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ANALYZING THE UNCONSTITUTIONALITY OF ELECTORAL BONDS

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ABSTRACT

This article addresses the recent Indian supreme court verdict that declared electoral bonds invalid. Electoral bonds came in 2017, allowing anonymous contributors to support political parties.²Critics contended that the lack of transparency allowed for unrestricted corporate financing to political parties. This breached citizen's right to knowledge under Indian constitution. The article describes how electoral bonds function through the state bank of India. Donors may anonymously purchase bonds and transfer funds straight into the parties' account. Between 2018 and 2022, almost \$2 billion in bonds were issued, with the ruling BJP getting 60% of donation. Opposition parties said that the system allowed for money laundering and improper political influence by companies. The article analyzes the supreme court's unanimous decision that bonds violate the right of citizens to know the source of political finance. This entitlement surpassed concerns about donor privacy. The court determined that the bonds did not effectively reduce black money, as indicated. The study emphasizes the need to balance openness and privacy issues while creating fair, constitutional political funding system. This would enhance Indian democracy by increasing voter awareness and control of donor influence.

Keywords: Political Funding, Electoral Bonds, Supreme Court Ruling, Electoral Reforms, Transparency, Anonymous Donations, Right to Information.

INTRODUCTION

Political campaign finance has long been a murky subject in India. Due to unrestricted political donations, corporate influence and black money had a significant impact on

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²https://www.researchgate.net/publication/378299703_The_Unconstitutional_Nature_of_Electoral_Bonds_in_India_Impacts_on_Political_Transparency_and_the_Democratic_Process#:~:text=Analyzing%20the%20Supreme%20Court's%20rationale,curb%20black%20money%20as%20claimed.

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elections but were often hidden from public view. This undermined openness and accountability for parties and candidates. The Modi government electoral bonds in 2017 to overhaul political finance. In the union budget address, it was stated that the goal was to improve transparency and reduce cash transactions in election funding. The new electoral scheme allows for anonymous payments to political parties through state bank of India branches.

The technique was described as allowing lawful donations from firms, groups, individuals seeking secrecy. The former system of cash equivalents was criticized for encouraging black money and allowing for misuse. Electoral bonds, which operate bearer instruments, aim to address this by publicly funneling “white money” into the system. Initially opposition parties, transparency campaigners, and constitutional experts expressed major concerns, they stated that the method allowed for concealed corporate funding to ruling parties. The government’s use of the state-owned SBI permitted contributors to remain anonymous, unlike the prior system of private electoral trusts.

With the general election looming in 2024, the monitoring of electoral ties has intensified. Opposition parties argue that the method disproportionately benefits the ruling party and hinders their own fundraising efforts. Petition submitted shortly after the announcement prompted the supreme court to examine its constitutional legitimacy. The court ruled the arrangement unconstitutional and arbitrary, achieving a significant win for transparency. Comprehensive disclosure of bond transactions is necessary to determine who gave how much to which party and maximize its impact. To ensure free and fair elections, funders who influence policy and governance must be transparent to the public.

SUPREME COURT RULING ON ELECTORAL BONDS.

in the historic decision, supreme court of India declared the electoral bonds scheme unconstitutional and unlawful. The five-judge court decided that the plan undermined openness in political fundraising and violated individuals’ basic right to information with a 4:1 majority. The electoral bonds concept permitted anonymous payments to political parties. In 2017, revision to the finance act and representation of people’s act allowed for unchecked corporate contributions to ruling parties. The administration pledged to increase openness and minimize dark money in election finance. Over Rs 16,000 crores were given through electoral bonds from 2018 to early 2022, 95% going to BJP.

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Multiple PILs were filed in 2017 to challenge the scheme constitutionality. Petitioners included NGOs working for electoral change, such as the association for democratic reforms (ADR) as well as opposition political parties.³

The cases alleged that reducing disclosure rules for political donations violated people's right to information under article 19(1)(a) ensures the basic right to free speech and expression.

The supreme court has understood this to include the access to information on public issues and candidates to make informed voting decisions. Petitioners argued that the use of bonds to conceal political donations violated their right to transparency.

WHAT ARE ELECTORAL BONDS AND HOW DO THEY FUNCTION?

