

## ELECTORAL BONDS - MOVING TOWARDS FREE AND FAIR ELECTIONS

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India is the only democracy in the world, which gives it a special status. The discussions that took place at the Constituent Assembly demonstrate the framers of the Indian Constitution's unshakable belief in democratic national governance. It did, however, find a proud home in the Constitution's preamble, which pledged to uphold republicanism, socialism, and secularism in addition to the objective of creating a strong, democratic nation in India. It was not just a democracy; it also spawned parliamentary democracy, which India embraced and developed..<sup>1</sup>

The "Parliamentary Democracy" political system, based on democratic republicanism and popular sovereignty, was endorsed by the Constituent Assembly. This theory was accepted there, coupled with the belief that the political representative would act as a catalyst for our nation's homogeneity, because of the diverse political, social, and economic structures of India. The legislators were viewed by the County's residents as the model of selflessness, civic duty, and leadership. The Gandhian idea of political philosophy was what people expected from politics. A clear illustration of how corruption and plundering are permeating the administration is the scandal after scandal. The gains from crimes and scandals.

In every democracy, the question of how to pay for elections is intricate. Fraudulent donations made in order to obtain power or favourable policy decisions have damaged and soiled the reputation of all democracies. Contributions to political campaigns, particularly those from large firms, have a substantial effect on the spread of corruption and graft. Consequently, there is an increasing focus on the values of responsibility and openness.

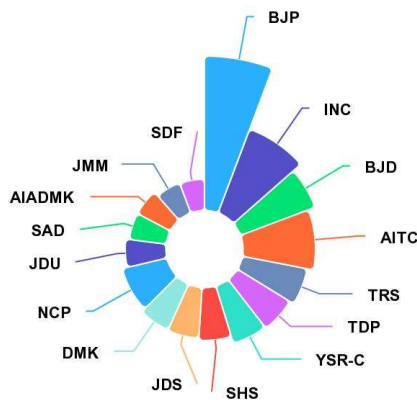
The Indian government introduced the electoral bonds scheme to enhance the nation's election funding practices.

Any political party that has obtained at least 1% of the total votes cast in the most recent State Assembly or General elections and is registered under Section 29A of the RPA, 1951 may be granted promissory notes known as electoral bonds. The fact that these electoral reforms are interest-free and receivable to the bearer upon demand makes them comparable to bank notes. They can be bought online or from specific State Bank of India branches with a cheque. Only business entities and Indian nationals are able to purchase them. These bonds expire on the date of issuance, and their validity is limited to fifteen days following that date. Any political party having

approved bank account with EIC can sell the bonds of different denominations of money from one thousand to one crore..<sup>2</sup>

The ADR is doing incredible work in India to advance democracy by examining the quantity and value of electoral bonds of a political party. When the programme was first unveiled in 2017, Mr. Arun Jaitley, the finance minister at the time, stated, "We must reform our funding channels to electoral parties." The reform is doing away with financial donations. Let's have legitimate and accountable funds to support political groups in India. <sup>3</sup>Therefore, it was stated that liquid cash could not be used to purchase electoral bonds; instead, demand draughts, checks, NEFT, RTGS, etc. could be used. When the electoral bond programme was first introduced, it was believed to be a modest reform and the initial move towards outlawing the use of illicit money for political financing.<sup>4</sup> But why would political parties require funding? Why would it take billions of rupees for a political party to run for office? The main goal of political parties is to establish a government by democratic and lawful means by winning elections. To spread their philosophy and run for office, they need money. It must cover the salary of its office bearers, members, and other expenses such as boarding housing and transportation. Electoral bonds have been implemented to guarantee that political parties are only spending legal money and not illicit or "black" money. Liquid cash funds are typically linked to unaccounted funds. Thus, electoral bonds represent the new means by which political parties generate capital for their electoral campaigns and the dissemination of their platforms. This implies that political parties are unable to finance their election campaigns without donations.

#### Donations via Electoral Bonds declared by National & Regional Parties



Association for Democratic Reforms

<sup>2</sup> Companies Act, 2013, §182

<sup>3</sup> (Union Budget 2017-18, 33).

<sup>4</sup> (Union Budget 2017-18, 32)

Graph 1: National and regional parties' declared electoral bonds (Source: Association for Democratic Reforms 2023)

Consequently, the parties that could effectively contest elections would be those who were already affluent or well-endowed. They can effectively manage a campaign and raise money through electoral bonds because they have the resources. This enables them to support candidates from the lower segments of society as well as SC and ST. All societal segments seem to have equal opportunities to run for office thanks to the logic of electoral bonds.

