

Electoral Bonds Scheme

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Abstract- The Electoral Bond Scheme, introduced by the Government of India in 2018, represents a significant policy shift in the arena of political funding. Aimed at fostering transparency in political donations while ensuring the anonymity of donors, the scheme has generated extensive debate and controversy. This abstract delves into the rationale, framework, implementation, and constitutional concerns of the Electoral Bond Scheme, alongside its impact on electoral transparency and democratic accountability in India.

Indexed Terms- Democracy , Bonds , Accountability , Scheme , Transparency

I. INTRODUCTION

Political funding in India has long been marred by a lack of transparency and accountability. A significant portion of political donations has traditionally been made in cash, with little to no disclosure about the sources of such funds. This unregulated flow of money has often fuelled a shadow economy, enabling the proliferation of black money and undermining the foundational values of democracy. The opaque nature of political financing has raised concerns about corruption, untraceable money, and undue influence by anonymous donors on the country's electoral process.

Recognizing the pressing need to address these issues, the Government of India introduced the Electoral Bond Scheme in 2018. The scheme was conceptualized as a reformative measure aimed at creating a structured and regulated mechanism for political donations. It sought to curb the influence of black money in elections while simultaneously addressing the delicate issue of donor confidentiality. The broader goal was to ensure cleaner funding channels that promote a more transparent and accountable electoral process.

The Electoral Bond Scheme was designed to strike a balance between two competing objectives. On one hand, it aimed to safeguard the identity of donors who may wish to contribute to political parties without fear of political repercussions or harassment. On the other hand, it sought to create a formalized and traceable system for political contributions, thereby reducing the reliance on unaccounted cash donations that have historically dominated political funding in India.

Under the scheme, individuals, corporations, and other entities can purchase electoral bonds in denominations ranging from ₹1,000 to ₹1 crore. These bonds can be bought from designated branches of the State Bank of India (SBI) during specific windows announced by the government. Once purchased, the bonds can be donated to political parties, which are required to redeem them through their verified bank accounts. Only those political parties registered under Section 29A of the Representation of the People Act, 1951, and that have secured at least 1% of votes in the last general elections.

One of the key features of the scheme is the anonymity of donors. While donors' details are recorded by the issuing bank for internal monitoring, they are not disclosed to the public or even the recipient political parties. This ensures that contributors can make donations without fear of backlash or undue influence. Additionally, donations made via electoral bonds are tax-exempt, incentivizing individuals and corporations to participate in a formalized funding mechanism.

However, the scheme has also attracted significant criticism for its potential to erode transparency in political funding. By maintaining the anonymity of donors, the scheme deprives citizens of critical information about the sources of funding for political parties. Critics argue that this undermines the fundamental Right to Information, which is crucial for fostering an informed electorate. There are also concerns that the ruling party may have access to

donor information through SBI, creating an uneven playing field for opposition parties.

Moreover, the removal of caps on corporate donations has raised fears about the increasing influence of corporate entities in politics. The scheme permits even loss-making or shell companies to make unlimited contributions, potentially paving the way for undue corporate influence on policymaking and governance. Smaller political parties have also voiced concerns that the scheme disproportionately benefits larger, well-funded parties, further exacerbating inequalities in the political landscape.

II. SALIENT FEATURES OF SCHEME

1. The State Bank of India (SBI) issues electoral bonds in denominations of ₹1,000, ₹10,000, ₹1 lakh, ₹10 lakh, and ₹1 crore. These bonds are payable to the bearer on demand and are interest-free, making them a straightforward instrument for political donations.
2. The bonds can be purchased exclusively by Indian citizens or entities established in India, ensuring that foreign contributions are excluded. They can be bought either individually or jointly with other individuals, providing flexibility to contributors.
3. Once issued, electoral bonds are valid for 15 calendar days from the date of purchase. During this period, they must be redeemed by eligible political parties through their designated bank accounts. After the 15-day validity, the bonds become void and cannot be encashed.
4. This framework ensures a regulated and time-bound system for political donations while maintaining the anonymity of donors.

III. MERITS OF THE SCHEME

1. **Redemption of Electoral Bonds:**
All electoral bonds issued must be redeemed through a bank account disclosed to the Election Commission of India (ECI). This ensures that the flow of funds remains traceable, reducing the chances of malpractice or misuse of funds in political financing. However, critics argue that this process could inadvertently strengthen opportunities for corruption if not monitored transparently.
2. **Restricting Unregistered Political Parties:**

The use of electoral bonds limits funding to only registered political parties that have secured at least 1% of the votes in the previous general elections. This prevents unregulated or fly-by-night political entities from receiving donations, thereby discouraging parties that operate solely to collect funds from the public without contributing meaningfully to the democratic process.

3. Safe and Digitized Election Funding:

Electoral bonds align with the government's vision of ensuring that election funding is secure and fully digitized. By mandating that any donation exceeding ₹2,000 must be made through electoral bonds, bank transfers, or cheques, the scheme reduces the use of unaccounted cash in political funding. This move promotes financial transparency while discouraging anonymous cash donations that have historically fuelled black money in the electoral system.

