

The Electoral Bond Scheme: A Flawed Approach to Transparency



Source: <http://www.deccanchronicle.com/opinion/columnists/161017/electoral-bonds-wont-lead-to-fairer-politics.html>

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The Electoral Bonds Scheme: A Flawed Approach to Transparency

Introduction

In a section titled ‘Transparency in Electoral Funding’ of the Budget speech for the financial year 2017-18, Finance Minister Arun Jaitley highlighted the absence of a “transparent method of funding political parties which is vital to the system of free and fair elections.”ⁱ Mr. Jaitley noted:

India is the world’s largest democracy. Political parties are an essential ingredient of a multi-party Parliamentary democracy. Even 70 years after Independence, the country has not been able to evolve a transparent method of funding political parties which is vital to the system of free and fair elections . . . Political parties continue to receive most of their funds through anonymous donations which are shown in cash.ⁱⁱ

Mr. Jaitley’s legitimate concern regarding transparency in political funding, however, is at complete odds with the new Electoral Bonds scheme, the broad contours of which were notified by the Government on January 2, 2018. The scheme lays out the procedure through which funding by individuals or companies to political parties can be routed through electoral bonds. These bonds will be bearer instruments in the nature of Promissory Notes which can be purchased from specified branches of the State Bank of India (SBI) and can be encashed by an eligible political party through a designated bank account. The most significant aspect of the scheme is this: the bond will not carry the name of the payee.

(Department of Economic Affairs)

NOTIFICATION

New Delhi, the 2nd January, 2018

S.O. 29(E).—In exercise of the powers conferred by sub-section (3) of Section 31 of the Reserve Bank of India Act, 1934 (2 of 1934), the Central Government hereby makes the following Scheme, namely:-

1. Short title and commencement.—(1) This scheme may be called the Electoral Bond Scheme, 2018.

(2) It shall come into force on the date of its publication in the Official Gazette.

2. Definition.— In this Scheme, unless the context otherwise requires, —

(a) **“electoral bond”** means a bond issued in the nature of promissory note which shall be a bearer banking instrument and shall not carry the name of the buyer or payee;

(b) **“authorised bank”** means the State Bank of India authorised to issue and encash the bonds in the branches specified in **Annexure I** to this notification;

(c) **“issuing branch”** means a designated branch of the authorised bank specified in **Annexure I** for issuing electoral bonds;

Source: http://www.incometaxindia.gov.in/communications/notification/notificationso29_2018.pdf

The rationale given by Mr. Jaitley for keeping the donor’s identity anonymous is that donors fear that disclosure of their identities would invite consequences from political opponents.ⁱⁱⁱ This was acknowledged by Mr. Jaitley in his Budget speech: “[while] an effort . . . requires to be made to cleanse the system of political

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funding in India . . . [d]onors have also expressed reluctance in donating by cheque or other transparent methods as it would disclose their identity and entail adverse consequences.”^{iv}

Nevertheless, several commentators have noted that transparency in political funding does not go hand-in-hand with the blacking out of donors’ identities. Furthermore, a closer scrutiny of the proposed scheme suggests that not only will it have no effect on the current system, but that it would lead to further opacity in the funding process.

A Flawed Approach to Transparency

Two big measures were proposed by Mr. Jaitley in his Budget speech with an aim to “cleanse the system of political funding in India.” These were (1) capping the maximum amount of single-source cash donation for a political party at Rs. 2000; and (2) the introduction of electoral bonds.

Let us look at the first step. Previously, there was no cap on cash donations to parties. However, Section 29-C of the Representation of the People Act, 1951 [RPA] requires that parties declare to the Election Commission [EC] details of all donations exceeding Rs. 20,000 – be it through cash or cheque – for availing tax exemption granted to them under Section 13-A of the Income Tax Act, 1961 [IT Act].