### **The connection between opaque elections and electoral bonds**

Section 293 A of Companies Act , 1956 prohibits a government company or business having less than 3 years operation to give contribution to any political person or party. A corporation could only reveal the total of its average profits for the preceding three years.

The most important rule, which is being removed right now, requires a company to include the donation amount on its profit and loss statement..

In this way, the company's political contributions were transparent to stakeholders and stockholders alike, eliminating any possibility of anonymity. Similar to this, a corporation must disclose the specifics of the donations in its financial statement in accordance with section 182 of the Companies Act of 2013. Furthermore, without any justification, the five percent cap was raised to seven and a half percent.

The 2017 Finance Bill, however, excused the businesses from adhering to the protocol in the event of an election bond donation. This creates a grey area for regulation and transparency because it seems sense to assume that any organization, including shell and foreign businesses, can make a donation of any size.<sup>5</sup>

Electoral bonds, which the Reserve Bank of India described as a "legally-sanctioned instrument that would allow corporations and other legal entities to anonymously funnel unlimited amounts of money to political parties," have sparked concerns about the flow of black money into Indian politics. The RBI said in response to a request from the Center that it thought these bonds would encourage money laundering and set a "bad precedent." Additionally, the Central bonds said that as they were "Bearer bonds," they would not allow the trail to be utilized to establish ownership.. The RBI also stated that these bonds can jeopardise the bank notes it produces.<sup>6</sup> The RBI disagreed, but the Centre nevertheless implemented electoral bonds.

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<sup>5</sup> Finance Act, 2017, §154.

<sup>6</sup> Nitin Sethi, Electoral Bonds: Seeking Secretive Funds: Modi Govt overruled RBI, Huffpost India (17th Nov, 2019, 8:38 PM). Available at [https://www.huffpost.com/archive/in/entry/rbi-warned-electoral-bonds-arun-jaitley-black-money-modi-government\\_in\\_5dcbde68e4b0d43931ccd200](https://www.huffpost.com/archive/in/entry/rbi-warned-electoral-bonds-arun-jaitley-black-money-modi-government_in_5dcbde68e4b0d43931ccd200).

The 2018 Election Scheme is another example of the ruling party's hidden agenda to entice financial institutions and promote money laundering. Furthermore, the donors' anonymity seriously impairs citizens' freedom of information and conceals important information, which is bad for accountability and transparency. According to the Centre, donors are shielded from "victimisation" because of their anonymity. To protect the donors' identities, however, it is impossible to undermine the greater public interest.<sup>7</sup>

## **THE PROBLEMS AND WORRIES RELATING TO INDIA'S DEMOCRACY**

Without ensuring fundamental democratic rights, like freedom of opinion, association, and assembly, a free and fair election is not conceivable. Elections may prove to be a useful instrument for creating political opportunities and involving more people in the political process. Political parties and civil society can organise, mobilise, and interact with the public on a range of problems through the electoral process. People are also encouraged to talk about public policy and other important issues during elections. All political corruption begins with the funding of political campaigns. It all began with the first general elections held in India. Since India's independence movement, corporations have provided funding to political parties in the nation. The Congress party received significant funding from the Birla family. The business community had a significant impact on the Congress government's economic agenda after independence..

Laws and policies are shaped by political parties. Political financing and public policy are intertwined. Ensuring the welfare of its population is the state's main goal. The state receives assistance from the government to achieve its goals. Public policy is the means by which the state formulates, expresses, and achieves its objectives. Government organs carry out this function. Political parties control the legislative process and constitute the government. Through their interactions and negotiations with the electorate, political parties achieve specific policy goals. A policy-making process is not an organic or haphazard phenomenon. Policy processes, on the other hand, are social processes. The fate of the situation is unpredictable and depends on how members of pressure groups, lobby organisations, and other civil society organisations communicate and work together.

