

A Critical Analysis on Judgment on Electoral Bonds in India

Rajalakshmi v

LLB, 2nd year

Hindustan School of Law, Hindustan Institute of Technology and Science, Hindustan University, Padur

Email id : rajiraghavan332@ gmail .com

Abstract: *The research paper deals with the analysis on judgment regarding electoral bonds by the Supreme court of India. The supreme court of India on 24,february declared electoral bonds as unconstitutional. This research paper aims at what electoral bonds are, analyze the judgment, purpose of the electoral bonds and researchers personal view on the judgment. This is a doctrinal type of research. The objectives of the study are to understand electoral bonds, to study the purpose of electoral bonds, to study how electoral bonds affect free and fair elections, to study the disadvantages of electoral bonds. The main aim of the study is how electoral bonds affect the principles of free and fair elections in India*

Keywords: electoral bonds

OBJECTIVES OF THE STUDY

- 1.To understand electoral bonds
- 2.To study the purpose of electoral bonds,
- 3.To study how electoral bonds affect free and fair elections,
- 4.To study the disadvantages of electoral bonds

I. INTRODUCTION

Body corporates and politics are two interdependent bodies. Though the right to business is a fundamental right, doing business without political support is impossible in any country. Any corporate to establish their business needs some help from the politicians by way of government policies and schemes. The government policies and schemes help to establish more corporate bodies in a country. Hence, a corporate automatically supports the political party that implements schemes and policies that benefits their business. This is how corporate and political parties are interdependent. Electoral bonds are one such legal way through which a corporate can support their favorite political party.

HISTORY OF ELECTORAL BONDS

The concept of electoral bonds in India was introduced through **THE FINANCE ACT OF 2017**, during the Union Budget 2017-18 by then Finance Minister Arun Jaitley. which amended several existing laws related to political funding. The primary aim was to address issues of opacity and corruption in political funding by bringing about a more transparent mechanism for donations to political parties.

The Finance Act, 2017, introduced the concept of electoral bonds as a means to cleanse political funding. The government argued that this move would bring transparency by making donations traceable. The first electoral bonds were issued in March 2018 by notified branches of **State Bank of India (SBI)**. These bonds could be purchased for specified denominations, starting from ₹1,000 (\$13.5 approximately). The government announced that these bonds could be used to make donations to registered political parties. Electoral bonds became operational, and various political parties started receiving donations through this mechanism. However, concerns were raised by opposition parties and transparency advocates regarding the anonymity of donors, which they argued could lead to the influence of undisclosed corporate interests in politics.

LEGAL CHALLENGES

The electoral bonds scheme faced legal challenges. In April 2019, the Supreme Court of India heard petitions challenging the scheme's legality and lack of transparency. However, in **April 2019**, the Supreme Court ruled that **electoral bonds would be valid for the upcoming general elections**, but it directed political parties to submit details of donations received through electoral bonds in sealed covers to the Election Commission of India (ECI).

HOW DO ELECTORAL BONDS WORK

Electoral bonds are issued by notified banks for specified denominations. They can be purchased by any Indian citizen or company incorporated in India. The purchaser can buy these bonds from the bank and then donate them to the political party of their choice. The political party can encash these bonds within a specified period. They need to deposit these bonds into their designated bank account within 15 days. One of the contentious aspects of electoral bonds is that they maintain the anonymity of the donor. Neither the donor nor the political party receiving the donation is required to disclose the identity of the donor publicly. This has raised concerns about transparency and accountability in political funding. Electoral bonds have a validity period. If they are not cashed within that period, they become worthless.

Proponents argue that electoral bonds provide a legal and transparent way for political parties to receive funding, reducing the reliance on cash donations which are often untraceable and can lead to corruption. Critics, however, contend that the anonymity provided by electoral bonds undermines transparency and can potentially lead to the influence of undisclosed corporate interests in politics.

State Bank of India Applicant V. Association for Democratic Reforms and Other Respondents, 2024.

In this judgment, the Court declared the Electoral Bond Scheme and the provisions of the Finance Act 2017 which amended the provisions of the Representation of People Act 1951 and the Income Tax Act 1961, **unconstitutional** on the ground that the non-disclosure of information regarding the funding of political parties is violative of the right to information of citizens under Article 19(1)(a) of the Constitution. The amendments which were introduced by the Finance Act 2017 to the provisions of the Companies Act 2013, permitting unlimited funding of political parties by corporate entities were held to be arbitrary and violative of Article 14 of the Constitution.

