

THE OPACITY AROUND ELECTORAL BONDS

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

The recent disclosures that the Election Commission (EC) and the Reserve Bank of India (RBI) had expressed reservations about the Electoral Bonds scheme highlight the importance of this issue. In 2017, the then RBI Governor wrote to the then Finance Minister that “allowing any entity other than the central bank to issue bearer bonds, which are currency-like instruments, is fraught with considerable risk and unprecedented even with conditions applicable to electoral bonds.” The EC warned that this would allow illegal foreign funds to be routed to political parties.

Objections were overruled and the scheme was passed in the Lok Sabha as part of the Finance Bill so that it would not have to go through the Rajya Sabha where the then-government lacked a majority. There is no other country in the world where such a scheme exists.

But first, why is this important? The main reason is that in the 21st century, money plays an increasingly larger role in elections. This was not so about 50 years ago. Today, India spends more on elections than the U.S. with a per capita GDP that is 3% of the U.S. Today, having more money does not guarantee success, but, at the other extreme, having no money certainly guarantees defeat. Some party may win a one-off election by spending very little, but sustaining victory over several elections requires funds. To reach voters, candidates and parties use hoardings and advertisements on printed, electronic and social media. They hold election rallies. They travel and have to pay party workers. In India, there is the added expenditure of buying votes through distribution of gifts, money, liquor and so on.

Given that money is required, a central issue is whether a winning candidate or party will work for the public or for those who have funded them. So, some countries have public funding of elections. Campaign funding laws and reforms are a constantly evolving subject internationally. They focus on public funding, limits on expenditure, limits on donations, transparency in funding and penalties for non-compliance.

We need to look at the issue of electoral bonds in this context — the importance and need for funding, and proper laws. Even a glance at the best international laws and rules shows that we in India are lagging far behind. The gaps between the stated purpose of the electoral bonds scheme and the letter of law are glaring, and several articles in the media have pointed them out. The voter does not know who is funding whom through electoral bonds. This is supposed to protect the donors from harassment from the authorities.

However, such harassment is always by the party in power through law enforcement agencies — police, the Central Bureau of Investigation, the Intelligence Bureau, the Enforcement Directorate and so on. The simple remedy is to stop such motivated actions. However, the bank knows the purchaser of the bonds as well as the party that cashed it. The law agencies can obtain this information whenever they want. Can the ruling party use this to demand donations for itself, prevent donations to others, and use the law enforcement agencies to harass those who donate to rival parties? There is nothing in the electoral bonds scheme or existing laws to prevent this from happening. Equally troublesome, donation limits have been removed. In theory, a large corporate could buy the government using electoral bonds. This would not be possible in any other country. India continues to have spending limits but, as everyone knows, hardly any winning candidate sticks to it.

It is true that black money cannot be used to buy electoral bonds. However, black money can be

used outside the scheme during elections. The reduction in cash donations from 20,000 to 2,000 is not good enough. There are parties with hundreds of crores of declared income who claim that all the funds were received from small cash donations of 100 or less. This cannot be prevented by merely reducing the cash limits. Meanwhile, we see reports that the 2,000 notes printed after demonetisation are being hoarded. Whether this will be used as black money and in elections is unknown. In short, electoral bonds cannot eliminate black money. There are other provisions in the electoral bonds scheme and the amended Finance Act, 2017. All of them were there earlier as well.

No doubt, there have been protests from the Opposition parties and from civil society. Political parties are sometimes seen as lacking credibility as they protest when they don't get money but keep quiet when they get funds. Civil society is seen as anti-establishment. In India it is possible for those in power to ignore all this. However, we are missing the elephant in the room. We don't need an incentive to be transparent and honest. Any political party can voluntarily choose to disclose its funds and sources. There is no law that prevents them from doing so. They can also state publicly that they will henceforth not use black money. No party has done this. Perhaps there are some compulsions under which they function — whether as the ruling party or as the Opposition.

Before we move to possible remedies, let us clearly look at the effect of the electoral bonds scheme and possible long-term implications. The ruling party gets nearly all the funds. It, along with the enforcement agencies, knows who has given how much money to whom. The public does not have this information. How can we have good democracy in secrecy? The real danger, however, is long-term. If big money entirely funds elections in an opaque way, democracy as we know it will not exist. Meanwhile, registrations are cancelled for NGOs but not for political parties. What is democracy without free speech and dissent, especially against the powerful?

Various commissions, including the Election Commission, have given detailed recommendations on suitable remedies. But, to date, no government has acted on them. We also need to benchmark ourselves against the best international practices and laws on campaign funding. Details are many, but there are a few simple principles for such remedies. First is complete transparency in all funding. Second, political parties need to be under the Right to Information Act. The Central Information Commission ruled that they were, but the parties refuse to follow its directions. There must be spending limits as well as donation limits, especially in a highly unequal society like ours, and strict penalties for flouting rules and the law. Public funding needs to be examined and introduced with proper checks and balances.

Voters need to demand changes and we need voter awareness campaigns. The simple message from voters to political parties could be “we like you, not your big money. If you want, we will all pitch in and give small individual donations.” If voters reject candidates and parties that overspend or bribe them, we would have moved democracy one level higher. Most important, the electoral bonds scheme needs to be scrapped. The Supreme Court is hearing a petition on this issue. Let us hope Indian democracy survives without going through another crisis.

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