

## The sordid story of the unholy Bond

Blood money, ransom, or outright bribe?

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Responding to widespread public criticism of electoral bonds in the light of recent revelations, Nirmala Sitharaman, the Finance Minister, is reported to have said, “*All major parties encashed electoral bonds; nobody has moral authority to say anything*” ([https://m.economictimes.com/news/politics-and-nation/all-major-parties-encashed-electoral-bonds-nobody-has-moral-authority-to-say-anything-says-finance-minister/amp\\_article/108826931.cms](https://m.economictimes.com/news/politics-and-nation/all-major-parties-encashed-electoral-bonds-nobody-has-moral-authority-to-say-anything-says-finance-minister/amp_article/108826931.cms)). When someone asked her whether she would contest in the ensuing elections, she said that she had declined BJP President JP Nadda’s offer to contest Lok Sabha because she does not have ‘*that kind*’ of money to fight elections (<https://www.livemint.com/politics/news/fm-nirmala-sitharaman-has-no-money-to-contest-lok-sabha-polls-heres-how-much-it-costs-to-fight-elections-in-india-11711622197912.htm>)

On the other hand, her colleague, Hardeep Singh Puri, the Union Minister for Petroleum, described the money received through electoral bonds as “*gifts*”. Explaining this further, *he said, "Every morning you get up and you get gifts thrown up from the other side. These are gifts which come our way, electoral bonds was one of them. We suddenly discovered a party who got 303 seats got 3000 crores worth of electoral bonds and a party with hardly any seats got 1600 crores. I have been overseas, tell me any system across the world where democracy works without political funding."* (<https://www.timesnownews.com/india/union-minister-hardeep-puri-calls-electoral-bonds-gifts-explains-why-times-now-summit-2024-article-108850896>)

While there is nothing moral anyway about electoral bonds, the off-the-cuff responses of the two senior colleagues of Prime Minister Modi speak volumes about the dishonesty surrounding electoral bonds. When Nirmala Sitharaman said that she did not have “*that kind*” of money to fight elections, she tacitly admitted that no ordinary citizen in India could afford to contest elections with the kind of money that political parties, particularly the BJP, could garner for themselves through all kinds of dishonest means, thus excluding almost 90% of the billion helpless Indian voters from even trying to contest elections.

Hardeep Puri's description of the bond money as “*gift*” raises a serious concern about the motives

underlying the BJP receiving corporate donations. Corporate entities by themselves are not voters and, therefore, a gift given by a company is not equivalent to a voter giving his/her humble contribution to a political party. When a private company gifts a sizeable amount to a political party, it is certainly not out of its love for democracy. Since private companies' decisions are mostly profit-driven, when they donate to the party in power, they expect favours in return. Hardeep Puri's view that democracies cannot work without political funding represents the view of those who tolerate dishonesty in politics.

The Finance Minister's contention that other political parties have no moral authority to question the BJP on electoral bonds is not entirely correct, as it is the BJP that rules at the Centre, controlling enforcement agencies like the Enforcement Directorate (ED), the CBI and the income tax authorities, who could intimidate private companies and extort money from them. The recent revelations have brought to light how raids on private companies have forced them to donate to the party in power. Also, it is the NDA government that amended laws relating to environmental protection, forest conservation, mineral regulation etc. to help private promoters of projects profiteer at the cost of public interest. Another ugly dimension of electoral bonds is that shell companies having little profits gave large donations to many political parties, especially the BJP, suggesting laundered money finding its way into electioneering.

One political party even nominated an electoral bond donor to the Rajya Sabha! What a travesty of democracy!

Nirmala Sitharaman and her party should know that some left parties questioned the ethics of the electoral bond scheme and refused to accept donations through it. Had the BJP really cared to cleanse politics of corruption, it would not only have desisted from introducing such a dishonest scheme as that of electoral bonds but also banned corporate donations altogether.

### **Corporate donations & political corruption, two sides of the same coin:**

The implications of private company donations to political parties have been a subject of serious debate in India for more than half a century.