However, there is a loophole in this clause: it does not categorically state that donations *less than* Rs. 20,000 need to be declared by parties. Hence, as J.S. Chhokhar notes, parties have often misused this provision by issuing multiple receipts of Rs. 19,999 or less to evade scrutiny.^v This is evident from a report by Association for Democratic Reforms, which noted that between the years 2004-05 and 2014-15, 69% of the total income of major parties came from unknown sources.^{vi} The same tactic, according to Chhokhar, would continue to be used under the new cap of Rs. 2,000.

It seems logical that the same excuse [the loophole in the Section 29C of the RPA] will now be used by political parties to not declare so-called donations below Rs 2000. If earlier a political party issued ten receipts for Rs 19,999 each for a total donation of Rs 2 lakh received in cash, the same party will now issue 100 receipts for Rs 1,999 for the same donation of Rs 2 lakh made in cash.^{vii}

The second step, electoral bonds, opens up another option that will lead to opacity in political donations. In March 2017, the Finance Act, 2017 was passed by both houses of Parliament through which four key statutes were amended to introduce electoral bonds in the legislative framework. These statutes included the RPA, the IT Act, the Reserve Bank of India Act, 1934 [RBI Act], and the Companies Act, 2013.

In the RPA, a proviso was added in Section 29-C, sub-section (1) exempting parties from declaring details of donations made through electoral bonds. Hence, not only will the bonds not carry the name of the buyer/donor – as proposed in the scheme – but also, thanks to this amendment, the parties would not be obligated to declare to the EC the details of the amount received through these bonds.

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AMENDMENTS TO THE REPRESENTATION OF THE PEOPLE ACT, 1951

Commencement of this Part.
Amendment of section 29C of Act 43 of 1951.

136. The provisions of this Part shall come into force on the 1st day of April, 2017.

137. In the Representation of the People Act, 1951, in section 29C, in sub-section (1), the following shall be inserted, namely:—

‘Provided that nothing contained in this sub-section shall apply to the contributions received by way of an electoral bond.

Explanation.—For the purposes of this sub-section, “electoral bond” means a bond referred to in the *Explanation* to sub-section (3) of section 31 of the Reserve Bank of India Act, 1934.

2 of 1934.

The Finance Act, 2017

Source: http://www.taxindiaonline.com/RC2/pdfdocs/Finance_Act_2017.pdf

It is therefore not surprising that in May 2017 the EC had written to the Parliamentary standing committee on Law and Personnel that introduction of electoral bonds would compromise transparency in political funding. The EC wrote: “The amendment in section 29 C of the Representation of the People Act, 1951 making it no longer necessary to report details of donations received through electoral bonds is a retrograde step as transparency of political funding would be compromised as a result of the change.”^{viii}

The second amendment that stands out is in the Companies Act. Originally, the Act, under Section 182, sub-section (1), required that donations to a party by a company shall not exceed 7.5% of its average net profits during the three immediately preceding financial years. This cap has been now eliminated by the Finance Act, allowing companies to donate unlimited sums of their profits. This, according to former Chief Election Commissioner S.Y. Quraishi, might soon result in “companies spending all their profits on politics alone and control governments.”^{ix}

AMENDMENT TO THE COMPANIES ACT, 2013

Amendment of section 182.

154. In the Companies Act, 2013, in section 182—

18 of 2013.

(i) in sub-section (1),—

(a) first proviso shall be omitted;

(b) in the second proviso, —

(A) the word “further” shall be omitted;

(B) the words “and the acceptance” shall be omitted;

The Finance Act, 2017. The proviso in Section 182 of the Companies Act, 2013, which capped donations to parties by companies at 7.5% of their average net profits during the three immediately preceding financial years, has been removed

Source: http://www.taxindiaonline.com/RC2/pdfdocs/Finance_Act_2017.pdf

It is also pertinent to note that the Government has already amended the Foreign Contribution (Regulation) Act, 2010 [FCRA] through the Finance Act, 2016, making it easier for foreign companies with subsidiaries in India to contribute to political parties – a move against which a petition in the Supreme Court was filed on behalf of Association for Democratic Reforms and Centre for Public Interest Litigation.^x