### **Transparency versus anonymity**

Because these bonds are bearer bonds, the electoral bond concept offers a completely anonymous method. This suggests that it is impossible to predict to whom an individual or business will give the electoral bonds they purchase from the SBI. The fact that the entire process is confidential and anonymous suggests that there is a lack of transparency. Whether secretive, anonymous political fundraising enhances or detracts from democracy is the main point of debate. But this is also the biggest advantage of electoral ties. A political party that is funded by the general public is not qualified to become the government after an election. The adverse consequence is that, should it

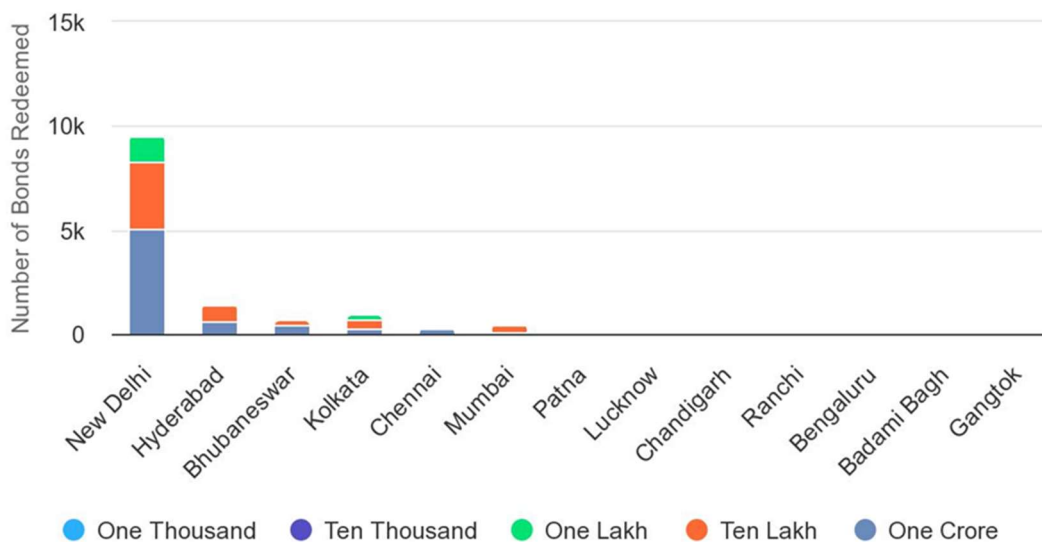
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<sup>7</sup> Reema Jain , Electoral Bonds: A Key-hole Analysis, 4 (2) IJLMH Page 419 - 423 (2021), DOI: <http://doi.one/10.1732/IJLMH.26069>

come to light, the ruling party will show no concern for individuals who contributed to the opposing political party.. Secrecy and anonymity are essential to the plan to stop these kinds of victims. A corporate contributor may purchase bonds and donate them to a specified recipient. It is not necessary for the donor It may harass and cause problems for opposition party donors by linking them to false accusations using the state apparatus, which includes the ED, CBI, NIA, and other institutions at its disposal. to identify who obtained the bonds, nor is it necessary for the receivers to disclose where they obtained them. The rationale for the secrecy is that the scheme's objective of protecting the donors from political retribution depends on keeping their identities a secret. The election bonds are purchased and supplied by the ruling party alone, endangering the democratic processes' integrity. Before the introduction of electoral bonds, corporations could only donate a maximum of 10% of their earnings, and political parties had to disclose any contributions that exceeded Rs. 20,000. With the introduction of election bonds, political parties could now accept donations from anonymous individuals and shell corporations. The election bonds are purchased and supplied by the ruling party alone, endangering the democratic processes' integrity. Political parties had to disclose all contributions over Rs 20,000, and firms could only donate 10% of their profits prior to the introduction of electoral bonds. With the introduction of election bonds, political parties could now accept donations from anonymous individuals and shell corporations. The integrity of the democratic processes is jeopardised since only the ruling party purchases and supplies the election bonds. Political parties had to disclose all contributions over Rs 20,000, and firms could only donate 10% of their profits prior to the introduction of electoral bonds. With the introduction of election bonds, political parties could now accept donations from anonymous individuals and shell corporations.

