

ELECTORAL BONDS – AN INNOVATIVE STEP TOWARDS TRANSPARENCY

Shantanu Ghosh

M.Phil. Research Scholar,

Department of Commerce with Farm Management, Vidyasagar University

E-mail: shantanughosh060@gmail.com

Abstract

Putting the art of financial engineering India attempts to manage for cleaning the funding of a political party. It has simplified the way of funding by establishing a direct route channelized through the authorized scheduled banks, which in turn provides benefits to all concerned. It is one of the major steps of the present government to counter the black money, involved in financing of Indian politics. The main thrust of this paper would be to analyze the background of this measure and provide recommendations on its emergence.

Key words: Black-Money, Electoral Bonds, Criticisms, and Recommendations

1. Introduction:

Ease of finance has been brought into light by the newly introduced “Electoral Bonds” as a means of financing political parties. Resolving all complicacies it embraces a simple channel of injecting funds to political parties registered under section 29A of “Representation of People Act”, 1951.

Round the globe it’s been the first initiative to bring in a way of finance that’ll provide more transparency and accountability of funds while also preventing the generation of black money than its prior mode. The introduction seeded its roots from the Finance Bill, 2017 (Section 133-136) which put forward the foundation of such bonds.

2. Genesis:

With the aid of cleaning the system of political funding the Central Government enforced the rule to finance political parties through purchasing electoral bonds from notified branches of State Bank of India (SBI) with specific denominations. Such direct route of financing will solve the problem of erosion of funds and subsequently prevent the generation of black money. It propounded its root from the budget announced for 2017-18 and is almost ready to be launched. Budget 2017-18 introduces section 133, 134 (addition of a new subsection 3 to

section 31 of Reserve Bank of India Act , 1934) of Part –III as Amendments to RBI Act, 1934, which allows the Central Government to authorize any scheduled bank to issue “Electoral Bonds”. A parallel amendment has also been made through section 135, 136 of Part-IV as Amendments to The Representation of People Act (RPA), 1951. As per section 136 of the Finance Bill, 2017 [w.e.f. 1st April, 2017] (Read with section 29C (1) of RPA, 1951), it voids the declaration required by political parties to the Election Commission of India (ECI) in form 24A by the treasurer of the political party (registered under section 29A of The RPA, 1951) in case of receipt of an “Electoral Bond”. “Electoral Bond” has been explained for the above purpose in section 31(3) of RBI Act, 1934(Amended).

The above amendments as introduced by the Finance Bill, 2017 lays down the foundation of the “Electoral Bond” that is expected to cleanse the political funding and absorb the essence of black money being involved in the funding of Indian Politics.

3. Emergence of the scheme:

Keeping in mind the removal of black money from India, NDA Government has now put a step forward with introducing the “Electoral Bond”. In 69 years of previous budget preparations such brave step is hardly found.

While allowing the recommendation of ECI of keeping the finance through cash restricted to Rs. 2,000 (Gearing down from Rs. 20,000 previously) and also mandating parties to receive donations digitally, it is now going to re-shape the route of donations where contributors are intending to hide their identity. Previously a contributor who intended to hide his/her/it’s identity to avoid the fear of reprisals of political parties needed to transfer the funds in the hands of “Electoral Trusts”, which further would inject funds to political parties (Registered u/s : 29A of The RPA,1951). (Abraham, Electoral Trust, 2017)

By the introduction of “Electoral Bonds” such indirect financing can be removed. The contributor can now provide donations to the political party he/she/it intends directly by purchasing the bond from notified branches of S.B.I and hand over to the parties desired. This sort of change will remove the need of “Electoral Trust” besides protecting the identity of donor. (Abraham, Electoral Bond, 2017).

4. Conceptual framework of the scheme:

The essence of engineering in finance has been applied in the funding of political parties by introducing the basis of “Electoral Bonds” vide Finance Act, 2017.

Purchasing an “Electoral Bond” requires a number of criteria that are to be complied with by the receiver as well as the giver/donor. Such bonds can only be handed over to political parties registered u/s: 29A of The RPA, 1951 and parties registering at least 1 % votes in favour in its last election. The contributor needs to purchase such bonds other than in cash, from the notified branches of SBI in multiples of Rs. 1,000; Rs. 10,000; Rs. 1 lacks; Rs. 10 lacks; Rs. 1 crore; for any value. (NDTV, 2018)

To avoid the “Parallel Currency” situations of these bonds the maximum ceiling of encashment is primarily set at 15 days. This implies from purchase to encashment the maximum days within which the bond remains effective is 15 days. Although before encashment of such bonds political parties are to notify a particular bank account in which such bonds are to be redeemed.