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In sum, we have the following: first, since the electoral bond will not carry the name of the donor, and the amendment in RPA exempts parties from declaring the bond details to the EC, large corporate houses and parties have enough room to engage in quid pro quo without fearing legal scrutiny and public accountability. Secondly, an amendment in the Companies Act – which removes the 7.5% cap on donations and the rule for mandatory existence of companies for at least three years – along with amendment in the FCRA, may allow a proliferation of shell companies for the purposes of routing black money to political parties.

Way Forward

As is evident, the electoral bond scheme, far from making the funding process transparent and tackling corruption, could provide a backdoor to corporate houses and international lobbyists for shaping public policy to benefit their own interests. Clearly, these decisions by the Government make political funding more opaque and will not address the worrying problems that arise from the possible capture of government policies and decisions. It is therefore important for us as a nation to explore other ideas like public funding of political parties. These could include suggestions made by Mr. Quraishi, ex-CEC, who suggests the setting up a National Electoral Fund, to which donors can contribute – not to any specific party, but to the fund as a whole. The proceeds can then be allocated to all registered parties in proportion to the votes obtained. This also addresses the donor's concern for secrecy. Mr. Quraishi further suggests that since public funds will be involved, there must be an annual audit by the Comptroller and Auditor General of India, thus ensuring public accountability.^{xi}

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ENDNOTES

ⁱ The 2017 Budget Speech, p. 32. Government of India. Retrieved from <http://indiabudget.nic.in/ub2017-18/bs/bs.pdf> on January 8, 2018.

ⁱⁱ *Ibid.*

ⁱⁱⁱ The Wire Staff. (January 7, 2018). Arun Jaitley on Why Electoral Bonds are Necessary. *The Wire*. Retrieved from <https://thewire.in/211558/arun-jaitley-electoral-bonds-necessary/> on January 8, 2018.

^{iv} See note 1.

^v Chhokar, J.S. (February 2, 2017). Why Modi Government's Political Funding Reforms May Just Be a Smokescreen. *The Wire*. Retrieved from <https://thewire.in/105158/modi-governments-political-funding-reforms-may-just-be-a-smokescreen/> on January 8, 2018.

^{vi} ADR. (January 24, 2017). Analysis of Sources of Funding of National and Regional Parties- FY 2004-05 to 2014-15. *Association for Democratic Reforms*. Retrieved from <https://adrindia.org/content/analysis-sources-funding-national-and-regional-parties-fy-2004-05-2014-15-0> on January 8, 2018.

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^{vii} See note 5.

^{viii} Express Web Desk. (May 19, 2017). EC calls electoral bonds ‘retrograde’, says will compromise transparency in funding. *The Indian Express*. Retrieved from <http://indianexpress.com/article/india/ec-calls-electoral-bonds-retrograde-says-will-compromise-transparency-in-funding-4664311/> on January 8, 2018.

^{ix} Quraishi, S.Y. (September 4, 2017). Talk Point: Do Electoral Bonds fit into the larger framework of free and fair elections? *The Print*. Retrieved from <https://theprint.in/2017/09/04/do-electoral-bonds-fit-into-the-larger-framework-of-free-and-fair-elections/> on January 8, 2018.

^x Live Law News Network. (October 3, 2017). Political Funding: SC Issues Notices To Centre, EC On PIL Challenging Finance Act Amendments. *Live Law*. Retrieved from <http://www.livelaw.in/political-funding-sc-issues-notices-centre-ec-pil-challenging-finance-act-amendments-read-petition/> on January 8, 2018.

^{xi} Quraishi, S.Y. (January 11, 2017). State funding of political parties could be a pillar of electoral reforms. *The Hindustan Times*. Retrieved from <http://www.hindustantimes.com/opinion/state-funding-of-political-parties-could-be-a-pillar-of-electoral-reforms/story-zaApTaDtoSDoA6vROPPU6M.html> on January 8, 2018.

