



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal

– The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

WHITE BLACK
LEGAL

EDITORIAL TEAM

Raju Narayana Swamy (IAS) Indian Administrative Service officer



Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru and a

professional diploma in Public Procurement from the World Bank.

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.



Senior Editor

Dr. Neha Mishra



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi, Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.

Dr. Rinu Saraswat



Associate Professor at School of Law, Apex University, Jaipur,
M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



Subhrajit Chanda



BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

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

ELECTORAL BONDS AND PURSUIT OF TRANSPARENCY

AUTHORED BY - SWATI PANDEY

Abstract

This paper examines the recent decision by the Supreme Court of India to abolish the electoral bonds program and analyses how it affects political parties, taxpayers, and public openness. With the introduction of the electoral bonds program in 2018, private citizens and businesses could donate to political parties anonymously. Some who supported it said that it made political money more lawful and transparent, while others said it encouraged potential abuse and opacity.

The paper begins by defining electoral bonds and its historical background. It highlights how the scheme was being misused by the political parties leading to corruption and money laundering cases, further they were exempted from paying taxes. Moreover, the paper also analyses that how the Supreme Court's decision to abolish the scheme is a landmark in the quest for greater transparency and accountability in political financing.

Furthermore, the paper discusses how the judgment is expected to curb corruption, reduce undue influence of wealthy donors on political parties, and promote a level playing field in elections. The enhanced transparency is anticipated to empower voters with better information, fostering a more informed and engaged electorate. This study evaluates the potential long-term benefits of the ruling on the democratic process and explores the challenges that may arise in its implementation.

Keywords – Electoral Bonds, Tax exemption, political funding, corruption, Transparency.

OVERVIEW

In India, the government created electoral bonds, a novel tool for transparently supporting political parties. Electoral bonds are essentially financial tools that let people and organizations provide money to political parties without disclosing their identity to the recipient party or the general public. Election bonds were heralded by the government when they were introduced in 2017 as a way to encourage transparency by directing donations through banking institutions. An Electoral Bond is similar to a promissory note wherein the holder may cash it whenever they like because it is a bearer instrument. An electoral bond offers the parties total anonymity and confidentiality because it has no information about them whatsoever, in contrast to a promissory note, which has the payer and payee's identities.¹

Government notified the Electoral Bond Scheme 2018 in the Gazette Notification No. 20 on 02nd January 2018². A person who is an Indian citizen, or who has been incorporated or established in India, may purchase Electoral Bonds in accordance with the terms of the Scheme (as stated in item No. 2(d) of the Gazette Notification). Electoral Bonds can be purchased by an individual or in conjunction with others. The only political parties eligible to receive the electoral votes are those registered under the Representation of the People Act, 1951³, and those that received at least 1% of the total votes cast in the most recent general election for the State's Legislative Assembly or House of the People. Only a bank account with the Authorized Bank may be used by a qualified political party to cash the electoral bonds. The election bonds have a fifteen-calendar day validity term from the date of issuance. If the bond is placed after that time, no payment will be made to the political party that is the payee. An electoral bond will be credited on the day it is deposited in the account of a qualifying political party. The introduction of electoral bonds was made to bring transparency in political funding and limit the growing corruption, unethical use of money in the system and to maintain the integrity of the nation. However, the opposition and other parties have harshly criticized Electoral Bonds since their introduction in 2017 on the grounds that they impeded political financial transparency. Critics have also drawn attention to the fact that EBs provide private organizations the ability to affect and influence governmental decisions. Therefore, a historical verdict pronounced by the apex court of the country scrapping the electoral bonds calling it unconstitutional.

¹ TOI News Desk, "Electoral Bonds explained: Transparency and anonymity in political funding", Times of India (Indiatimes.com), Mar 20, 2024, [what are electoral bonds | Electoral Bonds explained: Transparency and anonymity in political funding | India News - Times of India \(indiatimes.com\)](#), (last visited on July 8 2024).

² Press Information Bureau, "Electoral Bond Scheme 2018 (pib.gov.in)", (01 May 2019).

³ Representation of the People Act, 1951, (Act 43 of 1951), (India).

Historical Background of the electoral bonds:

During the presentation of the 2017-18 Union Budget, former Union Finance Minister Arun Jaiteley said that, despite 70 years of independence, “The nation has not been able to develop a transparent party funding system, which is essential to a free and fair electoral system.”

