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LEGALITY OF ELECTORAL BONDS

Electoral Bonds are a type of money instruments or interest free bearer bonds, which are issued by State bank of India to any person or company ,and the only requirement is that he must be registered under KYC, These bonds are used to fund a political party and further they are sold in the multiples of Rs.1000 and can even go up till Rs. 1 crore.

Further the political parties need to encash these bonds within the stipulated time i.e. within 15 days. Now any political party who even secured 1% of the total vote in the Lok sabha elections can get these bonds. It is important to note that the it is not necessary to disclose the information about the person who is purchasing these bonds further these bonds can be have no cap and can be purchased in whatever quantity the firm or an individual wants.

Before this scheme was introduced in 2016, the political parties had to make all the donations made to them (in cases when the amount exceeded Rs. 20,000/-) , further there were limitations on amount a corporate company a donate which was fixed at 7.5%-10% of the total company's revenue. ¹

But very recently in case of *Association for Democratic Reforms v Union of India, 2024 INSC 113*.² The supreme court held the scheme of electoral bond to be unconstitutional on the grounds that it was violating the right of voters to get information. A supreme court 5-Judge bench called this scheme which bought about amendments to Representation of the People Act, the Companies Act, and the Income Tax Act was said to be inherently arbitrary as well as it violated article 19(1)(a) of the general population. Further this scheme was also seen as a threat to democracy of the country.

¹ "Explained: What are Electoral Bonds, How It Works and Why It's Challenged in Supreme Court," *Economic Times*, [Nov,1 '2023], <https://economictimes.indiatimes.com/news/how-to/explained-what-are-electoral-bonds-how-it-works-and-why-its-challenged-in-supreme-court/articleshow/104889034.cms?from=mdr>.

² *Association for Democratic Reforms v Union of India, 2024 INSC 113*.

There are various grounds on which the appellants in this case argued that why this scheme should be struck down. One of the ground was that this scheme was violating the right to information of the voters. It was said that if the voters have the right to get information about the candidate they are electing , then they also should have the right to know that who is backing up and funding that candidate.

Another ground cited for striking down the scheme is that it leads to increase in mal practices businesses. It also increases the chances of backdoor lobbying. One such example given was of Vedanta corporation. Vedanta industries used to get contracts for mining and had already declared that they were on financial crunch, but despite its financial hardships was still considered as a potential bidder for many such bidding contracts and thus it was a clear instance of backdoor lobbying. These corporations majorly used to fund the political party in power.

Further this confidentiality maintained about the electoral bonds, that who is contributing how much, can be a cause for corruption. As, other than SBI, no one can come to know who has funded the party as as the secrecy of these donations makes it difficult to trace any quid pro quo agreements(an agreement between two or more parties in which there is a reciprocal exchange of goods or services).

Another reasoning given was that there was no way to figure out where this money used for funding political parties were used. And this election bonds are basically a misnomer as no one can come to know and no one even asks that where this money is spent on. Political parties in backdrop can use the money wherever they want to use.³

Further earlier corporations were only allowed to contribute only 7.5%-10% of the total revenue, now this unlimited contribution under this scheme is violative of article 14. Further it is also violative of free and fair elections.

The supreme court also emphasized that there must be a balance maintained between the right of citizen to know the individual or the corporates who are funding the candidate and political party they are electing and between the right to privacy(fundamental right under article 21) of their political affiliations.

In the latest development the supreme court ordered SBI(State Bank Of India) to publish all the information related to the bonds purchased.

³ *The Wire: The Wire News India, Latest News, News from India, Politics, External Affairs, Science, Economics, Gender and Culture*, <https://thewire.in/politics/electoral-bonds-primacy-vote-over-note>.

SBI on 14th of March disclosed that 22 corporations contributed more than ₹100 crore in electoral bonds between April 12, 2019, and January 24, 2024, according to data given by the State Bank of India (SBI) on March 14, under the highest court's directions. The Bharatiya Janata Party, out of all the major parties, cashed electoral bonds worth the most, ₹6,060.5 crore, during this time. Nonetheless, the distinct alphanumeric identifiers of every electoral bond remained undisclosed.⁴

⁴ *The Hindu Bureau, Making sense of the electoral bonds data, The Hindu (Mar. 15, 2024), <https://www.thehindu.com/news/national/electoral-bonds-data-a-package/article67953816.ece>.*