



## ELECTORAL BONDS AND CORRUPTION INVOLVED IN IT

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### Abstract

The main goal of the Electoral Bond has been to serve as a replacement for funds raised in the manner of cash and to ensure campaign financing accountability. Under such circumstances, where the country was bleeding internally due to illegal acts of corruption, a scheme was introduced to keep the same in check and incorporate white money into the system. With the help of this article, we will study the reason behind introduction of such a scheme in our country. We will further analyze the impact it has put over the current situation followed by few recommendations to improve the current scenario in the future course of time.

**Key Words:** Corruption, Electoral Bonds, Politics, RTI, Reforms

### 1. Introduction

The purpose of this system, according to the government of the time, was to incorporate white money into political institutions while combating the threat of black money. Nevertheless, clauses such as donor confidentiality and source of donors, the elimination of the 7.5 percent corporate donation limit, enabling foreign businesses to donate to political groups, and recent statistics released by multiple groups paint a very different picture. It indicates that this was merely a ruse to legalize corruption

under the guise of ostensibly transparent transparency<sup>1</sup>.

Although this scheme may have served as a control on political financing, as noted above, certain clauses have rendered this a highly contentious issue. The government is embroiled in a scandal over charges that the elected government was given access to the donor's information with the assistance of other organizations, flouting the act's norms. Basically, the model itself provided anonymity, which resulted in opaqueness in the financing method, and the main aspect is that the donor is not required to reveal his or her source of revenue, which merely provides enough room for abandoning all the black money stashed in tax havens and turning it white via these bonds.

The elimination of the 7.5 percent cap on donations from corporations, which allows for unaccounted and unrestricted contributions to all these political parties, is the most disturbing aspect, raising further doubts about whether this can be done on a for-profit basis between corporations and political groups. The ruling party would have access to this information with ease. The latest RTI report indicated that the nation's two apex organizations, the RBI and the Election Commission, both presented their common issues and serious reservations to the government regarding these bonds, stating that they may become tools for laundering money for shell corporations in the guise of foreign investment. This indicates that they proceeded with this scheme overtly, undermining all of the apex organizations in the process.

<sup>1</sup> Mr. Hemant, Electoral Bonds - the legalized form of corruption, Legal Service India E-Journal, available at: <http://www.legalserviceindia.com/legal/article->

1358-electoral-bonds-the-legalized-form-of-corruption.html



Moreover, another RTI request by an NGO called Association for Democratic Reforms (ADR) found that the ruling party won 94.5 percent of the total election bonds; this information alone would be enough to raise a number of concerns about the systemic adulteration of the protections offered by other acts and regulations. Ultimately, the fact that SBI, a public sector bank, will be the absolute decider on donor information indicates that, based on proximity, the ruling party will still have the advantage<sup>2</sup>.

On all these grounds, NGOs ADR and Common Cause a petition was lodged in the Supreme Court in January 2018, which the court heard in April 2018 and ordered some adjustments in the time frame for bond dissolution and accounting. In addition, a plea has been lodged in the court requesting a stay on the schemes.

### **1.1 RESEARCH QUESTIONS**

- a. **Was the implementation of Electoral bond system effective in increasing transparency in political funding?**
- b. **What are electoral bonds and how effective can they be in cleaning the political system?**
- c. **What are the other problems revolving electoral bonds?**

### **1.2 RESEARCH METHODOLOGY**

In the present research, doctrinal legal methodology will be used for carrying out this research. Analytical method will be used to identify what law currently is and to evaluate its efficiency. Comparative method will be used to determine if the implication of the technology in various countries like U.S, U.K and India

### **1.3 RESEARCH PROBLEM**

There is a strong need to rethink the whether the implementation of electoral bonds in the system is positively or negatively effecting the system. Electoral bonds are a yet another instrument used to clean the country's dirty political system. Although they raise questions, they are preferable to cash and increase election finance accountability and transparency. It is necessary to combine them with other election reform in order to reduce the influence of money in Indian politics.

