
Constitutionality Of The Electoral Bond Scheme

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Introduction

Democracy plays a crucial role in maintaining the health and functioning of both the Parliament and the nation as a whole. It is essential for uniting the country and upholding the legacy of freedom left behind by those who fought for independence. For this, the system of parliamentary democracy must work in an objective, constructive, and productive manner.² Throughout history, civilizations have been governed through various systems like authoritarianism, aristocracy, autocracy, monarchy, oligarchy, and feudalism. Despite these systems, the roots of democracy can be traced back to ancient Greece. The word "democracy" originates from the Greek words 'Kratos,' meaning power or rule, and 'Demos,' meaning the people. In essence, democracy translates to 'rule by the people' or 'rule by the many.' In simpler terms, democracy is a form of governance where the people, either directly or through their elected representatives, exercise control over the political system.³ In a democratic republic like India, true power lies with the common people. It is a system where individual rights and societal needs are balanced, where every citizen enjoys freedom and the right to make decisions for their own benefit. It provides equal opportunities for all citizens, who can select their government through free votes and influence its policies through their opinions. In this setup, the dignity of individuals and the rule of law are upheld.⁴

India, as a constitutional democracy with a parliamentary system, is committed to conducting regular, free, and fair elections. These elections are crucial for determining the government's composition, the members of both houses of Parliament, as well as the state and union territory legislatures, in addition to the positions of President and Vice President.⁵

1.1 Meaning of Electoral Bond and Electoral Bond Scheme

Electoral bonds are a recent development in political funding in India, introduced in 2017. They allow individuals and corporations to anonymously donate unlimited amounts to political parties. Under the Electoral Bond Scheme, donors can purchase bonds in fixed amounts from the State Bank of India (SBI) and give them to any political party, which can then

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² Bal Ram Jakhar, "Parliamentary Decorum" 31 *Journal of Parliamentary Information* 135(1987).

³ Dr. Mohd Aftab and Dr. Mazar Ali Shah, "Democracy in India: A historical perspective" 3(2) *International Journal of Advanced Academic Studies* 136 (2021).

⁴ Y.Satyanarayana, "Democracy, Development and Social Change: Some Constitutional Perspectives" IX(II) *Central Indian Law Quarterly* 145(1996).

⁵ Available at: <https://www.eci.gov.in/ecibackend/public/api/download?url=LMAhAK6sOP> (Visited on 18th May, 2024).

redeem them. The scheme does not require political parties to disclose the identities of the donors, not even to the Election Commission of India (ECI).⁶ Both individuals and firms can buy these bonds from SBI and donate them.⁷

Electoral bond as defined in the scheme⁸ means “a 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.” It operates similarly to a banknote, payable to the bearer upon demand and free from interest. Indian citizens or entities registered in India can purchase these bonds.⁹

The government promoted the Electoral Bond Scheme as part of broader "electoral reforms" aimed at moving toward a cashless and digital economy. In the 2017-18 Union Budget, then-Finance Minister Arun Jaitley explained that, even after 70 years of independence, India had not developed a transparent method of funding political parties, which is essential for free and fair elections. He proposed the Electoral Bonds Scheme to clean up political funding practices.¹⁰

Consequently, the Central Government introduced the Electoral Bond Scheme under the authority granted by subsection (3) of Section 31 of the Reserve Bank of India Act, 1934.¹¹

2. Historical Background of the Electoral Bond Scheme in India

Political campaign financing has historically been an opaque affair in India. Largely unregulated political donations meant the role of black money and corporate influence in elections was pervasive yet invisible to the public. This clouded transparency and accountability around parties and candidates. The major expenditure on actual conduct of elections is, however, reflected in the budgets of the concerned constituent units of the Union, States and Union Territories. If elections are being held only for Parliament, the expenditure is borne entirely by the Union Government, while for the elections being held only for the State Legislature, the expenditure is borne entirely by the concerned State.¹²

Traditionally, political parties in India financed themselves through private donations and membership dues.¹³ Corporate contributions to political parties were permitted with certain restrictions and had to be publicly disclosed. The Representation of the People Act (RPA) of 1951 introduced spending limits for election campaigns, with penalties for candidates who exceeded these limits, including potential disqualification.¹⁴

Concerns about black money infiltrating the political system surfaced in the 1960s. Black money refers to untaxed or illegally acquired funds. Reports such as those from the Santhanam Committee on the Prevention of Corruption (1964) and the Wanchoo Direct Taxes Enquiry Committee (1971) highlighted how black money was funneled into political fundraising, often in exchange for favorable policies. This problem was exacerbated by high tax rates and a restrictive policy framework, leading businesses and individuals to evade taxes and channel their black money into political donations. In 1968, Prime Minister Indira Gandhi banned corporate donations to political parties in an effort to curb corporate influence on politics. While this move was seen as a way to limit undue influence from business groups, it also increased the reliance of political parties on black money as there was no adequate replacement for corporate funding.

