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The Mechanisms of Electoral Bonds in India.

In the case of *Association for Democratic Reforms v Union of India*¹ five judge bench of supreme court of India unanimously declare the scheme of electoral bonds is unconstitutional the name of investor can not be disclosed to citizens of the country and not to even Election commission of India.

WHAT ARE ELECTROAL BONDS & ELECTROAL BOND SECHEME?

- **Electoral Bonds:**

Individuals and corporations may anonymously give a limitless amount of money to any political party via electoral bonds. Electoral Bonds are money instruments like promissory notes, which can be bought by companies and individuals in India from the State Bank of India (SBI) and donated to a political party, which can then encash these bonds.²

- **Electoral Bond scheme:**

Electoral Bonds were established in India as part of the 2017 Finance Act. According to an official statement dated November 4, 2023, only Political Parties registered under Section 29A³ of the Representation of the People Act, 1951 (43 of 1951) and receiving at least one percent of the votes polled in the last General Election to the House of the People or the Legislative Assembly of the State will be eligible to receive the Electoral Bonds. The

¹ Association for Democratic Reforms v Union of India, 2024 INSC 113.

² DRISHTIIAS, <https://www.drishtiias.com/daily-updates/daily-news-editorials/sc-strikes-down-electoral-bonds-scheme-1> (last visited April 06, 2024)

³ Representation of the People Act, 1951, §29A, No. 43, Acts of parliament, 1951(India).

program was touted by the administration as a "electoral reform" in a country transitioning to a "cashless-digital economy".

The electoral bond idea called for the issuance of a promissory note with bearer character. According to the Association for Democratic Reforms, a bearer instrument does not carry the name of the buyer or payee, so no ownership information is recorded, and the holder of the instrument is deemed the owner.

ELECTION COMMISSION OF INDIA ON ELECTORAL BOND:

On March 25, 2019, one of the respondents, the Election Commission of India (ECI), submitted an affidavit contesting the Electoral Bond Scheme. According to the affidavit, the strategy violates the purpose of openness in political fundraising. It further alleged that on May 26, 2017, the ECI sent a letter to the Union Government, warning of the "repercussions/impact on the transparency aspect of political finance/funding." Furthermore, they argued that exempting political parties from disclosing donation information would keep knowledge about foreign funding hidden. It said that there was "unchecked foreign funding of political parties in India, which could lead to Indian policies being influenced by foreign companies."

On April 1, 2019, the Union administration issued a response, arguing that the EBS was "a pioneer step in bringing electoral reforms, to ensure that the spirit of transparency and accountability in political funding is maintained." The Union said that political parties were mostly funded by cash donations, resulting in an "unregulated flow of black money." The Union declared that these concerns would no longer hinder political finance because just one licensed bank—the State Bank of India—could issue such bonds. Additionally, supplying KYC data ensures accountability.⁴

CONCERNS RAISED WITH RESPECT TO ELECTROAL BOND:

- **Contradicting its Basic Concept:**

⁴SCOBSEVER, <https://www.scobserver.in/cases/association-for-democratic-reforms-electoral-bonds-case-background/> (last visited April 06,2024)

The fundamental critique leveled against the electoral bonds plan is that it does the exact opposite of what it was intended to do, which is to increase transparency in election spending.

- **A challenge to democracy:**

The Union government amended the Finance Act of 2017 to exclude political parties from revealing funds received through electoral bonds. This implies that voters will not know which individual, firm, or organization financed which party and to what amount. In a representational democracy, residents vote for the persons who will represent them in Parliament.

- **Crony Capitalism:**

The electoral bonds scheme removes all pre-existing limits on political donations and effectively allows well-resourced corporations to fund elections subsequently paving the way for crony capitalism.⁵

- **Power-Biased Donations of Electoral Bond:**

The party in power secured the highest donation among national political parties. More than 52% of the ruling party's total donations were sourced from Electoral Bonds, amounting to Rs 5,271.9751 crore.

Main Opposition party secured the second-highest Electoral Bond donations, with Rs 952.2955 crore (61.54% of its total donations), followed by the third largest party with Rs 767.8876 crore (93.27%).⁶

CONCLUSION

The Supreme Court issued a significant decision on February 15, 2024, dismissing the Electoral Bonds Scheme, marking an important moment in Indian democracy. Upholding democracy as the fundamental framework of the Constitution, the Court unanimously declared the plan illegal, resolving all challenges submitted. This verdict mandates the government to stop issuing electoral

⁵ *Supra note 02.*

⁶ *Supra note 02.*

bonds immediately and to provide all relevant information to the Election Commission of India. The Court's decision focuses on the scheme's breach of the right to be informed and rejects the government's arguments, emphasizing that the Constitution cannot disregard potential misuse.

In researcher opinion the scheme of Electoral Bond is not transparent enough to reach its main objective therefore it violates related constitutional provisions and not providing the information regarding the investment done in electoral funding and violates citizens right of information because, this scheme is not informing how much money is earned and out them how much is spent. This scheme backed by loophole in law as the information regarding investment in electoral Bonds are asked by election commission of India, only the investor and the political party knows the amount and the party which have invested the money; therefore, it violates right to know of the citizens.