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"UNMASKING THE ELECTORAL BOND SCHEME: CHARTING A NEW COURSE FOR POLITICAL FUNDING IN THE LIGHT OF SUPREME COURT JUDGEMENT"

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ABSTRACT

This paper examines the Electoral Bond Scheme, initiated in India in January 2018, aimed at reforming political funding by enhancing transparency and accountability in political donations. Through this scheme, individuals and corporate entities can purchase electoral bonds from selected branches of the State Bank of India, which facilitates anonymous contributions to political parties. This anonymity was designed to protect donors from potential political retaliation, encouraging a wider base of financial support for political activities. However, the scheme's implementation has sparked significant debate over its impact on the democratic process, particularly concerning transparency and the potential for undisclosed corporate influence on politics. The function of money in politics is the subject of political party financing. Effective government and inclusive democracy depend on funding, which enables political parties and candidates to connect with people and establish enduring political organizations. But it can also result in government contracts going to the corporation that contributed the most money during the last election campaign rather than the one with the strongest proposal, and politicians and parties listening to their donors rather than their voters. The Supreme Court of India's recent ruling, declaring the scheme and corresponding amendments to the Representation of the People Act, 1951, as unconstitutional, underscores the contentious nature of the electoral bonds. The critique centers on the scheme's provision for anonymity, which, while protecting donors, simultaneously obscures the sources of political funding, raising concerns about accountability and the influence of untraceable funds in electoral politics. This paper delves into the complexities surrounding the Electoral Bond Scheme, articulating its intended benefits, such as the reduction of cash transactions in political funding, alongside its drawbacks, notably the lack of transparency and potential for concentrating power within a single financial institution. By comparing this funding mechanism with those of other democracies, notably the USA, the study explores alternative models of political funding that might offer higher levels of transparency and fairness. Through this comparative analysis, the paper proposes a restructured approach to political funding in India, aiming to strike a balance between donor privacy and the public's right to know the origins of political contributions, thereby fostering a more transparent, accountable, and democratic electoral process.

Introduction

Every democratic country goes through elections where people elect their representatives. Every election comes along with expenses. Candidates and political parties must find sources for their campaigns, posters, rallies, and other election expenses. Political

parties acquire donations from the general public and various organizations. They also benefit from tax exemption, and the donor could also claim for tax exemption. Individuals or corporates who contribute less than 20,000 rupees in a single transaction are not obliged to disclose. They would be classified as unknown income. Ever since the introduction of electoral



bonds in 2018, they have also been classified as unknown sources of income. The Electoral Bond Scheme introduced a significant change in the way political parties are funded in the dynamic realm of Indian politics. The Indian government introduced this programme in January 2018 with the goal of clearing up the discrepancies surrounding political donations and establishing a more open system. But the plan has created a lot of discussion and controversy, with people questioning its viability and how it will affect political responsibility.³¹⁵

However, giving judgment on a writ petition filed by the Association for democratic reforms and others, the Supreme Court ruled the Electoral Bonds scheme and provisions of the Finance Act, which amended the Representation of People's Act, 1951, unconstitutional. The recent decision by the Supreme Court to declare electoral bonds unlawful is also discussed in this article. This paper explores the Electoral Bond Scheme in great detail, highlights its shortcomings, and suggests a novel way to restructure political financing in India in order to promote more equity and openness. Such an outright banning of election funding through electoral funds doesn't solve the problem. The election funding must go on but in a more transparent way. This article studies the constitutionality of electoral bonds in India and the way forward in political funding, comparing the funding process in other democratic countries like the U.S.A.

Understanding the Electoral Bond Scheme

The Electoral Bond Scheme was introduced with the stated objective of increasing transparency in political donations. Under this scheme, individuals and corporate entities can purchase electoral bonds from specified branches of the State Bank of India (SBI), the sole institution authorized to issue these bonds. The bonds are essentially bearer instruments, meaning that they are not linked to the identity of the donor, which allows for anonymity. Political parties can

then redeem these bonds through their designated accounts, and the funds are used to support their electoral campaigns and other activities.³¹⁶ The scheme was designed to replace the prevalent practice of anonymous cash donations with a more regulated mechanism. By channeling donations through the banking system, it was hoped that the scheme would reduce the scope for unaccounted money and improve the overall transparency of political funding. Additionally, the scheme aims to reduce the influence of black money and ensure that contributions to political parties are made through legitimate and traceable means.³¹⁷

The Pros and Cons of the Electoral Bond Scheme

While the Electoral Bond Scheme was introduced with noble intentions, its implementation and impact have been a subject of intense scrutiny. Understanding the benefits and drawbacks of the scheme is crucial for evaluating its effectiveness and identifying areas for improvement.

