



## Electoral bonds and the right to information: Balancing privacy and transparency in political funding in India

Dipa Bhowmik

Department of Law, ALS, Amity University, Haryana, India

### Abstract

Electoral bonds introduced in India in 2017, was shown as an attempt towards reforming political funding. However, the absence of transparency led to unlimited and unregulated political donations by the corporations. Before understanding the trajectory ending of the journey of electoral bonds in India, it is vital to know what electoral bonds were. Electoral bonds were a kind of financial instruments functioning as bearer bonds or promissory notes. These bearer bonds were interest-free bonds that could be obtained by individuals and companies in India from a certain authorised branches of the SBI (State Bank of India). The Supreme Court of India on 15 February 2024 invalidated and declared the electoral bond scheme to be unconstitutional which was implemented in 2017 by the central government in the case of Association for Democratic Reforms v Union of India 2024 INSC 113. The Supreme Court of India on 15 February 2024 invalidated and declared the electoral bond scheme to be unconstitutional which was implemented in 2017 by the central government in the case of Association for Democratic Reforms v Union of India 2024 INSC 113. It is most certain that protecting citizen's interest is one of the most critical aspects to be taken into consideration by the government in a democracy.

**Keywords:** Electoral bonds, Indian politics, political funding, right to information

### Introduction

Financing political campaigns has continued being an opaque practice in India for a long time. Named electoral bonds, these political donations are largely unregulated and it highlights the role of black money and the influence of the corporate world in the election system. Furthermore, since electoral bonds or political funding do not feature identification of the donor or the political party to which the donation has been made, it creates mist about the whole practice.

In this case, focus is drawn towards the scope and application of Article 19(1)(a) of the Constitution of India. It is not only a mere clause; it is treated as a declaration echoing through the doors of democracy while shaping the essence of constitutionalism and democratic principles. Under the umbrella term of right to speech and expression, this clause further encompasses the right to seek, receive and access information by every citizen of India. Even the government in any case cannot overpower the mentioned article unless it is the situation of emergency. However, the lack of transparency in the electoral bonds raised question against the application of the right to information.

Electoral bonds introduced in India in 2017, was shown as an attempt towards reforming political funding (Mehrotra and Upadhyay, 2024) <sup>[3]</sup>. However, the absence of transparency led to unlimited and unregulated political donations by the corporations. It is however very right to understand that corporations make large amounts of political donations to the parties of their choice for political campaigns expecting economic favors in return and also for securing favorable policies from the government associated with their respective industries. This system makes the political parties to be corporate entities given their high dependence on corporate donations. The amount of donations made to a certain party most certainly influences the result of the election considering the role of political campaigns in the same. However, recently in February

2024, the Supreme Court has put an end to this debate over electoral bonds and their constitutionality by declaring it to be unconstitutional. Nevertheless, the journey of electoral bonds from its inception in 2017 to its invalidation in 2024 is to be critically studied to understand the reasons behind the decision of the Supreme Court and how the highest court again proved the supremacy of law in India.

### What are electoral bonds?

Before understanding the trajectory ending of the journey of electoral bonds in India, it is vital to know what electoral bonds were. Electoral bonds were a kind of financial instruments functioning as bearer bonds or promissory notes. These bearer bonds were interest-free bonds that could be obtained by individuals and companies in India from a certain authorised branches of the SBI (State Bank of India). These had to be obtained exclusively for the purpose of contribution of funds to the political parties. The amount of the bonds varied in multiple numbers ranging from thousand to one crore and their availability were restricted only to the first 10 days of the limited months of January, April, July and October. The Centre was responsible for announcing these 10 days concerning the availability of the bonds (Yadav and Yadav, 2024) <sup>[6]</sup>. It is also to be mentioned that entry of the name or any other information of the donor on the instrument would not be done so as to make the donations anonymous. There were no limitations on the number of electoral bonds that an individual or a company could purchase. One of the primary aims behind introducing electoral bonds was to replace cash donations to the political parties and improve the level of transparency in the same process.

The eligibility criteria for the political parties to receive donations via electoral bonds were associated with securing votes polled in Lok Sabha and State Assembly elections. A political party registered under the RPA, with a verified account generated by the Election Commission of India

(ECI), needed to secure a minimum of 1% of the votes polled in either Lok Sabha or even the State Assembly elections. The amount received from the bonds sold would be deposited in this verified account of a given political party within 15 days of their sale. A political party is further required to encash the amount within the mentioned 15 days. It is also to be mentioned that according to the electoral bond scheme, failure to encash any amount of any bond within the 15 days of being issued, would be directly deposited to the Prime Minister Relief Fund.

