

ELECTORAL BONDS AND POLITICAL PARTY FUNDING IN INDIA

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ABSTRACT

Free and fair elections between political parties are of prime importance for the healthy functioning of democracy in a country. Political parties require funds to carry out successful election campaigns. In recent times the money power has come to play a major role in elections and this has undermined the democratic character of elections. Corruption caused because of unchecked inflow of political funds during elections reduces accountability and introduces an asymmetry in policymaking. Democracy today faces a credibility crisis because of the various ill practices adopted by political parties like bribing voters, distributing alcohol and gifts to lure the voters, criminalization of politics, etc. To ensure transparency in the political funding mechanism the BJP-led government has proposed Electoral Bonds Scheme. However, the introduction of Electoral bonds is seen as a retrograde step that will make political funding in India more opaque. Anonymity promised to the donors in these bonds is not in line to bring transparency. Various committees and commissions like Indrajit Gupta Committee, Dinesh Goswami Committee, and the Law Commission Report (1999) have given various recommendations on how to make the funding mechanism more transparent. This paper aims to analyze the political finance regime in India and the end suggest some possible measures enhance transparency and accountability in political funding.

Keywords: Political Funding, Electoral Bonds, State Funding, Transparency.

INTRODUCTION

The cost of Indian elections is rising with every passing year, the 2019 general (Parliamentary) election in India emerged to be the most expensive election.¹ A Centre for Media Studies report on poll expenditure estimated that Rs 700 per vote was spent in the 2019 elections and on average, nearly Rs 100 crore has been spent per seat in 2019 elections. Thus, it is evident that political parties require a huge amount of monetary resources in order to contest

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¹ "Poll Expenditure- The 2019 Elections," Centre For Media Studies, 2019,

<https://cmsindia.org/sites/default/files/2019-05/Poll-Expenditure-the-2019-elections-cms-report.pdf>

elections unchecked inflow of such monetary resources into the political system leads to corruption which in turn reduces the faith of people in democracy. In order to ensure transparency and accountability, the government introduced the Electoral Bonds Scheme as a part of the Finance Bill, 2017. Electoral bonds are bearer instruments in the name of Promissory Notes issued by Banks. They are interest-free instruments that can be purchased from specified branches of the State Bank of India by any citizen or body incorporated in India within a fixed period of time. Electoral bonds are not the perfect model of political funding and have certain serious flaws as having been highlighted by the Election Commission (EC) and the Reserve Bank Of India (RBI). Association for Democratic Reforms (ADR), a non-governmental organization working in the area of political reforms approached the apex court last year and sought a stay on the scheme on the grounds that the anonymity of the donor in the case of [electoral bonds](#) flouts the objective of transparency that the scheme promised to achieve.² However, Supreme Court in a recent judgment refused to grant an interim stay on the electoral bond scheme and sought responses from the Centre and the Election Commission about the same.³ Many reforms have been suggested by political analysts to ensure transparency in the system. Some of them argue that corporate funding in elections should be banned as it hampers the democratic functioning of the government. Others suggest that India should adopt the system of public funding wherein the money for financing elections is given by the government to different political parties. The purpose of this paper is to critically analyze the current system of political funding in India and suggest some measures that can be adopted to make party funding more transparent. The research question focuses on how the system of Electoral Bonds is retrograde and makes political funding secretive and opaque. The Research Paper is divided into four parts. The first part deals with the Importance of Money in the elections and the need for ensuring transparency in political funding. The second part traces the evolution of the Party funding mechanism adopted in India. The third part deals with the Electoral Bonds Scheme and highlights the loopholes in the present system of political funding. The fourth part analyses the question of the effectiveness of Public Funding in the Indian context and highlights the reforms that can be undertaken to make political funding transparent.

I) MONEY AND TRANSPARENCY IN ELECTIONS

² “Electoral Bonds and Opacity in Political Funding,” Association for Democratic Reforms (ADR), n.d., https://adrindia.org/sites/default/files/ElectoralBondsNote_March_July2021_updated.pdf

³ “SC Refuses to Grant Interim Stay on Electoral Bonds, Seeks Response From Centre, EC,” *The Wire*, January 2020.

