

HAVE ELECTORAL BONDS MADE A BAD SYSTEM WORSE?

Relevant for: Indian Polity | Topic: Elections, Election Commission and the Electoral Reforms in India Incl. Political Parties

Last month, an investigative series on electoral bonds by independent journalist Nitin Sethi, with the help of Right to Information (RTI) activist Commodore Lokesh Batra (retd), exposed how the BJP leadership misled the Election Commission (EC) and Parliament on key features of the electoral bonds scheme and overruled the Reserve Bank of India (RBI)'s objections in its hurry to implement it. In a conversation moderated by **Anuradha Raman**, **Jagdeep Chhokar** (founding member, Association for Democratic Reforms) and **Milan Vaishnav** (senior fellow and director of the South Asia Program at the Carnegie Endowment for International Peace) speak of the flawed design of the scheme. Edited excerpts:

Milan Vaishnav: I think we should start from the original premise that the introduction of electoral bonds was a victory for transparency. Actually, by their design, electoral bonds legitimise opacity in how elections are funded. There is concern that electoral bonds could become vehicles for money laundering for shell companies, for foreign donations, which are prohibited. We now know that the RBI and the EC shared those concerns. One of the big threats to electoral funding worldwide is that it becomes difficult for voters to hold their elected representatives accountable when they cannot see who is financing whom. That is the central flaw of this scheme.

Jagdeep Chhokar: This is the most fundamental piece of information that voters need to know. When persons who donate money are not philanthropists and are commercial profit-making entities, they donate only when there is a more-than-adequate rate of return. So, when a corporation donates money to a political party, there is obviously a quid pro quo, whether it is known or not. If voters do not know whose money a candidate is using to fund his or her election, they won't know subsequently whether a decision made by the government is based on the interest of the constituents, in national interest, or in the interest of whoever donated the money.

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Milan Vaishnav: Far from it. This is an extremely regressive scheme. Essentially whatever modicum of transparency might have been under the previous system [is not there now]. Granted, [there was very little transparency then] because even though anything above 20,000 had to be disclosed, there were ways to circumvent that. Corporations/ individuals gave cheques/ payments that were 19,999! But be that as it may, there was limited transparency. Now, even the incentive to give through that route is gone because the government has essentially said it is perfectly legitimate for you to give anonymously any amount to any party from anywhere.

Jagdeep Chhokar: Former Finance Minister Arun Jaitley had said electoral bonds will be in the nature of bearer bonds and the identity of the donor will be anonymous. How do anonymity and transparency go together? They are the anti-thesis of each other.

Jagdeep Chhokar: Certainly not. But this is much worse. In that system, no company could donate more than 7.5% of its profits to a political party. Now that limit has been completely removed. Today, a company can donate 100% of its profits... I would imagine there is no bar if

the company also decides to donate its capital. This opens up the possibility of any foreign company or entity opening a shell company in India, with the money coming to it through a banking channel from Costa Rica or wherever, and then giving [that money] to the political party in power. Therefore the possibilities of unaccounted, illegal money controlling the policies and decision-making of the Indian government is now alive.

Milan Vaishnav: I think any analysis of electoral bonds has to be viewed in the broader context of a number of legislative changes which were made. The first was the removal of the cap on corporate donations. The second was the elimination of the requirement that companies must disclose details of their political funding. And the third is the complete rewriting of the Foreign Contribution (Regulation) Act, 2010, to redefine what a foreign firm is, and this is because both the Congress and the BJP have been guilty of taking donations from foreign firms. So, rather than confessing to their crimes, or being held accountable, they just decided to redefine what a foreign company was. All these three things go hand in hand with electoral bonds.

Milan Vaishnav: One of the biggest takeaways for me is how leading institutions seem completely unmatched when compared to the power of the executive. We know that the RBI, the EC and even Parliament had significant concerns. Those were dismissed in a variety of ways. And their concerns really match what groups like the ADR [Association for Democratic Reforms] had been saying, what independent analysts had been saying, which was that you are essentially going to create a system that is even worse than the status quo. Now, it is true that the executive has a lot of power, and it's not clear what the EC could have done to stop it, but it surely could have done more than what it did in terms of going to the public raising concerns, even considering resignations.

