

# EXPLORING ELECTORAL BONDS IN THE LIGHT OF CONSTITUTIONALISM

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## Abstract

Free and fair elections are essential to any democracy. In order to finance elections, India, one of the most populous democracies, introduced an electoral bonds program in 2018. This initiative affects election funding by allowing corporations to hide the specifics of their political contributions by keeping the identities of the bond buyer and beneficiary secret. Because this anonymity makes money laundering easier, businesses find it desirable. This article presents a thorough review of many statutes and laws related to the electoral bonds scheme. Sadly, by delaying court cases related to this system, the Indian judiciary has failed in its duty as the last arbiter and protector of the constitution. This delay gives the ruling party an unfair edge. Anonymity and secrecy undermine accountability in democracies. The current election funding arrangement is a threat to fair and transparent elections. India's democracy has suffered as a result of this new political financing framework, and the general public is still unaware of whether the ruling party supports the corporate donations made possible by it.

**KEYWORDS - Electoral Bonds; Free and Fair Elections; Democracy; Constitutionalism**

## I. INTRODUCTION

Every democracy has to deal with the challenging issue of funding elections, which is usually polluted by dishonest contributions made with the goal of obtaining power or favorable policies and damaging the reputations of democratic institutions. In response, the Indian government included the electoral bonds program in the 2017–18 Union Budget. Through this service, individuals, companies, or families can purchase electoral bonds from approved State Bank of India branches in a range of quantities and make anonymous payments to political parties. There are no restrictions on the number or frequency of transactions. These bonds, which resemble interest-free promissory notes, cannot be bought with cash in order to prevent the use of black money. These bonds are only offered to Indian citizens or companies that have their headquarters there. The intention is to increase transparency and accountability in political fundraising while safeguarding the anonymity of donors.

Election bonds can only be purchased by individuals who satisfy all current KYC (know your customer) requirements. Payments for election bonds must be made via a bank account, regardless of the intended recipient. These bonds, which are valid for up to 15 days, can only be used to donate to political parties registered under Section 29A of the Representation of the People Act, 1951. Political parties must have secured at least 1% of the votes in the most recent general election for the Lok Sabha or a Legislative Assembly in order to be eligible for these bonds. These bonds can only be cashed by approved political parties via a specific bank account with the bank. Election bonds may be bought singly or in combination, and the party treasurer may deposit them into a bank account that has been specifically approved and is supervised by the Reserve Bank of India. The money will go to the Prime Minister's Relief Fund (PMRF) if the bonds are not cashed within 15 days. The goal of this electoral bonds program is to finance political initiatives in India.

Political parties with adequate cash or resources stand a better chance of winning elections because they can run campaigns efficiently and raise money through electoral bonds. They can encourage more people to get involved in politics by using their influence to support candidates from underrepresented groups like Scheduled Castes (SC) and Scheduled Tribes (ST).

## II. THE ELECTORAL BOND SCHEME: AN OVERVIEW

Companies and individuals can take part in the scheme by purchasing electoral bonds from banks with a license and giving them to political parties, who would subsequently redeem them for cash.

The electoral bonds program was introduced in 2018 in response to long-standing worries about transparency and accountability in political funding. This effort deviated from the tradition of contributing money to political campaigns, which has come under fire for being opaque and unable to identify donors, raising concerns about how this practice may affect political results.

#### A. Objectives

- Strengthening Transparency

The primary objective of the Electoral Bond Scheme was to enhance political funding transparency through the use of reliable financial institutions.

- Promoting Formalization

The program attempted to speed up the political donation process while offering incentives for contributors to use banking channels. Reducing reliance on monetary donations—which are harder to trace and more susceptible to fraud—was the aim of the initiative.

- Preserving Donor Confidentiality

The idea aimed to preserve donors' privacy while enhancing the transparency of political fundraising. The argument put out by supporters was that revealing the names of contributors may provoke criticism of the initiative and deter individuals from contributing.

- Fostering Corporate and Personal Contributions

The program's objective is to provide a secure, confidential means of encouraging individuals and organizations to donate funds to political parties. This tactic aims to diversify the sources of political funding while lowering the likelihood of coercion or undue influence on contributors.

- Streamlining Contributions to Politics

The objective of the Electoral Bond Scheme was to streamline the process of political fundraising. It also aimed to increase the total amount of money lawfully provided to political parties while also making contributions to them more convenient and attractive to contributors.

#### B. The Electoral Bonds Mechanism

The goal of the electoral bonds system was to improve the political donation process in India by making it more transparent, anonymous, and user-friendly. Here's a brief summary of how the scheme operates:

- Buying and Selling

**Issuance:** The Indian government issued electoral bonds through the State Bank of India (SBI), the largest public sector bank in the country.

**Denominations:** The bonds, which were available in multiple denominations ranging from ₹1,000 to ₹1 crore, allow donors of various financial capacities to fund political parties.

**Purchase Windows:** Prior to important elections, the government may set aside specific periods of time during which bonds may be purchased. These windows were typically open for ten days each quarter.

