

## ELECTORAL BONDS: TRANSPARENT?

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### ABSTRACT

*This Journal Article examines the transparency of electoral bonds and explains how the electoral bonds work, also this paper includes a briefcase review of the recent judgment on the electoral bonds of State Bank of India v. Association for Democratic Reforms and others (2024)<sup>1</sup>. The constitutionality of the electoral bonds is questioned in this paper. More than Two Billion Dollars' worth of electoral bonds were issued by the SBI in the tenure of the year 2018 to 2022 and one single particular party received a total amount of around 60% of the total bonds issued in their accounts. Electoral bonds aimed to provide transparency but they failed to provide any bare minimum kind of transparency from that electoral bonds scheme. This Article consists of the meaning of electoral bonds, key aspects, the court's ruling, what went wrong, and the conclusion of the whole research paper. This research paper upheld the accountability and transparency of the potential financial abuse of anonymous political funding.*

### INTRODUCTION

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Electoral Bonds are a kind of money bill introduced in the year 2017, by these Electoral Bonds any individual or any organization may donate money to their favorable political party. This scheme allowed individuals to donate any amount of money without any limit anonymously. Under this scheme, anybody can go to any SBI Branch and purchase electoral bonds of Rs. 1,000, 10,000, 1,00,000, 10,00,000, 1,00,00,000. This was introduced in The Finance Bill 2017 and implemented in 2018. The Electoral Bonds are bearer instruments which is why there is no trace of those electoral bonds, so there is no ownership recorded of that instrument, the name, ownership, and other details of the donor of electoral bonds are anonymous.

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<sup>1</sup> State Bank of India v. Association for Democratic Reforms and others Writ Petition (C) No. 880 of 2017 With Writ Petition (C) No. 59 of 2018 With Writ Petition (C) No. 975 of 2022 And With Writ Petition (C) No. 1132 of 2022

## **Background of the Electoral Bonds**

The motive of introducing electoral bonds was to increase the transparency in the procedure of the funding of political parties, and also make the political parties accountable for their funding and their expenditure during their rallies, promotion, etc. As announced in the union budget speech, the electoral bonds aimed to reduce cash payments/transactions and increase transparency. Through this scheme, anybody can make anonymous donations to their preferred political party by purchasing the bonds from SBI. The electoral bonds can be only purchased from some specific SBI. The Electoral Bonds are available for the amount of Rs. 1,000 to Rs. 1,00,00,000. These bonds can be given by the donors to the political parties in a specified period specified in the Electoral Bonds itself. We can also say that electoral bonds are just as same as banknotes as they are payable to the bearer free of interest.

## **How Do the Electoral Bonds Work?**

Any individual<sup>2</sup> or any company/organization can purchase electoral bonds by making payments from their bank accounts. The electoral bonds would not have the name of either the payee, not the payer. The electoral bonds only consist of the name of the SBI Branch, the date of issue of the bonds, the validity of 15 days from the date of issue, and the amount of the Electoral Bonds. The bonds once handed over to the political party can be encashed in their registered/designated bank accounts. The political party has to file returns in front of the election commission of the total electoral bonds that they have received. The electoral bonds can be purchased only in the starting 10 days of January, April, July, and October, as specified by the Central Government. The central government can specify an additional 30-day period in a general election year.

## **Who can Purchase Electoral Bonds?**

Any citizen of India having an entity/corporation in India can purchase electoral bonds from the authorized branches of the State Bank of India. Anyone can buy electoral bonds individually or with someone else jointly. People who can buy Electoral Bonds are Hindu Undivided families, Company, Firm, Association of persons, Office, Body of Individuals.

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<sup>2</sup> Any individual or - <https://economictimes.indiatimes.com/news/how-to/explained-what-are-electoral-bonds-how-it-works-and-why-its-challenged-in-supreme-court/articleshow/104889034.cms?from=mdr>

## **VIOLATION OF THE RIGHT TO INFORMATION**

It is the constitutional right of the citizens of India to get to know about the political parties by whom they are getting money for the rallies, promotion, social work, and the salaries of their politicians. Key principles of RTI on electoral bonds are:

### **Right to Access Information**

The citizens of India have the right to information held by public authorities, but in this case, the citizens have the right to know about the finances of the person who is running for a public office and also the property, the crime record, etc. but were not provided because of the electoral bonds scheme.

### **Proactive Disclosure**

Proactive Disclosure means proactively disclosing the information held by the public authorities, but electoral bonds are prohibited from doing so and violate the RTI of citizens.