Free and Fair competition between political parties is the cornerstone of democracy. Political Parties require monetary resources to contest elections and such monetary resources have both positive and negative effects on the elections. Money in a positive sense helps political parties in reaching out to the electorate and effectively explaining their policies via print and social media advertisements, pamphlet distribution, hoardings, etc. It helps to engage citizens in the electoral process by spreading awareness about its policies and thereby helping in initiating a dialogue between people. In addition, it also provides a level playing field for all the political parties to compete on equal terms where no party has an unfair advantage over the other. But in recent years it is seen that money has done more harm than good as far as elections in India are concerned. Vote buying, bribing, the influx of black money in politics, increasing criminalization of the political landscape, the growing influence of big corporate houses in matters of policymaking, and the increasing influence of foreign powers in the domestic politics of the country are just a few examples of the ill effects that money has on the elections. Such ill practices have raised serious questions in people's minds about the effective functioning of democracy and have led to widespread erosion of people's faith in democracy. So the need of the hour is to take serious steps in direction of restoring transparency and accountability in the political funding system. But one should keep in mind that measures to bring transparency to the political system will vary from country to country. What measure might work for one country may not work for the other because of the very different contexts and challenges faced by the respective countries. For instance, the two biggest dangers of money power in the Indian context are, firstly the growing nexus between political parties and corporate houses wherein the big corporations funnel in large sums of money in support of a particular political party during the election period and the party repays it back by using its discretionary power to frame policies that benefit those big corporations often compromising the interest of millions of people who have voted for it and brought it in power. The second biggest danger is the increasing criminalization of politics. According to the trends, political parties prefer to give tickets to candidates who can finance themselves and reduce the financial burden of the party which often results in the selection of candidates who are either very rich or who have criminal records against them. This narrows down the scope for selection of grassroots leaders with less monetary resources and thus adversely affects the democratic fabric of the country. Transparency in political funding is thus needed to prevent the inflow of black money, check the quality of leaders who get elected, and restore the sanctity of policy making

by removing the corporate strings attached to it.⁴ Some of the common measures to ensure transparency are strong disclosure laws about sources of funding, a ban on donations from foreign sources, fixing a cap on the amount of money that can be used by a party and a candidate in a particular election, etc.

II) EVOLUTION OF PARTY FUNDING MECHANISM IN INDIA

Political funding in India has experienced some major changes over the years. Initially, the political party funding depended on traditional sources like membership dues, private donations, and grassroots-level financing. Over time there has been a shift from traditional sources to corporate donations. The Representation of Peoples Acts of 1951 passed by the Constituent Assembly placed regulations on the individual candidate but did not put any regulations on political parties. Candidates who exceeded the limits faced the prospect of disqualification and annulment of their elections. During this period the corporate donations used to finance elections proved a major challenge as there were threats of quid pro quo transactions (i.e. big corporates that would fund political parties would ask them for a favor once they came to power) being made. The Companies Act, 1956 sought to introduce some regulation on political funding by companies by requiring them to seek shareholder approval in a general meeting for any donation above Rs. 25,000 or 5% of the average net profit of the previous three years.⁵ In 1964 Santhanam Committee on Prevention of Corruption brought to light the issue of black money infiltrating the political system.⁶ In 1968 Prime Minister Indira Gandhi banned corporate donations to political parties, this was seen as a major step in the direction of curbing the black money in the election process but the real reason behind this move was to reduce the increasing influence of the Swantantra Party which was the main beneficiary of corporate donations as it advocated free market economy. In order to address the loophole in RPA 1951, the Supreme Court declared that a party's expenditure on behalf of its candidate is included in the calculation of a candidate's election expenses. However, the Parliament responded by inserting Explanations 1 and 2 to Section 77(1) of the RPA 1951 to provide that unauthorized expenditure by a political party or supporters of a candidate would not be included in a candidate's election expenses. A major change came in 1979 when political parties were exempted from income and wealth taxes, provided they filed annual returns

⁴ "Funding of Political Parties and Election Campaigns," *IDEA- A Handbook on Political Finance*, 2014, <https://www.idea.int/publications/catalogue/funding-political-parties-and-election-campaigns-handbook-political-finance>.

