

Needed: full disclosure on electoral bonds

The Supreme Court's suggestion to 'match the following' on political donations is impractical and incorrect



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In 2014, the Delhi High Court held that both the Congress and the Bharatiya Janata Party (BJP) were guilty of illegally accepting donations from two companies registered in India but whose controlling shareholder was Vedanta, a foreign company. The court held that this was in contravention of the Foreign Contribution (Regulation) Act (FCRA), 1976, as the donations accrued from "foreign sources" within the meaning of law.

Following this indictment, the two parties came together in the last memorable bipartisan move. In 2016 and 2018, the government amended the FCRA through the annual Finance Bills, to retrospectively legalise the violations. **The amendments and subsequent changes brought in by the current government enabled new and regressive pathways that afford full anonymity to corporate and foreign political donors.**

A new form of anonymity

While recently hearing a Public Interest Litigation (PIL) by the Association of Democratic Reforms (ADR), the Supreme Court downplayed the concerns of the corrupting influence of anonymous corporate and foreign money. It offered us voters the suggestion of "match the following".

Earlier, **only profit-making domestic companies could contribute to political parties; now loss-making companies can too. Earlier, foreign companies or companies where the controlling stake was held by a foreign company couldn't contribute; now they can. India's political parties could theoretically be fully funded by a foreign company operating in India or by a foreign entity through a shell company.**

In 2017, the then Finance Minister said **anonymous cash donations to political parties would be reduced from ₹20,000 to ₹2,000 to ensure greater transparency in political funding.** However, the concurrent introduction of electoral bonds brought a new form of anonymity to

thousands of crores of donations. It drastically reduced public and legislative oversight. **Only the ruling party via the State Bank of India (SBI) has a full account of all donations being made via electoral bonds, to itself and to Opposition parties. Parliament, the Election Commission and the Opposition parties do not have this information, nor do the public.**

The ADR PIL challenges electoral bonds as unconstitutional. In March 2021, the Supreme Court refused to stay the sale of electoral bonds before the West Bengal elections. Instead, the judgment listed several documents which supposedly establish a paper trail on donations – "all that is required is a little more effort to cull out such information from both sides (purchaser of bond and political party) and do some 'match the following'."

This is impractical and plainly incorrect. **The Right to Information (RTI) Act of 2005 enables easier access to information held by public authorities.** No ordinary person has the resources to navigate documents on obfuscating government websites or pore over income tax returns. The few civic and non-profit organisations that attempt to simplify information to enable accountability have been systematically delegitimised.

Suggesting a "match the following" is incorrect for three reasons. If we set aside individual donors and focus just on registered entities, we will find that the full scale of registered entities is unknown. Even if registered companies filed annual financial statements, many do not disclose political donations. Crucially, political parties do not need to disclose their electoral bond donors either.

According to back-of-the-envelope calculations, there are close to 25 lakh potential donors comprising just companies and firms. This includes about 12.6 lakh active private limited companies as of January 31, 2021. Unlike what is stated in the judgment, the annual reports of all these companies are not readily accessible on the website of the Ministry of Corporate Affairs. More than 12 lakh firms filed income tax returns for the assessment year 2018-19. Firms, unlike companies, have no regulatory mandate to submit their annual reports except for filing their annual tax returns, since their functioning is regulated by Acts other than the Companies Act of 2013.

Even if these documents are indeed filed and available in the public domain, they will not specify donations to parties. **Conveniently, the Finance Bill of 2017 amended Section 182 of the Companies Act of 2013 to remove the requirement for declaring disaggregated donations to political parties.** At best, company statements might have a total aggregate amount of all donations, including philanthropic ones. If we are lucky, these might be sub-categorised as "political contributions through electoral bonds." Nowhere are donations to specific political parties required to be mentioned.

Even if one combs through these documents to find an actual political donation, there is nothing to match it with. **Political parties do not need to disclose their electoral bond donors.** Strictly speaking, political parties are not even supposed to know their electoral bond donors. The only requirement is the annual audit reports with a total of all donations received via electoral bonds. These

reports are submitted with great delays. For instance, the audit reports for 2019-20 of major national parties were made available on the Election Commission's website only a few days ago. The BJP's report is not yet available as the Election Commission extended the deadline for the submission of Annual Audit Reports for 2019-20 to June 30, 2021. Even if these reports are submitted on time, there is no way to match a donation of a company to that received by a political party as only aggregate amounts are available.

Hence, the "match the following" suggestion of the Supreme Court falls flat on its face. It is impossible for an average voter to pore over documents of lakhs of entities and track potential company and firm donors. Further, recipient-wise information is unavailable. Unlike the tall claims of electoral bonds enabling transparency, it is only RTI applications with the SBI that offer a glimpse into the crores of money funding political parties, and therefore influencing public policies. If they chose to, the Supreme Court or the legislature could order full and real-time disclosure, to the actual benefit of transparency and accountability. Instead, meagre civil society resources are expended in filing PILs and RTI applications, at significant personal risk.

Winners and losers

In effect, electoral bonds give political power to companies, wealthy individual donors, and foreign entities, thus diluting the universal franchise of one voter-one vote. **Every vote is not equally valuable if companies can influence policies through hidden donations.** The winner of this arrangement is the ruling party, whether at the Centre or in a State, and the loser is the average voter. **Companies and political parties could exercise moral leadership and voluntarily disclose the identity of recipients and donors, as the Jharkhand Mukti Morcha recently did.** Till then, voters are stuck with a ruling party with war chests of resources, being subject to relentless election campaigns, while donors surreptitiously and directly influence policy.