Electoral bonds were problematic due to the anonymity they provided for contributors. The method allowed anybody to give to a political party anonymously. Electoral bonds were bearer instruments that did not identify the buyer or payee. They merely have a coded number and value inserted. These bonds are available for purchase at select state bank of India branches through electronic or cheque/DD deposits.

To donate, a buyer may simply give over the bond to their favorite political party, which can then cash it within 15 days. The party will deposit the bond into their account and get the donation immediately from SBI. The donor's name was not shown anywhere during the procedure. Donors were granted total anonymity, a significant departure from prior rules. Previously, political parties were required to report any contributions above Rs 20,000 to the election commission. This includes donor information such as name, PAN and address. Only monetary gifts under \$20,000 might remain anonymous.

The state bank of India was the sole lender responsible for issuing and selling electoral bonds to contributors under the system. The plan permitted SBI to operate special branches across India where individuals and organizations could acquire electoral bonds. Originally, 29 SBI branches in major cities were designated for this purpose. In future years, the list will be expanded to include hundreds of branches around the country for convenient access. Initially limited to Indian people and businesses, international entities can now give using SBI bonds.

The bonds minimum and maximum values Rs 1000 and Rs 1 crore. Bonds were offered in denomination of Rs 1000, Rs 10,000, Rs 1 lakh, and Rs 1 crore. To acquire a bond, buyers

³<https://www.sconline.com/blog/post/2024/02/20/analysis-and-anatomy-of-electoral-bond-judgment/>

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had to furnish basic KYC data to SBI, such as their name, address, and PAN. Despite recording the facts, the bank did not share the names of electoral bond buyers with the public, election⁴ commission, or any other entity. Banking confidentiality rules ensured that the purchase information was properly secured.

The buyer transferred the bond amount in cash or by electoral transfer into an SBI account, specifying their favorite political party. The money was subsequently deducted from the purchaser's account. In exchange, SBI supplied a tangible electoral bond certificate within 4 days by banking or post.⁵

This document just included the electoral bond's serial number and value. No personal information about the customer was inscribed on it. This was a bearer bond that buyers may anonymously transfer to any political party.

Bonds must be deposited within 15 days after issuance, or the buyer will get them before crediting donations to the parties' account.

WHAT DID THE SUPREME COURT SAY?

Violation of Right to Information

The supreme court decided that electoral bonds violate citizens basic right to knowledge under the Indian constitution. Electoral bonds, which allowed for anonymous political donations, hindered voters' ability to make informed decisions during elections. The court ruled that the right to information under article 19(1)(a) can only be restricted on reasonable reasons such as sovereignty, security, integrity, and public order. The anonymity of political donations was not considered a fair constraint on open information. The judges determined that openness in electoral finance was critical to maintaining the 'purity' of elections. Uncertainty about party funding and interests jeopardizes the fairness of election.

Unable to Curb Black Money

The supreme court ruled that electoral bonds failed to reduce black money and improve openness in political fundraising, which was a fundamental reason for their demise. The administration said that mandating donations through legal banking channels would boost the

⁴https://www.researchgate.net/publication/378299703_The_Unconstitutional_Nature_of_Electoral_Bonds_in_India_Impacts_on_Political_Transparency_and_the_Democratic_Process#:~:text=Analyzing%20the%20Supreme%20Court's%20rationale,curb%20black%20money%20as%20claimed.

⁵<https://www.scobserver.in/cases/association-for-democratic-reforms-electoral-bonds-case-background/>

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formal economy and reduce the use of illicit cash during elections. The court found no evidence that the initiative resulted in increased transparency or decreased illicit money. Electoral bonds provided a new way for illicit money to reach political parties. Electoral bonds increased opacity rather than openness by eliminating donation limit and the need for public reporting.

The court found that over 75% of the Rs 16,000 crores given through electoral bonds went to the ruling party, this concentration of donations suggests a lack of openness and accountability, rather than a decline in illicit fiancé. Experts suggest that electoral bonds may have just moved black money from cash to banking systems.⁶

Shell corporations can acquire bonds anonymously using unlawful cash and donate them to parties. Bonds did not reduce black money, but instead legitimized it owing to lack of transparency. Electoral bonds, which removed constraints on political donations, facilitated money laundering as a legitimate vehicle. The association for democratic reforms argued that opaque bonds are more harmful than cash donations. The latter did leave a paper trail.