Initially, there was no prohibition on corporate donations when electioneering was not as expensive as it is today and when political parties did not view politics as a profitable business venture.

There was one instance in the late sixties that raised a furore in the Parliament when concerns were expressed about a donation of Rs 40 lakhs given by the Cement Allocation and Co-ordination Organisation to some political parties and individuals. Madhu Limaye, a staunch follower of Ram Manohar Lohia [*whom Prime Minister Modi praised recently and said, “we are working hard to fulfil his vision for a strong India”* ([https://www.pmindia.gov.in/en/news\\_updates/pm-pays-tributes-to-dr-ram-manohar-lohia-on-his-birth-anniversary-6/](https://www.pmindia.gov.in/en/news_updates/pm-pays-tributes-to-dr-ram-manohar-lohia-on-his-birth-anniversary-6/))], who protested vehemently in the Parliament, calling it nothing but outright political corruption. Unlike today, instead of trying to suppress the voice of the opposition, the then Congress government readily responded and agreed to amend the Companies Act to ban corporate donations to political parties altogether (<https://www.thehindu.com/archives/ban-on-firms-funds-for-parties-govt-decision/article21006459.ece>)

As time passed by, electioneering became synonymous with splurging money to buy votes, or even buy elected representatives, which in turn called for more and more funds. Crowdfunding for political parties, which was the predominant source of funds during the freedom struggle and during the first few years after Independence, progressively yielded place to corporate funding, which in turn created an unholy bond between big business houses and political parties. Apart from soft-peddalling cases against private companies for statutory violations, the ruling party could also unleash its enforcement agencies against them to extort money. The relationship between business houses and political parties represents a two-way bond, with the former dictating terms to the latter to adopt “*business-friendly policies*”, a euphemism for twisting policies and laws to suit their interests, even if they hurt the public interest or even the national interest, and the latter taking corporate help to fund electioneering to be able to continue in power. In other words, a democratic system that the people inherited at the time of Independence gradually degenerated into a “*corporatocracy*”, which the framers of the Constitution would never have even dreamt of!

The growing nexus between politics and business made it difficult for the ruling political establishment to resist the temptation of relaxing the ban on donations. As a result, the Companies Act was amended in 1985 to permit company donations, though for the sake of public consumption, the amended provision limited the donations to 5% of the company's average profits for three years. As the appetite for corporate donations increased fast, the ceiling on donations was relaxed to 7 1/2% and an entirely new idea of business houses donating funds to political parties through the instrument of Electoral Trusts was introduced.

While all these statutory changes made it possible for political parties to receive sizeable corporate donations, to a large extent, the relevant provisions still ensured a certain extent of transparency and accountability in electoral funding.

Meanwhile, concerns were expressed about political parties receiving donations from foreign sources. This led to the enactment of the Foreign Contributions (Regulation) Act of 1976 (FCRA1976), later replaced by an improved version in 2010 (FCRA2010), which imposed a total ban on foreign funding of political parties.

Despite the restrictive provisions of the Companies Act and the FCRA, political parties were surreptitiously accepting donations in kind from domestic companies and direct/indirect donations from foreign sources, in violation of the statute.

On a writ filed by the author of this article and the Association for Democratic Reforms (ADR) in 2013 against FCRA violations by the two national political parties, the Delhi High Court pronounced a judgement on March 28, 2014 upholding the grounds on which the writ was based and ordered the Ministry of Home Affairs (MHA) to proceed against the two parties. When the two parties contested that order before the apex court, the latter dismissed their appeals on 29<sup>th</sup> November 2016. Strictly, the MHA should have initiated prosecution proceedings against the Congress and BJP. However, the NDA government led by the BJP had other ideas.