**Redeemed : Denomination-wise, amounts and number of Electoral Bonds in each city as under : March 2018 to April 2021**



Association for Democratic Reforms

## CRITICAL APPRAISAL

Before 2017, anyone donating more than ₹20,000 to a political party had to identify themselves. This suggests that donors who have contributed more than ₹20,000 must have their names disclosed by the political party. Donations below ₹20,000, however, are not required to be disclosed. The logic works like this: a political party organises a meeting or protest and asks participants to donate money. Small donations of ₹50, ₹100, ₹200, ₹300, or ₹500, for example, might be made, therefore it is quite challenging for a party to keep track of every dime... It takes a lot of labour to complete all those small gifts. For this reason, the law stipulates that contributions to political parties of ₹20,000 or less do not need the donor to disclose their identity. current is not feasible at current time because the electoral bond structure forbids monetary donations due to the fact that liquid currency is either unreported, unlawful, or sold on the black market. When these bonds are bought with a cheque and there isn't enough cash on hand, demand draughts are noted. No, it's not dark web money. Payments to political parties cannot exceed ₹2000, and no individual can give more than ₹2000 to a political party. However, it also brought about an increase in fraudulent donations, which benefited political parties. Political parties would be more uncomfortable and have to spend more time as a result of the regulation change, but it would also enable them to accept more money from the illicit market. Not to be overlooked in this context is the tax-free nature of political contributions. A section on election bonds was included in the Union budget for 2017–18. Nonetheless, tax payer funds are used to cover the cost of printing electoral bonds as well as the bank's profit from their sale. To get a tax exemption, corporate companies give money to a particular political party. The section on election finance transparency was released..<sup>8</sup> How are anonymity and transparency compatible? These run counter to one another. The anonymity of these electoral bonds is another issue. A corporate corporation could only donate 7.5% of its net profit from the previous three years to a political party prior to the introduction of electoral bonds. A company's financial statement must contain information on contributions, according to Section 182 of the Companies Act of 2013. But according to the Finance Bill of 2017, businesses that donate money through electoral bonds are exempt from the regulations. Political parties can now receive donations from any company, including shell corporations, in any sum up to and including 100% of their revenue .. Section 25 of the Companies Act permits these trusts to be registered as not-for-profit organisations, so they can accept donations from businesses and use them to A corporate organisation must disclose in its annual return the total amount of these particular political party donations it has made each time it makes a donation. Businesses can now contribute their entire profit after the corporate donation cap was lifted. Nevertheless, it raises the question of why, in the absence of a win-win arrangement, a company would donate all of its profits to a particular political party. A mutually beneficial exchange of services occurs through favourable legislation, tax breaks, land distribution in prime locations, etc.. Because donations are anonymous, they could be utilised as a simple means of sending money abroad. political organisations without tying contributions made by individuals to payouts . Section 29C of the

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<sup>8</sup> Union Budget 2017-18, 32

Representation of People Act, 1951, another alteration enacted by Section 137 of the Finance Act, was similarly arbitrarily altered. Prior to the modification, the party treasurer was expected to inform individuals or organisations that gave the Election Commission of India more than Rs 20,000 in a fiscal year. By enforcing donor transparency, this legislation alerted the public to the connections between corporate entities and billionaires and political parties, particularly the ruling party. This requirement for electoral bonds is eliminated by the amendment. By enforcing donor transparency, this legislation alerted the public to the connections between corporate entities and billionaires and political parties, particularly the ruling party. This election bond requirement is eliminated by the amendment. This increases the possibility that the ruling party will serve as an agent for unidentified funders. In the past, wealthy individuals, corporations, mining barons, and lawbreakers could carry cash in their bags and donate it to political parties. Currently, they use accounted funds to buy electoral bonds.. Additionally, the Lok Sabha elections of 2019 saw the highest amount of electoral bonds financed through anonymous sources ever. Political parties received a total of Rs 2,760.20 cr in electoral bonds between FY 2017–18 and FY 2018–19.”<sup>9</sup>. The Foreign Contribution Regulation Act 2010 (FCR Act 2010) prohibits political parties from accepting financial contributions from foreign organisations. Therefore, adjustments have been made to get around these rules. Foreign corporations' subsidiaries in India are not considered foreign corporations, hence they are permitted to donate to political parties. Under this amendment, political parties would receive funding from a foreign corporation that operates in India through its subsidiary. Money power has a big influence, and if the election process is run that way, all the money goes to the ruling party. It will have the ability to go against the principle of fair play. For whatever cause, a sizable discrepancy in campaign contributions between the opposition and ruling parties is not indicative of a robust democracy. Political parties with large campaign money balances have a significant advantage over those with smaller balances, even though income or contributions may not ensure election success. The electoral bond programme favours the center-right ruling party. The 2010 Foreign Contribution (Regulation) Act (FCRA) was modified to lift the prohibition on foreign funding of elections in India.. This has prevented sub-judice inquiries into "illicit" foreign donations in all prior elections for political parties, mainly the Congress and the Bharatiya Janata Party (the Delhi High Court had declared both parties guilty of such corruption in 2014). For 42 years, the amendment has been in force.<sup>10</sup>. Business regulations have not only been unilaterally changed to allow donations to flow freely, but every attempt has been made to obscure and prevent the public from accessing this new form of election funding. The Quint, an online news portal, conducted an investigation and found that electoral bonds were printed with secret alphanumeric codes. These codes can be used to track the connections between political parties and funders. The electoral bonds' numeric numbers provide the authorities with access to these facts. According to Agarwal (2018), "the electoral bond issued on April 5 carries the unique and hidden number OT 015101, while the one issued on April 9 has the unique number OT 015102." According to the lab report, the secret serial number was "visible when examined