The Scheme was introduced with an objective to "cleanse the system" of political funding and bring transparency⁴. On 14th May, in order to permit foreign corporations with a majority stake in Indian enterprises to make donations to political parties, it modified section 2(1)(j)(vi) of the Foreign Contribution Regulations Act, 2010.⁵(FCRA). Previously, foreign firms were prohibited from making donations to political parties under the Foreign Exchange Management Act of 1999⁶ and the Foreign Contribution Regulations Act.⁷

Various Amendments were being introduced in the Reserve bank of India Act, 1934⁸, Companies Act, 2013⁹, Income Tax Act, 1961¹⁰ and Representation of People Act, 1951(RoPA)¹¹ by the Finance Act, 2017.¹²

- By amending Section 13A of the Income Tax Act¹³, Section 11 of the Finance Act, 2017¹⁴ released political parties from the requirement to maintain a record of contributions made through electoral bonds.
- As per the Union Government, Section 31 of RBI Act.¹⁵ was replaced by Section 135 of the Finance act 2017 Act¹⁶ thereby permitting "any scheduled bank to issue electoral bonds”.
- With the introduction of Section 137 of the Finance Act¹⁷, political parties are no longer required to declare contributions made through electoral bonds in their Contribution Reports, as per section 29C of the RoPA¹⁸. The statistics reveal that parties have received contributions

⁴ Press Information Bureau, [Why Electoral Bonds are Necessary \(pib.gov.in\)](http://pib.gov.in), (7 January, 2018).

⁵ Foreign Contribution Regulation Act, 2010, (Act 42 of 2010), (India).

⁶ Foreign Exchange Management Act, 1999, No. 42 of 1999, (India)

⁷ Supra note 5.

⁸ Reserve Bank of India Act, 1934, (Act 2 of 1934), (India)

⁹ Companies Act, 2013, (Act18 of 2013), (India).

¹⁰ Income Tax Act, 1961, (Act 43 of 1961), (India).

¹¹ Supra note 3.

¹² The Finance Act, 2017, (Act 7 of 2017), (India).

¹³ Supra note 10, s.13-A.

¹⁴ Supra note 12, s.11.

¹⁵ Supra note 8, s. 31.

¹⁶ Supra note 12, s.135.

¹⁷ Supra note 12, s.137.

¹⁸ Supra note 3, s.29-C.

from both people and companies totalling more than twenty thousand rupees, a company's donation to a political party was not restricted by how much may be given.

- Section 182 of the Companies Act, 2013¹⁹ was amended by Section 154 of the Finance Act²⁰, removing the limit on the amount of money can be donate to a political party. Up until recently, businesses could only donate 7.5 percent of their net revenues over a three-year period.
- These amendments were made to bring transparency within the system and for giving a financial backing to the political parties followed by the various private institutions but it also led to unforeseen challenges in the country.²¹

Challenges to the amendments:

The Association for Democratic Reforms (ADR) and Common Cause, two non-governmental organizations, along with the Communist party of India filed cases in the Supreme Court contesting the modifications made in the Electoral Bond Scheme.

Initial arguments in the petitions contended that the Finance Acts were improperly passed as money bills in order to evade Rajya Sabha scrutiny. The bigger issue surrounding the usage of money bills under Article 110 of the constitution²² is linked to this dilemma.²³

The Election Commission of India (ECI), one of the respondents, submitted an affidavit objecting to the Election Bond Scheme on March 25, 2019. The affidavit claimed that the scheme failed to bring financial transparency in politics. The statement further asserted that on May 26, 2017, the ECI sent a letter to the Union Government cautioning against the “repercussions/impact on the transparency aspect of political finance/funding”. Moreover, they argued that preventing political parties from disclosing donation information would conceal specifics about foreign funding.

Thus, Consequently, the petitioners contended that the plan permitted "huge scale" election wrongdoing as well as "non-transparency in political funding".

¹⁹ Supra note 9, s.182.

²⁰ Supra note 12, s. 154.

²¹ Supreme Court Observer, available at: [Constitutionality of the Electoral Bond Scheme - Supreme Court Observer \(scobserver.in\)](https://www.scobserver.in) (last visited on 8 July 2024).