Headlines

Wake up to the Enormity of Student Suicides in India

(Editorial, *The Hindustan Times*, January 5, 2018)

Statistics from the National Crime Records Bureau (NCRB) show that 6,654 students committed suicide in 2012; 8,423 in 2013; 8,068 in 2014; and 8,934 in 2015. The number spiked to 9,474 in 2016, says NCRB data shared by the ministry of Home Affairs in Parliament last week. A cocktail of enormous parental expectations, ragging and the inability to cope with a new environment are among the factors that tip students over the edge. But what's sometimes ignored is that students often nurse mental illnesses such as anxiety and depression which can trigger suicidal thoughts. Unfortunately, the country's leading academic institutions often fail to realise the link between suicidal thoughts and mental illness. Even as counselling centres are becoming the norm in institutes such as the IITs, centres with resident psychologists who can intervene at the onset of mental problems which often coincide with the physical and psychological changes that an adolescent or teenager experiences are yet to become commonplace. Such mechanisms are almost non-existent at smaller institutes in the country's tier-2 and tier-3 cities.

Read More: <http://www.hindustantimes.com/editorials/wake-up-to-the-enormity-of-student-suicides-in-india/story-DjnDTLCCcZOjicLaxs2fy3L.html>

Date Accessed: 08.01.2018

Economy

In India, a Cess a Day Keeps Governance Away

(Bharat Dogra, *The Wire*, January 8, 2018)

Recently, increasing amounts of central government revenue have been raised by cesses and surcharges. These include the Swachh Bharat Cess, Education Cess, Secondary and Higher Education Cess, Krishi Kalyan Cess, Clean Environment Cess etc. However, according to a recent Comptroller and Auditor General (CAG) report, while very significant amounts have been raised from cesses, it has not been utilised properly for the stated purpose, thereby defeating the very rationale of the existence of such a high priority need for which a special cess was needed thus indicating gross inefficiencies or a lack of sincere concern.

Read More: <https://thewire.in/211152/india-cess-day-keeps-governance-away/>

Date Accessed: 08.01.2018

Distress Sign in Job Spend

(Basant Kumar Mohanty, *The Telegraph*, January 8, 2018)

The Centre has decided to pump an additional Rs 7,000 crore into the rural job scheme, which is being read by critics as an undeclared sign that economic distress is forcing more people to fall back on unskilled jobs in villages. Congress MP Anand Sharma attributed the spurt in demand for the rural scheme jobs to the state of the economy. "Contrary to the claims by the Prime Minister and finance minister, the Indian economy is a gasping economy," he told the Rajya Sabha on Thursday. He said medium and small-scale industries had witnessed a 33 per cent reduction in jobs in one year because of demonetisation and the "faulty" implementation of GST, raising the demand for the rural scheme.

Read More: <https://www.telegraphindia.com/india/distress-sign-in-job-spend-198798#.Wk7aHUafEIQ.twitter>

Date Accessed: 08.01.2018

Governance and Development

GOVERNMENT

For Years, India's Food Safety Regulator has Twisted Rules to Allow Sale of Unsafe Processed Food

(Kumar Sambhav Srivastav and Nitin Sethi, *Scroll.in*, January 8, 2018)

Between 2012 and 2015, the food processing industry tried to introduce nearly 4,500 products with completely new formulations. However, according to CAG report findings, starting from 2012, the Food Safety and Standards Authority of India, which is responsible for ensuring that the food sold in the country is safe for consumers has diluted its regulations, bypassed established protocols and ignored warning from its scientists to allow the sale of more than 800 processed foods with new formulations without assessing their safety. Some of these are still on the market. Regarding proprietary foods, when the CAG did a test audit of 50 proprietary food products approved for sale to consumers between 2012 and 2014, it found that even the diluted regulations were not followed.