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<sup>9</sup> Association for Democratic Reforms 2023, 6

<sup>10</sup> (Economic and Political Weekly 2019, 7)

under Ultra Violet (UV) Light on the right top corner of the original document showing fluorescence". The State Bank of India, however, refuted the assertion: The number serves as a safety precaution. The issuing and payment procedures are set up so that neither the political party nor the donor would have a record of the aforementioned number with the bank. The records only include the number of bonds issued and paid according to denomination.

## **JUDICIAL EVASION FOLLOWING JUDICIAL ACTIVISM**

The Supreme Court received petitions from the Communist Party of India (Marxist), Common Cause (an NGO), and the Association for Democratic Reforms (ADR) contesting the constitutionality of electoral bonds. The argument is that it is a non-transparent bearer banking instrument that benefits the ruling party and allows qualifying political parties to be funded anonymously. The right to know is violated by electoral bonds impedes transparency An arbitrary and unreasonable restriction on disclosure and accountability. As we observed, the entire procedure lacks transparency and is anonymous. Prior to the assembly elections, the Association for Democratic Reforms requested a halt to the selling of electoral bonds. The Supreme Court voiced few reservations but reserved its decision. The Indian government was questioned by the Supreme Court on how it would make sure that the money political parties raised through electoral bonds wouldn't be misused. The money might be used to support terrorism or to finance demonstrations and agitations. The Supreme Court allowed the sale of electoral bonds to proceed without interfering, ruling in favour of the sale. The hearing has been postponed while the matter is still before the court. The fundamental element of Indian democracy and the fundamental framework of the Indian Constitution are free and fair elections. Whether or whether electoral bonds are constitutional, the cases have been ongoing for four years with no decision made. For years, it has favoured the centre-right ruling party by failing to list and consider important constitutional matters including the petitions against Article 370 abrogation, the Citizenship Amendment Act 2019, the Unlawful Activities (Prevention) Amendment Act 2019, and the electoral bond scheme. The new judicial practise of the current government is to keep cases open for extended periods of time. It has produced an environment that benefits the centre-right ruling party. The members of the Constituent Assembly considered that all matters pertaining to fundamental rights should be settled in a month when drafting the Indian Constitution. It was believed that the government would benefit more from preserving the status quo the longer the legal proceedings dragged on. These suspicions have been confirmed by the latest incidents. The court bears the responsibility of guaranteeing the timely delivery of the judgement. The above-mentioned noteworthy ongoing constitutional disputes show that the court has abandoned its role as the protector of the constitution and is allowing the administration to enact laws at will. The Supreme Court began examining the constitution from a legal and structural perspective in the 1970s. The Supreme Court ruled in the historic Kesavananda Bharti case that the executive branch could not alter the fundamental elements or composition of the constitution. Even though the judiciary is the final arbiter and defender of the constitution, it has started to shirk its duties. For more than four years, the court has been considering petitions contesting electoral bonds. Political

parties have received thousands of crores of rupees in donations since the system's founding. This happened in the course of elections for the Lok Sabha and various state legislature assemblies. This has complicated free and fair elections by changing the way they are held and giving the ruling party an unfair edge. But there isn't enough time for the Supreme Court to hear the case and issue a ruling. The Public Interest Litigation, which calls for national political parties to be recognised as public authorities under the Right to Information Act of 2005, has been pending before the Supreme Court since 2015. The constitutional courts have conspicuously refrained from intervening, either due to their avoidance or unwillingness to act. Any constitutional democracy is at risk from this new trend, which abdicates the guardian and defender's basic duty.

