
SC STRIKES DOWN ELECTORAL BOND SCHEME

BY RUDRANSH MADHAV¹

ABSTRACT

The electoral bond scheme was introduced by the Central government in the year 2018 and the aim of the scheme was to cleanse the political funding in India. So electoral bonds are like promissory notes that can be bought by individuals and companies in India from the State Bank of India (SBI) and donated to a political party, which can encash these bonds. Special benefits were added in the scheme in which the donor's identity should not be disclosed by the government. The noble cause was passed in the parliament to fulfil the ulterior motive of the ruling party. Through an amendment to the Finance Act 2017, the Union government had exempted political parties from disclosing donations received through electoral bonds. The anonymity of this scheme was against the basic structure of the Indian constitution because it challenges Article 19(1)(a) right to information of the Constitution. The Supreme Court also agreed with the contentions of the petitioners that since the purpose of curbing black money cannot be traced to any of the reasonable restrictions elucidated under Article 19(2), it cannot be considered as a legitimate purpose for restricting the fundamental right to information. The Supreme Court in a unanimous verdict, upheld every challenge to every aspect in the electoral bonds case, declaring the scheme unconstitutional. It ordered the SBI to stop issuing electoral bonds immediately and to submit all information regarding the bonds sold, the names of all the donors and recipients to the Election Commission of India (ECI) and made ultra-virus to the Indian Constitution because it challenges Article 14, 19 and 21.

¹ Author is a student at Ramanujan College, University of Delhi

I. PROCEDURAL BACKGROUND OF ELECTORAL BOND SCHEME

On April 12, 2019, all political parties were instructed to submit information regarding their donations, contributors, and bank account details in a sealed cover to the ECI by a panel chaired by Chief Justice Ranjan Gogoi and composed of Justice Deepak Gupta and Justice Sanjiv Khanna. The panel stressed that these issues would require careful examination but decided not to stop the scheme's implementation.

The petitioners repeatedly appeared before the Court after the Order. They made a desperate plea in November 2019 and then made another attempt in October 2020, right before the Bihar elections became a major event.

In the year of 2021, Association of Democratic reforms approached the bench to halt the scheme before government starts to issue a fresh bond sale. The application was rigorously reviewed by a bench led by Chief Justice S.A Bobde alongside with Justice A.S Bopanna and Justice V. Ramasubramaniam.

On March 26, 2021, the Supreme Court rejected the plea made by the democratic reforms associations to put the scheme on halt and also dismissed the concerns about foreign corporate influence on electoral processes.

On February 15, in what one can call a watershed moment, the Supreme Court of Indian struck down the Electoral Bonds Scheme of 2017, holding the same to be unconstitutional. While pronouncing the unanimous verdict of the five-bench constitutional bench, Chief Justice of India DY Chandrachud held that anonymous electoral bonds are violative of the right to information under Article 19(1)(a) of the Constitution.

The CJI stated “*Crucial aspect of the expansion of right to information is that it is not confined to state affairs but also includes information necessary for participatory democracy. Infringement to the right to information is not justified by the purpose of curbing black money.*”²

II. WHAT IS THE ELECTORAL BOND SCHEME?

² <https://www.livelaw.in/top-stories/electoral-bonds-not-the-only-way-to-curb-black-money-therere-alternative-means-which-are-less-restrictive-supreme-court-249565?infinitemscroll=1>

Electoral Bond was a mode of funding to the political parties in India. The scheme of the Anonymous Electoral Bond was introduced in the The Finance Bill, 2017 during the Union Budget 2017-18.

Finance Minister Mr. Arun Jaitley proposed to amend the Reserve Bank of India (RBI) Act in order to facilitate the issuance of electoral bonds by banks for the purpose of political funding.

The central government had introduced the electoral bond scheme as a component of the Union Budget and then it was considered as a money bill. Money bills have a special constitutional validity where they can surpass the scrutiny of the parliamentary processes. The special validity is that the money bill doesn't need to be passed in Rajya Sabha (exempted).

The electoral Bond scheme was put forward through the Finance Act 2017, which contains chain of amendments in the Income Tax Act³ and Representative of People's Act⁴.

III. FEATURES OF ELECTORAL BOND SCHEME

The primary goal of the Electoral Bonds Scheme was to increase transparency in India's electoral finance. In a nation transitioning to a "cashless-digital economy," the administration had referred to the plan as an "electoral reform."

Election bonds provide anonymity since they don't identify the political party that issued them or the contributor. If the 15-day window is missed, neither the donor nor the political party that received the electoral bonds will be compensated for the bonds. Rather, the election bond's fund value is transferred to the Prime Minister Relief Fund.