In 1974, the Supreme Court ruled in the *Kanwar Lal Gupta v. Amar Nath Chawla*¹⁵ case that political party spending on behalf of a candidate should count toward the candidate's election expenses. Parliament responded by amending the RPA

⁶ Available at: <https://www.scobserver.in/cases/association-for-democratic-reforms-electoral-bonds-case-background/> (Visited on 6th May, 2024).

⁷ Dr.A.Shaji George The Unconstitutional Nature of Electoral Bonds in India: Impacts on Political Transparency and the Democratic Process pg 150 (Partners Universal Innovative Research Publication (PUIRP) Volume: 02 Issue: 01 | January-February 2024).

⁸ Electoral Bond Scheme, 2018 (No. 2 of 2018) s. 2(a).

⁹ *Id.*, s. 3

¹⁰ Available at: <https://www.scobserver.in/cases/association-for-democratic-reforms-electoral-bonds-case-background/> (Visited on 6th May, 2024).

¹¹ The provision has authorized the Central Government to make or issue any promissory note expressed to be payable to the bearer of the instrument other than the Reserve Bank of India.

¹² Available at: <https://www.eci.gov.in/ecibackend/public/api/download?url=LMAhAK6sOP> (Visited on 18th May, 2024).

¹³ M. V. Rajeev Gowda and E., “Sridharan Reforming India's Party Financing and Election Expenditure Laws” 11 (2) *Election Law Journal* 226 (2012).

¹⁴ Ramadevi, V. S. and Mendiratta, S. K. (2000). *How India Votes: Election Laws, Practice and Procedure* (pp.378–80, 391–95). New Delhi: Butterworths India

¹⁵ 1975 AIR 308.

in 1975 to exclude unauthorized party or supporter expenditures from the candidate's official campaign budget. This change rendered the election spending limits largely ineffective.

In 1985, the Companies Act was amended, once again permitting corporate donations to political parties under specific conditions, including a cap of 5% of a company's average net profit over the previous three years. Donations required board approval and had to be disclosed in the company's financial statements. Further reforms were proposed by the Dinesh Goswami¹⁶ Committee on Electoral Reforms in 1990, which recommended limited state funding for certain campaign expenses, like fuel and microphone rentals, while banning corporate donations.¹⁷

Despite these efforts, India's election system continued to grapple with issues like the influence of money, criminalization of politics, communalism, and casteism. Election campaigns grew increasingly expensive, and the buying of votes became a widespread problem. Industrialists and businessmen began directly participating in elections, sometimes purchasing seats in state legislatures or the Rajya Sabha. According to a survey by the Association for Democratic Reforms (ADR), 80% of Lok Sabha members are millionaires, reflecting a troubling connection between wealth and political power. This is a substantially greater percentage than the 30 percent and the 58 percent of Lok Sabha MPs in 2004 and 2009.¹⁸

Corruption, driven by the role of money in politics, has undermined the integrity of India's elections. The high cost of campaigns, coupled with a lack of transparency around political funding, has allowed money to dictate election outcomes rather than the electorate.¹⁹ The electoral compulsions for funds become the foundation of the whole superstructure of corruption.²⁰ A report by ADR revealed that between 2004-05 and 2014-15, 69% of political party income, amounting to ₹7,833 crores, came from unknown sources, highlighting the need for greater transparency in political donations.²¹

The push for election finance reform has also been supported by concerns about "institutional corruption," where large legal campaign donations shape political views and policies in favor of donors, eroding public trust in the democratic process.²² In response to these challenges, the Indian government introduced the Electoral Bond Scheme as an innovative approach to political financing. The scheme aims to bring transparency to political donations, representing a significant step toward reducing corruption in the electoral system.

