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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

AN REVIEW OF THE ELECTORAL BOND SCHEME AND THE SUPREME COURT'S RULING ON IT

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“Information about funding of political parties is essential for the effective exercise of the choice of voting”

These are the wordings of the Supreme court of India while deciding the Constitutionality of Electoral Bond scheme. India is the largest democratic country in the world, so there are many political parties operating in India. Political parties are an integral product of a free and open society and play an important role in the administration of the affairs of the community. The funding of these political parties has been a topic of discussion for a long time. Many discussion and arguments were going on regarding this issue. It was during this time that the Central Government took forward the Electoral Bond Scheme. Electoral bonds are relatively new concept in the realm of political funding in India. Electoral bond scheme creates a lot of controversies and discussions in the country. Many people argued that, this scheme will affect the transparency of political parties and the smooth conduct of election. Amidst these controversies, The Supreme Court of India ruled that the Electoral Bond Scheme was unconstitutional.

Electoral Bond Scheme-What exactly it is?

Electoral bonds are financial instruments introduced as mechanism for individuals and corporations to donate money to political parties. They are like promissory notes that citizens or corporate entities can purchase from designated banks using legal tender. These bonds can then be donated to political parties, who can encash them through verified bank accounts. However, the identity of the donor remains anonymous.

Clause 2(a) of Electoral Bond scheme 2018, defines Electoral bond as ‘bond issued in the

nature of promissory note which shall be a bearer banking instrument and shall not carry the name of the buyer or payee'

Authorised bank under the scheme is 'State Bank Of India' to issue bonds and to encash them under the branches specified in the scheme¹.

The bonds shall be issued in the denomination of 1000, 10,000, 1,00,000, 10,00,000 and 1,00,00,000. The bond shall be valid for fifteen days from the date of issue. The amount of bonds not encashed within fifteen days deposited by the authorised bank to the Prime Minister Relief Fund.

Under the Scheme the following bond can be purchased by a person, who is a citizen of India or incorporated or established in India and a person being an individual can buy bonds, either singly or jointly with other individuals.

Only the political parties registered under section 29A of the Representation of the People Act, 1951 and secured not less than one per cent of the votes polled in the last general election to the House of the People or the Legislative Assembly, are eligible to receive the bond. The bond shall be encashed by an eligible political party only through a bank account with the authorised bank.²

The information furnished by the buyer under the scheme is treated as confidential and will not disclose to any authority for any purpose, except demanded by a competent court. The face value of these bonds counted as income by way of voluntary contributions received by the political party and also for the purpose of exemption from Income-tax under section 13A of the Income Tax Act, 1961.

There is no limit on the number of electoral bonds that a person or company can purchase. These bonds are not available for purchase all the time. They are available for a period of ten days in a gap of four months. In the months of January, April, July and October as specified by the Central Government.³

¹The Electoral Bond Scheme,2018, Clause 2(b)

² The Electoral Bond Scheme,2018, Clause 3(3)

³ The Electoral Bond Scheme,2018, Clause 8(1)

On November 7,2022 the scheme was amended and added an additional period of fifteen days in the year of general elections to the Legislative Assembly of states and Union Territories with legislature for the sale of electoral bonds. Also it allows Central Government open additional one -week window for issuing electoral bond starting from November 9,2022.

Total amount of funds generated through the sale of Electoral Bonds from2018 to 2024 was over Rs16000 crores by various political parties.⁴

Pre and post implementation

The scheme was introduced in 2017 during the union budget 2017-2018 by then minister of finance Arun Jaitley. It were classified as a money bill in order to prevent the requirement of being passed by Rajya sabha. On 2 January 2018 the department of Economic Affairs in Ministry of Finance notified the Electoral Bond scheme. By finance Act,2017 amendments were made in The Reserve Bank Of India Act,1934, Representation of people Act,1951, The Companies Act,2013, The Income Tax Act,1961 and The Foreign Contributions Regulation Act,2010 to introduce the Electoral Bond Scheme.