Amendments:

- The Finance Act 2017 made three changes to a section of the Companies Act:
 - (i) The first proviso to Section 182(1) which prescribed a cap on corporate funding was omitted

³ The electoral bonds made by individuals or entities were tax-exempt under Section 80GG and section 80GGB under the Income Tax Act, 1961

⁴ Electoral Bonds would have a life of only 15 days during which it can be used for making donations only to the political parties registered under section 29A of the Representation of People's Act, 1951.

- (ii) Section 182(3) was amended to only require disclosure of the total amount contributed to political parties by a company in a financial year and excluded the requirement to disclose the particulars of the amount contributed to each political party.
- The Taxation Laws (Amendment) Act, 1978 included section 13A to the IT Act exempting the income of political parties through financial contributions and investment from income tax.
 - By the election and other related laws (Amendment) Act 2003, sections 80GGB⁵ and 80GGC⁶ were inserted in the IT Act making contributions made to political parties' tax deductible.
 - The Finance Act 2017 made amendments to section 13A⁷ of the IT Act.
 - Several amendments were made to the electoral bond scheme, On 7 November 2022 it was amended to increase the sale days from 70 to 85 in a year where any assembly election may be scheduled.
 - The Foreign Contribution Regulation Act (FCRA) was amended by the government. with the support of the opposition, to broaden the definition of a "foreign" corporation in order to include a wider spectrum of companies that might be allowed to make political contributions.

There were several conditions regarding the eligibility. Only the political parties registered under Section 23A of the Representation of the People Act, 1951 (RPA, 1951) which has secured at least 1% of votes in the last General Election to the Lok Sabha or the State Legislative Assembly could receive Electoral Bonds.

⁵ 80GGB “Deduction in respect of contributions made by companies to political parties-in computing the total income of an assessee, being an Indian company, there shall be declared any sum contributed by it, in the previous year to any political party or an electoral trust.

⁶ 80 GGC “deduction in respect of contributions made by any person to political parties- In computing the total income of an assessee, being any person, except local authority and every artificial juridical person wholly or partly funded by the Government, there shall be deducted any amount of contribution made by him, in the previous year, to a political party.

⁷ Amendment to proviso (b) to section 13A induced The political party was not required to maintain a record of contributions if the contribution was received by electoral bonds and proviso (d) to section 13A which induced The political party must receive a donation in excess of two thousand rupees only by a cheque, bank draft, electronic clearing system or through an electoral bond.

IV. OBJECTIONS RAISED BY RBI AND ECI

On 2 January 2017, RBI wrote a letter to the Ministry of Finance on the proposal of the government to allow scheduled banks to issue electoral bonds for the purpose of political funding. The RBI objected to this proposal on various grounds such as :

- The amendment would enable multiple non-sovereign entities to issue bearer instruments⁸. Electoral bonds have the ability to undermine the bank notes and the potential to convert itself into a currency if issued in huge quantities.
- The identity of the person or entity purchasing the bearer bond will be known because of the Know Your Customer⁹. RBI was totally against this amendment because it goes against the principle of the Prevention of Money Laundering Act, 2002.
- The RBI objected that permitting a commercial bank to issue bonds would have an adverse impact on public perception of the scheme. It also marked out the possibility of shell companies misusing bearer bonds for money laundering transactions.

V. ELECTION COMMISSION REPORT

On 26 May 2017, the Election Commission of India wrote to the Ministry of Law and Justice that the amendments to the IT Act, RPA and Companies Act introduced by the Finance Act 2017 will have a serious impact on the transparency of political funding of political parties.

The amendment to the RPA by which donations through electoral bonds were not disclosed is a regressive action towards donation transparency.

Government amendment deleted the provision in the Companies Act that the companies to disclose particulars of the amount contributed to specific political parties.

ECI also expressed its apprehension about the deletion of Section 182(1) by which the capon corporate donations were removed.

⁸ Section 31 of the RBI Act bars any person other than the RBI from issuing bearer bonds.

⁹ KYC

VI. WHY DID SC STRIKE DOWN ELECTORAL BOND SCHEME?

- **Violation of the Right of Information:**

The court was of the opinion that permitting anonymous donation to the political party was a violation of the fundamental right to information under Article 19(1)(a)¹⁰ of the constitution, the Supreme Court further stated that reasonable restrictions made under Article 19(2)(b) cannot be held valid under this case because it was taking over the right of the voters to know about the funding of the political parties and this anonymity can shadow the relationship between the giant corporates and the political parties. Corporate funding per se is violative of the constitution because corporate entities are not citizens and thus are not entitled to rights under article 19(1)(a) As a result of this anonymity, there is a legitimate possibility that financial contribution to a political party would lead to “quid pro quo arrangements”¹¹. The amendments permitting non-disclosure of information on political funding are violative of the right to information under Article 19(1)(a). The right to information on funding of political parties is a natural consequence of the judgment of this Court in ADR (supra) and PUCL (supra) because the underlying principle in the judgments is that an informed voter is essential for a functioning democracy. Information about funding to political parties is necessary for an informed voter since the Symbols Order 1968 and the provisions of the Tenth Schedule allow political parties to influence legislative outcomes and policies