### **1.4 LITERATURE REVIEW**

Mr. Hemant, in his research, '**Electoral Bonds - the legalized form of corruption**' (2014)<sup>3</sup>, has drawn attention on the fact that the government's electoral bond schemes has indeed failed to produce the expected results; but at the other hand, it has significantly distorted the forms of political financing and its origin, which is the most basic bit of information that electors need to know, infringing on their right to vote and violating the standards of a fair election. Ultimately, until and unless significant changes are implemented with the support of both the executive and the related institutions, this scheme cannot be understood or justified. The author has limited the scope of study to NGOs ADR and Common issues of the two big organization controlling electoral bonds including RBI and EC.

Mr. Milan Vaishnav, Law School, in her work, '**Electoral Bonds: The Safeguards of Indian Democracy Are Crumbling**'

<sup>2</sup> India Today Web Desk, What are electoral bonds? (2019)

<sup>3</sup> Supra n. 1



(2019)<sup>4</sup>, Discusses political financing in India progresses to be opaque in any significant way. In addition, the ruling party is the only group which has a better image of today's political finance scenarios in India. Electoral bonds alone did not create this obfuscated reality; they only served to shrivel it up. Nearly every state-run organization which has interacted with the electoral bond scheme—the RBI, the ECI, and Parliament—has voiced concerns but has been unable or unwilling to effect change. As a result, the executive branch has strengthened its power, and India's core institutions continue to suffer from a legitimacy crisis.

## **2. Urgency of reforms to the scheme**

The interest free Electoral Bonds are the banking products that can be purchased from the few designated State Bank of India branches that have the permit to undertake such transactions. The bonds can be purchased in the multiples of \$1,000, \$1 lakh, \$10 lakh, or \$1 crore. Businesses and organisations can buy such bonds, but they must declare their identities to SBI as part of the know - your - customer (KYC) process, & political parties could only cash them in certain designated bank accounts within the span of 15 days. These bonds are only available to parties that received 1% of all votes cast in the most recent Lok Sabha or state assembly elections. This allows taxpayer-funded funds to be used to make political donations via a legal platform, while the amount given to which party stays

confidential<sup>5</sup>. The information that a donor bought bonds costing a certain amount and that certain parties earned certain sums in total would be recorded. Electoral bonds have some accountability, but not complete openness and clarity. On the other hand, critics argue that removing the previous 7.5 percent cap on corporate contributions—7.5 percent of 3 year average net profit—allows corporations to make unrestricted campaign donations without having to reveal the recipient's identity.

Governmental financing will always be a murky business. Companies and organisations that are looking for licences and permits seek to please political supporters by making donations, which leads to accounting fraud to raise funds for those donations. Politicians, which have a variety of costs to cover in managing their organisations and holding campaigns, welcome support from big corporations, allowing ways that gives rise to an unhealthy paradox between the two<sup>6</sup>. Numerous changes to the constitution, the Companies Act, 2013 and the Income Tax Act, have been made by successive administrations in an attempt to change this. The new effort by the NDA to limit monetary contributions and political support through banking platforms is the classic example of the bad use of electoral bonds.

## **3. Important provisions**

In Indian political system, the competition between the parties is fierce, so it's no

<sup>4</sup> Mr. Milan Vaishnav, Electoral Bonds: The Safeguards of Indian Democracy Are Crumbling, Huffpost India (2019)

<sup>5</sup> S.Y. Quraishi, 2014, 'An Undocumented Wonder: The Making of the Great Indian Election,' New Delhi: Rupa Publications, ISBN: 978-81-291-3106-5 (2014)

<sup>6</sup> Dr. Bimal Prasad Singh, "Electoral Reforms in India –Issues and Challenges", International Journal of Humanities and Social Science Invention ISSN (Online): 2319 -7722, ISSN (Print): 2319 - 7714, Volume 2 Issue 3 (2013)



surprise that certain parties use unethical tactics to raise money. However, there are certain clauses present in various acts in India in order to control financing.