⁵ "Companies Act, 1956," https://www.mca.gov.in/content/dam/mca/pdf/Companies_Act_1956_13jun2011.pdf

⁶ "Report of the Committee on Prevention of Corruption," https://cvc.gov.in/sites/default/files/scr_rpt_cvc.pdf

including audited accounts, listed donations of Rs. 10,000 and above, and disclosed the identities of such donors. In 1985, the Rajiv Gandhi government removed the ban on corporate donations by amending Section 293A of the Companies Act, 1956 to permit corporate donations.⁷ Donations made by companies no longer required a general meeting but only at a meeting of the board of directors. In 1996, the Supreme Court ordered that to take advantage of the exemptions under the Income Tax Act, 1961 and Section 77 of the RPA 1951, political parties have to comply with the requirements to file returns. Even after the Supreme Court ruling, the political parties did not submit their audited accounts. In 2003, the NDA government under Atal Bihari Vajpayee, introduced the Election and Other Related Laws (Amendment) Act, 2003 which made all company and individual donations tax deductible under Section 80 GGB and 80 GGC of the Income Tax Act, 1961. It also mandated that any donation above Rs. 20,000 required a declaration to the Election Commission.⁸ Later in 2013, the government introduced “electoral trusts” by amending Income Tax Rules, 1962. Electoral Trust is a non-profit company established for receiving voluntary contributions from a person/company and distributing the same to respective political parties. The main aim of the Electoral Trust was to ensure the anonymity of donors. In 2017, the government introduced the Finance Bill, 2017. It proposed the following changes:⁹

- A. Earlier donations upto Rs. 20,000 do not have to be reported to the Election Commission or the Income Tax Authorities but the introduction of the Finance Bill, 2017 has reduced this limit to Rs. 2000. According to the finance minister this move will address the issue of unaccounted money in election financing.
- B. The proposed amendment introduces a new mode to make contributions – Electoral Bonds. Any donation made through an electoral bond will remain anonymous and the details of the donor do not have to be reported to the Election Commission or the Income Tax Authorities.
- C. The amendments to the Finance Bill, 2017 propose to remove: (i) the limit of 7.5% of net profit of the last three financial years, for contributions that a company may make to political parties, (ii) the requirement of a company to disclose the name of the political parties to which a contribution has been made.

⁷ “Electoral Reforms, <https://lawcommissionofindia.nic.in/reports/report255.pdf>

⁸ Indian legislation- Manupatra, <http://indianlegislation.in/>

⁹ “Monthly Policy Review,” PRS Legislative, n.d., https://prsindia.org/files/policy/policy_annual_policy_review/MPR%20March%202017_0.pdf

III) ANALYSIS OF THE ELECTORAL BONDS SCHEME

The Electoral Bonds were introduced as a part of the Finance Bill, 2017 which made amendments to the Income-Tax Act, the Representation of the People Act, and the Companies Act. Electoral Bonds are interest-free bearer instruments (like Promissory Notes) that are available for purchase from the State Bank of India within a designated window of 10 days in every quarter of the financial year. These bonds are issued in multiples of Rs 1,000, Rs 10,000, Rs 1 lakh, Rs 10 lakh, and Rs 1 crore. Political parties have to redeem these electoral bonds within fifteen days. Buyers of the bonds have to submit full KYC details at the time of buying. But the beneficiary political party is not required to reveal the identity of the entity that has given it the bond(s). The government considers the Electoral Bonds scheme as a big step toward electoral reform that will help to achieve the twin objectives of bringing accountability and transparency to the electoral funding process. The proponents of electoral bonds argue that these bonds help to keep the identity of the donors anonymous thereby shielding them from the political victimization by rival political parties. They claim this initiative of the government will bring transparency as it will decrease the transactions that are made in cash (as a provision of the Finance Bill, 2017 has made it compulsory that all transactions made in cash above Rs.2000 have to be disclosed) and encourage transaction through demand drafts and cheques and electronic means. The government also clarifies the fact that the electoral bonds will not become a parallel currency because they can expire after fifteen days of issuance.