2.1. The Electoral Bond Scheme, 2018²³

On January 2, 2018, the Ministry of Finance introduced the Electoral Bond Scheme, 2018 as a new mechanism for political funding in India. This scheme authorized specific branches of the State Bank of India (SBI) to sell electoral bonds in fixed denominations of ₹1,000, ₹10,000, ₹1,00,000, ₹10,00,000, and ₹1,00,00,000. The bonds are available for purchase for 10 days in January, April, July, and October of each year, with additional windows available during election years. The process ensures anonymity for the purchaser, whose identity remains confidential to everyone except the SBI, which records the buyer's Know Your Customer (KYC) details.

Political parties eligible to receive electoral bonds must have secured more than 1% of the votes in the last general election to either the Lok Sabha or a Legislative Assembly. Upon receiving a bond, political parties must encash it within 15 days. Any bond not encashed within this period is transferred to the Prime Minister's Relief Fund.

¹⁶ Committee on Electoral Reforms in 1990.

¹⁷ M. V. Rajeev Gowda and E. Sridharan, "Reforming India's Party Financing and Election Expenditure Laws" 11 (2) *Election Law Journal* 228 (2012).

¹⁸ Rashid Manzoor Bhat, Electoral System Of India: Major Issues And Challenges 2(3) *International Review Of Innovation, Technology And Green Energy* (2022).

¹⁹ Election Commission of India, Guidelines on Transparency and Accountability in Party Funds and Election Expenditure (New Delhi: 2014), available at: [://eci.gov.in/files/file/867-guidelines-on-transparency-and-accountability-in-party-funds-and-election-expenditure-matter-regardingdated-29082014/](https://eci.gov.in/files/file/867-guidelines-on-transparency-and-accountability-in-party-funds-and-election-expenditure-matter-regardingdated-29082014/). (Visited on 15th May, 2024).

²⁰ Ministry of Law and Justice, National Commission Report on Implementation of the working of the Constitution (New Delhi: 2001), available at: https://archive.pib.gov.in/archive/releases98/lyr2002/rsep2002/12092002/r1209200_24.html [hereafter NC Report] (Visited on 15th May, 2024).

²¹ Law Commission of India, 255th Law Commission on Electoral Reforms (New Delhi: 2015).

²² *Id.*

²³ Available at: <https://www.scobserver.in/wp-content/uploads/2021/10/Electoral-Bonds-Scheme-2018.pdf> (Visited on 5th May, 2024).

3. Prime Features of the Electoral Bond Scheme

Electoral bonds are designed to provide transparency and security in political donations while maintaining donor anonymity. Some of the key features of the electoral bond system include²⁴:

- Eligibility of Political Parties: Only political parties registered under the Representation of the People Act, 1951, which received at least 1% of votes in the last general elections, are eligible to accept electoral bonds.
- Eligibility of Donors: Only Indian citizens and entities incorporated in India are allowed to purchase electoral bonds, ensuring that foreign donations are restricted.
- Currency: All donations through electoral bonds are made in Indian Rupees (₹).
- Time Limit for Encashment: Electoral bonds are valid for 15 days from the date of issuance. If not encashed within this period, the donation is transferred to the Prime Minister's Relief Fund.
- Anonymity of Donors: The identity of the donor remains anonymous, ensuring that donations are free from bias or influence. This was one of the most significant aspects of the scheme, as the identity of the purchaser was protected.
- Denominations: The bonds are available in various denominations, starting from ₹1,000, and there is no upper limit on the amount a donor can contribute.²⁵
- Limited Sale Periods: Bonds can only be purchased during specific 10-day windows in January, April, July, and October each year. An additional 30-day window is available during general election years to accommodate the increased need for political funding.

These features were designed to address concerns about the transparency and regulation of political donations, which had historically been plagued by the influence of untraceable funds and black money. By requiring donations to be made through authorized bank transactions, the Electoral Bond Scheme sought to ensure that political financing would be more transparent, while protecting the privacy of donors.

4. Finance Act, 2017 and Amendments in Other Legislations

Electoral bonds were introduced in India through the Finance Act, 2017²⁶. The government promoted these bonds as a tool to increase transparency in political funding by channeling donations through banking systems. However, critics have raised concerns about the opacity surrounding the source of funds donated through this scheme.

