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BAN ON ELECTORAL BONDS

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ABSTRACT

The introduction of electoral bonds in India aimed to overhaul the opaque system of political funding by providing a structured mechanism for donations while preserving donor anonymity. However, concerns quickly arose regarding the potential for abuse and lack of transparency inherent in the scheme. These concerns led to a landmark legal case challenging the constitutional validity of electoral bonds, with petitioners arguing that the scheme violated the right to information and undermined the principles of free and fair elections. Prior to the introduction of electoral bonds, political parties relied heavily on donations from undisclosed sources, leading to concerns about black money influencing the democratic process. While existing regulations mandated reporting of donations exceeding a certain threshold, loopholes allowed for substantial undisclosed contributions, raising questions about accountability and ethical governance.

The case, *Association for Democratic Reforms & anr. Vs. Union of India*²⁰⁷ heard in the Supreme Court of India, attracted attention from various stakeholders, including non-governmental organizations and regulatory bodies like the Reserve Bank of India and the Election Commission of India. The court's observations highlighted the risks associated with electoral bonds, including the influence of corporations on policy-making and the infringement of voters' rights.

Ultimately, the Supreme Court delivered a verdict declaring the electoral bond scheme unconstitutional, mandating transparency measures to disclose bond purchases and donor information. This decision represents a significant milestone in India's electoral finance reform, emphasizing the importance of transparency, accountability, and democratic principles in the political funding process.

GRASP - EDUCATE - EVOLVE

INTRODUCTION

The introduction of electoral bonds in the Indian political funding landscape ignited a contentious debate surrounding transparency and accountability in campaign finance. It was said as a solution to issue of black money circulation and non-transparent political donations, electoral bonds aimed to revolutionize the funding mechanism for political parties. However, the journey of electoral bonds from inception to implementation has been fraught with challenges and legal scrutiny. The case challenging the constitutional validity of electoral bonds stands as important moment in India's electoral finance landscape. Initiated by a coalition comprising non-governmental organizations and political entities, it scrutinizes the fundamental principles of transparency and accountability in political funding. This article navigates through the inception, implementation, and eventual ban of electoral bonds, unraveling the intricate tapestry of India's electoral finance reform journey and the multifaceted debates surrounding it.

PRE-ELECTORAL BOND STAGE:

The electoral bonds were introduced by replacing the old system of political funding made to the political parties by any person or company other than government company. Section 29C of representation of people act,1951²⁰⁸ explains that the treasurer of a political party or any other person authorized by the party to maintain the accounts and to prepare a report in a prescribed manner under this act on donations which exceeds rupees twenty thousand made to the party in that financial year. The said report must be submitted before the due date for furnishing a return of income of that financial year under section 139 of the IT Act,1961²⁰⁹ and to the Election Commission fails which leads to no tax relief for the political party under IT Act.

In pre-electoral bond stage companies other than the government companies and company which has been in existence for less than three financial years can contribute to political parties only up to 7.5% of previous 3 financial year's net profit. This cap on corporate funding stood as a barrier which prevents excessive fund donation to ruling or any other parties and influencing them for the corporate's wish.

In such a way, any individual person or association of persons can contribute to any political party in India below Rs.20,000 which was known as 'Unknown Sources' of income and it need not be recorded and submitted in the annual report. This led to the black Money circulation in political funding. In 2013 amendment in RTI Act,2005²¹⁰ removed political Parties from the purview of public authority and exempted them from submitting their income

PROBLEMS IN POLITICAL FUNDING

The foremost problem before political funding was black money circulation. The 70% of the money donated to political parties are from unknown or undisclosed Sources. The details of such unknown donors are not available in public domains. Without accountability in political funding, free and fair democracy would be impossible.

A non-governmental organization named Association for Democratic Reforms, which was also a main petitioner in the electoral bond ban case, conducted a study in 2017 which found that the total income of political parties in India between the years 2004-05 and 2014-15 had been ₹11,367 crore and 69% of the total income was from donations by 'Unknown sources' whose contributions were just below ₹20,000. Only 16% of their total income was from the known donors.²¹¹

Bahujan Samaj party declared that the total income of the party in the fiscal year 2014-15 was 100% from unknown sources. Likewise,

²⁰⁸ representation of people Act,1951 (Act 43 of 1951), s.29C
²⁰⁹ Income Tax Act,1961 (Act 43 of 1961), s.139

²¹⁰ Right to Information act,2005 (Act 22 of 2005), s.2(h)

²¹¹ Electoral Bond https://en.wikipedia.org/wiki/Electoral_Bond# (last accessed Apr.4, 2024)

INC and BJP made 83% and 65% of their income from unknown sources in same year respectively. These are the sad truths of political funding before the introduction of electoral bonds.