Identity of the contributor though remains confidential; as requirement of purchasing such bonds the contributor requires to fulfill the Know Your Customer (KYC) norms stipulated by the authorized bank u/s: 31(3) of The RBI Act, 1934.

The electoral bond will be a bearer instrument in the manner of a promissory note and is expected to serve as a paper currency for funding political parties. These bonds will be available for purchase for a maximum of 10 days in the month of January, April, July, October, along with an open platform of 30 days in the year of election.

Basically notified scheduled banks mostly play a role of a custodian and also a vehicle transforming the money black to white. They will keep a record of information relating to the contributors (Through KYC norms) and facilitate the political parties direct funding from their respective contributors. Although electoral bonds will only serve the function of paper currency and will be used as a means of finance, it will not carry any interest to be payable from the bank’s part.

Section 136 of The Finance Bill, 2017, however removes the requirement of disclosure for political parties in lieu of finance received by way of an “Electoral Bond” [Previously as per section 29C (1) of The RPA, 1951, which was mandatory]

5. Political funding: Past and present scenario

How the “Electoral Bond“ will come into operation and analysis of effectivity of introducing such instruments will be understood in a better way through an empirical study by comparing alternatives.

We shall be first discussing the mode of finance which had been in existence for contributors willing to hide their identities even now:

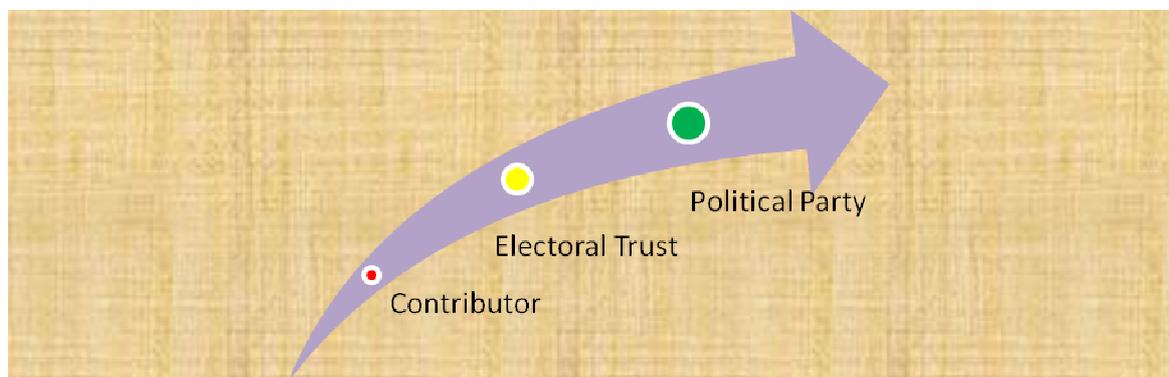


Figure 1 - Flow Chart of Political Funding (Created by Author)

“Electoral Trust” is a non- profit organization registered u/s 25 of The Companies Act, 1956 (Now registered as per section 8 of The Companies Act, 2013).It was an institutional setup which had worked as a custodian of contributors, facilitating them the confidentiality of their names. Such trusts had to disburse at least 95% of their accumulated balance prior to 31st March of the financial year to the political parties registered u/s 29A of The RPA, 1951. Where accumulated balance represents a total of funds received during the year from contributors and balance carried forward from the previous years (if any).Such trusts had prohibitions on using funds contributed either for the benefits of their own members or for the benefits of contributors (directly or indirectly).

To explicitly outline the functions of such trusts Central Government on 31st January, 2013, through inserting Rule 17CA in Income-Tax Act, 1962, provides a list of functions to be performed with the approval of Central Board of Direct Taxes (CBDT). The list of functions to be performed by an electoral trust can be found at

<http://www.incometaxindia.gov.in/Rules/Income-Tax%20Rules/2008/103120000000009096.htm>.

The trust needs to register itself and should bear the phrase “Electoral Trust” as a section 25 company of Companies Act, 1956 after its name and also needs to obtain an approval from CBDT, However after the enactment of Companies Act, 2013, the provisions corresponding to section 25 are given at section 8 of Companies Act, 2013 and regulations can be viewed at http://www.mca.gov.in/Ministry/pdf/The_Companies_Bill_2012.pdf. The operational guideline for such approval can be traced in [Notification No.9/2013/SO 309(E)].

In addition, the Electoral Trust had to submit to the ECI an annual report disclosing the details of contributions it received and the donations it gave to political parties, a part from an audit report vide guidelines issued on 6th June, 2014 by ECI. Detail of guidelines can be traced from http://eci.nic.in/eci_main1/PolPar/ElectoralTrust_06062014.pdf. (Abraham, Electoral Trust, 2017)

Contributor refers to persons eligible to donate funds to electoral trust. Following are the list of persons who are eligible to donate funds: Indian citizens, Domestic companies, Hindu Undivided Families (Including Jain and Sikh families), AOP's, BOI's and NRI's (Being citizen of India).