The Finance Act, 2017 introduced amendments to several key legislations, including the Representation of the People Act, 1951 (RoPA), the Reserve Bank of India Act, 1934, the Income Tax Act, 1961, and the Companies Act, 2013. These changes significantly altered the landscape of political financing in India.

1. Income Tax Act, 1961 (Section 13A Amendment) - Section 11²⁷ of the Finance Act, 2017 amended Section 13A of the Income Tax Act to exempt political parties from maintaining detailed records of contributions received through electoral bonds. This change reduced the transparency in political donations, as parties no longer had to disclose the identity of donors who used electoral bonds.

2. Reserve Bank of India Act, 1934 (Section 31 Amendment) - Section 135²⁸ of the Finance Act amended Section 31 of the RBI Act, enabling the Union government to authorize scheduled banks to issue electoral bonds. This amendment was

²⁴ Available at: <https://egazette.gov.in/WriteReadData/2017/175141.pdf> (Visited on 6th May, 2024).

²⁵ Available at: <https://www.equiruswealth.com/glossary/electoral-bonds> (Visited on 5th May, 2024).

²⁶ The Finance Act, 2017 (NO. 7 OF 2017).

²⁷ In section 13A of the Income-tax Act, with effect from the 1st day of April, 2018,— (I) in the first proviso, (i) in clause (b), (A) after the words “such voluntary contribution”, the words “other than contribution by way of electoral bond” shall be inserted; (B) the word “and” occurring at the end shall be omitted; (ii) in clause (c), the word “; and” shall be inserted at the end; (iii) after clause (c), the following clause shall be inserted, namely:“(d) no donation exceeding two thousand rupees is received by such political party otherwise than by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account or through electoral bond. Explanation—For the purposes of this proviso, “electoral bond” means a bond referred to in the Explanation to sub-section (3) of section 31 of the Reserve Bank of India Act, 1934.”;

²⁸ The Finance Act, 2017 Section 135 - In the Reserve Bank of India Act, 1934, in section 31, after sub-section (2), the following sub-section shall be inserted, namely: ‘(3) Notwithstanding anything contained in this section, the Central Government may authorise any scheduled bank to issue electoral bond. Explanation.- For the purposes of this sub-section,

crucial to the functioning of the Electoral Bond Scheme, as it allowed for a new financial instrument to facilitate political donations.

3. Representation of the People Act, 1951 (Section 29C Amendment) - Section 137²⁹ introduced a proviso to Section 29C of RoPA, exempting political parties from including contributions received through electoral bonds in their "Contribution Reports." Previously, these reports were mandated to disclose contributions exceeding ₹20,000 from companies and individuals. The amendment, therefore, shielded electoral bond donations from public scrutiny.

4. Companies Act, 2013 (Section 182 Amendment)- Section 154³⁰ of the Finance Act, 2017 made significant changes to Section 182³¹ of the Companies Act, which governs corporate donations to political parties. These amendments had the following effects:

(a) The earlier cap of 7.5% of a company's average net profits over the past three years was eliminated. This allowed companies to donate unlimited amounts to political parties.

(b) Companies were only required to disclose the total amount contributed to political parties in a financial year, without specifying the particular parties that received donations.

(c) Sub-section 3A allowed companies to donate via cheque, bank draft, electronic clearing systems, or other financial instruments, including electoral bonds, making it easier for businesses to contribute anonymously.³²

5. Taxation Laws (Amendment) Act, 1978 (Section 13A Tax Exemption) - Originally, Section 13A of the Income Tax Act, introduced by the Taxation Laws (Amendment) Act, 1978, exempted political parties from paying taxes on their income from contributions and investments, provided they maintained proper records and met the following conditions:

"electoral bond" means a bond issued by any scheduled bank under the scheme as may be notified by the Central Government.'.

²⁹ *Id.* Section 137- In the Representation of the People Act, 1951, in section 29C, in sub-section (1), the following shall be inserted, namely:—'Provided that nothing contained in this sub-section shall apply to the contributions received by way of an electoral bond. Explanation—For the purposes of this sub-section, "electoral bond" means a bond referred to in the Explanation to sub-section (3) of section 31 of the Reserve Bank of India Act, 1934.

