

The danger of electoral bonds

If being ranked 100th out of 190 countries in the World Bank Ease of Doing Business Index was a matter of national celebration, how do we celebrate India being ranked a far more impressive 19th out of 180 countries in the Paradise Papers leaks? Though more than 700 Indians figure in the documents cache, celebrations have been muted, to say the least.

Link with shell firms

All these Indians are on the list for one reason: their association with shell companies set up to siphon vast sums of money out of India and into a tax haven under the cloak of secrecy. The best part is that it's all legal, more or less.

An interesting case unearthed from the Paradise Papers pertains to a law firm's refusal to supply nominee directors to two Mauritius-based companies of an Indian business group due to fears of 'round-tripping' — a term that denotes the (illegal) routing of Indian-origin illicit funds from a tax haven (in this case, Mauritius) back to India.

What if there was a legal channel for companies to round-trip their tax haven cash to a political party? If this could be arranged, then a businessman could lobby for a change in policy, and legally funnel a part of the profits accruing from this policy change to the politician or party that brought it about.

Well, the government introduced precisely such a scheme earlier this year: electoral bonds. These bonds share with tax havens the two characteristics that make the latter such attractive destinations for black money: secrecy and anonymity.

Transparency in political funding is the global norm. The 255th Law Commission Report on Electoral Reforms observed that opacity in political funding results in "lobbying and capture" of the government by big donors. The lower the transparency in political funding, the easier it is for the super-rich to buy the kind of government they want.

According to the NGO, Association of Democratic Reforms, 69% of the income of political parties is from unknown sources. But even the 31% from known sources pertains only to the income that the parties declare to the Income Tax (IT) department.

Thanks to black money, the real incomes of political parties are far greater than their declared income. In other words, not only is the source unknown for the greater chunk of a party's income, even the very existence of this income is 'unknown', as it is not captured in any official record — either with the Election Commission (EC) or with the IT department. Put simply, transparency in political funding in India is already abysmal.

This is despite the existence of declaration norms, traditionally governed by four legislations: the Representation of the People Act (RPA), the IT Act, the Companies Act, and the Foreign Contribution (Regulation) Act (FCRA). Under these laws, political parties have to declare the source and the amount donated for all contributions above 20,000.

Similarly, companies have to declare in their profit and loss (P&L) statement the party-wise break-up of political donations. Also, a company must be at least three years old to contribute to a party. Its contribution cannot be more than 7.5% of its average net profit in the three preceding years. And parties cannot accept foreign contributions.

But declaration to an institution is not the same as disclosure to the public. Even with all these stipulations, as of today, it is barely possible to glean, via multiple Right to Information applications, a rudimentary idea of political parties' sources of funding. Now electoral bonds are set to eliminate even this smidgen of transparency.

The government set the ball rolling with the Finance Act 2016, which amended the FCRA to allow political parties to accept donations from foreign companies. This year, the Finance Act 2017 did the rest, by amending the RPA, the Companies Act and the IT Act. The Reserve Bank of India Act was also amended to enable the issuance of electoral bonds, which would be sold through notified banks.

What electoral bonds do

Electoral bonds are essentially bearer bonds that ensure donor anonymity. They are like cash, but with an expiry date. Let's say company 'X' wishes to contribute 100 crore to political party 'Y'. It could buy ten electoral bonds of 10 crore each from bank 'A'. These bonds would carry only a serial number and not the identity of the buyer.

X would have these bonds deposited in Y's designated account with bank 'B'. B would know that this money belongs to Y but it doesn't record the fact that it has come from X.

The cluster of amendments around electoral bonds makes the scheme's intent amply clear: first of all, they eliminate the 7.5% cap on company donations (which means even loss-making companies can make unlimited donations); also gone is the requirement for a company to have been in existence for three years (paving the way for fly-by-night shell companies); and finally, companies no longer need to declare the names of the parties to which they have donated (so shareholders won't know where their money has gone).

As for political parties, they no longer need to reveal the donor's name for contributions above 20,000, provided these are in the form of electoral bonds. In a nutshell, a foreign company can anonymously donate unlimited sums to an Indian political party without the EC or the IT department ever getting to know. It is difficult to imagine a better instrument to ease the flow of black money into the coffers of political parties.

Danger to democracy

By far the most pernicious feature of electoral bonds is their potential to load the dice heavily in favour of the ruling party. In the hypothetical transaction above, only bank 'A' knows the identity of the donor, while bank 'B' knows only the identity of the recipient.

But both the banks report to the RBI which, in turn, is subject to the Central government's will to know, though it remains to be seen if the former's autonomy can withstand the latter. So, only the ruling party — and no one else — can ascertain which companies donated to the Opposition parties. It is then free to use the organs of the state to gently dissuade (or retaliate against) these misguided donors. What this means is that once the scheme for electoral bonds is notified, the Opposition parties may struggle to raise adequate funds to put up a fight. The implications for democratic politics are obvious.

The government's stated rationale for introducing electoral bonds was that they would protect donors from harassment by enabling anonymous contributions. But this argument falls flat as only the government is in a position to harass, or alternatively, protect, donors from harassment by non-state harassers.

Going forward, there is little doubt that democracy will be the biggest casualty if electoral bonds see the light of day. Former Chief Election Commissioner S.Y. Quraishi has suggested an alternative worth exploring: a National Electoral Fund to which all donors can contribute. The funds would be allocated to political parties in proportion to the votes they get. Not only would this protect the identity of donors, it would also weed out black money from political funding. But without pressure from the citizenry, it is unlikely to interest a political class hell-bent on insulating itself from public accountability.

The definition of harassment needs to be constantly updated, and the process for justice made more robust

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