



An Invitation To Corruption?

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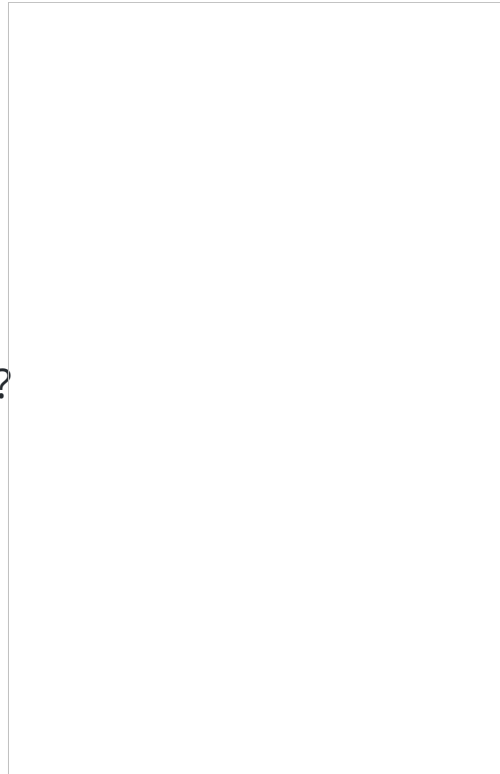
(This editorial is based on the article “An Invitation To Corruption?” which appears in The Hindu on 8th December 2018.)

In order to “**cleanse the system of political funding in the country**” and in keeping with the government’s desire to move to a cashless economy, electoral bonds scheme was introduced. **The scheme, announced during the 2017 Budget, aimed to account the donations made to all major political parties.**

Electoral Bonds Scheme

- **Electoral Bond is a financial instrument (similar to a promissory note) for making donations to political parties.**
- These are issued by Scheduled Commercial banks upon authorization from the Central Government to intending donors, but only against cheque and digital payments (it cannot be purchased by paying cash).
- These bonds shall be redeemable in the designated account of a registered political party within the prescribed time limit from the issuance of the bond.
- **The bonds will be issued in multiples of ₹1,000, ₹10,000, ₹1 lakh, ₹10 lakh, and ₹1 crore and will be available at specified banks.**
- They can be bought by the donor with a KYC-compliant account. Donors can donate the bonds to their party of choice which can then be cashed in via the party's verified account within 15 days.
- In its present form, the scheme permits not only individuals and body corporates but also “every artificial juridical person,” to purchase bonds.
- **Every party that is registered under section 29A of the Representation of the Peoples Act, 1951 (43 of 1951) and has secured at least one percent of the votes polled in the most recent Lok Sabha or State election will be allotted a verified account by the Election Commission of India.** Electoral bond transactions can be made only via this account.

Why Electoral Bonds are Necessary?



- The conventional system of political funding is to rely on donations. These donations, big or small, come from a range of sources from political workers, sympathizers, small business people, and even large industrialists. The conventional practice of funding the political system was to take donations in cash and undertake these expenditures in cash. The sources are anonymous or pseudonymous. **The quantum of money was never disclosed. The present system ensures unclean money coming from unidentifiable sources.**
- Donations made online or through cheques remain an ideal method of donating to political parties. However, these have not become very popular in India since they involve disclosure of the donor's identity. However, the electoral bond scheme envisages total clean money and substantial transparency coming into the system of political funding. A donor can purchase electoral bonds from a specified bank only by a banking instrument. He would have to disclose in his accounts the number of political bonds that he has purchased. A bond can only be encased in a pre-declared account of a political party.

But the **scheme's failings have become so blindingly obvious**, and its consequences so utterly devastating, that criticisms are coming in from a multitude of places like High Court judges, former Election Commissioners, journalists etc.

Drawbacks

- **There are many grey areas in this scheme because there is no ceiling on party expenditure and the EC (Election Commission) cannot monitor it. It cannot be**

sure that what is coming in is not black money as there is a secrecy of the donor.

- Even foreign money can come and even a dying company can give money. So, prima facie it appears the scheme cannot really deliver whatever it was intended to.
- The fact that the scheme allows for complete anonymity of the donor and neither the purchaser of the bond nor the political party receiving the donation is mandated to disclose the donor's identity. Therefore, not only will say, the shareholders of a corporation be unaware of the company's contributions, but the voters too will have no idea of how, and through whom, a political party has been funded.
- **For instance, the programme removes an existing condition that had prohibited companies from donating anything more than 7.5% of their average net-profit over the previous three years. This now means that even loss-making entities can make unlimited contributions.**
- Additionally, the requirement that a corporation ought to have been in existence for at least three years before it could make donations — a system that was meant to stop shell companies from being created with a view purely to syphoning money into politics — has also been removed.
- The scheme also suffers from at least two foundational defects. One, that it was incorporated on the back of a series of amendments made to legislation, including the Representation of the People Act, the Income Tax Act, and the Companies Act, which were introduced in the form of a money bill. And two, that the scheme flouts a number of fundamental rights. The Finance Act, through which these amendments were introduced, therefore did not deal with only those matters contained in Article 110.

Two Judgements

- Even as early as in 1957, in a pair of judgments outstanding in their lucidity and prescience, the Bombay and the Calcutta High Courts warned Parliament of the perils in allowing companies to freely add to party coffers.
- Bombay High Court said it is something which is likely to “grow apace and which may ultimately overwhelm and even throttle democracy in the country”.
- The court was conscious that, given the circumscriptions of the law, it could scarcely deny, in the case before it, permission sought by Tata Iron and Steel Co. Ltd. to amend its memorandum of association, to allow the company to make contributions to different political interests.
- The Calcutta High Court had made an almost identical appeal. “To the cynic it appears to be a plea of the company to have a legal sanction to bribe the Government of the day, to induce policies that will help the company in its business”.
- If amendments of this kind were allowed, and if joint stock companies serve as adjuncts to political parties, the Court added, the “man who pays the piper will then call the tune”.

Way Forward

- There's no doubt that the Constitution does not contain an explicitly enforceable right to vote. But implicit in its guarantees of equality and free speech is a right to knowledge and information. Our courts have nearly consistently seen "freedom of voting" as distinct from the right to vote, as a facet of the right to freedom of expression and as an essential condition of political equality. In the absence of complete knowledge about the identities of those funding the various different parties, it's difficult to conceive how a citizen can meaningfully participate in political and public life.
 - **The electoral bonds scheme, therefore, suggests two possibilities: one, that the government doesn't understand the Constitution; or, two, it does, and has expressly set out to transgress it.**
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