In 2016, through the backdoor of the Finance Act, the NDA government hustled through retrospective amendments to FCRA 1976 & 2010 to (i) condone the past FCRA violations committed by political parties and (ii) permit political parties thereafter to accept foreign donations through subsidiaries of foreign companies in India, though it amounted to going against the apex court's order. As if that was not enough, the NDA government went one step further in 2017 and removed the existing ceiling on donations stipulated in the Companies Act. This meant that political parties could accept unlimited donations from private companies (<https://thewire.in/politics/fcra-reviving-lapsed-law-amending-retrospectively-trumps-ethical-legal-barriers>)

During the last decade or so, electioneering became so expensive that the ruling party at the Centre had no hesitation in looking for more open-ended but less transparent sources of funding. The result was the egregious Electoral Bond scheme, introduced through the Finance Act of 2017, which protected the privacy of the donor at the cost of the voters and created new avenues for political parties to extract money from business houses.

### **Anonymous, life-threatening donations violate Articles 19 & 21:**

When the NDA government hurriedly enacted the legislation on electoral bonds, it neither had the patience to consult other political parties nor the courtesy to allow the Parliament to discuss it in detail. The opacity that surrounds electoral bonds made a mockery of the citizen's "*right to know*" under Article 19 of the Constitution and disturbed the level-playing ground among political parties. The way it was designed, funds could flow through bonds to political parties even from sources working against the national interest, as the only agencies privy to the details of donors would be the State Bank of India (SBI) and the NDA government itself, whose main concern was to maximise the inflow of donations, not bother so much about the public interest part of it. In its anxiety to exercise a close watch over the SBI, the BJP even took special care to plant its nominee on SBI's Board of Directors!

The list of bond donors is truly illustrious. Among them were those who violated environmental norms, polluted the environment and damaged people's health, drug firms that supplied sub-standard medicines, crippling or even killing people, especially children and an engineering firm compromising the safety norms and endangering workers' lives. In all such cases, in addition to violating the citizen's right to know under Article 19, the donors violated the citizen's "*right to live*" under Article 21. In all such cases, both the donors and the donees are liable to be prosecuted under the relevant penal laws.

It is unfortunate that the 2019 general elections and the intervening State Assembly elections were allowed to be conducted with a clear financial advantage for the BJP which received the bulk of the bond money.

In any case, after protracted litigation, the apex court finally held the electoral bond scheme to be violative of the Constitution and ensured that the details of party-wise donations and the identity of the donors were disclosed in the public domain.

Despite the apex court's orders, it appears that the BJP has a fairly sizeable amount received through bonds but still remaining unspent, which, unless restricted, the party would deploy in the ensuing elections to the disadvantage of other political parties. The Election Commission of India (ECI) has ample authority under Article 324 to freeze that amount and stop the BJP from spending on elections, pending a detailed scrutiny by an appropriate authority.

### **BJP, the biggest beneficiary:**

As the party in power at the Centre and as a party having no qualms whatsoever about leveraging its full regulatory might over the corporate world, the BJP remained the largest beneficiary of electoral bonds amounting to Rs 6,986 Crores, five times more than its nearest competitors, the TMC and the Congress (<https://www.hindustantimes.com/india-news/electoral-bonds-election-commissions-data-shows-which-party-received-how-much-10-points-101710721398573.html>). This gave a distinct financial advantage to that party over others in terms of mobility across the country, conducting massive public rallies, buying legislators on a large scale and splitting rival parties and pouring money into a range of other means of winning elections.

In terms of offering *quid pro quos* for bond donations, the BJP on its part has had no hesitation whatsoever to change environment laws and procedures, modify the Forest (Conservation) Act, amend the Mines and Minerals (Development & Regulation) Act, amend the Electricity Act, twist procedures and ignore protective laws for tribals for making it easier to hand over precious mineral blocks cheaply to private miners.

### **Electoral bonds, sub-standard drugs & crippling of people's health:**

While the bond money, as indicated above, has certainly tilted the balance of elections in favour of the BJP in violation of all democratic norms, their life-threatening consequences are far more worrisome.

The donors' list includes several drug manufacturers who were being investigated for crimes involving supply of sub-standard medicines that resulted in damaging people's health and, in some cases, even causing the death of children.