### **How the Lack of Transparency in Electoral Bonds Undermines the Right to Information Under Article 19(1)(a)**

The electoral bond scheme was introduced during the Union Budget 2017-18, through the Financial Bill, 2017, by then finance minister Arun Jaitley. Electoral bills were classified under money bills. This way they were able to bypass certain parliamentary scrutiny processes causing alleged violation of article 110 of the Constitution of India. The finance minister further proposed the amendment of the Reserve Bank of India Act concerning the facilitation of the issuance of electoral bonds for the purpose of political funding by the banks in India. Despite being introduced in 2017, it was notified in a gazette in 2018 by the Department of Economic Affairs in the Ministry of Finance in the name of the Electoral Bond Scheme, 2018.

One of the goals set by the electoral bond scheme was to reduce the circulation of black money and improve transparency in the field of political funding (Ananda, 2023)<sup>[1]</sup>. However, the scheme failed to achieve the same. It was noted that electoral bonds rather opened a new channel between black money and political parties. Removal of the name of the donors and removal of the requirement of mandatory transparency in the reporting of donations created opacity instead of transparency. It was also found that electoral bonds gave undue importance to the privacy of donors rather than focusing on maintaining transparency in the whole process of political funding. Thus, the scheme compromised the Right to Information of the citizens of India on election financing. Hence, violation of the Right to Information guaranteed under Article 19(1)(a) is a significant concern that was present in the operation of the scheme. It can also be argued that corporations use this opportunity of political funding to fund a certain political party with the intention of getting favors for the operations of the corporation as research has shown that almost all the bonds were received by the leading party. The mist regarding the use of the funding by a political party creates another concern in the mind of a layman. Given the anonymity of the whole process, it is not possible for one to know in what activity the political party must have used the funds acquired from electoral bonds.

In this scheme, the limit of 7.5% of the annual profit of a company from making donations to political parties was removed (George, 2024)<sup>[2]</sup>. It also allowed Indian subsidiaries of foreign corporations for making the nation and further allowing shell companies for being used to make donations. This opened the doors wide for shell companies to participate in the political funding.

Previously it was a mandatory action to be taken by any political party to report the names of the donors followed by the other details contributing more than 20,000 rupees in the party fund while also filing their income-tax returns. No

such information was required related to a donor donating an amount less than the one mentioned above. However, the new change concerning the anonymity of donors as well as the political parties, create a mist around the whole procedure. Taking into consideration all the dark sides of electoral bonds, the tragic ending of its journey was indeed presumed. However, the question again comes to mind, whether the government can introduce legislation to feed the interest of the political parties by compromising the rights of its own citizens. It is notable that despite the predicted issues existing in the electoral scheme, it was in operation from 2018 to 2024. It is indeed another question in concern how much corruption the scheme must have entertained during the time and why it took so long to realise the impact of such a practice and judicially put ban on the same.

### **Supreme Court ruling on the matter**

The Supreme Court of India on 15 February 2024 invalidated and declared the electoral bond scheme to be unconstitutional which was implemented in 2017 by the central government in the case of Association for Democratic Reforms v Union of India 2024 INSC 113. The judges for the bench were chief justice of India D.Y. Chandrachud, Sanjiv Khanna, J.B. Pardiwala, B.R. Gavai and Manoj Mishra, JJ.

It is considered to be an inherent nature of democracy for the state to conduct elections in a fair manner and engage the people of the country in the same. Election takes a significant place in Indian democracy. Focusing on the importance of elections in India, the central government notified the implementation of Electoral Bond Scheme on January 2nd 2018. The scheme was introduced in exercise of the power conferred upon the government under section 31(3) of the Reserve Bank of India Act, 1934 (Prakash, 2024)<sup>[4]</sup>. Taking into consideration multiple issues associated with the circulation of electoral bonds, a multitude of petitions was listed before a bench with the minimum of 5 judges in concern with the provisions of Article 145(3) of the Indian Constitution. The primary issues in the case included analysing the possibility of electoral bonds scheme to violate the Right to Information of the voters and to analyse if the lack of transparency associated with the donations made to the political parties through electoral bond scheme infringed the Right to Information of citizens under Article 21 of the Indian Constitution.