²² India Const. art. 110.

²³ Supra note 21 at 9.

Following the Supreme Court decision in the case of *Association for Democratic Reforms and Ors. vs. Union of India and Ors*²⁴ to invalidate the Electoral Bonds Scheme and order SBI, to release all pertinent information regarding the bonds, it became evident that the scheme was functioning as a means of a quid pro quo between the corporate donors and the political parties.

The revelation raised serious questions about companies that were misrepresenting their earnings and losses. These raised concerns about possible money laundering among loss-making entities that donated large sums of money to political parties even though their after tax profits were either negative or very small over a seven-year period.

The Court concluded that, in contrast to the promises made, the Scheme only safeguards the privacy of donors at the expense of voters. ADR's compilation of data and RTI replies gathered by transparency activists revealed that ₹16,518.10 crore²⁵ worth of bonds had been sold in all during the 30 rounds of the bond sale between 2018 and 2024. By comparison, figures collated by the Centre for Media Studies indicate that political parties spent ₹55,000–60,000 crore on collective expenditures during the 2019 General Election.²⁶ What was the extent of the impact of ₹16,000 crores of electoral bond money in the perpetual stream of cash that goes to political parties through all kinds of means?²⁷

The largest corporate donation was Future Gaming and Hotel Services, a well-known lottery corporations in India, with ₹ 1,368 crores. According to the reports, it was found that the business has been involved in money laundering and therefore it is under .²⁸

Megha Engineering and Infrastructures Ltd came in second place with ₹966 crores in total donation value. The company is said to have received multiple large government contracts, including ₹ 1.15 lakh crore for the Kaleshwaram Lift Irrigation Project and ₹14,400 crore for the Thane-Borivali Twin Tunnel Project.²⁹ In the past, political parties utilized electoral trusts to accept corporate payments

²⁴ [2024] 3 S.C.R. 417.

²⁵ Association for Democratic Reforms, “Updated data on Electoral Bonds-January 2024, (15 Feb 2024).

²⁶ A CMS report, “Poll Expenditure, The 2019 Elections, at page 7(2019).

²⁷ Supreme Court Observer, available at: [The making and unmaking of the Electoral Bond Scheme: Part 2 - Supreme Court Observer \(scobserver.in\)](#) (last visited on 8 July 2024).

²⁸ TNN, “Future Gaming’s Santiago Martin on ED, IT radar for over a decade”, Times of India, March 15, 2024, [Future Gaming’s Santiago Martin on ED, IT radar for over a decade | India News - Times of India \(indiatimes.com\)](#), (Last visited on 8th July 2024).

²⁹ Project Electoral Bond, “Top Buyers of electoral bonds are ‘Lottery King’ and Megha Engineering, The News Minute, 14th Mar 2024, <https://www.thenewsminute.com/news/top-buyers-of-electoral-bonds-are-lottery-king-and-megha-engineering>, (Last visited on 8th July 2024).

within RBI guidelines. However, donor names and amounts have to be disclosed. The removal of these restrictions through electoral bonds allowed for the covert channelling of an infinite amount of donations. The ruling Bhartiya Janata Party was the main beneficiary, according to reports examining bond donations. The BJP received more than Rs 12,000 crores of the Rs 16,000 crores donated via bonds between 2018 and 22. Thus the party received more than 75 percent of the funding for the anonymous bonds. With bonds a conduit for "bribes" to the BJP in secret, the Congress received only Rs 800 crore, or 5%. Reported quid pro quo and misuse of anonymity claims were strengthened by the ruling party's heavy reliance on bonds.³⁰

SUPREME COURT RULING - An Analysis

In the historic case of *Association for Democratic Reforms vs. Union of India*³¹, the Electoral Bonds Scheme 2018 ("EBS") was scrapped by the Hon'ble Supreme Court of India and declared unconstitutional. The ruling has been praised by many as a decision that upholds democracy. The court observed that the Electoral Bonds ruling is notable for its insightful acknowledgment of the destructive influence of corporate money in politics, its emphasis on citizens' right to know, and its consideration of the standards used to determine whether constitutional restrictions on basic freedoms are permissible.

