

"Why state financing is the only way to ensure fair and transparent poll funding?"

In just 28 days since the announcement of the general election, the Election Commission (EC) has seized cash, drugs, alcohol, precious metals and other items worth Rs 1,800 crore. Compare this to the legal upper limit of expenditure per candidate — Rs 70 lakh. Simple arithmetic would show that the seized amount can fully finance up to five candidates from each of the 543 constituencies. The amount seized is just the tip of the iceberg. The expenditure in any election is estimated to be several times the legal upper limit.

Fiscal constraints on electioneering give rise to the problem of unaccounted money. There have been a few solutions. However, all of them are premised on an adverse relationship between accountability and transparency. Alternately, state funding of the recognised political parties and outlawing of corporate funding could be instrumental in making the electoral process fairer and more participatory.

In 1962, the late Atal Bihari Vajpayee moved a Private Member's Bill to prevent electoral donations by corporates. It was argued that since all shareholders need not subscribe to the political endorsement by a corporate, it was immoral to allow donations against their consent. Vajpayee had propositioned that such funding would only serve corporate interests. While all political parties welcomed the bill, the then ruling party did not vote in its favour. Never again was such a bill introduced.

Under Section 29B of the Representation of the People Act 1951, political parties are free to accept donations from any person, except from a foreign source. Two inferences can be drawn from this — first, money wields the ability to disrupt political agenda; second, foreign money dilutes electoral integrity. Both reasons would equally be valid for any person who is alien to the election process — a non-voter. The concerns that arise from foreign-funding are equally applicable to funding from corporates, with the distinction that while the former is a jurisdictional alien; the latter, on account of being a non-participant, is an alien. However, party interests deter further expansion in the law.

The finance ministry's electoral bond scheme afforded a way to fund political parties without disclosing the donor's identity. Of the Rs 2,722 crore donated through the scheme in the last 15 months, almost 95 per cent has gone to the ruling party, which enjoys a 31.34 per cent vote share. The remaining contestants with a 68.66 per cent vote share could only garner 5 per cent funding. The anonymity provision under the scheme is antagonistic to transparency — the bonds merely enable an "on-the-books" secretive transfer. The State Bank as the facilitator would be privy to the details of the depositor and the political party funded, therefore allowing the ruling party to monitor its rivals. What would be unknown to others will be known by the ruling party.

Corporates have long defended their political donations on the grounds of freedom of speech. Within American jurisprudence, corporates claim free speech under the First Amendment. Like citizens, they seek to endorse their economic and political views through contributions to campaign finance. However, casting such a wide net of freedom of speech seems misplaced.

Corporates are associations that further economic interests of their members who enjoy a freedom of trade. Therefore, their freedom of speech is based on their exercise of the freedom of trade, which is essentially for a commercial purpose. Citizens, on the other hand, enjoy an unfettered freedom of speech which extends onto the political domain. Since corporates are not participants as voters, they have no claim to freedom of “political” speech and expression. Therefore, while citizen-voters can donate to a political party pursuant to free speech, corporates must refrain from donating to a political party.

In 2015, the Brazilian Supreme Court declared corporate financing of elections to be unconstitutional. The court understood that right to equality was essential to ensuring fairness through the extrinsic (fair options between candidates) and intrinsic (fair options between ideologies) conceptions. Because 95 per cent of all campaign finance came from corporates, the courts felt that disclosure norms could only address the extrinsic aspect. Corporates would still be able to collectively suppress certain socio-economic ideologies (welfare measures, controlled economy, wage-labour regulations) to their advantage, by inducing political parties and candidates. So, the electoral contest would not allow certain policies to flourish, irrespective of who won. Outlawing corporate funding was important to ensure the right to equality.

In realpolitik terms, there is no incentive for any ruling political party to reform the law as it stands. Even the main Opposition party lives in the hope that it would derive similar advantage when it comes to power. Thus, necessity would dictate that the task of electoral funding be given to the EC under Article 324. A fair and transparent manner to finance the political parties would require a censure of unaccounted money and direct donations by corporates and non-voters to political parties. State funding of recognised political parties is a viable alternative. A state funding scheme would be viable through the levy of an election cess on the direct taxes. A National Election Fund could be maintained by the EC, into which the proceeds from this cess may be deposited. At the current GDP-Direct Tax ratio and voter numbers, a 1 per cent election cess can fund Rs 500 for each vote cast in elections to the Lok Sabha and the state assemblies. The cess being progressive would spare the poorer candidates from the costs of funding elections. Direct donations to political parties may be permitted only from persons who are entitled to vote. Those not entitled to vote may contribute to the neutral National Election Fund.