³⁰ *Id.*

³¹ **Prohibitions and restrictions regarding political contributions.** (1) Notwithstanding anything contained in any other provision of this Act, a company, other than a Government company and 113 a company which has been in existence for less than three financial years, may contribute any amount directly or indirectly to any political party: Provided that the amount referred to in sub-section (1) or, as the case may be, the aggregate of the amount which may be so contributed by the company in any financial year shall not exceed seven and a half per cent. of its average net profits during the three immediately preceding financial years: Provided further that no such contribution shall be made by a company unless a resolution authorising the making of such contribution is passed at a meeting of the Board of Directors and such resolution shall, subject to the other provisions of this section, be deemed to be justification in law for the making and the acceptance of the contribution authorised by it. (2) Without prejudice to the generality of the provisions of sub-section (1),— (a) a donation or subscription or payment caused to be given by a company on its behalf or on its account to a person who, to its knowledge, is carrying on any activity which, at the time at which such donation or subscription or payment was given or made, can reasonably be regarded as likely to affect public support for a political party shall also be deemed to be contribution of the amount of such donation, subscription or payment to such person for a political purpose; (b) the amount of expenditure incurred, directly or indirectly, by a company on an advertisement in any publication, being a publication in the nature of a souvenir, brochure, tract, pamphlet or the like, shall also be deemed,— (i) where such publication is by or on behalf of a political party, to be a contribution of such amount to such political party, and (ii) where such publication is not by or on behalf of, but for the advantage of a political party, to be a contribution for a political purpose. (3) Every company shall disclose in its profit and loss account any amount or amounts contributed by it to any political party during the financial year to which that account relates, giving particulars of the total amount contributed and the name of the party to which such amount has been contributed. (4) If a company makes any contribution in contravention of the provisions of this section, the company shall be punishable with fine which may extend to five times the amount so contributed and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months and with fine which may extend to five times the amount so contributed. Explanation—For the purposes of this section, —political party means a political party registered under section 29A of the Representation of the People Act, 1951 (43 of 1951).

³² Available at: https://main.sci.gov.in/supremecourt/2017/27935/27935_2017_1_1501_50573_Judgement_15-Feb-2024.pdf (Visited on 7th May, 2024).

- (a) The party had to maintain detailed accounts to allow the Assessing Officer to calculate its income accurately.³³
- (b) Political parties were required to record voluntary contributions exceeding ₹20,000³⁴ along with the donor's name and address who made such contributions;³⁵ and
- (c) The accounts of the party had to be audited by a certified accountant.³⁶

The Finance Act, 2017 made critical changes to Section 13A, exempting political parties from maintaining donor records for contributions made via electoral bonds.³⁷ Furthermore, donations exceeding ₹2,000 could only be accepted via cheque, bank draft, electronic transfer, or electoral bonds.³⁸

These amendments collectively enabled political parties to raise funds with greater anonymity, especially through electoral bonds, while reducing the disclosure and accountability previously required under the law. This has sparked ongoing debates about the balance between transparency and privacy in political funding, and the impact on the integrity of India's democratic process.

4.1. Effect of the Amendments Introduced by The Finance Act to the Above Legislations:³⁹

The Finance Act, 2017 brought about several key changes to political financing in India, specifically related to transparency and corporate donations. The main effects of the amendments are:

- a. Introduction of Electoral Bonds: The new scheme allows individuals and corporate entities to contribute to political parties through electoral bonds, providing a formal mechanism for political donations.
- b. No Disclosure of Contributions through Electoral Bonds: Political parties are not required to disclose contributions received via electoral bonds. This has raised concerns about the lack of transparency in identifying donors.
- c. Reduced Corporate Disclosure Requirements: Companies are not obligated to disclose which political parties received their contributions, diminishing transparency regarding corporate influence on politics.
- d. Unlimited Corporate Funding: The cap on corporate donations (previously set at 7.5% of the company's net profits over the past three years) was removed, allowing corporations to make unlimited political donations.

4.2. Role of the Election Commission of India on The Electoral Bonds Scheme

The Election Commission of India (ECI) has long advocated for transparency in political funding. In its 2004 report⁴⁰, the ECI stressed the need for political parties to publish their audited accounts annually, allowing public scrutiny. This proposal sought to enhance the transparency and accountability of political parties' financial operations.

However, in 2019, the ECI filed an affidavit opposing the Electoral Bond Scheme. The ECI raised the following key concerns:

- The Electoral Bond Scheme contradicts the goal of transparency in political finance, as it allows donors to remain anonymous.
- The ECI had previously warned the government in 2017 about the potential negative impacts on transparency and the risks of unchecked foreign funding.
- The scheme could allow foreign entities to exert influence over Indian politics, as political parties are exempt from disclosing details of donations.