4. Cheques and Digital Transactions:

All transactions related to electoral bonds are conducted either through cheques or digital payment systems. This ensures that the funding process remains formalized, trackable, and consistent with the government's broader goal of fostering a cashless economy. By bringing political donations into a formal banking framework, the scheme aims to establish accountability and minimize the risks associated with unregulated cash contributions.

IV. DEMERITS OF THE SCHEME

1. The Electoral Bond Scheme has faced significant criticism since its inception, with detractors pointing out its potential to skew the political playing field. A key concern raised by critics is that the scheme was primarily designed to choke funding to opposition parties. By maintaining the anonymity of donors, it is alleged that the ruling party has an unfair advantage, as it can access information about donor identities through the State Bank of India (SBI). This creates an imbalance, as opposition parties remain unaware of their funding sources, limiting their ability to compete effectively in elections.
2. Another issue is the role of financially stable companies in the political funding landscape. For these corporations, the scheme does not present any threats or challenges. Instead, it offers a convenient mechanism to channel donations

selectively to political parties of their choice. Critics argue that the abolition of the 7.5% cap on corporate donations, which previously limited companies to contributing only 7.5% of their average annual profits over the past three years, has further exacerbated the problem. Now, even companies with minimal or no profits, including shell entities, can contribute unlimited amounts to political parties.

3. This change has raised fears of unchecked corporate influence, as companies can now funnel substantial amounts to preferred parties, potentially expecting favourable policies or decisions in return. The lack of transparency in donor identities and the absence of limits on contributions together promote an environment where corporate funding can heavily influence electoral outcomes, thereby undermining the principle of a level playing field in Indian democracy.
4. These concerns highlight the need for reforms to ensure fairness, transparency, and accountability in political funding.

V. CHALLENGE TO CONSTITUTIONAL VALIDITY

In 2017, the Association for Democratic Reforms (ADR) filed a writ petition before the Supreme Court of India, challenging the constitutionality of the Electoral Bond Scheme. This petition led to a series of cases filed by various concerned parties, all questioning the legal and constitutional validity of the scheme. The ADR's petition, filed under Article 32 of the Constitution, contested the amendments made to the Finance Act of 2017, which paved the way for the introduction of the Electoral Bond Scheme.

The primary grounds for challenging the scheme were related to the anonymity associated with the issuance of electoral bonds. The ADR argued that this anonymity compromises the transparency in political funding, which is vital for ensuring a fair and accountable electoral process. The lack of transparency allows for unaccounted and undisclosed donations to political parties, potentially leading to the influence of money in politics that remains hidden from public scrutiny. This, according to the petitioners, is a violation of the fundamental principle

of transparency that is crucial for maintaining the integrity of elections in India.

Moreover, the ADR's petition raised concerns about how the right to information of voters is compromised under the Electoral Bond Scheme. The anonymity of donors means that voters are unable to know which individuals or entities are funding political parties, which could influence their voting decisions. This lack of information violates the voter's right to make an informed choice, a right that is inherent to the democratic process. The petitioners argued that the anonymity feature of the scheme undermines the democratic principle of transparency and weakens the ability of citizens to hold political parties accountable for their sources of funding.

In addition to the ADR, several other parties, including the Election Commission of India (ECI), also expressed their opposition to the scheme. The ECI, in its submissions, highlighted that the scheme would have an adverse impact on the transparency of political financing. The Commission raised concerns that the scheme could lead to increased foreign influence in Indian politics, as it allows foreign companies and individuals to indirectly contribute to political parties, without any public disclosure. This could potentially disrupt the democratic framework by introducing external influences that are not subject to scrutiny or regulation.

The ECI also pointed out that the scheme's provisions for donor anonymity might encourage illegal or black money transactions in elections, as the identity of the donor remains undisclosed, making it difficult to trace the source of funding. The lack of an adequate system for monitoring and auditing these donations also posed significant risks for electoral integrity.

In light of these concerns, the constitutional challenge brought before the Supreme Court sought to examine whether the amendments to the Finance Act and the introduction of the Electoral Bond Scheme violated key principles enshrined in the Indian Constitution, particularly freedom of speech and expression, right to information, and electoral fairness.

The Supreme Court has been examining these petitions with the aim of determining whether the

Electoral Bond Scheme complies with the constitutional provisions governing transparency, fairness, and accountability in the electoral process. The outcome of this legal battle is crucial, as it will set a precedent for the future of political funding and its regulation in India, balancing the need for clean funding with the principles of democracy and accountability.