The court gave following directions:

- The issuing bank will immediately cease to issue electoral bonds.
- SBI will provide the ECI with a list of all electoral bonds obtained since this Court's 12-April 2019 interim ruling. The information must contain the date each electoral bond was purchased, the buyer's name, and the denomination of the bond that was purchased.
- SBI will provide the ECI with a list of political parties that have received electoral bond payments since this Court's 12-April 2019 interim ruling. Every electoral bond that political parties encash must have its details disclosed by SBI, including the bond's denomination and the date of encashment.
- A week after obtaining the data, i.e. by March 13, 2024 the ECI will post the information

³⁰ Dr. A. Shaji George, "The Unconstitutional Nature of Electoral Bonds in India: Impacts on Political Transparency and the Democratic Process, Volume: 02 Issues: 01, partners Universal Innovative Research Publication (UIRP), Page no. 154, (2024).

³¹ [2024] 3 S.C.R. 417.

given by the SBI on its official website.³²

EBS Scheme struck down due to following Resolutions:

Preserving the buyer's or purchaser's anonymity, or that of the cause they are contributing to, is the Essential components of Electoral Bond Scheme. The court observed that the public interest in the impartial administration of justice may only be protected by the publication of pertinent and material documents, tracing the history of RTI under Article 19(1)(a).³³

The *State of U.P. v. Raj Narain*³⁴ and *S.P. Gupta v. Union of India*³⁵ ruling were cited in support of the conclusion that the initial body of RTI law concentrated on the closed connection between right and open guarantee. connection between right and open guarantee.

The court acknowledged the value of information as fundamental to forming opinion on social, cultural, and political matters during the second stage of the development of RTI jurisprudence. Referring to the ruling in *People's Union for Civil Liberties v. Union of India*³⁶ it was decided that a similar argument of protection against revelation of any candidate's criminal history was denied since it was determined that such information was public knowledge. It was decided that ECI has the authority to question candidates about their expenses and criminal history. Voting was deemed to constitute an exercise of the right to free speech guaranteed by Article 19(1)(a)³⁷. The court then took on the challenging job of striking a balance between the right to political donation, right to privacy and Right to Information. The same was discussed in the case of *Union of India v. Association for Democratic Reforms*³⁸,

The court use the proportionality test, to determined that in order to strike a balance between two rights, it is necessary to determine where the greater public interest rests.

³² Indian Kanoon, available [at Association for Democratics Reforms vs Union Of India on 15 February, 2024 \(indiankanoon.org\)](https://www.indiankanoon.org/), (Last visited on 9th July 2024).

³³ India Const. art. 19(1)(a).

³⁴ 1975 AIR 865.

³⁵ AIR 1982 SC 149.

³⁶ AIR 1997 SC 568.

³⁷ Supra Note 33.

³⁸ AIR 2002 SC 2112.

The ruling in *Mazdoor Kisan Shakti Sangathan v. Union of India*³⁹ followed by *Sahara India Real Estate Corporation Ltd. V. SEBI*⁴⁰ observed that for the balancing of two fundamental rights together, it is necessary that the "structured proportionality standard" must be followed. When there are fundamental rights on both sides of the see-saw, double proportionality should be used." Therefore, the Court examined whether the means employed were appropriate, necessary, and proportionate to the fundamental rights violated, specifically the RTI, by analysing amended Section 13-A of the Income Tax Act⁴¹, which does away with the requirements of maintaining records of contributions made by political parties, as well as other amended provisions.

It is held that although keeping information private fulfills the goal of informational privacy, it does not satisfy the appropriateness prong. The complete non-disclosure of facts to voters and the reduction of black money rationale are unrelated.

Additionally, it does not satisfy the requirement prong because there are several ways to reveal the data to different authorities in accordance with the relevant enactments, such as through annual audit report.⁴² Contributions made beyond a certain level and not as a true indication of political support or affiliation is not covered by the right to the privacy of political associations. Since EBS entirely subverts RTI and tilts the scales in favour of political donation informational privacy, it cannot be regarded as the least restrictive way to uphold fundamental rights. Due to their inherent aspect of contributor anonymity, the various revisions, namely to Section 13-A of the IT Act⁴³ and Section 29-C of the Representation of People Act⁴⁴, were ruled to be unlawful. As a result, EBS scheme was declared unlawful and consequently abolished.

