



## Electoral Bonds

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*(The editorial is based on the article "Bonds of secrecy" which appeared in The Indian Express for 3rd April 2019. In this editorial we'll go through the biggest criticisms of the 'electoral bonds' system.)*

*"Concealing the identity of donors in electoral bonds goes against a fundamental tenet of democracy — transparency. Any executive Act which takes away transparency is anti-democratic and against the public interest."*

Elections are run with money as much as anything else. This involvement of money in our elections has become a bane to our democracy. Transparency on the flow of money into our elections had always been a key issue and the 'electoral bond' system was supposed to take care of this. Sadly, as pointed out in this editorial, this system is deeply flawed and what is worse is that it can actually make the involvement of money in our elections more opaque.

### The First and Biggest Problem

- Electoral bonds were conceived in 2017 and the necessary legislative changes were made in the Finance Bill of 2017.
- **For example, Section 31 of the Reserve Bank of India Act, 1924, was amended and a new Clause (3) was added to provide for electoral bonds. This amendment was pushed through as a money bill, whereas the Reserve Bank of India Act itself is not a money bill.**
- **This contradiction remains unresolved till today. If the parent Act is not a money bill, how can an amendment to it be treated as a money bill?**

The notification issued by the Department of Economic Affairs of the Ministry of Finance on January 2, 2018, gives us details of these bonds. From it, one gets a clear idea of the objective of these bonds:

- **To conceal the identity of the donor of political funds.**
  - In India, political parties fund their election campaigns mostly through funds

- from corporate houses and wealthy individuals.
- **No political party can meet the exorbitant expenses of an election with their membership fees.** They need to depend on corporates, who are flush with money and have no hesitation in generously helping political parties, particularly the ones that are their favourites.
  - **Much of these funds are actually black money.** Although political parties get income tax exemptions on these donations and the donors too can claim exemption under the relevant provisions of the Income Tax Act, the bulk of these donations remain unaccounted. This means that every election in India adds to the volume of black money in the country.
  - **Electoral bonds were conceived with a view to keeping the identity of the donor secret. The bond does not carry the name of the buyer.**
    1. **The donor does have a genuine fear that if parties in the Opposition get to know how much he has contributed to the ruling party, he will be in trouble when the former comes to power. The electoral bond scheme is informed by an appreciation of such fears.**
    2. Under the scheme, the name or other details of the buyer of the bonds will not be disclosed to any authority for any purpose whatsoever. The recipient, after receiving the bonds from the donor, will deposit it in his account. **Of course, the government — and the ruling party — will know who the donor is and how much money has been given to a party.**
    3. If there is a “tough” government in office, we can be sure that the parties in Opposition will get almost nothing.
    4. Thus, two objectives are achieved by introducing electoral bonds.
      1. One, the identity of the donor can be kept secret from the public, including other political parties.
      2. Two, the ruling parties will get the lion’s share of the donations. There is ample evidence that these two objects have been achieved.

The details of the electoral bonds were notified by the finance ministry in January 2018. Para 7(4) of this notification points out, *“Confidentiality of the information furnished by the buyer shall not be disclosed to any authority for any purpose.”*

- This notification was issued under Section 31(3) of the Reserve Bank of India Act, 1924.
- **This Section does not give any details about the electoral bonds policy. The confidentiality of the bonds and the total prohibition of disclosure of information about the donor, to any authority for any purpose, is a matter of legislative policy.**
- This cannot be dealt with through a notification, which is a subordinate legislation. Subordinate legislation can only deal with the details of the implementation of the policy contained in the parent Act. It is the Act which should contain the policy, not the notification issued by the executive under the Act.

- **The Supreme Court has struck down many such orders, regulations, and notifications on the ground of being ultra vires the parent Act. January 2, 2018, notification on electoral bonds is ultra vires Section 31(3) of the Reserve Bank of India Act, 1924, and hence is illegal.**

### **Section 29C in The Representation of the People Act, 1951**

Declaration of donation received by the political parties.—

The treasurer of a political party or any other person authorized by the political party in this behalf shall, in each financial year, prepare a report in respect of the following, namely:—

- The contribution in excess of twenty thousand rupees received by such political party from any person in that financial year;
- The contribution in excess of twenty thousand rupees received by such political party from companies other than Government companies in that financial year.

### Way Forward: Transparency is Crucial

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- **Firstly, it is not open to the executive to legislate against transparency — a fundamental aspect of public policy in a democracy.**
  - **A legislature can provide for the confidentiality of state secrets but not for protecting the confidentiality of the donors of political funding who are private individuals or private companies. No public interest will be served by that. In fact, it would only injure public interest.**
  - Secondly, Section 29(C) of the Representation of People Act, 1951, requires every political party to submit an annual report to the Election Commission. This report should contain the details of contributions in excess of Rs 20,000 received by the party concerned from individuals and private companies. This requirement has been done away with in the case of electoral bonds through an amendment.
  - **This amendment to Section 29(C) is against the public policy of transparency and is hence unconstitutional.**
  - The Preamble to the Right to Information Act, 2005 declares: “... *Democracy requires an informed citizenry and transparency of information which are vital to its functioning.*” As such, any executive Act which takes away transparency is anti-democratic and against the public interest.
  - Keeping in view the above-mentioned shortcomings of the legislation, necessary reforms should make their way into the larger public discourse.
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