It has been reported that *“seven of the 35 pharmaceutical companies which have contributed Rs 1,000 crore to political parties through electoral bonds were being investigated for manufacturing poor quality drugs such as cough syrups and Remdesivir”*

(<https://economictimes.indiatimes.com/news/politics-and-nation/7-pharma-firms-facing-probe-for-poor-quality-drugs-funded-parties-through-electoral-bonds-congress/articleshow/108678993.cms?from=mdr>).

It is still in fresh in our memory how sub-standard cough syrups supplied by Indian manufacturers

caused the death of children in other countries, bringing a bad name to the domestic Pharma industry.

Such cases call for an urgent investigation, as any political party getting bribed by a drug company for compromising investigation against it would amount to a heinous crime against the people, attracting the penal provisions of the newly enacted Bharatiya Nyaya Sanhita and also the relevant provisions of Drug (Control) Act, 1950.

Some of those drug manufacturing companies have brought ignominy to India in other countries where sub-standard drugs have resulted in the death of children.

### **The curious case Silkyara Tunnel collapse:**

One of the electoral bond donors in the case of BJP is the Navayuga Group involved in constructing the Silkyara Tunnel in Uttarakhand, which collapsed in November, 2023, endangering the lives of 41 workers.

A press release issued by the NDA government in 2018 (<https://pib.gov.in/Pressreleaseshare.aspx?PRID=1521024>) stated,

*“The Cabinet Committee on Economic Affairs chaired by the Prime Minister Shri Narendra Modi, has given its approval to the construction of 4.531 km long 2-Lane Bi-Directional Silkyara Bend - Barkot Tunnel with escape passage including approaches on Dharasu -Yamunotri section between Chainage 25.400 Km. and Chainage 51.000 Km in Uttarakhand”.*

When the tunnel collapsed, there were reports that the contracting firm failed to provide an escape passage, which resulted in trapping the workers. From subsequent new reports

([http://timesofindia.indiatimes.com/articleshow/106239742.cms?](http://timesofindia.indiatimes.com/articleshow/106239742.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

[utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://timesofindia.indiatimes.com/articleshow/106239742.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)), it appears that a fact-finding expert team did point to some technical lapses on the part of the contractor but seemed to underplay the failure of the company to provide an escape passage as required in the contract, ostensibly on the ground that global safety norms did not require such an escape outlet as Silkyara Tunnel had two corridors (<https://timesofindia.indiatimes.com/city/dehradun/silkyara-has-2-corridors-doesnt-need-escape-passage-officials/articleshow/105638267.cms>).

Is the NDA government trying to provide a convenient alibi for Navayuga itself to escape criminal liability for the disaster, merely because it gave Rs 55 crores of electoral bonds to the BJP? If the answer is in the affirmative, which an independent enquiry alone can establish, should not the BJP be held responsible for the criminality involved?

**Did a part of the bond money come from intimidation/ extortion?**

It is reported that 41 companies facing probe by the CBI, ED and the I-T Department gave Rs 2,471 crore to the BJP through electoral bonds, and Rs 1,698 crore of it was donated after raids by those agencies ([https://www.business-standard.com/companies/news/41-companies-facing-probe-by-central-agencies-in-electoral-bond-list-124032201001\\_1.html](https://www.business-standard.com/companies/news/41-companies-facing-probe-by-central-agencies-in-electoral-bond-list-124032201001_1.html))

If what has been reported is factually correct, it amounts to the party in power deploying its band of loyal enforcement agencies to intimidate private companies and extort money from them, which amounts to a serious offence under the Bharatiya Nyaya Sanhita, 2023.

**Bond money to favour oligarchs against consumers' interests:**

It has been reported that the BJP received Rs 150 Crores of bond money from a telecom major (<https://scroll.in/article/1065827/bharti-groups-rs-150-crore-bond-donation-to-bjp-coincided-with-modi-governments-telecom-u-turn>), coinciding with the NDA government's U-turn in telecom policy that resulted in circumventing the auction route for valuable spectrum. This perhaps represents only a sample of how bond money is closely linked to policy benefits showered by the NDA government on business houses. A thorough investigation is necessary to establish the nature and magnitude of such *quid pro quos* and the cost to the public exchequer.

