel grants 'first movers advantage' and is best suited to incentivise firms to explore and discover resources by taking financial risks.
- Notably, it is useful in sectors like oil & gas exploration, where the seeker would have to spend considerable resources in the discovery of the resource.
- Hence, the economics of demand and supply along with other significant aspects if any are to be employed to select the resource allocation mode.
- 2G case - The very fact that the competing players far outnumbered the slots available implies that the resources commanded good value in the market.



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- In such circumstances, auctioning would have led to a fuller realisation of value for both the state and the players, but it was not employed.

What is the issue with licence transfers?

- The purpose of allotting spectrum is to enable players to utilise the resource for enhancing tele-connectivity and tele-density in the country.
- Hence, a substantive entry and exit criteria should have been established and subsequent transfer of spectrum should have been regulated.
- But this was not the case and there were clear cases of spectrum transfers that had benefited the initial non serious buyers enormously.
- Notably, across sectors, unregulated subsequent licensing transfers of natural resources have effectively made it a free trading commodity, which is not desired.



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Cambridge Analytica Crisis

Relevancy

- ✓ G.S. Paper 2
- ✓ About Cambridge Analytica Crisis
- ✓ Data collection and use by the firm
- ✓ Issues related to it and what can be done
- ✓ Vulnerability of India's cyber security and dangers abound in India

Recently:

- ❖ Cambridge Analytica crisis exploded.
- ❖ Union Law Minister Ravi Shankar Prasad warned Facebook against the misuse of Indians' data and any attempt to influence the electoral processes of this country.
- ❖ There were media reports that a political consultancy that worked on President Donald Trump's campaign gained inappropriate access to data on 50 million Facebook users.
- ❖ The alleged scandal involving Cambridge Analytica's use of the data of more than 55 million Facebook users has reopened big questions about the organisation of the information order in a democracy.
- ❖ They have also revealed how the language of democracy is struggling to come to terms with complex technological developments.

What is Cambridge Analytica?

- Cambridge Analytica (CA) is a British data firm.



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- The firm has been drawing flak for its alleged role in influencing the behaviour of voters in the 2016 presidential election campaign, and for helping the 'Leave' side in the Brexit referendum.

What did CA do?

- The firm is alleged to have harvested data of tens of millions of Facebook users without permission in order to design software to predict and influence people's voting preferences.

Where did it collect the data from?

- Dr Aleksandr Kogan, a psychology professor at Cambridge University developed an application, "this is your digital life", to harvest data of Facebook users.
- The app was downloaded by 270,000 people (these people granted permission for data collection), it extracted personal information of each of the users' friends without consent.
- Kogan then passed on all the data collected through his app to CA and other companies.

What kind of data was acquired by CA?

- When the app was downloaded, Kogan had access to not only to users' basic information such as city of residence and details about friends, but also data from the profiles of their Facebook friends.

How was the data used by the firm?

- Kogan's firm Global Science Research (GSR) offered users small amounts of money to complete a survey on the condition that they grant permission to access their personal details through Facebook.
- This helped GSR to build personality and psychological profiles of millions of people.
- The data were allegedly used by CA to tailor its political advertisements for a group of individuals, whose likings and interests were already known to them.

How did this help Donald Trump in his presidential election campaign?

CA performed a variety of services such as:-

- Designing target audiences for digital advertisements,
- Fund-raising appeals,
- Modelling voter turnout,
- Buying \$5 million in television ads and
- Determining where Trump should travel to get maximum support.

What are the issues?

- The first issue at stake is what consent means in the new information order.
- The conceit and attraction of the modern information order is that it does things with our consent, in our name, ostensibly to satisfy our desires.
- But given the complexities of data-sharing, possible third-party uses, or use by friends, through whom your data can be accessed, it is not very clear what we are consenting to, and whether the terms of that consent can be enforced.
- The regulatory approach often hinges on user consent and the growth of social media companies over the past decade is fair evidence that consent is not hard to obtain, even with the knowledge of private data being signed over.
- The fact that such vast amounts of data were so easily collected in the first place—and without breaking the rules —points to the larger issues to do with the economics of the internet.

What needs to be done?

- Regulatory action can change this to a certain extent.
- Data localization conditions can ensure that user data collected within a country must be kept within it.
- Regulations can also compel businesses to adopt privacy by design principles that foreground user choice and consent.
- The European Union's General Data Protection Regulation (GDPR), which takes effect from 25 May this year, has adopted this approach.



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- Perhaps the most stringent data protection regime globally, it will be a litmus test for companies' ability and willingness to comply.

Indian context: What makes India more vulnerable?

- For millions of Indians, the discovery of internet itself happens through Facebook.
- There are over 2.2 billion users globally, out of that 250 millions of them are in India.
- While regulators in the US, China and the EU have put in place laws to address concerns around privacy and data protection, India has so far taken a piecemeal approach.

What are the dangers abound in India?

- **Creating Psychological Profiles**
 - Data mined from Indian users of social media may be used for purposes such as targeted cross-platform advertising, but analysed in bulk, such data can provide an intimate psychological profile including ideological preferences that together help campaign managers target communications and forecast voter behavior.
- **Spread of Fake News**
 - Social Media promotes content based on engagement rather than quality thus limiting users' access to information, which in turn leads to political polarization and the spread of fake news.

No data protection law in India

- **Only a Whitepaper till now**
 - In 2017 the Ministry of Electronics and Information Technology released a White Paper by a committee of experts led by former Supreme Court judge, Justice B.N. Srikrishna, on a data protection framework for India.
- **Current Information Technology Act, 2000 inadequate**
 - It only identifies six types of "sensitive personal data" and requires entities handling such data to have "reasonable security practices and procedures" in place before collecting the information.