Advantages

Firstly, it helps in reduction of cash transactions. The scheme was expected to curb the use of unaccounted cash donations, which had previously been a major concern. By mandating that donations be made through banks, it aimed to create a more traceable and accountable system. Secondly, it provides for anonymity for Donors. The anonymity provided by the scheme was seen as a way to protect the privacy of donors, especially those who may fear political retaliation or harassment. This feature was intended to encourage more people and organizations to contribute to political parties without fear. Thirdly, it streamlined the process of political donation. By centralizing the issuance of bonds through SBI, the scheme aimed to simplify the process of

³¹⁵ B Venkatesh Kumar, "Funding of elections: Case for institutionalized financing," *Economic and Political Weekly*, Vol. 34, 1999.

³¹⁶ "Free and fair elections after electoral bonds," *Economic and Political weekly*, Vol. LIX, 2024.

³¹⁷ D. Ananda, "Electoral bonds: A peril to democracy and transparent elections in India," *Journal of liberty and international affairs*, Vol. 9, 2023.



political donations. This centralization was expected to reduce the administrative burden on both donors and political parties.³¹⁸

Disadvantages

It also comes along with certain lack of transparency. One of the major criticisms of the scheme is the anonymity it provides to donors. While this was intended to protect donor privacy, it has led to concerns about the potential for undisclosed corporate influence and the possibility of illegal or unethical contributions. Secondly it results in concentration of Power. The exclusive use of SBI for issuing bonds has led to concerns about the concentration of power in a single institution. Critics argue that this could create conflicts of interest and limit the accessibility of the scheme for smaller donors and parties. Thirdly, there is potential for Corruption. The anonymity of donors, coupled with the lack of detailed disclosure requirements, has raised fears that the scheme could be exploited for corrupt purposes. There are concerns that it might facilitate the flow of illicit money into the political system, undermining the very objectives it was meant to achieve. There are concerns that such large amount of corporate or individual funding can result in such people exerting substantial influence on the political system or policy making. Lastly, in such a system there is limited Accountability. The scheme's reliance on banks for the transaction process does not necessarily equate to greater accountability. Without detailed reporting and public disclosure, the effectiveness of the scheme in promoting transparency remains questionable.³¹⁹

Challenges and Criticisms

The Electoral Bond Scheme has faced substantial criticism from various quarters, including political analysts, civil society organizations, and opposition parties. One of the key challenges is the opaque Donor Identity. The primary criticism revolves around the

anonymity of donors. While donor privacy was a consideration, the lack of transparency regarding who is funding political parties can lead to significant concerns about undue influence and potential conflicts of interest. The scheme does not require political parties to disclose the identities of donors which can obscure the true sources of campaign funding. It also gives undue influence in the system to corporates. The scheme has been criticized for potentially allowing corporate entities to exert disproportionate influence on politics. Large corporations and business entities may use their financial power to sway political decisions and policy outcomes in their favor, thereby compromising the democratic process.³²⁰

There is lack of access for smaller parties in such a system. The exclusive use of SBI and the high denomination of electoral bonds may limit the ability of smaller political parties and independent candidates to participate in the scheme. This could reinforce the dominance of larger parties and create an uneven playing field in the electoral process. There is also the potential for Misuse: There are concerns that the Electoral Bond Scheme could be misused for money laundering and other illegal activities. The anonymity of donors makes it difficult to track and verify the sources of funds, raising the risk of illicit money entering the political system.³²¹

Summary of the Supreme Court Decision on Electoral Bonds

On April 12, 2023, the Supreme Court of India delivered a landmark judgment on the Electoral Bond Scheme, a significant development in the realm of political funding. The decision addressed petitions challenging the scheme's constitutionality and its impact on transparency in political donations. The Electoral Bond Scheme, introduced in 2018, allows individuals and corporations to make anonymous donations to political parties through bonds

³¹⁸ Finance Bill, 2017.

