

HERE IS WHY THE ELECTORAL BONDS SCHEME MUST GO

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

The Supreme Court, after a brief hearing on March 24, reserved orders on the question of whether or not to stay the electoral bond scheme, ahead of the upcoming State elections. For the last three years, electoral bonds have been the dominant method of political party funding in India. In their design and operation, they allow for limitless and anonymous corporate donations to political parties. For this reason, they are deeply destructive of democracy, and violate core principles of the Indian Constitution.

If democracy means anything, it must mean this: when citizens cast their votes for the people who will represent them in Parliament, they have the right to do so on the basis of full and complete information. And there is no piece of information more important than the knowledge of who funds political parties. Across democratic societies, and through time, it has been proven beyond doubt that money is the most effective way of buying policy, of engaging in regulatory capture, and of skewing the playing field in one's own favour. This is enabled to a far greater degree when citizens are in the dark about the source of money: it is then impossible to ever know — or assess — whether a government policy is nothing more than a *quid pro quo* to benefit its funders. The Indian Supreme Court has long held — and rightly so — that the “right to know”, especially in the context of elections, is an integral part of the right to freedom of expression under the Indian Constitution. By keeping this knowledge from citizens and voters, the electoral bonds scheme violates fundamental tenets of our democracy.

It is equally important that if a democracy is to thrive, the role of money in influencing politics ought to be limited. In many advanced countries, for example, elections are funded publicly, and principles of parity ensure that there is not too great a resource gap between the ruling party and the opposition. The purpose of this is to guarantee a somewhat level playing field, so that elections are a battle of ideas, and not vastly unequal contests where one side's superior resources enable it to overwhelm the other. For this reason, in most countries where elections are not publicly funded, there are caps or limits on financial contributions to political parties.

The electoral bonds scheme, however, removes all pre-existing limits on political donations, and effectively allows well-resourced corporations to buy politicians by paying immense sums of money. This defeats the entire purpose of democracy, which as B.R. Ambedkar memorably pointed out, was not just to guarantee one person, one vote, but one vote one value.

However, not only do electoral bonds violate basic democratic principles by allowing limitless and anonymous donations to political parties, they do so asymmetrically. Since the donations are routed through the State Bank of India, it is possible for the government to find out who is donating to which party, but not for the political opposition to know. This, in turn, means that every donor is aware that the central government can trace their donations back to them. Given India's long-standing misuse of investigative agencies by whichever government occupies power at the Centre, this becomes a very effective way to squeeze donations to rival political parties, while filling the coffers of the incumbent ruling party. Statistics bear this out: while we do not know who has donated to whom, we do know that a vast majority of the immensely vast sums donated through multiple electoral cycles over the last three years, have gone to the ruling party, i.e. the Bharatiya Janata Party.

The government has attempted to justify the electoral bonds scheme by arguing that its purpose is to prevent the flow of black money into elections. The journalist Nitin Sethi has already debunked this rationale in a detailed 10-part investigative report, which has also highlighted reservations within the government as well as by the Election Commission of India to the electoral bonds scheme. That apart, this justification falls apart under the most basic scrutiny: it is entirely unclear what preventing black money has to do with donor anonymity, making donations limitless, and leaving citizens in the dark. Indeed, as the electoral bonds scheme allows even foreign donations to political parties (which can often be made through shell companies) the prospects of institutional corruption (including by foreign sources) increases with the electoral bonds scheme, instead of decreasing.

It is important to be clear that the objections to the electoral bonds scheme, highlighted above, are not objections rooted in political morality, or in public policy. They are constitutional objections. The right to know has long been enshrined as a part of the right to freedom of expression; furthermore, uncapping political donations and introducing a structural bias into the form of the donations violate both the guarantee of equality before law, as well as being manifestly arbitrary.

This brings us to the all-important role of the courts. One of the most critical functions of an independent judiciary in a functioning democracy is to referee the fundamentals of the democratic process. Governments derive their legitimacy from elections, and it is elections that grant governments the mandate to pursue their policy goals, without undue interference from courts. However, for just that reason, it is of vital importance that the process that leads up to the formation of the government be policed with particular vigilance, as any taint at that stage will taint all that follows. In other words, the electoral legitimacy of the government is questionable if the electoral process has become questionable. And since the government itself cannot — in good faith — regulate the process that it itself is subject to every five years, the courts remain the only independent body that can adequately umpire and enforce the ground rules of democracy.

It is for this reason that courts must be particularly sensitive to and cognisant of laws and rules that seek to skew the democratic process and the level playing field, and that seek to entrench one-party rule over multi-party democracy. There is little doubt that in intent and in effect, the electoral bonds scheme is guilty of both. Thus, it deserves to be struck down by the courts as unconstitutional.

In this regard, the conduct of the Supreme Court so far has been disappointing. The petition challenging the constitutional validity of the electoral bonds scheme was filed in 2018. The case, which is absolutely vital to the future health of Indian democracy, has been left unheard for three years. The Supreme Court's inaction in this case is not neutral: it directly benefits the ruling party which as we have seen, has received a vast bulk of electoral bond funding through the multiple State and one general election since 2018, and creates a continuing distortion of democracy. It is a matter of some optimism that a start was finally made when the Court heard the application for stay before this round of elections. One can only hope that the Court will stay the scheme so that it does not further distort the coming round of elections, and then proceed to hear and decide the full case, in short order.

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