Income Tax Implications of the SC Judgement:

According to sections 80GGB and 80GGC of the Income Tax Act⁴⁵, Any Indian business or individual that makes non-cash contributions to any registered political party or electoral trust in India is allowed

³⁹ AIR 2018 SC 3476.

⁴⁰ AIR 2012 SC 3829.

⁴¹ Supra Note 13.

⁴² SSC TIMES, [Analysis and Anatomy of Electoral Bond Judgment |SCC Blog \(scconline.com\)](#) (Last visited on 8th July 2024).

⁴³ Supra Note 13.

⁴⁴ Supra Note 18.

⁴⁵ Supra Note 9, s.80GGB, 80GGC.

to subtract from their taxable income the corresponding amount.

The SC ruling, delivered by the Hon'ble Chief Justice of India, stipulates in paragraph 221(f) that any Electoral Bonds that are still valid after fifteen days but have not yet been cashed by the political party must be returned to the issuing bank by either the purchaser or the political party, depending on who is in possession of the bond. After the legitimate bond is returned, the issuing bank will credit the buyer's account with the full amount. This suggests that the deduction made by the Indian companies and individuals under sections 80GGB and 80GGC of IT Act⁴⁶, respectively, for the FY 2023–24 relevant to the AY 2024–25, regarding the electoral bonds they already purchased in the current FY 2023–24, will not be negatively impacted by the SC ruling, prima facie. This is because the donations made through electoral bonds have not been ordered to be reimbursed by the Honourable Supreme Court because the political parties involved would have already cashed them after the 15-day validity period had passed. Additionally, the SC ruling makes no recommendations about the elimination of the deduction under Sections 80GGB or 80GGC of Income Tax Act, 1961.⁴⁷

Another intriguing question is whether the deductions made by the donors—corporations under section 80GGB of the Income tax Act and individuals other than companies under section 80GGC⁴⁸—for their contributions to recognized political parties through electoral bonds in all previous assessment years—AY 2018–19, 2019–20, 2020–21, 2022–23, and 2023–24 under section 13A of the Income Tax Act⁴⁹, can be rescinded given that the Honourable Supreme Court (SC) ruled the Electoral Bond Scheme, 2018 to be unconstitutional?

It is evident that the response is negative. This is due to the established legal position that, in the Finance Act of 2017⁵⁰, the Legislature itself brought electoral bonds under the purview of eligible contributions to recognized political parties, which may be claimed as a deduction under sections 80GGB and 80GGC of the Income Tax Act⁵¹. As a result, the respective donors have been able to legitimately claim this deduction in these assessment years. Now, the legitimate entitlement of the donor's deduction claims under sections 80GGB and 80GGC⁵² from previous assessment years cannot

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Supra Note 13.

⁵⁰ Supra Note 12.

⁵¹ Supra Note 45.

⁵² Ibid.

be revoked or altered by any subsequent order, even if it comes from the honourable Supreme Court.⁵³

The ruling's implications for the next general elections:

Particularly in light of the impending general elections, the Supreme Court's ruling regarding the legitimacy of the EBS Scheme is greatly appreciated and considered to be exceptionally significant. It is a well-known illustration of how judicial scrutiny can restrain the legislature's arbitrary decisions. Regarding the EBS Scheme's legitimacy and potential for abuse by corporations and political parties, numerous experts and scholars expressed concerns following its inception. The Law Commission of India expressed concerns in its 255th Report⁵⁴ over the turning of financial superiority into electoral advantage. Every citizen's right to equitable participation in the political process is undermined by lobbying and capture, which place undue emphasis on large donations and specific interest groups. In addition, a number of opposition parties have asserted that the ruling party has abused the EBS Scheme to solicit political contributions from business interests in exchange for political favors. Moreover, they claimed that donors who supported the ruling party received preferential treatment (such as government contracts and tenders in a variety of government-aided projects and donations given following raids by central investigative agencies), while those who did not support the ruling party or supported opposition parties did not receive the same treatment. A successful democracy requires transparency because it guarantees accountability. Money laundering in Indian politics is probably going to decrease as a result of the Supreme Court's judgment to invalidate the EBS Scheme.

It is unclear how this judgement will affect Indian politics or how the Court ordered the SBI to provide the ECI with the EBS' details.⁵⁵

⁵³ [Taxmann, available at: Income Tax & Balance Sheet Implications of SC Judgement on Unconstitutionality of Electoral Bonds - Taxmann, \(Last visited on 10th July 2024\).](#)

⁵⁴ Press information Bureau, "Law Commission of India Submits its Report on Electoral Reforms to the Ministry of Law & Justice, (March 2015).

