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Institute of South Asian Studies
National University of Singapore
29 Heng Mui Keng Terrace
#08-06 (Block B)
Singapore 119620
Tel: (65) 6516 4239 Fax: (65) 6776 7505
www.isas.nus.edu.sg
<http://southasiandiaspora.org>



The ‘Electoral Bond Initiative’ in India: Prospects for Authorised Campaign Finances

The process and magnitude of electoral funding have come under severe public scrutiny in India. It is an acknowledged fact that elections entail a huge amount of monetary resources. Obviously, such large amounts cannot be raised through individual- or retail-donations. Corporate agencies are rumoured to be making sizeable donations to political parties. The nature of such funding is opaque. The public, therefore, desires that political parties disclose the sources of their funds and maintain transparency in their dealings. Seized of the matter, the Indian government has, in the current year’s budget, introduced an innovative proposal of electoral bonds which appears to be the first of its kind anywhere in the world. The announcement, which has received very diverse reactions, is certainly a step in the direction of attempting to cleanse electoral funding. The scheme for issuance of such bonds has not been announced as yet. It has to be seen how effective the bonds will be in introducing transparency.

Vinod Rai¹

A very significant feature of India’s Union Budget 2017 was the display of intent by the government to enhance transparency in electoral funding. A transparent method of funding political parties is vital to the system of free and fair elections. Any attempt, therefore, at

¹ Mr Vinod Rai is Visiting Senior Research Fellow at the Institute of South Asian Studies (ISAS), an autonomous research institute at the National University of Singapore. He is a former Comptroller and Auditor General of India. He can be contacted at isasvr@nus.edu.sg. The author bears full responsibility for the facts cited and opinions expressed in this paper.

cleansing politics of the influence of money power will be wholeheartedly welcomed by the people since political parties continue to receive most of their funds through anonymous donations which are made in cash. Towards this objective, the government made a path-breaking announcement in the budget, proposing the issuance of electoral bonds which the donors could purchase from authorised banks. These bonds will be redeemable only in the designated account of the intended recipient, a registered political party, within a short period of time which would be specified as three to four weeks. The issuance of such bonds will stop cash payments which were subject to abuse and created a 'grey economy'. In fact, as of now, all donations above ₹20,000 (S\$430) are to be disclosed by political parties to the Election Commission. It appears that the proposed electoral bonds will neither provide a tax exemption nor earn interest, as a means of reforming election funding.

The government is yet to specify the nature and operational scope of these bonds as the preferred instrument for contributions to political parties. The key is to ensure the transparency of such transactions through the banking channel and yet maintain the anonymity of the donors. As ordinarily understood, a bond is a document to establish the security of a debt, quite like an 'IOU'. A corporate entity or a borrower issues bonds to raise money from investors who are willing to lend them money for a specified period of time. The electoral bond appears to be in the nature of an instrument that will be used to donate money to political parties. In the scheme of things, as made public so far, the parties to the transaction will be the agency desiring to make a monetary contribution (becoming the issuer of an electoral bond), the Reserve Bank of India (RBI) and a political party as the intended recipient of this donation. The RBI will act as the intermediary. This kind of an instrument seems to be an innovation, perhaps the first of its kind in any democracy in the world, though former United States President Barack Obama had introduced a system of 'on line' donation towards his election campaign. India does have a structure of electoral trusts but electoral bonds are entirely new.

India's Finance Minister Arun Jaitley, has explained the bonds in these terms:

"A notified bank will be issuing these bonds, any donor can buy those bonds by cheque or digital payment which will ensure it is only clean money, white money. These bonds by the donor can be given to the political parties which will be redeemable in a short period of time as will be mentioned in the scheme. The time will be as short as pragmatically possible. They will be redeemable in the notified account of the political party. This means every political

party recognised by the Election Commission has to notify one account to the Election Commission in advance. This would involve donor giving clean money because it will be cheque paid, and the donor will receive the money in its party account. These bonds will be bearer in character because if names are disclosed then it is as good as issuing a cheque which is the present status quo and the present status quo hasn't worked. Because of the present status quo, donors have preferred cash payment rather than disclosure of their identities. The present status quo has failed and hence we have to experiment with a new system. Method of enforcement is very simple, if you don't comply with this regulation, you lose your exemption.”²

What appears to be the life cycle of the electoral bonds can be outlined in these terms: they will first be issued by a notified bank in specific denominations. A donor desiring to contribute to a political party can buy these bonds by making payments digitally or through cheque. He is then free to gift the bond to a registered political party. The bonds will, in all likelihood, be bearer documents, and the identity of the donor will not be known to the receiver. The recipient political party can then convert these bonds into money via its bank account. The bank account used for this purpose must be the one notified to the Election Commission, and the bonds may have to be redeemed within a prescribed time period. The scope of electoral bonds seems to be distinct from the commonplace understanding of bonds as there will not be a concept of a principal amount or at least the interest on it. Essentially, electoral bonds seem to be like bearer cheques. The issuing bank will remain the custodian of the donor's funds until the political party redeems the bond. It appears that only the RBI, in the absence of any notification of a scheme by the government so far, will be allowed to issue these bonds, to be sold through notified banks.