PROBLEMS WITH THE CURRENT SYSTEM OF POLITICAL FUNDING IN INDIA:

The electoral Bonds scheme has some fundamental problems in it which may have serious repercussions on the transparency aspect of political finance. The anonymity promised to the donors in the electoral bonds scheme is not in sync to bring transparency. Keeping the identity of the donors anonymous makes the political funding opaque and keeps the voters in dark as they have no idea about who is giving how many funds to which political party. The system further becomes opaque as the companies or corporations no longer need to show donations made to political parties in their profit and loss accounts according to the provisions of the Finance Bill, 2017. The 7.5% cap on the net profit earned by the company in the last three years that can be donated to political parties has been removed which means that now the companies can donate as much as they want as there is no upper limit on the number of donations. This will lead to a sharp increase in corporate donations and the emergence of shell companies i.e. companies that remain inactive and are just used as a means of making transactions. Corporate

donations often have strings attached to them which hampers the capacity of the elected government to make independent and unbiased decisions.

The Election Commission (EC) and Reserve Bank of India (RBI) have also expressed serious reservations about the Electoral Bonds Scheme. According to EC, the electoral bonds scheme is problematic as it cannot be ascertained whether the political party has taken any donation in violation of provisions of the Representation of the People Act, which “prohibits the political parties from taking donations from government companies and foreign sources”.¹⁰ Moreover, the Reserve Bank Of India (RBI) cautioned that allowing any entity other than the central bank of the country to issue bearer bonds is fraught with considerable risk.¹¹ But these concerns were ignored by the government. The current system of political funding (electoral bonds) has a tendency to favor the political party that is in power as is seen in the case of the Bhartiya Janta Party (BJP). In the year 2018 BJP received Rs. 210 crores from the electoral bond scheme which was 95% of the total bonds issued.¹² It is also argued that the identity of the donor does not remain truly anonymous as the incumbent government can use enforcement agencies to bring out information on purchases of bonds from banking channels. Earlier all donations made in cash above Rs.20,000 had to be reported to the election commission and the income tax department but the Finance Bill,2017 has changed the upper limit and now made it compulsory to report all cash donations above Rs.2000. This is not an effective solution as now donors can, for example, donate multiple times Rs.1999 and all such transactions will go unreported.

IV) REFORMS NEEDED IN THE POLITICAL FINANCE SYSTEM

1) Applicability of Public/State Funding in the Indian Context

State funding or public funding means that the government gives funds to political parties or candidates to contest elections. State Funding can be of two types- Direct state funding (directly giving money to political parties or candidates to contest elections) and Indirect state funding (eg. Permitting parties and candidates to use public buildings for rallies, allocation of

¹⁰ “EC Raises Concern over Electoral Bonds,” *The Hindu Business Line*, December 2021, <https://www.thehindubusinessline.com/news/national/ec-raise-concerns-over-electoral-bonds/article26660912.ece>.

¹¹ Furquan Ameen, “Electoral Bonds: What Letters from RBI and BJP Show,” *The Telegraph*, November 2019, <https://www.telegraphindia.com/india/electoral-bonds-what-letters-from-rbi-and-bjp-show/cid/1722525>.

¹² Anubhuti Vishnoi, “Electoral Bonds: Ruling BJP Bags 95% of Funds,” *The Economic Times*, November 29, 2018, <https://economictimes.indiatimes.com/news/politics-and-nation/electoral-bonds-ruling-bjp-bags-95-of-funds/articleshow/66858037.cms?from=mdr>.

state media for advertisements, etc.). State Funding has many advantages, firstly it helps to bring the campaign finances down, it reduces corruption, and provides a level playing field to all the candidates which means that even candidates who have fewer resources and do not have good connections with big corporates can win elections. It reduces the dependence of political parties on corporate funds and ensures that there are no quid pro quo transactions. In a nutshell, state funding makes the system of political finance free and transparent. Many committees have been formulated in India to analyze and give recommendations on the effectiveness of political funding in the Indian context. In 1972 the Joint Committee of Parliament on Amendments to Election Law expressed the view that basically the problem of election expenses could be solved only if it was accepted in principle that all the election expenses presently borne by a candidate or the political party should be progressively shifted to the state. The Dinesh Goswami Committee on Electoral Reforms in its report submitted in May 1990 recommended that state assistance should be given in kind only and not in cash. It recommended that state assistance should be extended only to candidates set up by recognized political parties and that candidates set up by other political parties need not be made eligible for such assistance. The committee was also of the view that there need not be any ban on private expenditure in respect of items proposed for state assistance except voters' identity slips.¹³ The Indrajit Gupta Committee submitted its report to the government in 1999 and recommended partial state assistance in kind in the form of facilities that could be extended to the recognized political parties, in particular, to meet the election expenditure of their candidates. It also recommended a separate election fund to which the Central Government and the state governments took together should contribute Rs. 600 crores annually.¹⁴ The Law Commission of India brought out a report on electoral reforms and in that it supported various recommendations made by the Indrajit Gupta Committee for funding of elections in kind. It further added that the state funding, even if partial, should not be resorted to unless the other provisions mentioned by it are implemented, as, otherwise the whole purpose of state funding would be defeated.¹⁵ After analyzing these committee recommendations it can be concluded that adopting full state funding of elections at this juncture is not a viable option for India keeping in mind the current state of the economy and electoral funding in mind.