- The Donation Process and Anonymity

Individuals, companies, or groups may purchase anonymous electoral bonds; the issuing bank would be the only entity to be aware of the buyer's identity.

Once bonds were acquired, contributors could assign them to specific political parties. Eligible parties were those registered under Section 29A of the Representation of the People Act, 1951, and those that garnered

at least 1% of the vote in the preceding assembly or general election.

Political parties could then cash these bonds through their verified accounts at respectable financial institutions within a specified period of time, often about 15 days, ensuring that the funds were transferred into their official accounts.

- Disclosure and Accountability

**Banking Channel:** By using the banking system for all transactions, the electoral bonds program sought to guarantee the transparency and traceability of all donations.

**Election Commission Reporting:** To establish some oversight over political financing, political parties that accepted donations through electoral bonds were obliged to inform the Election Commission of India (ECI) of the total amount received.

### III. THE CONCERNS AND ISSUES PERTAINING TO DEMOCRACY IN INDIA

A free and fair election depends on upholding fundamental democratic rights including the freedom of assembly, association, and opinion. Elections are necessary to create political opportunities and increase the number of individuals participating in politics as a whole. Political parties and civil society use elections as a means of organizing, mobilizing, and engaging the public on a variety of issues, fostering discourse on significant topics like public policy. However, funding political campaigns has played a significant role in the growth of political corruption, which was first observed in India during the country's first general elections after independence. Companies were a major source of funding for political parties during this time. Particularly the Birla family made important contributions that influenced the post-independence economic policies of the Congress party. In 1968, Prime Minister Indira Gandhi repealed Section 293A of the Companies Act in an effort to curtail corporate influence in politics. There is speculation, though, that this move may have also been made to prevent corporate interests from supporting political rivals. Because public funding is insufficient to replace corporate donations, politicians are increasingly using secret or "black" money for their election campaigns.

Corporate party support has increased dramatically in recent years, primarily as a result of the introduction of electoral bonds. The Election Commission of India (ECI) has issued the first data showing the growing financial consequences of Indian elections. Between 1952 and 2014, the amount spent on elections per constituency rose from ₹0.26 million to ₹71.38 million. Electoral bonds, which were introduced in the 2017 Union budget, allow both domestic and foreign firms to make anonymous payments to political parties.

Electoral bonds, which have already raised over Rs 9800 crore, according to the Association for Democratic Reforms (ADR), have become an essential channel for big, opaque contributions, making money that was previously unlawful lawful. Political parties combine this financial support with objectives for policies that further the general good to give them significant influence over laws and public policy. The state formulates

and pursues its objectives through public policy, which are subsequently implemented by governmental bodies. Political parties use their influence in the governance and legislative processes to forward specific policy goals by interacting with the electorate. A range of stakeholders, including advocacy groups and civil society organizations, influence the policy-making process and, as a result, influence outcomes in unexpected ways through lobbying and collaborative efforts.

#### IV. CRITICISM OF THE ELECTORAL BONDS

The public authority vested in legislators can swiftly deteriorate from discretionary to corruptive, creating a stark divide between the state's and the people's influence.

It was obvious that this concept was badly thought out. Despite being filed in the Lower House as a money item, it did not meet the necessary constitutional standards to be designated as such. According to the Constitution, a money bill is any legislation that deals with the appropriation of funds from the Consolidated Fund of India or the imposition, abolition, remission, modification, or regulation of taxes. Money initiatives fall under the purview of the Lower House and, if passed, are subject to the President's signature without veto authority, which appears to be the primary intention behind this strategy. However, the final decision about whether a law qualifies as a money bill belongs to the Speaker alone, and the Speaker's choice is not subject to judicial review.

Electoral bonds aim to accomplish two main goals: firstly, they want to stop political parties from accepting donations from unreported or "dark money"; secondly, they want to allow for open, cashless fundraising. However, a few government programs concerning electoral bonds present an alternative perspective:

1. Section 29(c) of the Representation of People's Act, 1951 has been changed to exempt political parties from disclosing contributions obtained through electoral bonds.
2. Concerns have been raised about potential corporate influence due to Section 182(3A) of the Companies Act, 2013, which exempts firms from declaring donations made to political parties.
3. Political parties stand to benefit greatly from electoral bonds because contributions made through them are free from federal income taxes under Section 13A(b) of the Income Tax Act of 1961.

This conduct violates several fundamental rights. Fundamental rights are meant to uphold the lofty objectives of justice, liberty, equality, fraternity, and individual dignity as mentioned in the Preamble. For this reason, it is deemed inappropriate to disregard their rights.

There are provisions of the Finance Act, 2017 that are deemed arbitrary and illegal. Some restrictions are perceived as being arbitrary and unreasonable, such as the one concerning donor confidentiality and the ambiguity of the procedural norms. The Act's arbitrary and ambiguous nature is further compounded by its vagueness on the gravity of the penalties for violating secrecy.

These two essential concepts—reasonableness and non-arbitrariness—form the foundation of the entire constitution and play a major role in its overall structure. The judiciary retains the authority to declare legislative and executive actions unconstitutional through well-reasoned verdicts even in cases where these fundamental values are violated.

