

ENSURING TRUST IN THE ELECTORAL PROCESS

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

The Election Commission of India has announced dates for elections to five Legislative Assemblies. It is a matter of grave concern that the petition challenging the electoral bonds scheme, which deals with the vexed issue of election funding, continues to languish in the Supreme Court. The delay in adjudicating on the case filed in September 2017 is inexplicable in light of the observation by the apex court that the matter gives rise to “weighty issues which have a tremendous bearing on the sanctity of the electoral process in the country.”

The political system in India has traditionally been hostile to the idea of transparency in electoral financing. Political parties have zealously opposed any examination of the linkages between their governments’ policies and decisions, and the interests of their major donors. When the Bharatiya Janata Party (BJP) government announced the launch of a new instrument of political party funding to ostensibly ensure greater transparency and eliminate black money from the system, it was hoped that the issue of anonymous financing would be squarely dealt with. However, using the money bill route to bypass the Rajya Sabha, the government introduced regressive amendments to laws, including the Income Tax Act of 1961, the Companies Act of 2013, and the Representation of the People Act of 1951, to introduce electoral bonds which allow donors to anonymously donate unlimited amounts of funds to political parties.

Under the scheme, an electoral bond, issued in the nature of a promissory note, can be bought by any Indian citizen or company incorporated in India. The scheme allows parties to receive these bonds without the public, the Election Commission or even the Income Tax Department knowing the identity of the donors. It has legitimised opacity and opened the floodgates for anonymous donations to parties, dealing a severe blow to voters’ right to know. People’s ability to track donations by big businesses and expose quid pro quo has been undermined. Expressing its opposition to electoral bonds in the Supreme Court, the Election Commission has contended that they will have an adverse impact on transparency in political party financing and would make it impossible for the constitutional body to ascertain whether donations received were in compliance with the statutory framework governing political parties.

In 2016 and 2017, amendments were made to the Foreign Contribution (Regulation) Act (FCRA), 2010, with retrospective effect to bail out the BJP and Congress, which were found guilty by the Delhi High Court of having received contributions from foreign sources in violation of the FCRA. In conjunction with these amendments, which enabled Indian subsidiaries of foreign companies to make donations to political parties, electoral bonds allow anonymous financing by foreign entities opening Indian elections to the influence of foreign interests.

One of the stated objectives of introducing electoral bonds was to address the problem of black money and large cash donations. Proponents of electoral bonds have argued that since bonds can only be purchased via cheques, demand drafts, direct debit or electronic clearing, they will stem the flow of black money. The problem with this assertion, however, is that it completely overlooks the crux of the problem: the provision of the Income Tax Act under which political parties were exempted from disclosing sources of donations of less than 20,000. Most parties claimed that a majority of their income was received in denominations smaller than 20,000 thus doing away with the requirement to disclose the source of donation. It is an open secret that most of the anonymous donations received by parties were large cash contributions, which were ‘broken down’ and shown as multiple small donations. If the government was serious about addressing the malaise of black money, it should have done away with the provision of non-

disclosure of sources. Instead, amendments to the Income Tax Act in 2017 only lowered the stipulated ceiling of anonymous contributions from 20,000 to 2,000. Creative accountants can easily neutralise the impact of a lowered ceiling by multiplying the number of unattributed cash donations by a factor of 10, enabling donors to continue to anonymously pump cash into the system.

In fact, electoral bonds are likely to abet money laundering since the amendments to the Companies Act in 2017 removed the cap of 7.5% on political contributions by a company as a percentage of its average net profits of the preceding three years. This allows for black money to be easily routed through shell companies to purchase electoral bonds, an apprehension also expressed by the Election Commission. Even the Reserve Bank of India flagged serious concerns about the electoral bonds.

The rationale given by the government for providing anonymity to donors of electoral bonds is to allow donors to use legitimate funds to support political parties by protecting them against the wrath of rival parties, especially the party in power. But as bonds are issued only through the State Bank of India, it would not be difficult for the party in power to access information about the identity of purchasers and details of bonds sold to them, and match those to deposits in political party accounts. It is no surprise, therefore, that the lion's share of donations through bonds have been cornered by the BJP – it bagged 95% of bonds issued in the first tranche in March 2018 and approximately 60% of bonds sold till March 2019.

Bonds worth nearly 6,500 crore have been sold so far. They have consolidated the role of big money in electoral politics. Information obtained under the Right to Information (RTI) Act shows that bonds with the highest denomination value of 1 crore are the most preferred by donors and constitute 92% of the total value of bonds sold till October 2020.

Electoral bonds militate against every known principle of transparency and lend themselves to use by special interest groups, corporate lobbyists and foreign entities to acquire a stranglehold on the electoral process and governance at the expense of citizens. To ensure public trust in the electoral process, it is critical that the Supreme Court immediately adjudicates on the matter. If bonds are to be retained as an instrument for contributing to political parties, donations must be made transparent and parties should be obligated to file reports with the Election Commission and other oversight bodies disclosing the names of donors and amounts received. This information must also be placed in the public domain. These steps are necessary to safeguard democracy and ensure that elections do not become a mere formality.

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