¹³ M. V. Rajeev Gowda and E. Sridharan, "Reforming India's Party Financing and Election Expenditure Laws," *Election Law Journal*, 2012
<https://casi.sas.upenn.edu/sites/default/files/upiasi/Reforming%20India%27s%20Party%20Financing%20and%20Election>

¹⁴ "Public Funding Of Elections"; PRS Legislative Research; 22 December 2010

¹⁵ "Report on Electoral Reforms," PIB, March 2015, <https://pib.gov.in/newsite/PrintRelease.aspx?relid=116934>.

2) Steps to bring Transparency in Political funding in India

Following measures can be adopted to make political funding more transparent. Firstly, there should be strong disclosure laws about the sources of funding. Secondly, the provisions of the Right to Information (RTI) Act should be legally enforceable on all political parties so that concerned citizens can exercise their rights and seek information about the functioning of political parties.¹⁶ There should be a cap on the amount of money that a political party and a candidate can spend in an election and this cap should be revised regularly by the Election Commission. Strict actions like de-registration of political parties and legal action against candidates should be taken if they violate the laws related to political financing. Accounts of political parties should be regularly audited by Election Commission. Adopting complete public funding is not a viable option keeping in mind the economic condition of the country.¹⁷ Instead, there should be more focus on indirect state subsidies in the form of providing air time to political parties, providing vehicle fuel, tax benefits, etc.

CONCLUSION

Adopting a Transparent method of political funding is very important for keeping the edifice of democracy in our country alive. Money in the present times has come to dominate politics and if adequate measures are not taken the politics will move in the direction of plutocracy where the state or society will largely be governed by the wealthy, where the people in power will no longer serve the voters but serve the interest of wealthy corporate houses. This is evident from the fact that India has been ranked at the 9th position in the index of crony-capitalism as per the study by The Economist. The report also says that the non-crony wealth amounts to only about 8.3 percent of the GDP.¹⁸ These figures speak volumes about the deep-rooted nexus between politicians and big corporates. Crony capitalism refers to an economy in which success in business depends on the relationship between businessmen and government officials and the end result of this relationship is excessive corruption and exploitation. After analyzing these figures it can be concluded that there should be a complete ban on corporate funding as the big corporates funding political parties is the root cause behind most of the corruption that takes

¹⁶ Priscilla Jebaraj, "Political Parties Yet to Comply with RTI Act," The Hindu, March 2021, <https://www.thehindu.com/news/national/political-parties-yet-to-comply-with-rti-act/article26601174.ece>.

¹⁷ Niranjan Sahoo, "Towards Public Financing of Elections and Political Parties in India: Lessons from Global Experiences," Observer Research Foundation, November 2020, <https://www.orfonline.org/research/towards-public-financing-elections-political-parties-india-lessons-global-experiences/>.

¹⁸ "Comparing Crony Capitalism around the World," The Economist, March 2016, <https://www.economist.com/graphic-detail/2016/05/05/comparing-crony-capitalism-around-the-world>.

place in our country. Moreover, there should be a ban on anonymous donations of all kinds whether from individuals or corporations and all parties must disclose in detail the amount that they raise and spend during the election campaign to the Election Commission. Election Commission in turn should publish these figures for the voters so that the voters can make an informed decision about whom to vote for. We have to keep in mind that these reforms can only be implemented successfully if independent institutions like Judiciary and the Election Commission act as watchdogs and ensure that all political parties comply with the rules and take strict action against the defaulters.

