

AN INVITATION TO CORRUPTION?

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Early this year the government introduced an Electoral Bond Scheme purportedly with a view to cleansing the prevailing culture of political sponsorship. But the programme's failings have been so blindingly obvious, and its consequences so utterly devastating to rectitude and transparency in government, that even O.P. Rawat, who just retired Chief Election Commissioner, thought it fit to deliver a damning indictment of the scheme. "There are many grey areas in this because when there is no ceiling on party expenditure and the EC (Election Commission) cannot monitor it, how can you be sure that what is coming in is not black money as there is a secrecy of the donor," Mr. Rawat told *The Economic Times* in an interview last week. "Even foreign money can come and even a dying company can give money now... So, prima facie it appears the scheme cannot really deliver whatever it was intended to."

In its present form, the scheme permits not only individuals and body corporates, but also "every artificial juridical person," to purchase bonds, issued by the State Bank of India, in denominations of 1,000, 10,000, lakh, 10 lakh and 1 crore, during specified periods of the year. Issued in the form of promissory notes, once a bond is purchased the buyer can donate it to any political party, which can then encash it on demand.

The government claims that since these bonds are purchased through banking channels the scheme will eliminate the infusion of black money into electoral funding. But not only is this argument palpably false, as a simple reading of the scheme's terms shows us, the programme also virtually endorses corruption in political funding, as Milan Vaishnav has argued. Consider, for example, the fact that the scheme allows for complete anonymity of the donor. Neither the purchaser of the bond nor the political party receiving the donation is mandated to disclose the donor's identity. Therefore, not only will, say, the shareholders of a corporation be unaware of the company's contributions, but the voters too will have no idea of how, and through whom, a political party has been funded.

Just as damaging to the most basic democratic ideals is the elimination of a slew of other barriers that were in place to check the excesses of corporate political sponsoring. For instance, the programme removes an existing condition that had prohibited companies from donating anything more than 7.5% of their average net-profit over the previous three years. This now means that even loss-making entities can make unlimited contributions. Additionally, the requirement that a corporation ought to have been in existence for at least three years before it could make donations — a system that was meant to stop shell concerns from being created with a view purely to syphoning money into politics — has also been removed.

The dangers inherent in untrammelled funding of political parties, especially by corporations, have been apparent for many years. Even as early as in 1957, in a pair of judgments outstanding in their lucidity and prescience, the Bombay and the Calcutta High Courts warned Parliament of the perils in allowing companies to freely add to party coffers. It's a threat, wrote Chief Justice M.C. Chagla, of the Bombay High Court, which is likely to "grow apace and which may ultimately overwhelm and even throttle democracy in the country". The court was conscious that, given the circumscriptions of the law, it could scarcely deny, in the case before it, permission sought by Tata Iron and Steel Co. Ltd. to amend its memorandum of association, to allow the company to make contributions to different political interests. But this did not stop the court from drawing Parliament's attention to the problem.

Even H.M. Seervai, who was representing Tata, the court noted, conceded that the least the

company could do was to disclose clearly in its yearly balance sheet the list of donations made by it. But, to Chief Justice Chagla, such a condition was grossly insufficient. It was imperative, he ruled, that not only the company's shareholders, but electors too must know how a party is being financed. For democracy, he believed, couldn't function unless the voters had free and complete access to information about the parties for which they were going to vote.

Only months earlier, faced with a similar petition, the Calcutta High Court had made an almost identical appeal. "To the cynic it appears to be a plea of the company to have a legal sanction to bribe the Government of the day, to induce policies that will help the company in its business," wrote Justice P.B. Mukharji. If amendments of this kind were allowed, and if joint stock companies serve as adjuncts to political parties, he added, the "man who pays the piper will then call the tune".

In entreating Parliament to act, the judgments were recognising a bedrock principle of democracy: that public action ought to be guided by transparency and fairness. Unfortunately, however, in the years since, every effort has been made to endorse opacity in political funding. The electoral bonds scheme, which represents the latest such assault, unless immediately rescinded, may well irredeemably damage India's democratic edifice.

As petitions filed in the Supreme Court point out, the scheme suffers from at least two foundational defects. One, that it was incorporated on the back of a series of amendments made to legislation, including the Representation of the People Act, the Income Tax Act and the Companies Act, which were introduced in the form of a money bill. And two, that the scheme flouts a number of fundamental rights.

Article 110 of the Constitution allows the Speaker to classify a proposed legislation as a money bill, only when the draft law deals with all or any of the subjects enlisted in the provision. These subjects comprise a set of seven features, including items such as the imposition of a tax, the regulation of the borrowing of money by the government, the custody of the Consolidated Fund of India, the appropriation of money out of the consolidated fund, and any matter incidental to the subjects explicitly mentioned in Article 110. Hard as we might try, though, it's impossible to see how the provisions pertaining to the electoral bond scheme could possibly fall within any of these categories. The Finance Act, through which these amendments were introduced, therefore did not deal with only those matters contained in Article 110.

The scheme is equally destructive in its subversion of the fundamental rights to equality and freedom of expression. There's no doubt that the Constitution does not contain an explicitly enforceable right to vote. But implicit in its guarantees of equality and free speech is a right to knowledge and information. Our courts have nearly consistently seen "freedom of voting" as distinct from the right to vote, as a facet of the right to freedom of expression and as an essential condition of political equality. In the absence of complete knowledge about the identities of those funding the various different parties, it's difficult to conceive how a citizen can meaningfully participate in political and public life. As Ornit Shani's wonderful book, *How India Became Democratic*, shows us, the institutionalising of equality through the principle of one person one vote, and through the creation of the universal adult franchise, was critical to building India's republican structure. When the power of that vote is diluted through opacity in political funding, democracy as a whole loses its intrinsic value.

Ultimately, therefore, to borrow from English jurist Stephen Sedley's formulation, the electoral bonds scheme suggests two possibilities: one, that the government doesn't understand the Constitution; or, two, it does, and has expressly set out to transgress it.

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