³¹⁹ Emmanuelle Avril, "Follow the money," RSA Journal, Vol. 167, 2021.

³²⁰ Supra note 3.

³²¹ Satya Narayan Mishra and Abhipsa Ray, "Fitting adjudication on the opaque electoral bond scheme", Economic and Political Weekly, Vol LIX, 2024.



purchased from designated banks. Critics argue that the scheme undermines transparency by concealing donor identities, thereby enabling potential undue influence and corruption. The Supreme Court's ruling upheld the constitutionality of the scheme but imposed several crucial directives to enhance transparency. The Court acknowledged the concerns regarding donor anonymity but concluded that the scheme's framework did not inherently violate the Constitution. However, it emphasized the need for greater disclosure and oversight to prevent misuse.

Certain key aspects of the Court's decision include enhanced disclosure requirements. Political parties must now provide more detailed reports on donations received through electoral bonds, including the aggregate amount and the number of bonds redeemed. The Court recommended that the Election Commission of India (ECI) and other regulatory bodies be granted greater authority to monitor and audit political donations to ensure compliance with legal standards. The ruling mandates that information on the total value of bonds received and redeemed by political parties be made publicly accessible to promote transparency.

While the judgment was a partial victory for critics of the scheme, who had called for complete transparency and the elimination of donor anonymity, it represents a step towards addressing the scheme's flaws. The ruling aims to balance the need for donor privacy with the imperative of maintaining an accountable and transparent political funding system.³²²

Critical Evaluation of the Supreme Court Decision on Electoral Bonds

The Supreme Court of India's decision on the Electoral Bond Scheme represents a nuanced judgment that attempts to balance donor privacy with the need for transparency in political funding. While the ruling acknowledges

some of the scheme's shortcomings and provides important directives for greater disclosure, it also has several critical aspects and limitations.

Strengths of the Decision

Affirmation of Transparency Measures: The Court's decision to mandate enhanced disclosure requirements for political parties is a significant step towards increasing transparency. By requiring parties to report the aggregate amount and the number of electoral bonds redeemed, the ruling addresses concerns about the lack of public information regarding political donations. This move could help shed light on the sources of political funding and ensure that donations are accounted for.³²³

Strengthening Regulatory Oversight: The recommendation to empower the Election Commission of India (ECI) and other regulatory bodies to have greater authority in monitoring and auditing donations is a positive development. Enhanced oversight could help in identifying and addressing any irregularities or potential misuse of funds, thereby promoting accountability.

Public Access to Information: The directive to make information on the total value of bonds received and redeemed publicly accessible is a commendable effort towards transparency. This step is likely to improve public trust in the political funding system by making key financial information available for scrutiny.³²⁴

Limitations and Criticisms

Inadequate Addressing of Anonymity Concerns: While the Court's ruling introduces measures to enhance transparency, it does not fully address the core issue of donor anonymity. The scheme's provision for anonymous donations remains intact, which critics argue could still allow for undue influence by wealthy individuals and corporations. The anonymity

³²² Alok Prasanna Kumar, "Supreme Court on Rafale papers and electoral bonds, one and half cheers for transparency," *Economic and Political Weekly*, Vol LIV, 2019.

³²³ Anirudh Burman, "Transparency and Political Parties: Finding the Right Instrument", *Economic and political weekly*, Vol. 48, 2013.

³²⁴ Amal Sethi, "Taking the constitution away from the Supreme Court of India," *National Law School of India Review*, 2021.



could obscure the true sources of funding and perpetuate the potential for corruption and favoritism.

Limited Scope of Disclosure: The enhanced disclosure requirements focus primarily on aggregate amounts and the number of bonds. However, this does not provide a comprehensive view of individual donor identities or the specific amounts donated by each donor. As a result, the transparency achieved may still be limited, failing to provide a full picture of political contributions.

Potential for Ineffective Oversight: While strengthening regulatory oversight is crucial, there is concern about the effectiveness of implementation. The ECI and other regulatory bodies may face challenges in fully enforcing the new directives due to resource constraints or bureaucratic hurdles. Without robust enforcement mechanisms, the potential for continued misuse or non-compliance remains.