Before leading towards the decision of the case, the Supreme Court had taken into consideration multiple vital aspects of law with the intention of carving out a baseline to determine the constitutionality of the electoral bonds scheme in question. It is to be specifically mentioned that Supreme Court had considered the scope of judicial review in the present case with a special focus on cases related to economic policy. Highlighting two major judgments of Pioneer Urban Land and Infrastructure Limited vs. Union of India and Swiss Ribbons vs. Union of India, where the primary concern was to determine the constitutionality of a certain provision of the Insolvency and Bankruptcy Code, 2016 were in question. In the present case the Supreme Court made the following observation:

“The broad argument of the petitioners that the presumption of constitutionality should not applied to a specific class of statutes, that is, laws which deal with electoral processes cannot be accepted and that like a challenge of any other

law, the petitioners would have to prima facie prove that the law infringes fundamental rights or constitutional provisions, the onus would shift to the State to justify the infringement.”

### Aftermath of the decision

The basic reason behind the Supreme Court’s decision of striking down the Electoral Bond Scheme as unconstitutional was to uphold constitutional rights and values. The judgment specifically focuses on enhancing transparency and accountability in the case of political funding, while also reducing the overpowering impact of corporate power and money in politics. It is also expected that the judgment will ensure fair competition in politics and offer genuine choices to voters.

However, one of the most significant influences or the verdict given by the Supreme Court concerning electoral bonds was the direction given by the highest court to the government for revealing the details of all the donors as well as donations that were made under the ambit of the scheme. The court suggested that maintenance of transparency in the matter of political funding was critical for ensuring free and fair elections. In accordance with the ruling, the State Bank of India, the authority which was responsible for issuing the bearer bonds, will be required to furnish a detailed data with all the information as mentioned above to the election commission within the time limit of four weeks from the date of the verdict. It is further dated that the SBI will also be required to provide data on all the political parties who encashed the bonds and thereafter received the donation amounts in their respective accounts. The court also directed all the parties to voluntarily reveal the amount that they received through the controversial bond under consideration. Winning for transparency with the help of the verdict, it was revealed that the scheme under consideration had enabled in excess of Rs. 16,000 crores of donation to different political parties without any kind of details of donors or the amount donated (Singhal, 2022)<sup>[5]</sup>.

The courts rightly focused on the rights of the citizens to have information concerning the crucial details associated with financing political parties aiming to gain political power. The courts observed that the anonymity can threaten the democratic principles of India and enable a quid pro quo relationship between the donors and the political parties.

With the mandate of the disclosure, the indistinct practice of political funding channeled via the electoral bonds scheme will be exposed. Experts have opined that the step taken by the Supreme Court increasing transparency and eliminating anonymity in the political funding practice, will highlight the importance of Right to Information in a democracy and bring a significant change in the elections in India.

### Conclusion

The analysis concluded that electoral bonds were choking democracy and hampering the level of transparency required in political funding. It is most certain that protecting citizen’s interest is one of the most critical aspects to be taken into consideration by the government in a democracy. However, infringement of the Right to Information in the scheme under consideration questioned the capacity of the government to uphold such right. The Supreme Court of India has rightly eliminated the threat to democratic fabric by declaring the scheme unconstitutional while highlighting

the primary reasons for the same which have been discussed in the analysis above.

Invalidation of electoral bonds and the judgment thereof highlighted multiple concerns that need to be taken into consideration by the authorities in future administration. It had rightly pointed out the vital role of transparency in a democracy while dealing with political funding. Funding for political parties most certainly cannot be restricted as elections require funding. However, the practice could be made constitutional by helping it align with fundamental rights and other constitutional provisions. There should be no existence of undue influence or conflict of interest. With reasonable restrictions as well as transparency in the electoral bond scheme, the same can attain a new life.

### References

1. Ananda D. Electoral bonds: a peril to democracy and transparent elections in India. *Journal of Liberty and International Affairs*,2023;9(1):89-100.
2. George AS. The Unconstitutional Nature of Electoral Bonds in India: Impacts on Political Transparency and the Democratic Process. *Partners Universal Innovative Research Publication*,2024;2(1):150-164.
3. Mehrotra A, Upadhyay A. Electoral Bonds: What the SC judgment means and how political funding is regulated in western democracies. *ABP Live*, 2024.
4. Prakash B. Interpreting the Illicit Nexus of Ruling Party in form of “Electoral Bond Scheme”: After it being declared as “Unconstitutional” by Apex Court, 2024. Available at SSRN 4816678.
5. Singhal D. How Electoral Bonds Open the Door for Legalizing Corruption in India?. *Supremo Amicus*,2022;28:237.
6. Yadav R, Yadav K. The Electoral Bond Judgement-A Critical Analysis: Recent Judgement on Electoral Bond. *Motherhood International Journal of Research & Innovation*,2024;1(01):46-49.