Section 29C of the Representation of the People Act, 1951 (RPA)<sup>7</sup>: This section requires major political groups to announce contributions collected by either individual or organisation if the contribution reaches Rs.20,000. If the report is not submitted on time, the group will be denied tax benefits under the Income Tax Act of 1961.

Section 77 of the Representation of the People Act, 1951 (RPA)<sup>8</sup>: This section defines what is included in the term "expenditures of the party." The expenses undertaken by a particular party's nominee or his approved representative in relation to the administration from the date of his nomination in the election to the date the outcome is announced are included in the expenses of the political party.

As per Section 2(e) of the Foreign Contribution Regulation Act, 1976<sup>9</sup>: According to this act It is strictly forbidden to receive funds from any international source. It is imposed by up to 5 years in jail, as well as a fine or sometimes both.

Rule 90 of the Conduct of Elections Rules, 1961<sup>10</sup>: Under this act the maximum amount of expenditure by a political party in an election is governed.

#### **4. Controversies and criticism related to the electoral bonds**

The main criticism is that, while being intended to increase accountability, electoral bonds simply make campaign funding more secretive, but only for the general public. Companies are not required to disclose to whom they are contributing money, and parties are not required to disclose from whom they are receiving funds. Furthermore, because of the other reforms about multinational businesses and profitable businesses, electoral bonds may potentially be used by front companies with little real enterprise or benefit to funnel capital into politics. Although the EBS serves as a deterrent to conventional under-the-table contributions by requiring cheque and electronic paper trails of transfers, it is fraught with controversy due to many other understated provisions.

**Anonymity:** According to the provisions under this scheme, neither the contributor (who may be a person or a corporation) nor the political party is required to disclose the source of the contribution. This undermines a basic constitutional principle: political communication freedom, which is enshrined in Article 19(1)(a) of the Indian Constitution.

**Confidentiality:** It would therefore undermine the underlying value of political finance transparency. It would hide the identities of corporations and vulture capitalists who donate large sums to political groups, particularly the dominant parties, from public attention, leading to increased

<sup>7</sup> The Representation of the People Act, Act no. 43 of 1951, Act of Parliament, 1952 (India).

<sup>8</sup> Supra *n.* 7

<sup>9</sup> The Foreign Contribution Regulation Act, Act no. 49 of 1976, Act of Parliament, 1976 (India)

<sup>10</sup> Conduct of Elections Rules, 1961, Statutory Rules and Order, 1961 (India)



opacity and rendering it a convenient conduit for dirty black money.

**Opaque:** Since the bonds are bought by the SBI, the Indian government still knows the identity of the donor. This intelligence disproportion has the potential to slant the mechanism in favour of whatever political party is in power at the moment.

Regulations like the termination of a 7.5 percent cap on corporate contributions, the exclusion of the mandate that companies disclose political donations in their financial statements, and the exclusion of the obligation that an organisations must be three years old undercut the scheme's purpose and therefore any troubled, dying, or shell companies.

Electoral Bond System can conveniently become a way for businesses to transfer cash held in tax shelters to parties in exchange for a reward or benefit. In the current cabinet meeting, the Congress-led Opposition parties raised the issue, accusing the ruling party of supporting a policy that "legalises corruption in politics"<sup>11</sup>. Senior Party leaders cited documentation collected under the Right to Information (RTI) Act by transparency activist Commodore Lokesh Batra (retired), that became the base of a collection of news stories reported by Huffington Post India, demonstrating how well the Govt defied RBI and EC warnings to permit electoral bonds.