- **Violation of Article 21**

The non-disclosure of information on political contributions promotes corruption¹² and quid pro quo arrangements. The available data shows that more than ninety-four per cent of the total electoral bonds are purchased in denominations of rupees one crore, this data makes it very simple that bonds are purchased by corporations and not individuals. The following amendment violates the rights of shareholders of companies who are donating money to political parties by preventing the disclosure of information to them.

¹⁰ State of U.P vs. Raj Narain & Ors 1975

¹¹ A favor or advantage granted in return for something.

¹² Relied on Kanwar Lal Gupta v. Amar Nath Chawla, 1975 SCC (3) 646

- **Not Proportionally Justified to Curb Black Money**

Reckon on the proportionality test laid down in its 2017 verdict of *KS Puttaswamy*¹³ case which upheld the right to privacy, it underscored that the government did not accept the least restrictive method to achieve its objective.

The government has to build an electoral trust among the voters, which facilitates the collection of political contributions from the donors.

The SC also agreed with the contentions of the petitioners that since the purpose of curbing black money cannot be traced to any of the reasonable restrictions elucidated under **Article 19(2)**, it cannot be said to be a legitimate purpose for restricting the **Fundamental Right to Information**.

- **Right to Donor Privacy not extended to contributions made:**

The court pointed out that financial contributions to political parties are usually made for two mottos: As an expression of support and two, as a “quid pro quo measure”

However, this scheme has undermined the electoral trust of the voters because of certain amendments which stand in violation of Fundamental Rights.

The bench said the deletion of a provision in the Companies Act permitting unlimited corporate contributions to political parties was “arbitrary and violative” of Article 14 (right to equality) of the Constitution. Under the scheme, the contributions made by corporations and companies have been given paramountcy over contributions made by the general public. This has created a drift among the voters because now they feel that the upcoming policies made by the government will be at par or in relation with corporations, so they can aggressively make a profit out of such policies. The Chief Justice held that the (right to privacy of political affiliations) doesn't extend to those contributions, which may be made to influence policies for future gain.

- **Unlimited corporate donations Violate Free and Fair Elections:**

The court found the amendment made to Section 182 of the Companies Act, 2013¹⁴, permitting unlimited political contributions by companies to be manifestly arbitrary.

¹³ *K.S. Puttaswamy and Anr. Vs. Union of India* ((2017) 10 SCC1)

The provision allows Indian companies to make financial contributions to political parties under specific conditions. However, through the Finance Act, 2017 crucial changes were introduced including the removal of the prior cap on the amount that companies can donate to political parties -7.5 % of the average profits of the preceding fiscal years.

Additionally, the requirement for companies to disclose the names of the political parties to which contributions were made in their Profit and Loss accounts was also eliminated.

The Chief Justice highlighted that section 182 errs by treating political contributions by individuals at par with those made by companies as the latter is often made with the intent of securing benefits in return.

While delivering the judgment, CJI said “*A company has graver influence on the political process than contributions by individuals. Contributions by companies are purely business transactions.*”¹⁵

- **Amendment to Section 29C of Representation of People’s Act, 1951 Quashed:**

Initially section 29C of the Representation of the People Act, 1951, required parties to declare all contributions higher than Rs. 20,000, and specify whether they were received from individuals or companies.

However, the Finance Act, 2017, amended this provision to create an exception wherein such a requirement would not be applied to donations received through electoral bonds.

Striking down the amendment, the court observed that the original requirement to disclose contributions of more than Rs. 20,000 effectively balanced the voter’s right to information with the right to privacy of donors especially since donations below this threshold were far less likely to influence political decisions.

VII. SC CONCLUSIONS

- (i) The Electoral Bond Scheme, the proviso to Section 29C (1) of the Representation of the People Act 1951 (as amended by Section 137 of Finance Act 2017), Section 182(3) of the Companies Act (as amended by Section 154 of the Finance Act 2017),

¹⁴ Section 182 of the Companies Act, 2013 (Companies Act) enables an Indian company to contribute any amount to any political party and Section 182(3) states that this required company to disclose any amount contributed to any political party along with the particulars of the amount donated and name of the receiving party.