Section 31 of the RBI Act stipulates that only the RBI or the Central Government authorized by the RBI Act shall draw, accept, make, or issue any bill of exchange or promissory note for payment of money to the bearer of the note or bond. The RBI Act were amended by including Section 31(3) which permits the Central Government to authorize any scheduled bank to issue electoral bonds.⁵

Section 29C of Representation Of People Act deals with the declaration of donations by political parties. Under this section treasurer of a political party or any person authorised by the party on behalf have the duty to disclose any contributions in excess of twenty thousand rupees received by such political party from any person or from any companies other than government companies in that financial year. This Section was amended and exclude the Electoral Bond Scheme from the scope of it. So, any political party receiving donations through electoral bonds shall not have the duty to disclose it.⁶

⁴ Electoral bonds worth Rs16000 sold since its inception, available at <https://www.businesstoday.in> (Last modified 15 February ,2024)

⁵ The Finance Act,2017(Act 7 of 2017), S 135

⁶ The Finance Act,2017(Act 7 of 2017), S 137

Section 182 of the Companies Act 2013 were amended to eliminate the provisions that require disclosure of particulars of the amount contributed by companies to political parties in their profit and loss account. Prior to this amendment a company can donate to a political party only certain conditions are satisfied. Conditions like, donations can't made in cash, It must be authorized by the board and the details of donation must be disclosed in companies profit and loss account. After the amendment a company required to disclose only the total amount contributed to the political parties without disclosing about the political party which the contribution made.⁷

Under Section 13A(b) of Income Tax Act,1961 political parties are required to maintain book of accounts for contribution exceeding Rs 20,000 and also a record of such contribution including name and address of person who has made the contributions. This section was amended and relaxed for contributions through Electoral Bonds.⁸

The foreign Contribution Regulation Act which was amended to exempt from scrutiny foreign funds received by political parties. Prior to this change, Foreign funds received by political party before September 6 2010, when this act was enacted, were open to scrutiny. After this amendment funds received by political party since 1976 can't be scrutinised.

The effect of the amendments introduced by the Finance Act to the above legislations is that: -

- i) A new scheme for financial contribution to political parties is introduced in the form of electoral bonds.
- ii) The political parties need not disclose the contributions received through electoral bonds.
- iii) Companies are not required to disclose the details of contributions made in any form and
- iv) Unlimited corporate funding is permissible.

Public Interest Litigation

Shortly after the amendments were introduced in the above Acts two non-governmental organizations filed petition in the Supreme Court against the Electoral Bond Scheme.

⁷ The Finance Act,2017(Act 7 of 2017), S 154

⁸ The Finance Act,2017(Act 7 of 2017), S 11

Association Of Democratic Reforms and Common Cause filed petition in 2017 and Communist Party of India (Marxist) approached the court in 2018. The petitioners challenge the constitutional validity of the amendments and the introduction of the Finance Act as a Money Bill under Article 110 of the Constitution.⁹

In an interim order dated 13 April 2019, court order every political party to submit details of contribution received on a sealed cover. Following this Order petitioners approached the court on multiple occasions. In 2019, again in 2020 before Bihar elections and in 2022 Association Of Democratic Reforms approached the Court for a stay on the Scheme before the commencement of fresh round of bond sales. But this was rejected by the Court and it was held that “apprehension that foreign corporate houses may buy the bonds and attempt to influence the electoral process in the country, is. misconceived.” The Bench also sternly discouraged the petitioners from approaching the Court, stating that “there cannot be repeated applications seeking the same relief.”

On 16 October 2023, the petitioners approached the court to hear the case before 2024 General Elections. After considering the Importance of the issue the case was transferred to a Constitutional Bench led by Chief Justice D Y Chandrachud with Justices [Sanjiv Khanna](#), [B.R. Gavai](#), J.B. Pardiwala, and Manoj Misra.