The significance of this announcement lies in the fact that, as of now, most political parties use the lax regime on donations to accept cash contributions from anonymous sources. Nearly 70 per cent of the ₹11,300 crore (S\$2.4 billion) in party funding over an 11-year period came from unknown sources, according to the Association for Democratic Reforms.

Currently, political parties are required to report any donation of over ₹20,000 (S\$430) to the Income Tax Department. But there has been a trend of more donations flowing by way of hard

² Replying to questions asked by Network 18 at a press conference on 1 February 2017.

cash in smaller amounts. To fix this, the current year's Budget has reduced the non-disclosure limit to ₹2,000 (S\$43) and insists that any amount over this must be paid through cheque or the digital mode. The idea is that electoral bonds will prompt donors to take the banking route to donate, with their identity captured only by the issuing authority. So, while the identity of the donor is captured, it is not revealed to the political party or public. In the process, transparency is not necessarily enhanced for the voter. The government claims that steps like the reduction of permissible cash contribution from ₹20,000 (S\$430) to ₹2,000 (S\$43) and the issuance of electoral bonds for cheque and digital payments will end the current opacity in political donations. In reality, both measures have inbuilt anonymity. Transparency will still remain doubtful as neither the tax officials nor the Election Commission would know the actual sources of funding.

In order to release electoral bonds in the market, the government proposes to design a scheme under which the issuance of donations to political parties will be sketched out. As a first step, the required amendment to the RBI Act and the Representation of People Act were made through Sections 133 to 136 of the Finance Bill 2017. The electoral bond scheme will be administered under the Income Tax Act.

An issue that has raised alarm among experts and the general public is that the Finance Bill does away with the cap on a company's donations to political parties at 7.5 per cent of the average of its profits over three successive years. The amendment has been questioned since the identity of the recipient will be kept secret. However, to be an anonymous benefactor to a political party, electoral bonds are a neat vehicle though income tax breaks may not be available for donations through electoral bonds. Thus if a donor decides to make a donation, he or she may well have to choose between remaining anonymous and saving on taxes, as the tax-exempt nature of these bonds is still not clear. Also, in the electoral bond route, while the political party may not know the identity of the donor, the bank will. What analysts find worrisome is the removal of the earlier requirement of an enterprise disclosing the name of the political entity to which the contribution was made. It is argued that the government has, therefore, opened the floodgates for special interest groups and corporate lobbyists to influence the country's democratic politics. It is also argued that the long-term negative impact of not only the anonymity provision but also the wholesale withdrawal of restriction over private sector donations will be a deepening of the growing inequity in political finance. Given their dominance over the economic and administrative apparatus and the greater chances of

capturing political power, the large and established parties will draw undue advantage from the new measures that allow unrestricted donations via electoral trusts and bank bonds. Smaller and newer parties will find few donors and, in the absence of public funding of political activities, they stand to be further marginalised, it is pointed out.

Another critical argument is that these budgetary measures have foreclosed state funding of elections. Obviously, the deletion of the 7.5 per cent cap on the proportion of profits for corporate funding to political parties, and the issuance of electoral bonds leave no doubt about the government's determination to expand all possible channels of funding opportunities for political parties rather than to introduce state funding. While it is true that electoral bonds have not been tried in any other democracy, the coexistence of state funding and unrestricted access to corporate sector funding also seems improbable.

It is for this very reason that the Election Commission has told a parliamentary committee that electoral bonds introduced by the government is a "retrograde" step as it would compromise transparency in political funding. The Commission, in a written submission to the Parliamentary Standing Committee on Law and Personnel, said that changes made in the election laws, after the introduction of the bonds, would compromise transparency in political funding.

"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,"³ it said. The concern seems to arise from the ambiguity whether donations through bonds would be disclosed to the Election Commission. Under section 182 of the Companies Act, no political donation can be made unless the board of directors passes a resolution authorising such a payment. The minutes of such board meetings are in the public domain. However, it is a moot question whether donations through bonds will be transparent. The full operational details, however, will be known only after the scheme is framed by the Indian government.

³ As reported by NDTV News India on 20 May 2017, quoting a written reply by the Election Commission to Parliament.

It may be recalled that the Central Information Commission had ruled in 2013 that political parties must reveal their sources of funds and be covered under the Right to Information (RTI) Act. This decision was unanimously opposed by all political parties. As they refuse to be covered under the RTI, citizens will not be able to access information about political funding through any channel. So, while the regulating agencies like the Income Tax Department and the Election Commission are deprived of their powers to make political party funding transparent, citizens will also not have any means to find out which party has collected how much money and from whom. These factors impel the political analysts and citizen groups to sound sceptical about the new measure. It is hoped that when the scheme is announced all these issues will be taken care of and that the true intent of government in making electoral finance transparent, will be revealed.

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