⁵⁵ Shikha Gupta, End of Anonymous Political Donations: Supreme Court Declares Electoral Bonds Scheme Unconstitutional, Vidhi centre for legal policy, 23 April 2024, [End of Anonymous Political Donations: Supreme Court Declares Electoral Bonds Scheme Unconstitutional – Vidhi Centre for Legal Policy \(vidhilegalpolicy.in\)](#).

Need for Balanced policies in political donation:

The electoral bonds case has highlighted the need for India to have a just legal framework for political finance. Transparency has been appropriately recognized by the Supreme Court as essential, but fair play and the avoidance of harassing sincere donors also require balanced principles. Elections need money, therefore this delicate balancing act is necessary. Additionally, in order to prevent conflicts of interest and undue influence, election money control is required. Thus, it's essential to have openness and fair restrictions without going too far. For example, although the Court mandated that the anonymity of electoral bonds be withdrawn since it infringed upon voters' right to information, unrestricted disclosure standards may deter legitimate, small donors from supporting the parties they favor. Therefore, it seems sense that the election law's Rs 20,000 threshold, below which donor information is not need to be revealed, be in place. Large donations should be prohibited from opacity, but small individual donors may need protection from potential political rivalry. In a similar vein, even if the Supreme Court upheld the 7.5% corporate donation maximum, there is a case can be made for a reasonable increase to between 10% and 15% of profits. A higher cap allows for legal spending that serves commercial goals while preventing the spread of undue influence.

These complex regulations differentiate between the requirement for openness in large donor giving, which can distort policies, and expanding the base through smaller contributions from professionals, individuals, and businesses. In general, striking a balance between fairness, freedom, and transparency in political fundraising is crucial. The historic decision on electoral bonds shifted the balance back toward the openness that is so vital to maintaining the integrity of elections. Policy frameworks going forward need to support this with complementing, well-balanced initiatives. Ultimately, the electoral bonds ruling made clear that democratic accountability, fair constraints, and openness must all be carefully balanced in election funding regulations.⁵⁶

CONCLUSION

A historic ruling was passed on February 15, 2024, when the Supreme Court struck down the Electoral Bonds Scheme by declaring it unconstitutional. The unanimous Court ruling upheld democracy as the cornerstone of the Constitution and addressed all of the challenges presented, ruling the plan unlawful. In addition to supporting election integrity, the court's astute decision in ADR's petition contesting

⁵⁶ Supra at 30 at 161.

the Finance Act, 2017 prevented democracy from devolving into a mobocracy. Since the highest court in the land acknowledged in its ruling that information is important for both securing the goal of self-development and holding the government accountable, additional reforms of this kind are likely to be brought forth by the court. In light of this order, the government must immediately stop issuing electoral bonds and provide Indian Election Commission with all pertinent data.

The ruling ensures that political donations are subject to stricter scrutiny, thereby preventing the influx of illicit funds into the political system. It also affirms the status benefits to taxpayers by safeguarding their right to know how their money is being utilized in the political sphere. By mandating full disclosure of political contributions, the ruling aims to enhance public trust and confidence in democratic institutions.

The majority of electoral bond policy money goes toward funding political parties for ineffective campaign strategies and the unholy process of forming and dissolving governments. Political Parties play a significant role in shaping public policy and governance, and their financial operations should be subject to the same scrutiny as other entities. Allowing tax exemptions for political parties creates opportunities for misuse of funds and corruption, undermining public trust in political institutions. Some businesses have experienced significant setbacks as a result of the Electoral Bonds Case, which may result in harsh legal repercussions if ignored. Most firms appear to have been unaware of the repercussions of the Electoral Bond case, despite the case receiving a lot of media attention. Companies would be wise to notice the significant modifications to the disclosure requirement regarding political contributions that have resulted from the decision.

In summary, the Supreme Court's ruling aims to enhance transparency and accountability in political funding, ensuring that voters have access to information about who finances political parties. This decision is expected to reduce the influence of undisclosed and potentially illicit funding in Indian politics, fostering a fairer and more transparent electoral process.