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Electoral bonds: what, why and concerns

Relevancy

- ✓ G.S. Paper 2
- ✓ About electoral bonds
- ✓ The importance of these bonds and earlier provisions regarding it
- ✓ Recent amendments

Recently:

- ❖ The Government issued a notification in January, 2018 on electoral bonds, which was provided in the Finance Act 2017.



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- ❖ Despite being argued as an effective tool for cleaning political funding, there are some serious concerns with electoral bonds.
- ❖ Electoral Bonds have been proposed as a way of reforming election funding in the Union Budget 2017.

What is an Electoral Bond?

- Electoral bonds will be issued by a notified bank for specified denominations.
- Those who want to donate to a political party, can buy these bonds by making payments digitally or through cheque.
- Then they are free to gift the bond to any registered political party.
- The bonds will likely be bearer bonds and the identity of the donor will not be known to the receiver.
- The party can convert these bonds back into money via their bank accounts.
- The bank account used must be the one notified to the Election Commission and the bonds may have to be redeemed within a prescribed time period.
- Electoral bonds are essentially like bearer cheques.
- The issuing bank will remain the custodian of the donor's funds until the political party redeems the bond.

Why is it important?

- Most political parties use the negligent regime on donations to accept cash donations from anonymous sources.
- Nearly 70% of the Rs.11,300 crore in party funding over the past 11-year period came from unknown sources.
- Currently, political parties are required to report any donation of over Rs.20,000 to the IT department.
- But there has been a trend of more donations flowing by way of hard cash in smaller amounts.
- To fix this, the Budget has proposed to reduce the disclosure limit to Rs.2,000 and insists that any amount over this must be paid through cheque or the digital mode.
- The idea is that electoral bonds will prompt donors to take the banking route to donate, with their identity captured by the issuing authority.

What are the problems in electoral bond?

- The identity of the donor is captured, but it is not revealed to the party or public.
- So the transparency is not enhanced for the voter.
- Also the income tax breaks may not be available for donations through electoral bonds.
- This pushes the donor to choose between remaining anonymous and saving on taxes.
- Also privacy of the donor is compromised as the bank will know their identity.

What were the earlier provisions?

- The incongruity of political parties depending on corporate funds to fight elections and sustain democracy is at times troubling.
- To address this, the Representation of People Act 1951 was amended in 2003, and sections 29B and 29C were inserted.
- Section 29B says political parties may accept contributions of any amount from any person or company.
- This is however except any contributions from a government company or foreign source.
- Section 29C says that every political party which receives such funding should prepare a report on contributions above Rs.20,000.
- They should also submit the same to the Election Commission before the income tax returns are filed.
- If any party fails to do this, it will not get tax exemption for that year under the Income Tax Act.



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- Similarly, Section 13A of the Income Tax Act 1961 provides for exemption of all voluntary contributions received by a political party from payment of income tax.

But such exemption is conditional on -

- the recipient party maintaining such books of accounts and other documents
- maintaining a record of such contributions and the names and addresses of donors as well as amounts above Rs.20,000
- This provision also says that if the party fails to submit the report as stipulated in Section 29C, it will not get the tax exemption.
- Section 139 (4B) of the IT Act deals with furnishing of income returns by parties.
- It requires a political party to furnish total income including the exempted contributions with all the particulars.

What are the recent amendments?

- The Finance Act, 2017 amended both the above mentioned Acts.
- It also exempted electoral bonds from the purview of section 29 C of the RP Act 1951 as well as section 13 A of the IT Act 1961.
- Henceforth, income received by way of electoral bonds is not required to be disclosed in the report to the Election Commission.
- Further, political parties are not required to maintain any record of the same or the names and addresses of donors of these bonds.

What are the concerns?

Secrecy

- The electoral bonds scheme has been to keep the identity of the donor absolutely confidential.
- The authorised bank will not disclose any information about the purchaser of the bonds to any authority for any purpose.
- Also, the bank will not know who the recipient of the bonds is.
- This secrecy and confidentiality in the case of political funding is a serious concern.

Black Money

- A legal provision introduced by the Centre last year mandated contribution above Rs.2,000 to be made only through cheques, drafts, etc.
- This provision should adequately take care of the problem of black money flowing into the coffers of political parties.
- But by introducing electoral bonds, the Government has defeated this purpose.

Opaque

- The scheme conceals from public scrutiny the identity of the corporates and donors who contribute to political parties.
- The Election Commission will neither be allowed to have a record of the electoral bonds received by a political party.
- It is also not clear whether the I-T authorities will have an opportunity to get all the details of the contribution.

Legal incongruity

- Section 13A, as amended, rules out the need to maintaining record of the electoral bonds or details of the donor.
- This provision seems to be in contradiction with Section 139 (4B) of the IT Act which deals with furnishing information.

Taxation system

- Taxing is a sovereign function. It is the social policy to tax all incomes for the benefit of society.
- So, all tax statutes lay down specific conditions for exempting any particular category of income.



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- But the amendments, excluding all the existing conditions, in favour of the bonds goes against the scheme of taxation laws.
- Any legislative exclusion of public scrutiny of financial transactions having a bearing on public revenue is against constitutional policy.

Legal

- The notification prohibits disclosure of any information about a donor to any authority which is a substantive provision.
- Notably, a notification issued under an Act cannot make a substantive provision. Only an Act can make such a provision.
- Also, this notification has been issued under section 31 of the RBI Act 1934 which does not contain any such provision.
- Legally, a notification which is a subordinate legislation cannot travel far outside the parent Act.
- In all, the electoral bonds have some legal incongruities and basic differences with constitutional and democratic principles.



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