No Privacy Over Transparency

The supreme court held that electoral bonds prioritized contributors' privacy over openness in political spending. The scheme's reliance on anonymity to safeguard donor privacy jeopardized citizen's access to election finance information. All donations exceeding Rs 2000 must be disclosed to the election commission. Electoral bonds improved privacy by eliminating the transparency criterion altogether, rather than establishing exceptions to disclosure requirements for specific instances. The court upheld the right to know, stating that transparency only be curtailed on recognized constitutional grounds such as public order or incitement. Donor anonymity did not constitute acceptable limits on information freedom.

The court ruled that anonymizing political fundraising records for privacy reasons was unsustainable. Voters have the right to know if donors and parties engaged in quid pro quo through big contributions. Legal experts praise the verdict for emphasizing the need of openness in crucial public information, such as election money. This promotes honesty, prevents conflict and accountability.

⁶<https://www.scoobserver.in/cases/association-for-democratic-reforms-electoral-bonds-case-background/>

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Disclosure of Donor Detail

The supreme court ruling on electoral bonds had a significant influence, requiring the government to disclose all contributors including donations made through the contentious bonds. The court emphasized that openness in political fundraising is crucial for free and fair elections. The court ordered that all information on electoral bond transactions be made public immediately.

The state bank of India, which issued the bearer bonds, must provide complete data to the election commission within 4 weeks. This includes information about bond purchases, including quantity, date, and denomination. SBI must also share information on which political parties uncashed the bonds and received donations in their accounts. The court mandates voluntary disclosure of bond donation amounts, despite the absence of legal obligation.⁷This

departure from anonymity is a significant victory for openness. The technique facilitated over Rs16,000 crore in political donations without requiring donor amount data.

The covert funding of political parties will now be revealed through systematic disclosure. The court upheld citizens' right to receive important information about political party finance. Anonymous fundraising violates democratic values and may lead to unethical bargains between parties and major contributors.

By requiring transparency, dubious funding through electoral bonds will be discovered. Previously, any company, even illicit sources or foreign businesses, could anonymously give limitless quantities to parties via bonds acquired at SBI offices. Legal experts applauded the verdict for promoting openness and confirming voters' right to information about election finance. This promotes transparency in democracy by allowing for financial investigation if political parties seek public office.

UPCOMING ELECTION AND RULING PARTY FUNDING

The supreme court decision to ban electoral bonds is anticipated to have a substantial influence on the BJP's finances for the next 2024 general elections. Since 2018, the BJP has received nearly 60% of the Rs 16,000 crores funded through electoral bonds, or over Rs

⁷<https://www.taxmann.com/research/company-and-sebi/top-story/10501000000023816/electoral-bonds-political-contribution-provisions-under-the-amended-companies-act-are-unconstitutional-%E2%80%93-recent-supreme-court-order-experts-opinion>

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10,000 crores. The removal of bond anonymity raises fears among party members that corporate contributions may become increasingly hesitant to contribute. Large firms, including state-owned enterprises, that generously gave to the BJP through bond may have their information revealed.

This might harm the BJP's financial stream ahead of critical state and national elections. The party is exploring alternate funding options that do not rely on anonymous bonds. Options such as soliciting smaller individual donations are being examined. The BJP may advocate for alternate forms of political financing, such as electoral trusts that protect contributors' identity. Corporate donations to ruling parties without secrecy cover are expected to decrease, affecting overall funding- the ruling restores support for national parties such as congress, traditional individual donors. Individuals who previously avoided donating publicly using electoral bonds can now contribute up to Rs 20,000 in a transparent manner.⁸ The current BJP has disproportionately benefited from anonymous bond fundraising, leading to negative financial ramifications. The ruling might impact the party's election spending strategy, as its finances may decrease.

According to some observers, the impact may be mitigated due to existing patronage networks between large business and the ruling party. Corporates that invest in policy influence may discover strategies to keep financing while presenting as compliant. But electoral bonds provided unprecedented size and opacity. The restriction on these practices may cause political parties that rely primarily on large donors to reconsider their fundraising tactics. This may impact election dynamics due to budget limits.