Read More: <https://scroll.in/article/863560/for-years-indias-food-safety-regulator-has-twisted-rules-to-allow-sale-of-unsafe-processed-food>

Date Accessed: 08.01.2018

Haryana frames Rehabilitation Policy for Slum-Dwellers

(PTI, *The Indian Express*, January 8, 2018)

The Haryana government has approved the slum-in-situ policy which is a rehabilitation initiative for people living in urban slums on government lands. The slums to be rehabilitated would be identified under the Pradhan Mantri Awas Yojana survey and the colonies where houses would be allotted to the slum dwellers will be developed on a PPP model. The ownership right over the unit allotted to beneficiary would be given after 15 years of allotment and until then will be given on lease at an amount of Rs 12000 and Rs 10000 for municipal corporations and committees respectively. To obtain full ownership of the house, an amount as decided by the Municipal councils or committees will have to be paid after the completion of 15 years of residence.

Read more: <http://indianexpress.com/article/india/haryana-frames-rehabilitation-policy-for-slum-dwellers-5015391/>

Date Accessed: 08.01.2018

HEALTH

Food Poisoning, a Common Outbreak in 2017

(Afshan Yasmeeen, *The Hindu*, January 7, 2018)

Integrated Disease Surveillance Programme (IDSP) data by the Ministry of Health reflected food poisoning as the most common outbreak in 2017 along with acute diarrhoeal disease. The incidence of ADD and food poisoning has been found to be particularly high in places where food is cooked in bulk. The Ministry's disease surveillance agency has however reported that this is not a new trend but has been prevalent for the past couple of years and that the increased number of visible cases was due to a better system of reporting. The overall mortality has not increased due to these outbreaks according to Ministry sources.

Read More: <http://www.thehindu.com/news/national/food-poisoning-a-common-outbreak-in-2017/article22392234.ece>

Date Accessed: 08.01.2018

LAW AND JUSTICE

India's Judge-Population Ratio goes up Marginally

(PTI, *The Indian Express*, January 7, 2018)

Data from the Ministry of Law and Justice claims that the judge-population ratio in the last 3 years has improved marginally. As per the 2011 census and sanctioned strength of judges of the Supreme Court, the 24 high courts and all the subordinate courts, the ratio stands at 19.66 judges per million (10 lakh) people in comparison to 17.48 judges per million in 2014. However while the sanctioned strength has gone up, the actual working strength has not shown any improvement. The issue of a poor ratio was brought to light when a former Chief Justice of India lamented the executive's inaction in doubling the number of judges to handle the

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“avalanche” of litigations instead of shifting the entire blame for the backlog of cases on the judiciary. Despite Mr Modi’s assurance that a solution will jointly be formulated, substantial efforts have not gone into improving the situation in the magnitude that it is required.

Read More: <http://indianexpress.com/article/india/web/indias-judge-population-ratio-goes-up-marginally-5014968/>

Date Accessed: 08.01.2018

India and the World

SOCIAL JUSTICE

Govt. readies Social Security Scheme with Pension and Insurance Cover, aims for Universal Coverage

(Aanchal Magazine & Anil Asai, *The Indian Express*, January 7, 2018)

The Ministry of Social Justice and Empowerment has started preparing a draft social security code as a safety net for workers in the informal sector and for those outside the ambit of EPFO and ESIC. The scheme envisages mandatory pension, insurance against disability and death, and maternity coverage, alongside optional medical and unemployment coverage. Since the present system of EPFO and ESIC functions on the basis of contributions of both the employer and employee, there is a significant population that is unable to contribute. The new Code will make it the responsibility of the government to pay the entire amount on behalf of the population living below poverty line. Ministry officials, while terming this initiative as pathbreaking, state that proposals for the funding are being examined while circulating it amongst other departments as well as states to achieve a consensus among stakeholders.

Read More: <http://indianexpress.com/article/india/social-security-scheme-draft-labour-modi-govt-epfo-5015555/>

Date Accessed: 08.01.2018

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