³³ IT Act, Proviso (a) to Section 13A.

³⁴ It was ten thousand rupees when Section 13A was introduced. It was increased to twenty thousand rupees by the Election and Other Related Laws (Amendment) Act 2003.

³⁵ Information Technology Act, s. 13A Proviso (b).

³⁶ *Id.*, Proviso (c).

³⁷ *Id.*, amendment to s. 13A Proviso (b).

³⁸ *Id.*, Proviso (d).

³⁹ Available at: https://main.sci.gov.in/supremecourt/2017/27935/27935_2017_1_1501_50573_Judgement_15-Feb-2024.pdf (Visited on 7th May, 2024).

⁴⁰ Available at: <https://www.eci.gov.in/eci-backend/public/api/download?u> (Visited on 7th May, 2024).

In response, the Union government defended the scheme, asserting that it was a step toward transparency by moving political donations away from unregulated cash contributions to banking channels. The government emphasized that only the State Bank of India (SBI) is authorized to issue these bonds, and KYC norms would help ensure accountability.

4.2.1. Indrajit Gupta Committee on State Funding of Elections, 1998

The Indrajit Gupta Committee⁴¹ on State Funding of Elections supported the idea of state funding to create a level playing field for smaller parties. It recommended that the State funds to be allocated only to national and state parties with allotted symbols, not independent candidates. Initially, state funding should be provided in kind, offering certain facilities to recognised political parties and their candidates. Acknowledged economic constraints, advocating partial rather than full state funding.

4.2.2. Law Commission of India, 1999

The Law Commission's 1999 report⁴² supported the idea of state funding but under strict conditions. It recommended that state funding would be permissible only if political parties were banned from accepting contributions from any other sources. The Representation of the People Act, 1951 (RPA) should be amended to include a new section (Section 78A) requiring political parties to maintain, audit, and publish their accounts regularly. Penalties should be imposed on political parties that fail to comply with these financial regulations, enhancing accountability.

The views of both committees underline the importance of fair elections and transparent financial practices to strengthen democracy in India.

5. Electoral Bond Scheme: Role of Judiciary

The judiciary has historically recognized the pervasive influence of money on politics in India and has taken a critical stance on the role played by corporate entities and large donors in elections. In numerous rulings, the Supreme Court has observed that the flow of money, particularly "big money," can create an uneven playing field in the political process. Here are some key judgments related to the influence of money in Indian politics:

In *Kanwar Lal Gupta v. Amar Nath Chawla*⁴³ the court noted that money serves as a tool for political solicitation, enabling candidates or parties with large funds to increase their exposure and gain an unfair advantage over their rivals. This "discrimination" based on financial power undermines the principle of equal opportunity for all candidates and voters. In another case of *Vatal Nagaraj v. R Dayanand Sagar*⁴⁴ Justice V.R. Krishna Iyer acknowledged that large amounts of money are frequently used to evade expenditure ceilings during elections. He expressed hope that these "necessary evils" of elections would be eliminated.

In *P Nalla Thampy Terah v. Union of India*⁴⁵ the Constitution bench upheld the constitutional validity of provisions that allowed unlimited channelling of funds by political parties, but expressed concern that such provisions diluted the principle of free and fair elections. "In *Common Cause (A Registered Society) v. Union of India*,⁴⁶ this Court dwelt on the ostentatious use of money by political parties in elections to further the prospects of candidates set up by them. Justice Kuldeep Singh described the role of money in the electoral process, which is relevant for contextualizing the issue:

"The General Elections is an enormous exercise and a mammoth venture in terms of money spent. Hundreds and thousands of vehicles of various kinds are pressed on to the roads in 543 parliamentary constituencies on behalf of thousands of aspirants to power, many days before the general elections are actually held. Millions of leaflets and many million posters are printed and distributed or pasted all over the country. Banners by the lakhs are hoisted. Flags go up, walls are painted, and hundreds of thousands of loudspeakers play out the loud exhortations and extravagant promises. VIPs and VVIPs come and go, some of them in helicopters and air-taxis. The political parties in their quest for power spend more than one thousand crore of rupees on the General Election (Parliament alone), yet nobody accounts for the bulk of money so spent and there is no accountability anywhere. Nobody discloses the source of the money. There are no proper accounts and no audit. From where does the money come from nobody knows. In a democracy where rule of law prevails this naked display

⁴¹ Available at: <https://legislative.gov.in/document/indra-jit-gupta-committee-report-on-state-funding-of-elections/> (Visited on 18th May, 2024).