## 5. Conclusion

Electoral bonds' most pervasive attribute is their ability to skew the odds strongly in favor

of the majority party. For instance, only bank "A" gets to learn the identification of the donor in the imaginary exchange described above, whereas bank "B" can only know the recipient's identity. However, both these banks are expected to disclose to the Reserve Bank of India, which would then be subject to the Central government's need to have access to the information, though it is unclear if the former's autonomy would be able to survive the latter. As a result, only the ruling party, and no one else, has access to information about which corporations have contributed to opposition parties. Then it's free to use the state's institutions to politely discourage (or punish) these misguided donors. This suggests that after the electoral bond scheme is announced, opposition parties will find it difficult to collect more funds to fight. The consequences for democratic politics are self-evident. The government claimed that incorporating electoral bonds would shield donors from intimidation because they would allow anonymous donations. However, this point falls flat since only the government has the authority to threaten or defend donors from non-state harassers.

When electoral bonds are implemented, there really is no doubt that democracy will suffer the most serious consequences. Former Chief Election Commissioner S.Y. Quraishi has proposed a viable alternative<sup>12</sup>: a National Electoral Fund to which all contributors are welcome to donate. The funds will be distributed to political parties based on the number of votes they get. Not only does this secure contributors' identities, but it would also keep black money out of politics.

<sup>11</sup> Union of India vs. Association for Democratic Reforms and anr, (2002) 5 SCC 294

<sup>12</sup> Adil Rashid, Electoral Bonds Have Legalised Crony Capitalism: Ex-Chief Election Commissioner SY Quraishi, (2015)



However, without citizen pressure, it is impossible to pique the imagination of a political elite hell-bent on avoiding public scrutiny.

The government's electoral bond system has so far failed to provide the required results; on the other hand, it has further blurred the method of political financing and its source, which is the most basic piece of knowledge that voters need to know, infringing on their right to vote and violating the norms of a free and fair election. Finally, unless and until significant changes are implemented with the cooperation of both the executive and the related organisations, this scheme cannot be explained.

### **6. Recommendation**

The Scheme's goal was to serve the interests of the people, but the implementation seems to be working toward democracy. As previously mentioned, the resulting opacity of campaign finance leads to “lobbying and capture” in governance by large donors, making it possible for powerful industrialists to put to power a desirable government. Some recommendations for improving the scheme are suggested in the following paragraphs, taking into account the purposes for which it was implemented<sup>13</sup>.

The digitalization of transfers would aid in the control of black money flows. The Election Commission must have access to the anonymous transfers in order to investigate them. This will protect the donors' secrecy while still providing for the detection of non-

genuine transactions. To ensure the distinction between contributions from an Indian and contributions from a foreign entity, there must be additional protections for accepting donations from Indian branches of foreign corporations<sup>14</sup>. It is necessary to develop a stricter procedure for regulating donations made by artificial people. This will discourage politicians from forming foreign corporations to convert their black money into white.

Individuals and companies will contribute to the creation of the National Election Fund. A fund like this may be designated as the only way for corporations and people to donate to political parties. The Election Commission has the authority to determine how the contributions are distributed among the parties. Another option is to enact the Indrajit Gupta Committee's (1998) recommendation, which advocated for state financing of elections in order to level the playing field for smaller parties. The logistics of this procedure, though, must be thoroughly sorted out in order to determine how much funding would be allocated to national parties, state parties, and individual candidates.

Electoral reforms have been pledged by successive governments, and committees have been established to investigate the problem. It is critical that the authorities carry out these changes and rid our political system of the vicious cycle of graft and tax avoidance that undermines our democracy's very core. Corruption will continue to corrode the country's vitals unless the administration,

<sup>13</sup> Milan Vaishnav, Electoral Bonds: The Safeguards of Indian Democracy Are Crumbling, Huffpost India, (2019)

<sup>14</sup> Anandita Bhargava and Smita Gupta, The dichotomy inherent in electoral bonds, ISSN: 2349-

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major parties, and the general public take drastic and decisive measures to clean up public offices.

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