#### **IV. Constitutionality of Electoral Bonds**

Three arguments can be made against the constitutionality of electoral bonds: (a) violation of Article 19(a) of the Constitution's guarantee of the right to an informed vote; (b) the fact that the legislation approving the bonds was a money bill; and (c) disdain for the serious concerns expressed by the Election Commission and the RBI over changes to specific Acts.

##### **1. Right to Informed Voting**

In *ADR v. Union of India* and *PUCL v. Union of India*, the Supreme Court initially examined and then further developed the theory of the informed vote. The theory has its roots in other penumbral rights specified in Article 19(1)(a) of the Indian Constitution, including the freedom to vote and the right to know. In cases involving evidentiary privilege under Section 123 of the Indian Evidence Act, the Right to Know was initially outlined as a component of freedom of speech. The Court addressed whether Section 123 of the Indian Evidence Act of 1872 permits the State to assert the privilege.

"The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries," the statement continued. But the Supreme Court first unambiguously established a full-fledged "Right to be Informed" under article 19(1)(a) of the Indian Constitution in *Secretary, Ministry of Information and Broadcasting Government of India v. Cricket Association of West Bengal*: "The freedom of speech and expression includes right to acquire information and disseminate it." Furthermore, "the right to be educated, informed, and entertained" is encompassed in the freedom of expression.<sup>11</sup> "The right to participate", held the Court, "is meaningless unless the citizens are well-informed."<sup>12</sup> The case of *Buckley v. Valeo*, in which the US Supreme Court had to rule on the validity of statutory disclosure rules on contributions made to candidates and political organisations, best exemplified the significance of the Right to Know About the Funding of Political Parties.

Furthermore, full disclosure regarding political party funding may force parties to discontinue advantageous business dealings or discourage voters from supporting elected officials who have

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<sup>11</sup> *ibid*

<sup>12</sup> *ibid*

used or are likely to use their position for advantageous business dealings. For this reason, it is crucial information that political parties disclose to the electorate on their funding sources. Given that "the prospect of voter awareness of a contribution may make the recipient less likely to provide a donor with favours," these two arguments could come together.

It may be argued that electoral bonds do not require anonymity; rather, they only allow it. The law did not require or forbid any disclosure in the case of alternative dispute resolution (ADR). The Court went on to order mandatory disclosure after ruling that the Right to Know of voters was violated by the absence of mandatory disclosure in the first place. Consequently, electoral bonds violate the right to an informed vote to the degree that they permit anonymity, even though they do not require it.

## **2. Electoral Bonds introduced as a Money Bill**

The Indian Constitution's Article 110 (1) specifies a money bill, while Article 109 (1) outlines the process used to enact the money bill. Only in the Lok Sabha may a Money Bill be filed, and it must contain provisions pertaining to "taxation, government borrowings, or expenditure from the Consolidated Fund of India only."

Furthermore, Article 117 of the Constitution of India defines Financial Bill as that bill that deals with the heads mentioned in Article 110(1) or any other additional matter.<sup>45</sup> Finance Bill is further classified into two categories, namely, Category-I and Category-II. Category-I deals with subjects pertaining to Article 110(1) and Category-II with other matters. Electoral Bonds, at best, will fall under Financial Bill-Category II. Category II bills require the assent of both Lok Sabha and Rajya Sabha. Therefore, any Financial Bill can be tabled on the floor of Parliament as a Money Bill only in cases wherein it falls under any of the heads given in Article 110(1) of the Constitution.

Electoral Bonds, on the other hand, do not fit within any of the categories listed in Article 110 (1). Therefore, the introduction of Money Bills disguised as Electoral Bonds violates the idea of the separation of powers.

The Rajya Sabha does not have the same authority as the Lok Sabha when it comes to money bills because the latter are considered passed if they are not passed within 14 days of the Rajya Sabha's sitting. The Rajya Sabha is extremely important in India's bicameral legislature because it serves as a check on the Lok Sabha's misuse of power. Therefore, the Lok Sabha has effectively circumvented the Rajya Sabha by introducing Election Bonds in the Finance Act 2017 as a Money Bill, which is against the democratic norms and ideals contained in the Constitution. In summary, the introduction of Electoral Bonds as a Money Bill was not possible, and permitting the same would entail attacking the sacrosanct Constitution.