On 15 February 2024 Supreme Court of India unanimously struck down the Electoral Bond Scheme. Court directs State Bank Of India to furnish the details of Electoral Bonds purchased from 12 April 2019 and ordered Election Commission to publish the same on their official website.

Arguments of the Petitioners

Petitioners submitted that the statutory amendments and the Electoral Bond Scheme which mandates non-disclosure of information of electoral funding are unconstitutional. They violate Article 19(1)(a) which guarantees to the voter the right to information concerning the affairs of the public and the government. This includes the right to information about financial contributions to political parties. The deletion of the limit on corporate contributions i permits donations by loss making companies, removes the control of shareholders over the decisions

⁹ Constitutionality of the Electoral Bond Scheme, available at <https://www.scobserver.in> (Last modified on 13 March 2024)

of the Board and it permits unlimited contribution by corporates and thereby abrogates democratic principles and also 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). This scheme is violated Article 21 because the non-disclosure of information of political contributions promotes corruption and quid pro quo arrangements. The available data indicates that more than ninety four percent of the total electoral bonds are purchased in denominations of rupees one crore. This indicates that bonds are purchased by corporates and not individuals. The limited disclosure clause in the Electoral Bond Scheme prevents investigating agencies such as the Central Bureau of Investigation and Enforcement Directorate from identifying corruption. They violate the rights of shareholders of Companies who are donating money to political parties by preventing disclosure of information to them. They further argued that The Electoral Bond Scheme is arbitrary due to its discriminatory and non-transparent nature. It contradicts existing laws requiring transparency and verification of the beneficial ownership and source of funds. It is necessary for a Political parties to know the funding sources of rival political parties to enable them to critique it before the public. Under the scheme only the ruling party knows the amount received by every party through Electoral Bond but none of other political parties can know the amount received by their opponent.¹⁰

Arguments of the union of India

It was argued submitted by the union that the Electoral Bond Scheme allows any person to transfer funds to political parties of their choice through legitimate banking channels instead of other unregulated ways such as direct transfer through cash. The Scheme ensures confidentiality of the contributions made to political parties. The benefit of confidentiality to contributors ensures and promotes contribution of clean money to political parties. The right of a citizen to know how political parties are being funded must be balanced against the right of a person to maintain privacy of their political affiliations. Donating money to one's preferred party is a form political self-expression, which lies at the heart of privacy. Maintaining anonymity of donations to political parties is a part of the concept of secret ballot because it enables a person to make political choices without any fear of victimization or retaliation. The right to information only operates against information in the possession or in the knowledge of the state. It cannot operate for seeking information not in the knowledge or possession of the state. The fact that one party receives substantially more support through donations than other

¹⁰ Association for Democratic Reforms & Anr V. Union of India, (2024 INSC 113)

parties cannot in itself be a legal ground to challenge the validity of the Electoral Bond Scheme.¹¹

Findings of the Court

A five Judge Constitutional bench unanimously struck down Electoral Bond Scheme. The Court also struck down amendments made in Income Tax Act ,1961 and Representation Of People Act 1951.key takeaways from the verdict