Jagdeep Chhokar: First, the EC is a constitutional institution so it can't be easily played around with. Second, the RBI Act under Section 31 says that any currency or similar documents or instruments can be issued only by the RBI. That bit was also changed to say that the State Bank of India will issue bonds. Lastly, the concerns of the RBI and EC were flippantly and irresponsibly undermined and overlooked.

Now, could the EC have done more? I don't think so. The EC is kind of hemmed in by Supreme Court decisions and the laws that Parliament makes. So, I think the EC in writing that letter did a wonderful job. Milan talks about commissioners resigning. Whether that achieves any purpose is questionable. If one person resigns, there are 20 more willing to be appointed and do the bidding of the government.

Milan Vaishnav: I think one has to separate two issues. Jagdeep and I agree that the design is fundamentally flawed. But there's also the question of implementation. And I think what Nitin's investigation has shown is that we have several fundamental issues with implementation. We know, for instance, that the Prime Minister's Office intervened to go beyond the regulations to create new windows. We know that pressure was applied to encash expired bonds before State elections. The government has not even come close to answering the allegations on the table about the violation of regulations which they themselves had written.

Milan Vaishnav: That's right. You could argue that we're going to have too much money in politics and there's little we can do to stop it. But if that's your position, let's at least try to allow voters to be able to connect the dots. If you really believe the rhetoric about the war on cash, why has the government not scrapped cash-giving altogether, which was in their power to do so? But of course, they chose not to do that because they'd like to have their cake and eat it too.

Jagdeep Chhokar: I don't think the government legalised an illegal system. The point is that the system is not legal because the way electoral bonds were introduced as part of the Budget, as a

Money Bill, was unconstitutional. We are hoping that as the whole scheme was pushed as a Money Bill, it will be struck down by the court.

Jagdeep Chhokar: The problem is that if political parties are to be given money from the election fund in proportion to the number of votes that they have pulled in the previous election, then they would not be allowed to take money from anywhere else. I will bet whatever anybody wants, parties will not agree to the proposal. It is impractical simply on that count.

Milan Vaishnav: Not under the current status quo. I think injecting funds into the current opaque system would be throwing away good money. There has to be a grand bargain that if you want to put public funding on the table, you're going to have to insist on much stricter norms and adherence to those norms by parties and candidates so that there should be a requirement that any funds raised be processed digitally. Second, there has to be an independent third party scrutiny of political party accounts. Third, the EC has to be given greater power and authority to go after wrongdoers.

Jagdeep Chhokar: There are two more things. Appointments of Election Commissioners have to be made non-partisan. And it is ridiculous that the EC has no power to de-register a political party.

Jagdeep Chhokar: Political parties have to understand that they are also governed by the law. The Central Information Commission (CIC) says six national political parties are public authorities under the RTI. The Central Information Commission is the highest statutory authority for the RTI Act. But all the six parties have blatantly defied that. And the government has given an affidavit in the Supreme Court that political parties should not be under the RTI Act.

Milan Vaishnav: You can't have a situation where six major political parties thumb their nose at the CIC saying, we reject your ruling that we are under your ambit and there's nothing apparently anyone can do about it.

But we also have to set the default position at a more transparent level, so that citizens, every time they want to know who's funding whom, don't have to submit an RTI. In the wake of demonetisation, the government asked every private citizen, companies, entrepreneurs to go digital and shun cash payments. Political parties weren't asked to comply. There is a fundamental hypocrisy at work here that has to be rectified.

Jagdeep Chhokar is one of the founding members of the Association for Democratic Reforms. ADR has petitioned the Supreme Court against electoral bonds; Milan Vaishnav is senior fellow and director of the South Asia Program at the Carnegie Endowment for International Peace

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