All above categories needs to quote their respective Permanent Account Number (PAN) at the time of donations except for NRI's (Indian Citizens) where quoting the passport number is mandatory. Every eligible contributor can claim deduction u/s: 80GGB and 80GGC of Income-Tax Act, 1961, from their respective gross total income subject to the amendment of I.T Act, 1961, through Finance Act, 2013 (w.e.f. : 1st April, 2014) where no deductions is allowed under 80GGB and 80GGC if donations are made in cash. See (<http://law.incometaxindia.gov.in/DIT/Income-tax-acts.aspx>).

There are certain persons from whom the trust is not suppose to collect donations for funding purpose of political parties, they are : Non- Citizens, Other Electoral Trusts, Government Companies, Any other Foreign Source/Foreign Entity (whether registered or not) [As defined under Foreign Contribution (Regulation) Act, 2010], See at <http://mha.nic.in/fcra.htm> and any Artificial Judicial Person, Local Authority which are wholly or partly funded by Government.

The party receiving the donations from the electoral trust needs to be registered under section 29A of The Representation of People Act, 1951 and also is to file a return [The responsibility lies on the treasurer(s) of the political party] before filing returns of income to I.T Department, in form 24A as per section 29C (1) of The RPA, 1951, if receipt is more than Rs. 20,000 from the contributor.

However, the proceedings have been quite simplified through the inception of Electoral Bonds as primarily the sources unveiled. The bonds presently are under process and yet require a finer tune which requires further discussions among the political parties. Electoral Bonds will altogether reduce the compliances of political parties with ECI in regards to receipts of donations under such mode and also protecting the identity of willing contributors so that they are not exposed to the threats of reprisals and vindictiveness. Besides it will also cut down the functions of intermediaries (Electoral Trusts) to eliminate the effect of black-money in funding.

6. Critique:

Announcement by the hon'ble finance minister Mr. Arun Jaitley on electoral bonds as a means of political party funding instrument is not free from criticism. Mr. T.S. Krishnamurthy (Former Chief Election Commissioner) had stated that such bonds will not be able to disclose the nexus between the corporate and political parties to the public and concerned. It might increase the transparency between the donor and the donee, yet public in general is still kept in dark as far as who gives money and how much money is given. That's not exactly what transparency means – he argued. (The Economic Times, 2018)

The alliance between corporate and political parties still remains confidential which are not desired on the backdrop of a good economy. Rather he suggested to Press Trust of India (PTI) that it would have been a better step to set up an Election Commission administered National Election Fund which would give the donor 100% tax benefits on any donation made thereto. (The Economic Times, 2018)

7. Conclusion and Recommendations:

Since long after independence we have found a direct route for financing political parties which is not yet established in any other side of the globe.

At the outset, we can say that the cornerstone of a sound and transparent electoral finance system regime is disclosure. Disclosure of donors and their background greatly empowers citizens, public spirited organizations, and election watchdogs to verify donor records, recipient parties and establish any quid pro quo or possible complicity.

Although the donor is required to comply with the KYC norms but the bond itself by its regulation hardly provides anyone (Including the ECI) the power of inspection. (Sahoo, 2018)

The two major pillars of transparency and accountability can only be established when strong records of disclosures and strict scrutiny of accounts are ensured.

Donor needs to purchase bonds in a non-cash mode from S.B.I by filling the KYC norms properly; S.B.I will therefore have the database of total bonds purchased along with the respective information of donor. What still lacks is the cross-checking of bonds, whom are they actually handed over to? As the contributions from bonds require no disclosure from political parties side to the ECI as a statute. The lack of cross-checking is the point of concern which has been also criticized by the former Election Commissioner Mr. T.S. Krishnamurthy. Although setting up of a National Fund under the administration of Election Commission will just be a transformation of the powers of an electoral trust to ECI and can hardly reduce the problems, as funding still holds an indirect route and involves a third party(ECI as an intermediary) intervention. Rather a better way would be if electoral bonds are made a sole route of funding political party and the Central Government, by amendment of statute enforces order to authorized scheduled banks to share the database of information (collected through KYC norms) with the ECI. In addition the mandating of disclosure u/s 29C (1) of The RPA, 1951, by political parties to ECI in respect of “Electoral Bonds” if established it will serve and make out a complete picture of compliance and will eliminate the inconsistency in the cross-checking process. As of now the electoral bonds are just the prototypes and are in the process of being tuned. I hope ultimate outcomes in the form of issuance of such type of bonds will definitely meet up the due requirements of disclosure and accountability and ensure a transparent view of finance, by driving out the black-money from Indian Politics.

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