ELECTORAL BONDS

In 2017 budget session of Parliament former Finance Minister Arun Jaitley introduced a Finance bill regarding a new scheme named electoral bonds. It was passed successfully in both the houses and given assent by President of India. On January 2nd 2018, department of Economic Affairs introduces the scheme of electoral bonds in India.

It was said that the electoral bonds will bring substantial transparency in political donations against the present system of contributions in the election funding mechanism. To increase the transparency in political funding, electoral bonds were introduced.

During introduction of electoral bonds, Arun Jaitley said,

“Even after 70 years of India had not been able to evolve a transparent

Political funding system” – on 2nd Jan 2018²¹²

Sec 2 of Electoral Bond Scheme, 2018 defines electoral bond as a “bond issued in the nature of promissory note which shall be a bearer banking instrument and shall not carry the name of the buyer or payee”

An electoral bond is like a financial tool used for making donations to political parties. These bonds may also be purchased by the general public to support qualified political parties. The bonds function similarly to demand-free, interest-free banknotes that are receivable to the bearer. These bonds can be bought digitally with the assistance of a cheque or a Demand Draft.

A bearer instrument is one where no ownership information is recorded and the holder of the instrument is presumed to be the owner. The one (eligible political party in this case) in possession of the electoral bond is entitled to encash the same from 29 authorized branches of the State Bank of India (SBI).

The electoral bonds can be purchased by any individual, a Hindu undivided family, a company or a Firm, an association of persons or a body of individuals, whether incorporated or not. In the case of a person, he/she should be a citizen of India while in case of organizations, it should be incorporated or established in India.

Only those political parties which was registered under section 29A of the Representation of the People Act, 1951 and have secured at least 1% of the votes polled in the last general election in the Lok Sabha or the State Assembly can encash an electoral bond.

The bonds will be available in the denomination of Rs 1000, Rs 10,000, Rs 1 Lakh, Rs 10 Lakhs and Rs 1 Crore and it can be purchased only in a 10-days period in the beginning of each quarter i.e. first 10 days of January, April, July, October

The government can also specify an additional 30 days for the purchase of the bond in the year of the general election of the Lok Sabha. In 2022 amendment sale days of Electoral bond was increased extra 15 days and finally it was 85 days per year. It can be purchased through a KYC-compliant account to make donations to a political party. The political parties have to encash them within a stipulated time of 15 days. If it is not encashed within 15 days that the amount will be donated to Prime Minister’s National Relief Fund.

AMENDMENTS MADE IN OTHER ACTS

Several amendments in respective acts were made to implement a scheme electoral bond. It was amended by the Finance Act, 2017²¹³

²¹² Final case study on electoral bonds, <https://www.slideshare.net/slideshow/final-case-study-on-electoral-bonds-scheme/266814731> (last accessed Apr.4, 2024)

²¹³ Finance Act, 2017 (Act 7 of 2017)

since the electoral bond bill was introduced and passed as a finance bill.

RESERVE BANK OF INDIA ACT, 1934²¹⁴

Section 135 of finance act, 2017 amended Section 31 of the RBI Act. This permitted the Union government to “authorize any scheduled bank to issue electoral bond[s].”

COMPANIES ACT, 2013²¹⁵

Section 154 of finance act, 2017 amended Section 182 of the Companies Act, which removed the upper limit on how much a company could donate to a political party. Previously companies could only donate up to 7.5 percent of three years of the company’s net profits.

INCOME TAX ACT, 1961²¹⁶

Section 11 of the Finance Act, 2017 amended Section 13A of the Income Tax Act exempting political parties from keeping a detailed record of donations received them through electoral bonds.

REPRESENTATION OF THE PEOPLE ACT, 1951²¹⁷

Section 137 introduced a proviso to Section 29C of Representation of the People Act, exempting political parties from publishing contributions received through electoral bonds in “Contribution Reports.” These reports disclose contributions received by parties which is more than twenty thousand rupees from the companies and individuals.

ASSOCIATION FOR DEMOCRATIC REFORMS & ANR. VS. UNION OF INDIA²¹⁸

Shortly after the amendments were introduced in September 2017, two Non-Governmental Organizations – Association for Democratic Reforms (ADR) and Common Cause and the Communist Party of India (Marxist) filed Public Interest Litigation in the Supreme Court challenging the amendments

on two grounds. Primarily, it was argued that the scheme will result in pure lack of transparency in political funding in India thus the information of electoral donors & donee and the Income of the Political Parties are not accessible to general public and Election Commission and legitimized electoral corruption at a “huge scale.” Secondly, it is argued that this bill was passed as a Money Bill, avoiding the upper House of Parliament.