⁴² Available at: https://lawcommissionofindia.nic.in/cat_electoral_reforms/ (Visited on 8th June, 2024).

⁴³ (1975) 3 SCC 646.

⁴⁴ (1975) 4 SCC 127.

⁴⁵ 1985 Supp SCC 189.

⁴⁶ (1996) 2 SCC 752.

of black money, by violating the mandatory provisions of law, cannot be permitted.” The challenge to the statutory amendments and the Electoral Bond Scheme cannot be adjudicated in isolation without a reference to the actual impact of money on electoral politics. This Court has in numerous judgments held that the effect and not the object of the law on fundamental rights and other constitutional provisions must be determined while adjudicating its constitutional validity. The effect of provisions dealing with electoral finance cannot be determined without recognizing the influence of money on politics. Therefore, we must bear in mind the nexus between money and electoral democracy while deciding on the issues which are before us in this batch of petitions.

Recently, in a landmark judgement of the Apex Court of the country *Association Democratic Republic v. Union of India*⁴⁷ two issues were raised before the court

1. Whether unlimited corporate funding to political parties, as envisaged by the amendment to Section 182(1) of the Companies Act infringes the principle of free and fair elections and violates Article 14 of the Constitution;
2. Whether the non-disclosure of information on voluntary contributions to political parties under the Electoral Bond Scheme and the amendments to Section 29C of the RPA, Section 182(3) of the Companies Act and Section 13A(b) of the IT Act are violative of the right to information of citizens under Article 19(1)(a) of the Constitution.⁴⁸

The Bench held that the Scheme violated the voters’ right to information enshrined in Article 19(1)(a) of the Constitution. The Court also directed that the sale of electoral bonds be stopped with immediate effect. SBI was directed to submit details of the Electoral Bonds purchased from 12 April 2019 till date, to the ECI. This will include details of the purchaser as well as the political parties that the bonds were given to. The Court unanimously struck down the Union’s 2018 Electoral Bonds (EB) Scheme.

6. Conclusion and Suggestions

Elections serve as the most important mechanism through which citizens express their will in a democracy. However, elections must be conducted fairly, free from the undue influence of money, to ensure that democratic ideals are upheld. While the Electoral Bond Scheme was introduced as a measure to reduce the use of black money in political funding, it has raised significant concerns regarding transparency and accountability.

The Supreme Court's ruling to strike down the scheme highlights the importance of transparency in political finance. Ensuring that voters have access to information about political donations is crucial for maintaining trust in the democratic process. Unchecked and anonymous political financing can erode this trust and weaken the foundations of governance over time.

Suggestions

1. Regulation of Donations: Restrictions can be imposed on donations from certain entities, such as foreign individuals or companies. Additionally, limits on donation amounts can help prevent undue influence by large donors. Some countries, such as the US, impose contribution limits on different types of donors.

2. Expenditure Limits: Limiting the amount that political parties can spend on campaigns can prevent a financial "arms race." For example, the UK imposes expenditure caps on political parties. In the US, however, the Supreme Court has blocked attempts to impose expenditure limits, citing the right to freedom of expression.

3. Public Funding of Political Parties: Many countries allocate public funds to political parties based on their past performance in elections. For instance, Germany uses a system where parties receive public funds based on the votes they received, membership fees, and private donations.

4. Disclosure Requirements: Public disclosure of donations can enhance transparency. However, donor anonymity may be necessary in some cases to protect donors from retaliation. A balance between transparency and anonymity can be struck by requiring disclosure of large donations while allowing small donors to remain anonymous.

⁴⁷ 2024 INSC 113.

⁴⁸ *Id.*

5. Balancing Transparency and Anonymity: Many jurisdictions allow small donors to remain anonymous while requiring the disclosure of larger donations. For example, the UK mandates disclosure of donations over £7,500, and Germany requires disclosure for donations exceeding €10,000.

6. National Election Fund: Establishing a National Election Fund, to which all donations could be made, could provide a solution. Funds from the pool could be distributed to political parties based on their electoral performance, removing concerns about donor influence.