- The Court held that the Scheme by permitting anonymous political donations infringed upon the Fundamental right to information under Article 19(1)(a) of the Constitution. Court held that right to information in India focussed on the close relationship between the right and open governance. The citizens have a duty to hold the government of the day accountable for their actions and inactions, and they can effectively fulfil this duty only if the government is open and not clothed in secrecy. It was held that information on funding of political parties was essential for voters. Money increases access to legislators and there is a legitimate possibility that financial contribution to a political party would lead to ‘quid pro quo’ arrangements.¹²
- Government argued that the scheme curbs black money. It is held that the infringement of the right to information which is traceable to Article 19(1)(a) can only be justified if the purpose of the restriction is traceable to the grounds stipulated in Article 19(2). The purpose of curbing of black money cannot be traced to any of the grounds in Article 19(2), and thus, is not a legitimate purpose for restricting the right to information.¹³ Article 19(2) stipulates that the right to freedom of speech and expression can only be restricted on the grounds of: (a) the sovereignty and integrity of India; (b) the security of the State; (c) friendly relations with foreign states, (d) public order; (e) decency or morality; (f) contempt of court; (g) defamation; and (h) incitement to an offence. The purpose of curbing black money is traceable to public interest. However, public interest is not one of the grounds stipulated in Article 19(2). Of the rights recognized under Article 19, only Article 19(1)(g) which guarantees the freedom to practice any profession or to carry on any occupation, trade or business can be restricted on the ground of public interest. Curbing black money cannot be traced to any of the

¹¹ Id

¹² Id

¹³ Id

reasonable restrictions under Article 19(2), it cannot be said legitimate purpose for restricting the fundamental right of information

- The Union of India submitted that information about financial contributions to political parties is not disclosed to protect the contributor's informational privacy to political affiliation. Here court held that there are two reasons for the contribution, one as a support and two as quid pro quo measure. The law as it currently stands permits contributions to political parties by both corporations and individuals. The huge political contributions made by corporations and companies should not be allowed to conceal the reason for financial contributions made by another section of the population: a student, a daily wage worker, an artist, or a teacher. Thus, the chief Justice held that the right to privacy of political affiliation does not extend to those contributions, which may be extended to influence policies. It only extends to contributions made as a genuine form of political support.
- Amendments made in Section 182 of Companies Act, 2013 permitting unlimited contributions to political party were arbitrary. Before the 2017 amendment it was mandatory for companies to disclose the details of the amount contributed to a political party along with the name of the political party to which the amount was contributed in its profit and loss account. It is clear as day light that the purpose of mandating the disclosure of contributions made by companies was not merely to curb black money in electoral financing but crucially to make the financial transactions between companies and political parties transparent. It is held by the Court that the deletion of the mandate disclosure of the particulars of contributions violates the right to information of the voter since they would not possess information about the political party to which the contribution was made, is necessary to identify corruption and quid pro quo transactions in governance. Such information is also necessary for exercising an informed vote. Thus court concluded that the amendment to Section 182 is manifestly arbitrary for (a) treating political contributions by companies and individuals alike; (b) permitting the unregulated influence of companies in the governance and political process violating the principle of free and fair elections; and (c) treating contributions made by profit-making and loss-making companies to political parties alike. The law must not treat companies and individual contributors alike because of the variance in the degree of harm on free and fair elections. So, Court struck down amendments made in section 182 of Companies Act, 2013.

- Court struck down amendments made in Section 29C of Representation of Peoples Act,1951 stating that the requirement to disclose contributions more than 20,000 effectively balance voters right to information and donor's right to privacy. Court held that donantions made below this amount are less likely to influence political decisions.¹⁴

Conclusion and Recommendations

February 15, 2024, marks a historic day in India's democracy as the Supreme Court delivered a landmark verdict striking down the Electoral Bonds Scheme. Court through this decision uphold democracy and the Constitution's basic structure, the Court unanimously found the scheme unconstitutional. Even though Court declare Electoral Bond Scheme as unconstitutional still India doesn't have a strong Law to regulate political funding. We need an effective regulation of political financing along with bold reforms. In order to break the cycle of corruption and erosion of quality of democratic polity. It is crucial to plug the loopholes in the current laws to make the entire governance machinery more accountable and transparent. The contributions must be genuine and it is purely for the progress of the political party not for any other means that affect democracy. So we need effective Laws with zero loop holes to regulate such contributions. Then only we can achieve complete transparency in political funding.

Reference

- The Electoral Bond Scheme,2018
- The Finance Act,2017
- <https://www.scobserver.in>
- <https://www.businesstoday.in>