The concealment surrounding contributions and receipts made through electoral bonds constitutes a clear violation of a citizen's right to information access. The freedom of speech and expression protected by Article 19(1)(a) of the Constitution is intimately related to this right. The Supreme Court's recognition of the Right to Information as a basic right has made it possible for citizens to obtain information on government offices. A competent court may obtain bond-related information under the electoral bond scheme's Clause 7(4). In cases where law enforcement initiates criminal proceedings, it is still unclear which specific "competent court" would receive this information. Moreover, the plan fails to specify whether banks are required to furnish the "competent court" with comprehensive information at different stages of the legal proceedings, such as the inquiry, trial, or appeal.

## V. JUDICIAL EVASION: A TRANSITION FROM JUDICIAL ACTIVISM

February 15, 2024: The Union's 2018 Election Bonds (EB) Scheme was unanimously invalidated by a five-judge Constitution Bench led by Chief Justice D.Y. Chandrachud. The Bench concluded that the Scheme violated Article 19(1)(a) of the Constitution, which guarantees voters' freedom to obtain information. They emphasized that people cannot legitimately use their right to vote if they are unaware of the funding that political parties get. Under the Scheme, political parties were allowed to accept anonymous corporate money. The petitioners included the Communist Party of India (Marxist), Common Cause, the Association for Democratic Reforms (ADR), and other parties, arguing that the Scheme promoted "opacity in political funding" and allowed "widespread election corruption."

The Association for Democratic Reforms (ADR), Common Cause, an NGO, and the Communist Party of India (Marxist) have all filed suits before the Supreme Court challenging the validity of electoral ties. Electoral bonds are primarily criticized for violating the right to information by serving as opaque bearer instruments that aid the ruling party and permit eligible political parties to receive anonymous funding. The imposition of arbitrary disclosure limits results in a lack of accountability and openness. Concerned about the ADR's attempt to halt the issue of electoral bonds prior to assembly elections, the Supreme Court decided to defer rendering a ruling. The court questioned the Indian government about the precautions taken to prevent election bond funds from being misused for purposes such as funding terrorism or instability. Despite these concerns, the Supreme Court opted to uphold the election bond auction's unrestricted continuance. Since the case is still ongoing before the court, the hearing has been rescheduled.

The basis of India's democratic system and the Indian Constitution both depend on free and fair elections. The legitimacy of electoral bonds has caused controversy over the last four years, and this has led to criticism of the judiciary for its prolonged hold-ups in resolving significant constitutional questions. Policies that are perceived to benefit the ruling party, such as the Citizenship Amendment Act of 2019, the Unlawful Activities (Prevention) Amendment Act of 2019, the repeal of Article 370, and the electoral bond scheme, have been the subject of particularly contentious disputes. Some who oppose the current administration argue that the atmosphere created by the drawn-out legal proceedings is advantageous to them. During the drafting of the Indian Constitution, the Constituent Assembly of India intended for disputes pertaining to fundamental rights to be resolved expeditiously, preferably within a month. Concerns have been raised over the potential for the administration to gain from postponing rulings. Recent events have only served to confirm these fears. The quick administration of justice is one of the most significant duties of the judiciary. The court may decide to stray from its constitutional guardianship responsibilities due to the backlog of important constitutional issues, which would give the government more discretion when passing legislation.

Since the 1970s, the Indian Supreme Court has been thoroughly dissecting the legal and structural foundation of the Indian constitution. It is evident from the landmark *Kesavananda Bharti* case that the executive branch lacks the authority to alter the fundamental clauses or structure of the constitution. The Supreme Court has faced criticism recently for failing to fulfill its roles as last arbitrator and protector of the Constitution. For over four years, the Supreme Court has been discussing the validity of electoral bonds.

Political parties are able to raise a substantial amount of money for local and national elections because to the anonymous fundraising system established by these bonds. As a result, the integrity of free and fair elections has been compromised, unfairly favoring the ruling party. In addition, the Supreme Court has postponed the Public Interest Litigation, which was launched in 2015 and sought to categorize national political parties as public bodies under the Right to Information Act of 2005. Because of the judiciary's apparent hesitation or passivity in a number of cases, questions have been raised about how committed it is to upholding its constitutional duties. These kinds of advancements put constitutional democracies in grave danger because they undermine the judiciary's fundamental role as the protector and defender of the constitution.

## VI. CONCLUSION

The objective of introducing the electoral bonds system in 2018 was to enhance the openness of digital transactions in India's political funding while safeguarding the anonymity of donors. There have also been issues with its deployment. Political parties have exploited systemic weaknesses, potentially by manipulating donations and increasing the degree of secrecy around political funding, in spite of efforts to curtail cash contributions and establish legal fundraising avenues. The plan's opponents argue that it undermines democratic norms by allowing undisclosed corporate influence and jeopardizing electoral transparency. There have been

concerns expressed concerning election accountability and fairness due to the government's emphasis on contributor anonymity and its control over the State Bank of India. As the program grows, more oversight and adjustments will be needed to ensure that electoral funding practices uphold democratic principles and maintain the legitimacy of Indian elections.

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