In order to give full effect to the judgment which was rendered by the Constitution Bench, this Court directed the State Bank of India, which was the authorized Bank to deal with Electoral Bonds under the Electoral Bond Scheme to submit details of the Electoral Bonds purchased by the contributors and redeemed by political parties between 12 April 2019 (the date on which an interim order was passed by this Court directing the Election Commission of India to collect details of the contributions) till 15 February 2024 (the date of the judgment).

HOW ELECTORAL BONDS AFFECT FREE AND FAIR ELECTIONS

Electoral bonds have sparked considerable debate regarding their potential impact on free and fair elections. Here are some ways in which electoral bonds can affect the democratic process:

1. Anonymity of Donors: One of the most contentious aspects of electoral bonds is the anonymity they provide to donors. Critics argue that this anonymity undermines transparency in political funding. When donors' identities are undisclosed, it becomes difficult for the public to know who is financially supporting a political party. This lack of transparency can raise concerns about the influence of vested interests, including corporations, on political parties and elected representatives.

2. Potential for Influence Peddling: The anonymity of donors through electoral bonds raises concerns about the potential for influence peddling. Without knowing who is financially supporting a political party, there is a risk that certain donors may seek to exert undue influence on political decision-making in exchange for their financial support. This can undermine the integrity of the electoral process and lead to policies that prioritize the interests of wealthy donors over those of the general public.

3. Unequal Access to Funding: Electoral bonds may exacerbate existing inequalities in political funding. Wealthy individuals and corporations may have greater resources to purchase electoral bonds and donate to political parties, giving them disproportionate influence over the political process. This can marginalize the voices of smaller donors and grassroots organizations, leading to an imbalance in the representation of diverse interests in the political sphere.

4. Impact on Electoral Competition: Electoral bonds can potentially distort electoral competition by favoring parties with access to large donations. Parties that receive significant funding through electoral bonds may have a financial advantage over their competitors, making it harder for smaller or less well-funded parties to compete on a level playing field. This can hinder the diversity of political representation and limit voter choice in elections.

Overall, while electoral bonds aim to bring transparency to political funding, their impact on free and fair elections depends on how they are implemented and regulated. Striking a balance between transparency and accountability on one hand, and protecting the integrity of the electoral process on the other, remains a challenge in many democratic systems.

II. RESEARCH METHODOLOGY

This is a doctrinal research. The primary sources are judgments, provisions and statutes. The secondary source of information are taken from articles, law journals and commentaries.

III. REVIEW OF LITERATURE

<https://www.eci.gov.in/disclosure-of-electoral-bonds> the concept of free and fair election was understood from this website. This is the official website of the election commission of india. Details of electoral bonds by SBI were taken from this page.

https://dea.gov.in/sites/default/files/Electoral%20Bonds_Press%20RELEASE_2-1-2018.pdf From this page the researcher learned the electoral bonds scheme. The report was released by the Government of India Ministry of Finance Department of Economic Affairs on January 02, 2018.

<https://www.scobserver.in/wp-content/uploads/2021/10/Electoral-Bonds-Writ-Petition-by-Association-for-Democratic-Reforms-ADR.pdf> from this page the researcher gathered informations regarding the case judgment.

<https://www.scobserver.in/cases/association-for-democratic-reforms-electoral-bonds-case-background/amp/> from this page the information regarding history of electoral bonds, how electoral bonds remain as a threat to democracy of India was understood.

IV. CONCLUSION

The scheme of electoral bonds was introduced by the government to legalize and transparent the support for the political party. But the denial of such financial transactions is violative of the right to information of the citizens of india. This scheme also remains a threat to the corporates. In recent times the sudden actions of ED against various body corporates should be considered. These ED rides and their reports are not published. The companies that are being raided by the ED bought electoral bonds after the ride and the proceedings against those body corporates are pending and not being disclosed by the authorities. This imposes the suspicion of threat by ED to the body corporates. By legalizing those electoral bonds the political parties implies coercive measures to get the support from the body corporates. That also discourages the small parties development, since these small parties get least support or sometimes no support from the body corporates. By declaring these electoral bonds unconstitutional, all political parties can contest in elections without monetary partiality. This prevents the money transactions from body corporate to political parties. By such money deposits the big political party always has greater money support and smaller political parties get no monetary support. This obviously affects the free and fair election and collapses the principles of democracy. Free and fair elections are the basic structure of the constitution and these electoral bonds pose a great threat to this basic structure of the constitution.