## **3. Prior consent of the RBI and Election Commission**

Through RTI responses, it has come to light that numerous government agencies, such as the Election Commission (EC), the Reserve Bank of India (RBI), and the Finance Ministry's Financial

Sector Reforms and Legislation division, have opposed the notion of this harsh programme from its inception for their own unique reasons.

In response to the Finance Ministry, the RBI said that they alone possess the authority to issue money, and that in the case of election bonds, the government will acquire that authority through a change to Section 31 of the RBI Act. Furthermore, according to the RBI, the introduction of electoral bonds will enable the money laundering and counterfeiting of unlawfully obtained cash, which will enter the system. The RBI and the Finance Ministry exchanged multiple letters, however the RBI never approved of the electoral bonds plan.

Furthermore, the Election Commission of India's objections were made public when it submitted an affidavit to the Supreme Court. In their correspondence with the Law Ministry, the Commission had made it clear that the adoption of electoral bonds would have a negative effect on the openness of political financing. It was also claimed that the Government discussed the plan with many political parties without first consulting them.<sup>49</sup>

These accusations prove that important parties within and outside the government were not consulted before the introduction of the electoral bonds plan in Parliament, despite the Election Commission and RBI voicing serious reservations about the system's validity.

## **V. Judicial Intervention**

NGOs Association for Democratic Reforms and Common Cause filed a Public Interest Litigation (PIL)<sup>61</sup> at the Supreme Court, challenging the validity of this idealistic plan on the grounds that it allows foreign lobbyists to fund political campaigns illegally. However, the Supreme Court declined to provide a stay on this plan in an interim ruling. Nonetheless, it mandated that political parties provide the Election Commission with all relevant information on contributions made through Electoral Bonds by May 15, 2019.<sup>52</sup> Additionally, by May 30, 2019, the Court ordered all political parties to release donor information, including name, amount, and bank account information, in a sealed envelope.

It should be mentioned that the majority of the parties submitted comprehensive information on the donor route after May 30, 2019, in violation of the directive. Although it was contended that transparency is enabled by the fact that the bank verifies the KYC criteria before providing the E-Bond, the Apex Court correctly noted that this does not ensure that the source of funding is checked. Based on the RTI replies, which exposed the government's egregious mistakes, the Association for Democratic Reforms applied for a stay on electoral bonds in the Supreme Court in November 2019 (issue sub-judice).

It is imperative that the Supreme Court accelerate the final hearing on the case contesting the Electoral Bonds and issue a decision that clarifies the situation as soon as possible. The electoral

bonds' anonymity gives the ruling party in the Centre an unfair advantage. It is undeniable that the electoral bonds programme has already been allowed to operate freely in a number of significant national elections, including the 2019 Lok Sabha elections, as a result of the refusal to provide an early hearing on this matter. The conduct of free and fair elections in India is now under jeopardy, which is crucial to a functioning democracy.

## CONCLUSION

As we have seen, there are numerous issues and irregularities with the new electoral funding plan. Although it was a praiseworthy measure to dramatically reduce cash donations, it did allow political parties to take advantage by boosting the number of fictitious donors. While cutting back on monetary contributions is a good thing, it has allowed political parties to take advantage of legal loopholes and attract more phoney donors. However, it is a good thing that legal and legitimate funds are being added to the democratic process via digital and cheque payments. It is impossible to overlook its shortcomings in terms of anonymity and concealment, though. The manner by which elections are funded has been significantly impacted by the introduction of electoral bonds. Whether or whether the recently enacted legislation is best for the nation is incomprehensible. In India, election bonds have simplified the process of hiding. Such donations have the ability to taint political life and impede the nation's democracy's healthy growth. This new tool has made the state of Indian democracy worse. Transparency and democracy are hampered by electoral connections. The administration persisted in its heinous actions despite its pledge to reform. They ensure that the buyer and recipient of the bond remain anonymous, giving the ruling political party an unfair advantage. Nonetheless, the information is accessible to the ruling party because it controls the State Bank of India. A number of laws have been amended, most notably the Companies Act of 2013, to address the increasing practise of corporations giving money to political parties in return for benefits. Free and fair elections are impacted by it. The 2018 election bonds programme is designed to entice businesses and make money laundering easier. The plan's opacity and anonymity compromise accountability and transparency. Voters are deprived of their right to know if the ruling party is giving special treatment to its corporate backers.<sup>13</sup>

## RESEARCH PROBLEM

1.. The Finance Act of 2017, which was passed as the Money Bill, created the electoral bond mechanism for financing elections. By amendment to the act , the requirement to give the names and addresses of persons who have made contributions to political parties through bonds is removed.