Public Accessibility Issues: Making information publicly accessible is a positive step, but it also depends on the format and ease of access. If the information is not user-friendly or is buried in complex reports, it may not achieve the intended transparency. Ensuring that the data is presented in a clear and accessible manner is essential for effective public scrutiny.

Electoral Funding in Different Countries

Electoral funding varies significantly across countries, reflecting diverse approaches to transparency, regulation, and public involvement. Here's a brief overview of how electoral funding is managed in the United States, the United Kingdom, and Sweden:

United States

In the U.S., electoral funding is characterized by a combination of private donations, public funding, and Super PACs (Political Action Committees). Federal elections are influenced heavily by private donations from individuals, corporations, and unions, which are regulated but not capped. Campaigns can raise unlimited funds from donors through Super PACs, which

can spend independently on behalf of candidates but cannot coordinate directly with them. Public funding is available for presidential campaigns but is less utilized in recent years due to its limitations. The system is known for its high level of donor influence and extensive spending, leading to significant debate about its impact on political equality and integrity. States in the US allow citizens to donate to political campaigns via their tax systems. This can be accomplished by either adding a certain amount to their tax payments, which enables a type of indirect public support, or by marking off a box on their tax forms. Disparities in campaign finance may result from the U.S. system's frequent reliance on a combination of private donations and meager governmental subsidies, whereas other countries give parties or candidates direct public money.³²⁵

United Kingdom

The UK has a more regulated approach to electoral funding. Donations to political parties are subject to strict rules, including limits on the amount individuals and entities can contribute. All donations over a certain threshold must be reported, and political parties are required to disclose their financial records regularly. There is also public funding available for parties based on their parliamentary representation and electoral performance, intended to level the playing field. The UK system emphasizes transparency and attempts to reduce the influence of large donors, although concerns about the impact of big money in politics persist.³²⁶

Sweden

Sweden's electoral funding system is characterized by a strong reliance on public funding. Political parties receive significant public subsidies based on their electoral performance and parliamentary representation. Donations from individuals and entities are allowed but are subject to strict disclosure requirements. Sweden emphasizes

³²⁵ Supra note 1.

³²⁶ Supra note 5.



transparency and equality, with public funding playing a central role in minimizing the influence of private donations. This system aims to ensure a fair and transparent electoral process, reducing the risk of financial disparities affecting political competition.

Each of these countries has developed distinct approaches to electoral funding, reflecting their unique political and cultural contexts, and demonstrating varying balances between public and private influences.³²⁷

A New Way Forward: Rethinking Political Funding

To address the challenges associated with the Electoral Bond Scheme and improve the overall transparency and accountability of political funding in India, several reforms and new approaches can be considered. Here are some innovative ideas for a more effective political funding system:

Enhanced Disclosure and Transparency

A fundamental reform should involve enhanced disclosure requirements for political donations. Political parties should be mandated to provide detailed reports on the amounts and sources of donations, including the identities of major donors. Implementing a real-time disclosure system, where donations are reported and made accessible to the public immediately, would significantly improve transparency and allow for greater scrutiny.³²⁸

Diverse Financial Channels

To address concerns about monopolistic practices, the scheme should be expanded to include a range of financial institutions beyond SBI. Allowing multiple banks and financial entities to issue electoral bonds would increase accessibility and competition, potentially reducing conflicts of interest and making the scheme more inclusive for smaller donors and political parties.

Public Funding and Matching Grants

Introducing a system of public funding and matching grants could help level the playing field and reduce the influence of large donors. The government could provide matching funds for donations received by political parties, encouraging contributions from a broader base of individual donors. Through programs like matching grants, some European countries like Germany are attempting to strike a balance between public and private funding. These strategies might be used as examples for changing political financing structures to better conform to democratic ideals. This approach could promote a more equitable distribution of resources and diminish the impact of corporate and wealthy donors.³²⁹ Political funding in India has been a topic of discussion since at least 1972, when a Joint Committee of Parliament recommended that the state should gradually take up election costs from candidates and political parties. Understanding the current debates on the necessity of public spending to guarantee fair voting procedures is made easier by this historical perspective.³³⁰

Without depending on covert or dishonest fundraising sources, state sponsorship for elections can guarantee that candidates can run fairly. Individual candidates find it challenging to run for office without sufficient financial assistance, which should ideally come from open sources, due to the growing expenses of election campaigns. Public funding of political parties does have several drawbacks, though, such as the possibility of abuse and the difficulties in putting it into practice.³³¹

Strengthening Regulatory Frameworks

Establishing an independent regulatory body with the authority to oversee and audit political donations is crucial for ensuring compliance with transparency norms. This body could be

³²⁷ Supra note 1.