### **Accountability**

It is one of the Right to Information Act's responsibilities to provide transparency in the actions of the government and government offices held by the people in authority. So, it became difficult to make someone accountable for their actions.

### **Anonymity of Donors**

To maintain the anonymity of the donors, the electoral bonds scheme violated the right to information of the citizens who have to vote.

## **WHITENING THE BLACK MONEY**

Unaccounted income not reported to the tax authorities, has been a huge challenge in India, particularly in political funding. The government presented its argument that they could use formal banking channels instead of illicit cash in the elections. Experts suggested that shifting from cash payments to banking channels can reduce the black money, but instead of reducing the black money, it helped in whitening the black money. The formalization took place and reduced the circulation of black money to some extent as the State Bank of India had an eye over the electoral bonds. This was also a major point due to which electoral bonds

were struck down. The impact of electoral bonds on political funding was that the shift of cash transactions to the formal channel also improved accountability and made the process of donations more transparent. Some of the limitations of the electoral bonds scheme were that due to the anonymity of the donor, there was potential in whitening the black money with the help of being an anonymous factor, there were also certain regulatory gaps that helped in whitening the black money because of lack of public disclosure of necessary information, while some economists believed that electoral bonds helped in reducing the black money, while there was another point of view of people who believed that the electoral bonds scheme helped in whitening the black money.

### **OPPOSITION ON ELECTORAL BONDS**

There is always criticism or support provided by the opposition parties to the parties who have passed a bill in the parliament, but in the policy of electoral bonds, it was passed without any problem because the ruling party had the majority in the parliament so the act for the electoral bonds act was passed. The concerns which were expressed by the opposing parties were just as same as the normal public that because of the electoral bonds scheme, there may be an increase in the lack of accountability and transparency, critics also allegedly said that the electoral bonds scheme is just passed to benefit the ruling party, and it will be unequal to the opposition if the scheme gets launched, and also they raised their concerns on potential on misuse, that this scheme may give an increase in the number of money laundering cases and may lack on the regulatory oversight. After that, the electoral bonds scheme faced certain challenges such as legal and political, as the opposition believed that this scheme can only benefit the political party which is ruling and not the other political parties. So, in against the electoral bonds scheme certain cases were filed in the Supreme Court against the electoral bonds scheme and there were a lot of Rights to Information filed to get to know about the donors of the electoral bonds scheme but all of the Rights to Information were rejected as it was a part of electoral bonds scheme to keep the identities of the donors private, this lead to further frustration among the opposition and led to more suits filing in the court of law, the opposition leaders also questioned the validity of the electoral bonds scheme as it seemed vague to the opposition leaders, also, there was a backlash which was faced by the ruling party because of the public protest and campaigns hosted by the opposition party. The leaders of the opposition party also criticized the electoral bonds scheme publicly through their social media accounts and the various news channels along

with a public statement against the electoral bonds scheme.

## **THE SUPREME COURT JUDGEMENT ON THE SCHEME**

The Supreme Court of India has been scrutinizing the electoral bonds scheme since its inception in the year 2017. Various petitions were filed in the Supreme Court challenging the validity, transparency, and constitutionality of the Electoral Bonds Scheme, as the bonds provided an anonymous way of the transaction to their favorable political party. The Key challenges made in the petitions which were common in almost every petition were Transparency, Accountability, the potential it holds for Money laundering, Favoritism, an unequal playing field, and violation of constitutional principles. These were various concerns presented by the opposition in the Supreme Court, the policy faced heavy criticism from the Supreme Court and there were a lot of petitions filed in the court of law against the electoral bonds scheme.

### **Key Issues Of The Electoral Bonds Case**

- Is the Electoral Bonds Scheme constitutional?<sup>3</sup>
- Does the electoral bonds scheme violate the voter's right to information?
- Can the scheme allow anonymity with the view to protect donors right to privacy?
- Does the electoral bonds scheme threaten the democratic process and free and fair elections?

### **Challenge To The Amendments**

When the amendment was introduced in 2017, shortly after that in the year 2018 various organizations lodged writ petitions against the electoral bonds scheme, two big names were the Association for Democratic Reforms (ADR) and Common Cause, and alongside the Communist Party of India, filed their petitions challenging the electoral bonds scheme. The petition argued that the Finance Act was wrongfully passed in the parliament because of the majority of one single particular political party. They also argued in the Hon'ble Court that

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<sup>3</sup> <https://www.scobserver.in/cases/association-for-democratic-reforms-electoral-bonds-case-background/#:~:text=The%20Supreme%20Court%20held%20that,right%20to%20information%20of%20voters.>

this scheme allowed non-transparency in political funding and legitimized electoral corruption at a huge scale.