Donations from corporates into this fund will not distort the election process, but would instead improve the integrity of the peoples’ electoral choice. Parties would be inclined to adopt a more inclusive agenda when in government since more votes will translate into more state funding. Parties will also vie for votes in absolute numbers than merely be the first past the post. Democracy will then truly be of the people, for the people and by the people.

Electoral bond

Why in the discussion?

- Recently, an NGO in his petition challenging the validity of the scheme had said that this scheme should be banned or the names of the donors should be made public under it.
- While deciding on this petition, the Supreme Court has asked the political parties to give the details of donors through electoral bonds, the amount received from them, payment received on each bond, etc. to the Election Commission by May 30.
- Apart from this, the Right to Information (RTI) application has revealed that out of the total electoral bonds purchased between March 2018 and January 24, 2019, 99.8 percent of the electronic bonds were of 10 lakhs and one crore rupees.
- State Bank of India (SBI) sells of bonds of one thousand, ten thousand, one lakh, one million and one crore rupees.
- According to information received from RTI, 1,258 electoral bonds of worth one crore rupees and 1,459 of worth 10 lakh rupees were bought.

What is it?

- If we talk about Bond, then it is a debt security. The mention of election bond was first made in the General Budget of 2017.
- In fact, it was said that the RBI will issue a type of bond and the person wants to donate to political parties, he will first buy the bond from the bank, and then whichever political party he wants to donate can give it.
- The political parties will sell these bonds to the authorized bank and during the validity period, the amount will be deposited in proportion to Bond's purchase in bank accounts of political parties.
- The election bond will be like a promissory note on which no interest will be given. It is notable that the election bond can be purchased only through check or e-payment.

Its process

- The government has made several rules for election bonds, some of which are: -
- The first rule is that any political party registered under Section 29-A of the Representation of the People Act, 1951, who has secured at least one percent vote in the previous Lok Sabha or Assembly election, can take donation through

electoral bonds.

- Through this provision, there is a intention to stop those groups which are given to parties who take donations in the name of contesting but do not take part in the elections.
- The second rule is that electoral bonds are issued for only 10 days in one quarter of any financial year. But 30 days of extra time will be given in the year of Lok Sabha elections.
- The third rule is that validity of electoral bonds issued from certain branches of State Bank of India stays for 15 days of issuance.
- The donor has to cash in on the bonds of his favorite political party during these 15 days. Only intend to give 15 days time is that these bonds can not be misused as parallel currency.
- The fourth rule is that these bonds are valued at least one thousand rupees and maximum one crore rupees. The buyer of the electoral bond will have to fulfill all the KYC rules so that these bonds can not be purchased from the illegal account.

Drawbacks

- There is no fixed limit for the expenditure of the parties and the Election Commission can not monitor it. It is difficult to ensure that the amount is coming is black money or white, because the donor is confidential.
- There can also be foreign money and any financially poor company can also donate money. In these circumstances, first of all, it appears that this plan has not really been successful in achieving its initial objective.
- This scheme facilitates the complete anonymity of the donor and neither is the buyer of Bond nor the disclosure of the identity of the political party receiving the donation is disclosed.
- Shareholders of a company will be unaware of the donations given by their company. With this, it can also be said that the voters will not even know how and through whom, funding has been given to any political party.
- In addition, the condition of being in existence for at least three years before donating to any donor company has been removed. This condition prevents black money from being consumed in politics through Shell companies.

Expected Questions (Prelims Exams)

1. Consider the following statements regarding Electoral Bond-

1. This bond can be obtained from the branches of the Reserve Bank of India.
2. This bond can be from minimum one thousand rupee to maximum up to Rs. 1 crore.
3. It is required to be redeemed, by those who takes it, in the account of political party within 30 days.

Which of the above statements is/are correct?

- (a) Only 1
- (b) Only 2
- (c) 1 and 3
- (d) All of the above

Expected Questions (Mains Exams)

Q. To what extent will electoral bond scheme be successful in bringing fairness and transparency in elections? Analyse.

(250 Words)



Note: Answer of Prelims Expected Question given on 15 APR. is 1(b)