

## TO THE POLL BOOTH, WITH NO DONOR KNOWLEDGE

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

Late last year, the Union government authorised the State Bank of India to issue and encash [a new tranche of electoral bonds, the 19th such parcel](#) since [the scheme's notification in 2018](#). The timing of the announcement was predictable, with elections slated to be held to five different State Assemblies beginning next month. Now, as a result, voters in those States will go to the ballot box with no knowledge about the donors backing the various contestants.

Ensuring citizens have access to information, especially material on political funding, one would think, is an essential feature of a democracy. But ever since its introduction, the electoral bond scheme has envenomed the democratic process, by destroying altogether any notion of transparency in political funding. In this time, the Supreme Court of India has paid scant attention to the issue. It has allowed the scheme to continue unabated and has denied an interim stay on its operation without so much as conducting a full-fledged hearing.

BJP accounts for nearly 70% of assets declared by national parties: ADR report

In one such provisional order, the Court asserted that the bonds were not, in fact, anonymous. Voters interested in finding out the identity of political donors, the Bench said, could simply perform what the order described as “match the following.” According to the Court, since both the purchase and the encashment of bonds are made through banking channels, all it would take for a person to glean the identity of a donor was for her to look through every corporation’s financial statement — these records, the Court said, ought to be available with the Registrar of Companies.

Even assuming for a moment that voters have the resources to go through annual returns filed by every corporation in India, what the order ignored was that there is no attendant obligation on political parties to provide details to the public on each donation received by them through electoral bonds. Companies are also under no obligation to disclose the name of the party to whom they made the donation. Therefore, this “match the following” exercise apart, from being impossible to perform, will also do nothing to pierce the veil concealing the bonds. This is because anonymity is written into the programme’s ideals; it represents the basic leitmotif of the system.

When he explained the contours of the electoral bond scheme to the Lok Sabha, the then Union Finance Minister Arun Jaitley stressed on this very feature. “The donor will know, which party he is depositing money to,” he said. “The political party will file return with the Election Commission [of India]. Now, which donor gave to which political party, that is the only thing which will not be known.” This avowed objective runs athwart one of the most basic features of a democracy, that the right to freedom of expression, which the Constitution guarantees, includes within it a right to know.

Election campaign funding by political parties

The electoral bond scheme is designed to allow an individual, or any “artificial juridical person”, including body corporates, to purchase bonds issued by the State Bank of India during notified periods of time. These instruments are issued in the form of promissory notes, and in denominations ranging from 1,000 to 1 crore. Once purchased, the buyer can donate the bond to any political party of their choice and the party can then encash it on demand. The purchasers

are not obliged to disclose to whom they presented the bond, and a political party encashing a bond is compelled to keep the donor's identity secret.

What is more, a series of restrictions that were in place before the scheme's introduction have now been done away with. For example, amendments have been made removing a previous prohibition that disallowed a company from donating anything more than 7.5% of its net profits over the course of the preceding three years. Similarly, a mandate that a company had to have been in existence for at least three years before it could make donations (a requirement that was aimed at discouraging persons from using shell corporations to funnel money into politics) was also lifted.

Thus, through its very architecture, the electoral bond scheme permits unlimited and anonymous corporate funding of political parties. In its defence, the Government says two things: one, that voters have no fundamental right to know how political parties are funded and two, that the scheme helps eliminate the role of black money in funding elections. On any reasonable examination, it ought to be clear that neither of these arguments is tenable.

Voters needn't know source of political funding: govt.

First, the Supreme Court has consistently held that voters have a right to freely express themselves during an election and that they are entitled to all pieces of information that give purpose and vigour to this right. Surely, to participate in the electoral process in a meaningful manner and to choose one's votes carefully, a citizen must know the identity of those backing the candidates.

Second, as affidavits filed by the Election Commission of India in the Supreme Court have demonstrated, the scheme, if anything, augments the potential role of black money in elections — it does so by, among other things, removing existing barriers against shell entities and dying concerns from donating to political parties.

Moreover, even if the bonds were meant to eliminate the presence of unaccounted currency, it is difficult to see what nexus the decision to provide complete anonymity of the donor bears to this objective. Indeed, it is for this reason that the Reserve Bank of India reportedly advised the Government against the scheme's introduction.

National parties collected over 3,370 crore from from unknown sources in 2019-20: ADR

The worries over the electoral bond scheme, however, go beyond its patent unconstitutionality. This is because in allowing anonymity it befools the basis of our democracy and prevents our elections from being truly free and fair. There are, therefore, few issues of greater moral urgency than this that are awaiting the Supreme Court's consideration. Yet, despite challenges to the scheme having been launched quickly on the heels of its notification in 2018, the Court has failed to hear and decide on the programme's validity.

A delay in adjudication, as we have seen in a plethora of cases that are pending consideration, invariably presents a *fait accompli*. In this case, the damage from the pendency is all the starker, because the integrity of the electoral process is at stake. Judges of yore warned as far back as in 1957 of the threats posed by limitless corporate funding of elections. Chief Justice M.C. Chagla of the Bombay High Court predicted that any decision to allow companies to fund political parties might "ultimately overwhelm and even throttle democracy in this country".

Editorial | [Opacity rules: On electoral bonds](#)

Justice P.B. Mukharji of the Calcutta High Court used language that was stronger still. “To induce the Government of the day by contributing money to the political funds of political parties, is to adopt the most sinister principle fraught with grave dangers to commercial as well as public standards of administration,” he wrote. “...The individual citizens although in name equal will be gravely handicapped in their voice because the length of their contribution cannot ever hope to equal the length of the contribution of the big companies.”

Today, those dangers are heightened by individual voters not only being in a position where they are unable to match contributions made by corporations but also find themselves in a position where they have no knowledge over the identity of the donors bankrolling the political establishment. Can there be a greater threat to our democracy?

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