VI. SUPREME COURT JUDGEMENT

In a landmark decision, the Supreme Court of India addressed the constitutional validity of the Electoral Bond Scheme. The case involved multiple petitions, including one by the Association for Democratic Reforms (ADR), challenging the scheme's provisions and its impact on transparency in political funding. The Court addressed two key questions:

1. Whether the non-disclosure of information regarding voluntary contributions to political parties under the Electoral Bond Scheme and amendments to Sections 29C of the Representation of People Act, Section 182(3) of the Companies Act, and Section 13A(b) of the Income Tax Act violate citizens' Right to Information under Article 19(1)(a) of the Constitution.
2. Whether unlimited corporate funding to political parties, as per the amendments to Section 182(1) of the Companies Act, infringes on the principle of free and fair elections and violates Article 14 of the Constitution.

- Violation of Right to Information Under Article 19(1)(a) of the Constitution

The Supreme Court found that the Electoral Bond Scheme, which ensures donor anonymity, violated the Right to Information guaranteed under Article 19(1)(a) of the Constitution. The Court emphasized that the right of a voter to know the sources of funding for political parties was critical in ensuring an informed vote. By restricting access to this information, the scheme adversely affected the voter's ability to make an informed electoral choice, thus violating the core of the democratic process.

The Court pointed out that under Article 19(2), the Right to Information can only be restricted on specific grounds such as public order, decency, morality, or security of the state. The government argued that the

Electoral Bond Scheme was introduced to curb black money in electoral funding, which it considered a valid restriction on free speech and expression. However, the Court disagreed, stating that curbing black money could be achieved through other means without infringing upon the right to information.

The proportionality test, which is used to evaluate whether the restriction on a fundamental right is justifiable, was found to be unsatisfied in this case. The Court concluded that the Electoral Bond Scheme, while aiming to curb black money, did not meet the necessary criteria for limiting the Right to Information.

As an alternative to the Electoral Bond Scheme, the Court proposed the creation of Electoral Trusts. These Trusts would act as intermediaries for collecting political donations and would be subject to specific conditions:

- Contributors' details, such as name, address, account number, and the amount contributed, would be recorded.
- Donations must be made through bank drafts, electronic transfers, or cheques (not in cash).
- The Trust must maintain a list of contributors and the political parties to which the contributions are made.

This alternative system would allow for transparency while maintaining the confidentiality of the donors, thus achieving the goal of cleaner political funding without violating the voter's right to information.

- Amendment to Section 182 of the Companies Act, 2013

The Court also scrutinized the amendment to Section 182 of the Companies Act, which allowed unlimited donations by both profit-making and loss-making companies to political parties. The Court found this amendment to be arbitrary for several reasons:

1. The unlimited contributions from companies allow them to leverage their resources and influence policy-making, which could give them disproportionate influence over the electoral process.
2. By treating companies and individuals equally in terms of donation limits, the amendment was deemed manifestly arbitrary. Companies, with

their vast financial resources, can now exert much more influence than individual voters, which violates the principle of political equality. The Court emphasized the value of “one person, one vote” and noted that corporate donations are often made with the intention of securing favorable government policies in return.

3. The Court found it particularly problematic that the amendment did not distinguish between profit-making and loss-making companies. The latter could make donations without any immediate financial benefits, raising concerns about corruption and quid pro quo arrangements.

The Supreme Court therefore held that the amendment allowing unlimited corporate contributions violated the principles of free and fair elections and political equality, as enshrined in the Constitution.

- Directions of the Court

Following its decision to strike down the Electoral Bond Scheme and the related amendments, the Supreme Court issued several critical directions:

- State Bank of India (SBI) was directed to stop issuing electoral bonds.
- SBI was ordered to provide the Election Commission of India (ECI) with details of electoral bonds purchased from April 12, 2019, including the names of the purchasers and denominations of the bonds.
- SBI was instructed to submit details of the political parties that had received contributions through electoral bonds.
- Electoral bonds that were still valid (i.e., within the 15-day encashment period) and had not been redeemed by political parties should be returned to the purchaser.
- The Election Commission of India (ECI) was instructed to publish the information
- shared by SBI on its official website by March 13, 2024.

These directions were aimed at restoring transparency and ensuring that the Electoral Bond Scheme’s impact on political funding is minimized while alternative systems for political donations are considered. The Court’s ruling underscores the importance of transparency in political financing and the need for a

more balanced approach to prevent undue influence over the electoral process.

CONCLUSION

The Electoral Bond Scheme is a significant reform in India’s political funding, yet its implementation has sparked considerable debate. While the scheme aims to address issues related to cash donations and black money, its lack of transparency undermines the democratic need for openness and accountability in political financing. The anonymity of donors, while protecting their privacy, restricts citizens' right to know the financial backing of political parties, which is crucial for informed voting.

To address these concerns, future reforms could include the mandatory confidential disclosure of donor identities to the Election Commission of India (ECI), capping corporate donations to prevent undue influence, and ensuring equal opportunities for all political parties. These measures would improve transparency without compromising donor privacy.

In conclusion, the Electoral Bond Scheme underscores the complex balance between maintaining donor confidentiality, ensuring transparency in elections, and upholding democratic principles. The ongoing judicial review of the scheme's constitutionality will likely have a significant impact on the future of political funding in India. It could also set a crucial precedent for resolving the competing interests of privacy, transparency, and accountability in democratic governance.

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