Respondents argued that, this scheme allows individuals to donate their money whichever party they want or they would like through only proper banking channel that also in only State Bank of India unlike direct money transfer through cash which leads to unregulated flow of Black Money. so, there would be no more confusions and corruptions in political funding in India.

In April 2019, 3-judge bench led by former Chief justice Ranjan Gogoi ordered all political parties to submit their donation and donor’s details with their bank account number to Election Commission. Further they refused to impose a stay on the scheme as it would require an in-depth hearing. In 2023, this issue was referred to the 5-judge constitutional bench led by CJI D.Y.Chandrachud

SC’S OBSERVATIONS

1. Supreme court noted that 1.Electoral bonds scheme allows unlimited anonymous corporate funding to political parties which violates right to information of citizens enshrined under article 19(1)(a) of Indian Constitution²¹⁹.
2. Unlimited political funding to political parties infringes the principle of free and fair elections and violates Article 14 of Indian Constitution²²⁰.
3. It facilitates the backdoor lobbying risks and quid pro quo arrangements.
4. The donations given by corporations may help to favorable treatments or policies.

²¹⁴ Reserve bank of India act, 1934 s.31

²¹⁵ Companies act, 2013 (Act 18 of 2023) s.182

²¹⁶ income tax act, 1961 (Act 43 of 1961) s.13A

²¹⁷ Supra note2 at 2

²¹⁸ Supra note 1 at 1

²¹⁹ The Constitution of India, art. 19(1)(a)

²²⁰ The Constitution of India, art. 14

5. Enabling foreign funding may influence Indian policies or Government.

OBJECTIONS FROM RBI & ECI

RBI's OBJECTION

On 2nd January 2017 Reserve Bank of India wrote a letter to ministry of finance stating that the proposal of enabling any scheduled banks to issue bearer bonds militated against RBI's sole authority for issuing bearer instruments. It can undermine the faith in banknotes issued by the Central Bank and not revealing the identity of persons or entity who is purchasing the bearer bond would affect the principles of Prevention of Money Laundering Act, 2002²²¹.

ECI's OBJECTION

On 26th May, 2017 Election Commission of India wrote a letter to Central Government stating that the Electoral Bond Scheme would create a huge threat on transparency in political funding and exempting political parties from disclosing their information about donation would keep the foreign funding in the dark. The affidavit stated, "unchecked foreign funding of political parties in India, which could lead to Indian policies being influenced by foreign companies."

JUDGEMENT

On 15th February 2024, Supreme court of India delivered the Final Verdict by observing all the necessary facts and circumstances on electoral bonds stating it as Unconstitutional. It held that the scheme violates the voters right to information which was given under article 19(1)(a) of Indian Constitution. Further it directed the State bank of India to submit all the details of purchased bonds from the introduction of the scheme to Election Commission of India. ECI was directed to publish all the details given by SBI in the Official Website.

SUGGESTIONS

1. The old method of political funding was unregulated and having loop holes for circulation of Black Money. So, new scheme should be implemented which regularizes the political funding in India
2. The new scheme should have transparency and accountability towards general public and should be easily accessible to them.
3. The political parties should be added under the purview of public authority and their income must be exposed under RTI.

CONCLUSION

In conclusion, the ban on electoral bonds represents a critical juncture in India's quest for transparent and accountable electoral financing. The introduction of electoral bonds was intended to usher in a new era of integrity and fairness in political funding, yet it quickly became apparent that the scheme fell short of these aspirations. While electoral bonds offered a structured mechanism for donations, their anonymity and potential for abuse raised significant concerns about the integrity of the democratic process. The landmark case challenging the constitutionality of electoral bonds underscored the fundamental principles at stake: the right to information, the integrity of elections, and the accountability of political parties. The Supreme Court's verdict declaring the electoral bond scheme unconstitutional was a decisive moment, affirming the primacy of transparency and accountability in political funding. Furthermore, the ban on electoral bonds serves as a reminder of the enduring importance of democratic values and institutions. Upholding the principles of transparency, accountability, and fairness is essential to preserving the integrity of India's democracy and ensuring that the voices of all citizens are heard

²²¹ Prevention of money laundering act, 2022

REFERENCES

1. A Fillip to Democracy: Supreme Court's Electoral Bonds Case Verdict, <https://www.livelaw.in/articles/a-fillip-to-democracy-supreme-courts-electoral-bonds-case-verdict-249803>
2. Electoral Bonds Constitution Bench | Judgement Summary, <https://www.scobserver.in/reports/electoral-bonds-constitution-bench-judgement-summary/>
3. Electoral bond, https://en.wikipedia.org/wiki/Electoral_Bond#
4. Final case study on electoral bonds, <https://www.slideshare.net/slideshow/final-case-study-on-electoral-bonds-scheme/266814731>