### **Election Commission On The Scheme**

On March 25, 2019, the Election Commission of India, one of the respondents, filed an affidavit against the electoral bonds scheme. The affidavit claimed that the electoral bonds scheme is not making political funding transparent, instead, it is making it more secretive and easier to make money laundering.<sup>4</sup> The affidavit stated, “unchecked foreign funding of political parties in India, which could lead to Indian Polies being influenced by foreign companies. Of which the Union Government replied that the electoral bonds scheme would reduce the unregulated flow of black money and also increase formalized money through the banking networks with the help of the State Bank of India which can issue the bonds, and KYC will ensure accountability.

### **The Challenge In The Supreme Court**

On April 12<sup>th</sup>, 2019, a bench led by Chief Justice Rajan Gogoi, Deepak Gupta, and Sanjiv Khanna submitted all the details of the donations, donors, and the details of their bank accounts in a sealed cover to the Election Commission of India. This was the first step towards removing the anonymous donations.

But during this time the petitioner had to go to court multiple times to receive the list of donors of the electoral bonds, petitioner went to court again in October 2020 just before the Bihar Elections.

In early 2021, ADR approached the Court seeking a stay on the scheme, before the commencement of a fresh round of bond sales. This application was substantially considered by a Bench led by Chief Justice S.A. Bobde, with Justices A.S. Bopanna and V. Ramasubramanian. On 26 March 2021, the Bench denied any stay on the application of the scheme. They held that the apprehension that foreign corporate houses may buy the bonds and attempt to influence the electoral process in the country, is...misconceived.” The Bench also sternly discouraged the petitioners from approaching the Court, stating that “there

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<sup>4</sup> The affidavit stated - <https://www.scobserver.in/cases/association-for-democratic-reforms-electoral-bonds-case-background/>

cannot be repeated applications seeking the same relief.<sup>5</sup>

On 16 October 2023, the petitioners approached the Court during mentioning, to hear the case before the 2024 General Elections. A Bench led by Chief Justice D.Y. Chandrachud, with Justices J.B. Pardiwala, and Manoj Misra referred, noting the “importance of the issue” referred the case to a five-judge Constitution Bench.

On 31 October 2023, a five-judge Constitution Bench led by CJI Chandrachud, with Justices Sanjiv Khanna, B.R. Gavai, J.B. Pardiwala, and Manoj Misra heard arguments over three days. Petitioners argued that the electoral bonds scheme increased corporate funding, black money circulation, and corruption. They argued that voters have a right to information about political parties’ source of funding, as it informs the policies and views of that party. The Union contended that the scheme was designed to guarantee confidentiality and the right to privacy of the donors, who were otherwise exposed to retribution from political parties that they didn’t fund.

On 15 February 2024,<sup>6</sup> the Court unanimously struck down the Union’s 2018 Electoral Bonds (EB) Scheme. The Bench held that the Scheme violated the voters’ right to information enshrined in Article 19(1)(a) of the Constitution. The Court also directed that the sale of electoral bonds be stopped immediately. SBI was directed to submit details of the Electoral Bonds purchased from 12 April 2019 to date, to the ECI. This will include details of the purchaser as well as the political parties to which the bonds were given. Further, the Court ordered the ECI to publish the information shared by SBI on its official website within one week of receiving the information.

## CONCLUSION

This was all the research that was possible to find on the topic of electoral bonds, here we talked about is the process of electoral bonds is transparent or if it is just a myth, the electoral bonds scheme which was launched in the year 2017 in the Finance Act. The scheme provided a way to anonymously donate money to favorable political parties and help them manage their funds the scheme also provided that anyone could buy electoral bonds from the State

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<sup>5</sup> In early 2021 - <https://www.scobserver.in/cases/association-for-democratic-reforms-electoral-bonds-case-background/#:~:text=The%20Supreme%20Court%20held%20that,right%20to%20information%20of%20voters.>

<sup>6</sup> the Court unanimously - <https://www.scobserver.in/cases/association-for-democratic-reforms-electoral-bonds-case-background/#:~:text=The%20Supreme%20Court%20held%20that,right%20to%20information%20of%20voters.>

Bank of India during some months of the year, or during the time of elections, this scheme also provided that the electoral bonds can be of amount Rs. 1,000, 10,000, 1,00,000, 10,00,000, 1,00,00,000. The scheme was felt non-transparent and no accountability was provided due to that scheme so the scheme was struck down in the Supreme Court in the year 2024 and all the names were requested from the State Bank of India before the elections of 2024.