PREVIOUS DONATIONS RULES BACK IN EFFECT

The supreme court ruling against electoral bonds has reinstated the legal framework for political party finance that existed before the contentious bonds were established in 2017. According to experts, this represents a substantial shift in openness and accountability rules, which were previously hampered by electoral relationships. Rules requiring reporting of donations above Rs 20,000 are back in place.

⁸<https://www.taxmann.com/research/company-and-sebi/top-story/10501000000023816/electoral-bonds-political-contribution-provisions-under-the-amended-companies-act-are-unconstitutional-%E2%80%93-recent-supreme-court-order-experts-opinion>

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Prior to the introduction of electoral bonds, the representation of people's act mandated annual submission of donors' details and sums above Rs 20,000 to the election commission by political parties. This included the contributors' names, address, and PAN numbers. The businesses legislation limits corporate donations to 7.5% of average net income over the last three years. This barred registered firms from donating limitless funds to political parties or candidates.

Electoral bonds eliminated both criteria. The removal of donation limitations and opacity around contributors allowed for unrestrained anonymous funding, even from foreign and illicit sources. The supreme court decided that electoral bond anonymity infringed citizens' freedom to know and did not effectively address political finance. The court ruled that modifications to the RPA and companies act to facilitate bonds were invalid.

COMPARISON WITH OTHER DEMOCRACIES ON POLITICAL DONATION RULES

The issue surrounding electoral bonds in India has sparked global concerns about political finance regulations. Comparisons were often drawn to norms in the UK, Canada, US and other countries.

Unlike India, most democracies require openness in political donations over a certain level through public statements. In the US, campaigns must report donations over \$200 and donor information to the federal election commission on a regular basis. Reporting is necessary, even if contributors choose to remain anonymous.

The UK prohibits foreign donations and limits individual contributions to 500- 2500 pounds a year, according to the organization. Donations of more than 500 pounds to political parties at the constituency or national level must be declared to the election commission.

Canada forbids donations from anybody other than citizens or permanent residents. Donations are not accepted from corporations, foreign bodies, unions. Individuals can donate up to \$1600 to a party every year. Every contribution above \$200 must be declared.

Individuals' donations to political parties in France are limited to €7500 per year and corporate donations to €15000. Donations above €150 must be clearly recorded. Foreign and anonymous contributions are strictly prohibited and subject to criminal consequences for infractions.

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In Germany, the amount that can be donated by an individual cannot exceed €1 million each year among all parties. Companies cannot exceed €1.5 million per year. Donations above €50,000 need public disclosure and examination. Anonymous monetary donations are limited to €500.

Unlike other democracies, India's electoral bonds program allows for total anonymity, including unrestricted political payments from foreign firms.⁹

The supreme court decided that this violated global transparency requirements. Its judgment puts India back on track with other democracies. While requiring openness for big contributions, appropriate constraints may be necessary to minimize harassment of real individual contributors. The parallels emphasize the need for balanced regulation and openness to maintain democracy accountability.

CONCLUSION

The supreme courts decision to abolish electoral bonds highlights the importance of openness and accountability in political fundraising to ensure free and fair elections. The courts decision to prohibit anonymity for contributors strengthens India electoral system and uphold citizens right to information. This finding is noteworthy election are lifeline of democratic institution. The quality of democracy and governance depends on fairness of election procedures and public trust. Unchecked political finance had the potential to destroy public confidence over time.

Power dynamics characterized money may lead to corruption, policy distortion, conflict of interest that harm the public welfare. The public has the right to understand the financial foundations of political parties and politicians competing for power in lawmaking and administration. Transparency in electionfinance allows voter to monitor whether parties push policies supported by large contributors after being elected. Thorough examination promotes accountability and prevents corrupt transactions between political leaders and their financial supporters. Transparency is key to free, fair, and ethical democratic process.

The electoral bonds case highlights the need for balanced legal framework for political fundraising in India. The Supreme Court recognizes the need of openness, but balanced regulations are necessary to ensure fairness and prevent harassment of real contributors.

⁹ <https://www.indiatoday.in/newsmo/video/electoral-bonds-sc-verdict-how-us-uk-germany-regulate-political-funding-2503299-2024-02-17>

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Balancing the necessary funds for elections is crucial. Electoral funding requires monitoring to avoid conflicts of interest and undue influence. Reasonable limitations and openness without excess are necessary.

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