2. Electoral bonds violate citizens' basic "Right to Know" rights. A blatant and capricious information restriction that jeopardises the larger public interest is a grave blow to the fundamental values of transparency and accountability. Important public information being withheld would

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<sup>13</sup> Ananda, D. (2023). Electoral bonds: a peril to democracy and transparent elections in India. *Journal of Liberty and International Affairs*, 9(1), 89-100. <https://doi.org/10.47305/JLIA2391090a>

increase the political elite's lack of accountability, which runs counter to the concept of "Democracy and Rule of law."

3. A number of central agencies have voiced their concerns and repeatedly warned the government against the Election Bond Scheme, claiming that it could increase the flow of illicit funds, money laundering, cross-border counterfeiting, and forgeries. These agencies include the Reserve Bank of India (RBI), the Election Commission of India (ECI), the Law Ministry, and several Rajya Sabha MPs. These groups had raised serious concerns about the electoral bonds system, voiced strong opposition to it, and called it a "bad precedent." Not only did the government ignore the critiques, but it also rejected suggestions designed to make the Scheme less vulnerable to fraud.

4. Furthermore, the government is not shielded by the anonymity of persons buying electoral bonds because the State Bank of India (SBI) is always willing to provide donor information. This implies that the only people who don't know where these funds are coming from are the taxpayers. It should be noted that the SBI commission, which enables the sale and purchase of the bonds, is paid for by the federal government using public funds in addition to the bond's issue.

## RECOMMENDATIONS

1. 1. In the event that the 2018 Electoral Bond Scheme is extended, the fundamental tenet of bond donor anonymity must be abandoned. It is mandatory for all political parties that accept contributions through electoral bonds to include in their contribution reports the total amount of these donations received during the designated fiscal year, along with the particular details each donor provided about each bond, including its amount and all the information about the credit received against each bond. Standardising the reporting structure and standards for the political parties in question is necessary to ensure that the public is provided with an accurate picture of their financial situation.
2. 2. According to the eligibility requirements outlined in the Electoral Bond Scheme, 2018, a list of all political parties authorised to accept donations through electoral bonds should be established and updated on a regular basis. The parties' vote shares in the most recent general election to the House of People or the state legislature should serve as the basis for this list.. The public must have access to this list through the SBI and ECI websites. Hard copies of the approval to provide electoral bonds should also be available at the 29 SBI branches.
3. 3. The annual financial reports that the parties submit would be examined by an organisation that has been authorised by the Election Commission and the Comptroller and Auditor General (CAG). In addition to losing their tax benefits, political parties who violate the transparency rules should face specific sanctions.
4. 4. In accordance with the Right to Information (RTI) Act, all national and local political parties are required to disclose all information regarding the funds they obtained through electoral bonds. Under the RTI, all donor data should be accessible for public scrutiny.

## WAY FORWARD

It is not feasible for a typical voter to go through the records of thousands of organisations and locate likely businesses and corporate contributors. Additionally, recipient-specific data is not available. Only RTI applications filed with the SBI provide a glimpse into the millions of dollars backing political parties and, consequently, influencing public policies, in contrast to the grandiose claims made about electoral bonds facilitating openness. The legislature or the Supreme Court might, if they so choose, impose complete and immediate dis-closure, which would promote accountability and openness. Instead, limited resources from civil society are used to file PILs and RTI petitions, often at great personal risk

A normal voter cannot possibly search through thousands of organisations' records to find potential companies and corporate donors. Furthermore, recipient-specific information is not accessible. Unlike the grandiose claims made by electoral bonds encouraging transparency, only RTI petitions filed with the SBI offer a view into the millions of cash supporting political parties and, subsequently, influencing public policies. To encourage transparency and accountability, the legislature or the Supreme Court could, if they so choose, impose total and instant dis-closure. Instead, PILs and RTI applications are filed using the meagre resources available to civil society, frequently at great personal risk.

Decisions made by the public and a nation's electoral donation policy are clearly related. For instance, tobacco firms' outdoor smoking advertisements are prohibited in practically every nation, with the exception of Germany, which is the only one where cigarette businesses financially support all of the political parties. Therefore, the electoral body system need a thorough revision and shouldn't continue to be a paper tiger.

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