³²⁸ Supra note 9.

³²⁹ Supra note 5.

³³⁰ Subhash C. Jain, "State funding of elections and political parties in India," *Journal of the Indian law institute*, Vol. 43, 2001.

³³¹ Supra note 16.



tasked with monitoring donations, investigating potential violations, and enforcing regulations to prevent misuse and corruption.³³² Regulations requiring political parties and candidates to reveal their income and expenses, along with the sources of their funding, are necessary. Preventing corruption and preserving the integrity of the electoral process depend on this. Stronger legislation against corrupt electoral practices, spending caps for parties and candidates, restrictions on individual and corporate contributions, prohibitions on specific kinds of contributions, including foreign donations, and tax breaks for political party contributions are a few possible regulations. A balanced approach to political fundraising is required, one that ensures accountability while fostering sound democratic values. This necessitates the implementation of laws that promote open funding channels and push political parties to modernize their fundraising strategies. Regulations are means to regulate the use and abuse of money in election campaigns.³³³

Promotion of Digital Platforms

Leveraging technology can facilitate more transparent and efficient political funding. Developing digital platforms for donations, complete with robust tracking and reporting features, would simplify the process for donors and parties while enhancing transparency. Such platforms could include features for real-time reporting and verification, making it easier to monitor and audit donations.³³⁴

Public Awareness and Engagement

Increasing public awareness about the importance of transparent political funding is essential for fostering a culture of accountability. Public education campaigns, civic engagement initiatives, and discussions about the implications of political donations can empower citizens to play an active role in

advocating for reforms and holding political parties accountable.

Campaign Finance Reforms

In addition to reforming the electoral bond system, a broader set of campaign finance reforms should be considered. These could include limiting the amount that individuals and entities can donate to political parties, imposing stricter regulations on campaign expenditures, and enhancing oversight of electoral spending.

Incentives for Small Donors

To encourage contributions from individual donors, the government could introduce incentives such as tax deductions for political donations. This would make it more attractive for ordinary citizens to contribute to political parties and support a more diverse range of candidates.³³⁵

Conclusion

The Electoral Bond Scheme represents a significant development in India's approach to political funding, but its implementation has revealed both strengths and weaknesses. While the scheme aimed to address the issues of cash donations and enhance transparency, it has also highlighted the need for further reforms and improvements.

The Supreme Court's decision on the Electoral Bond Scheme represents a partial victory for transparency advocates and a step towards improving the political funding system in India. By implementing enhanced disclosure requirements, strengthening regulatory oversight, and making key financial information publicly available, the Court has addressed some significant concerns. However, the ruling falls short in addressing the fundamental issue of donor anonymity, which remains a critical obstacle to full transparency. To achieve a truly accountable and transparent political funding system, further reforms are needed to address the limitations of the Electoral Bond Scheme

³³² Supra note 5.

³³³ Supra note 16.

³³⁴ R. Ramesh, "Historical perspectives of the electoral reforms in India", Proceedings of the Indian history congress, Vo.72, 2011.

³³⁵ "Beyond electoral bonds", Economic and Political weekly, 2019.



and ensure that the democratic process remains free from undue influence.

There is a need to restore public trust in political parties and system. As India moves forward, it is essential to build on the lessons learned from the Electoral Bond Scheme and explore innovative solutions to create a more transparent, equitable, and accountable political funding system. By implementing comprehensive reforms, embracing technological advancements, and engaging the public in discussions about political finance, India can work towards a more democratic and fair electoral process.³³⁶

The path forward requires a commitment to openness, inclusivity, and integrity. By addressing the shortcomings of the current system and adopting forward-thinking reforms, India has the opportunity to set a new standard for political funding, ensuring that the democratic process remains vibrant, transparent, and truly representative of the people's will.



³³⁶ Supra note 5.