¹⁵ <https://vidhilegalpolicy.in/blog>

and Section 13A(b) (as amended by Section 11 of Finance Act 2017) are violative of Article 19(1)(a) and unconstitutional.

- (ii) The deletion of the proviso to Section 182(1) of the Companies Act permitting unlimited corporate contributions to political parties is arbitrary and violative of Article 14

Furthermore, the court directed that the issuing bank, i.e., the State Bank of India, shall *immediately stop the supply of electoral bonds and will have to furnish the details of donations* through electoral bonds and the details of the political parties that received the contributions. The aforementioned details have been directed by the court to be submitted to the Election Commission of India (ECI) by March 6 which shall then be published by the ECI on their respective website by March 13.

Case Laws

State of U.P vs. Raj Narain & Ors 1975

State of U.P vs. Raj Narain was a landmark cornerstone that widened the scope of the constitutional Rights to freedom of speech and expression. The Supreme Court realized its verdict by improving the scope of Article 19(1)(a) of the Indian Constitution and Sections 123 and 162 of the Indian Evidence Act, 1872. The Supreme Court of India held that there is a right to receive information when a matter concerns any public interest.¹⁶

K.S. Puttaswamy and Anr. Vs. Union of India

In this case, privacy was declared as a fundamental right. It also laid down three conditions for the proportionality test to test whether the invasion of privacy (which is a fundamental right) by the government is reasonable or not, such conditions are as follows:

- (i) Legality (existence of law)
- (ii) Defined in terms of a legitimate state interest.
- (iii) Proportionality ensures a rational nexus between objects and means adopted.

¹⁶ <https://lawplanet.in/state-of-up-vs-raj-narain/>

So the above conditions need to be proved by the government to put reasonable restrictions on the fundamental right to privacy.

The second and third requirements of the proportionality test were not met by the government. This was due to the second requirement that it be defined as state interest, which stipulates that reaching out to a specific population is a legitimate constitutional purpose and that the state has an aim to ensure that its citizens receive basic human facilities. However, the Universal Adult Franchise, the most important right, was being restricted by the state. The anonymity clause that was imposed after the amendment prevented them from informing the people about the political parties' fundraising practices. Thus it is unable to demonstrate that it was appropriate and hence should be made unconstitutional.

K.S. Puttaswamy (9-J) (Privacy) (supra) as to whether the right of privacy is an essential component for the effective fulfilment of all fundamental rights or can be held to be a part or a component of Article 21 and Article 19(1)(a) of the Constitution.

Maneka Gandhi v. Union of India¹⁷,

In this case, the Court held that substantive due process is a part of Article 21 which has to be read along with Articles 14 and 19 of the Constitution. Therefore, Justice Nariman held that arbitrariness of legislation is a facet of unreasonableness in Articles 19(2) to (6) and therefore arbitrariness can also be used as a standard to strike down legislation under Article 14.

Shayara Bano (supra) explained in the In Re Special Reference No.1 of 2012 that a judgement of apparent arbitrariness constitutes a constitutional defect in and of itself, making legislation that violates Article 14 illegal. Moreover, it was held that there is no rational distinction between subordinate legislation and plenary legislation for the purposes of Article 14. Accordingly, the test of manifest arbitrariness laid down by this Court in Indian Express Newspapers (supra) in the context of subordinate legislation was also held to be applicable to plenary legislation. In conclusion, this Court held that manifest arbitrariness “must be something done by the legislature capriciously, irrationally and/or without adequate determining principle.” It was further held that legislation which is excessive and disproportionate would also be manifestly arbitrary. The

¹⁷ (1978) 1 SCC 248

doctrine of manifest arbitrariness has been subsequently reiterated by this Court in numerous other judgments

State of Tamil Nadu v. Ananthi Ammal¹⁸

a three-judge Bench of this Court held that a statute can be declared invalid under Article 14 if it is found to be arbitrary or unreasonable.

State of Andhra Pradesh v. McDowell & Co¹⁹

This Court held that legislation can be invalidated on only two grounds: first, the lack of legislative competence; and second, on the violation of any fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provision.

VIII. CONCLUSION

A momentous day for Indian democracy arrived on February 15, 2024, when the Supreme Court declared the Electoral Bonds Scheme unlawful. The absurdity that the government showed with this electoral bond scheme will be remembered as a shame in Indian democracy and SC not only made the scheme unconstitutional but also upheld the constitution's basic structure. The government is required to put a halt on the issuance of electoral bonds in compliance with this order and furnish the Indian Election Commission with all the relevant information. The court ruling highlights the schemes in violation of the right to information discards the government's arguments and ensures a confidence that the constitution cannot ignore the potential misuse of power by the government.

¹⁸ (1995) 1 SCC 519

¹⁹ (1996) 3 SCC 709