**Bond money from shell companies:**

Among the bond donors are at least 18 companies that figure in the list of “*high risk*” companies notified by the Finance Ministry in 2018 from the point of view of the Prevention of Money Laundering Act (<https://fiuindia.gov.in/pdfs/quicklinks/High%20Risk%20NBFCs%20updated.pdf>). After donating to the party in power, those companies seem to have abruptly disappeared from the list (<https://thewire.in/politics/18-of-19-firms-marked-high-risk-by-finance-ministry-that-bought->



electoral-bonds-went-off-future-list), suggesting that it was the bond money that did the trick!

There are at least 16 out of the top 200 firms that donated through electoral bonds, even though they were running their businesses in loss during the three previous consecutive years. Though they were incurring losses, they donated a whopping Rs 710 crore to political parties. Of this, Rs 460 crore (over 60%) went to the BJP (<https://www.reporters-collective.in/trc/electoral-bonds-the-art-of-extracting-wealth-from-loss-making-firms>)

This shows how the electoral bond scheme permitted political parties, particularly the BJP, to get donations through dubious shell companies from unknown sources. It is ironic that the NDA government expected to enforce the Prevention of Money Laundering Act should become a party to its violation.

### **Shell companies blessed by the NDA government?**

“Shell” companies is a term not defined in the Companies Act. The Corporate Affairs Minister admitted this in the Rajya Sabha on 6-2-2018 and suggested the need to adopt a proper legal definition of it. A consistent definition of it is required to be incorporated not only in the Companies Act but also in the other related legislations such as the Prevention of Money Laundering Act and in the corresponding SEBI regulations. Considering that overseas shell companies have created a shadow economy posing a serious risk to the domestic economy, one would have expected the government to consult experts, study how the term is defined elsewhere and get the necessary legislative amendments enacted in the Parliament. On the contrary, the NDA government has deliberately chosen to allow the legislative gap to continue, allowing overseas shell companies to thrive. Apart from the legislative gap, the Ministry of Finance issued instructions on 22-8-2022 to allow overseas shell companies to operate in such a manner that they could round-trip/ launder money into India (<https://countercurrents.org/2023/02/overseas-shell-companies-a-shadow-economy-a-threat-t-national-interest/>)

It is therefore possible that a portion of money flowing through electoral bonds has originated from such shell companies. This certainly calls for an investigation, as money received by political parties from sources that operate against the national interest could have tainted elections in India.

### **What next?**

Considering that the apex court has held electoral bonds to be unconstitutional, the ECI should immediately freeze all unspent electoral bond money lying with the political political parties to ensure that such illegal money is not spent on elections.

Apart from the illegality of electoral bonds, the donations received through electoral bonds could possibly be linked to grave crimes against the people and, therefore, such money should not be allowed to taint elections.

The President of India, in the interest of upholding the democratic principles that lie at the heart of our Constitution, should ask the apex court to set up an independent judicial committee to get the kind of concerns listed above investigated so that appropriate remedial action could be initiated.

Corporate donations to political parties negate the very idea of democracy. It upsets the level-playing ground among political parties in elections. It also places candidates not having financial means to contest elections at a disadvantage. It subjugates political parties to corporate control eroding the credibility of our democratic system. Corporate control over governance hurts the public interest. Therefore, as a matter of principle, there should be a total ban on corporate donations.

To enable any citizen to be able to contest elections, irrespective of his/her having adequate finances, the State should step in and provide reasonable financial support to all such citizens. There should be stringent limits to the expenditure incurred by political parties and individual candidates and any expenditure in excess should be deemed to amount to a corrupt practice leading to de-registration of the party or disqualification of the candidate as the case may be.

As an authority set up under Article 324, the Election Commission can exercise power to freeze the unspent electoral bond money lying unspent with political parties but the Commission seems to be far too subservient to the political executive to be able to exercise its authority. It is imperative that all political parties should collectively demand for unshackling the Commission from the clutches of the political executive.

