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## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated 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

# **ANALYZING THE IMPACT OF THE ELECTORAL BOND SCHEME ON FUNDAMENTAL RIGHTS OF THE ELECTORATE**

AUTHORED BY - SHIVAM GAUR

The Electoral Bond Scheme was introduced in 2018 as a purported means to reform political funding in India. The scheme aimed to replace the unchecked cash contributions to political parties with a system of electoral bonds, which are bearer instruments that can be purchased from an authorised bank id est State Bank of India and donated to political parties of the donor's choice.<sup>1</sup>

The rationale behind the scheme was to bring more transparency and accountability to political funding, as the identities of the donors would be known to the banks, even though the information would not be publicly disclosed. However, the recent judgment by the Hon'ble Supreme Court of India has raised significant concerns regarding the constitutional validity and alignment of the scheme with the fundamental rights of the electorate.

## **Historical Context and Regulatory Framework**

The Electoral Bond Scheme, introduced in 2018, marked a significant shift in India's political funding landscape, aiming to reform the system by providing a structured approach to financial contributions to political parties. This scheme was a response to the historical context where the Companies Act and the Representation of Peoples Act did not have stringent regulations on political contributions, resulting in unmonitored cash funding for political parties. The absence of clear guidelines led to concerns about transparency and accountability in political funding.<sup>2</sup>

The Electoral Bond Scheme sought to address these issues by establishing a formal mechanism for funding political parties. One of its key features was the legitimization of anonymous financial support to political parties. By allowing individuals and entities to purchase electoral bonds without

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<sup>1</sup> The Hindu: "Electoral bonds full data Complete list of donors, parties and unique numbers" on March 21, 2024

<sup>2</sup> <https://thewire.in/article/government/electoral-bonds-where-did-they-come-from-where-did-they-go>

revealing their identities, the scheme aimed to protect donors' privacy while ensuring that political parties received much-needed financial support. This anonymity was a departure from traditional methods of political funding, where the sources of contributions were often opaque.

Moreover, the scheme focused on encouraging contributions from corporates, thereby diversifying the funding base of political parties. By allowing corporate entities to issue electoral bonds and donate funds to political parties, the scheme aimed to promote a more structured and transparent approach to political financing. This move was intended to reduce the reliance on cash donations and promote a culture of formal financial transactions in political funding.

In addition to promoting transparency in political funding, the Electoral Bond Scheme introduced disclosure requirements for political parties. Parties receiving electoral bonds were required to approach the electoral commission and file returns on the total electoral bonds received. This step was crucial in ensuring accountability and tracking the flow of funds within the political system. By mandating reporting mechanisms, the scheme aimed to enhance oversight and prevent misuse of funds.

Furthermore, the scheme included tax exemptions under the Income Tax Act to incentivize donations through electoral bonds. Donors of electoral bonds were eligible for tax benefits under Section 80GG and Section 80GGB of the Income Tax Act. This provision aimed to encourage individuals and entities to contribute to political parties through formal channels while enjoying tax advantages.<sup>3</sup>

Overall, the Electoral Bond Scheme represented a significant step towards reforming political funding in India. By introducing structured guidelines, promoting transparency, encouraging corporate contributions, and providing tax incentives, the scheme aimed to create a more accountable and regulated framework for financial support to political parties.

## **Evolution of Regulatory Mechanisms**

The evolution of regulatory mechanisms under the electoral bond scheme pretext has been a significant aspect of corporate governance and political funding in India. The Companies Act has

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<sup>3</sup> <https://cleartax.in/s/electoral-bond-scheme>



been a pivotal legislation that has undergone several amendments over the years to regulate political contributions by companies. Initially, the Companies Act introduced regulations in 1960 to govern corporate funding to political parties. These regulations aimed to bring transparency and accountability to the process of political contributions by companies.

The Companies Act of 2013 marked a significant milestone in the regulation of political funding. It introduced stricter provisions regarding disclosure requirements, ensuring that companies were transparent about their contributions to political parties. This move aimed to promote transparency and accountability in corporate political funding. However, the Finance Act of 2017 brought about substantial changes to the regulatory framework governing political contributions.

One of the key changes was the removal of caps on corporate funding, allowing companies to contribute without restrictions. This move aimed to encourage greater participation in the political process by corporates.

The Electoral Bond Scheme was introduced in 2018 as a mechanism to channelize transparent funding to political parties. It aimed to address concerns regarding opacity and black money in political funding. The scheme provided a legal route for companies to make contributions to political parties while maintaining anonymity. This helped in reducing the influence of black money in elections and promoting clean and transparent funding practices. Despite its intentions, the Electoral Bond Scheme has faced criticism for lack of transparency in the process of political funding. There have been calls for greater disclosure and accountability to ensure that the scheme achieves its objectives effectively.

In conclusion, the evolution of regulatory mechanisms under the electoral bond scheme pretext reflects the ongoing efforts to strike a balance between corporate participation in the political process and ensuring transparency and accountability in political funding. As the regulatory landscape continues to evolve, it is essential for companies to stay updated with the latest provisions to comply with the law and uphold ethical practices in their political contributions.

## **Impact on Income Tax and Representation of Peoples Act**

The amendments to the Income Tax Act in 1978 marked a significant shift in the taxation of political contributions in India. These changes, coupled with subsequent revisions under the Finance Act,

2017, introduced exemptions for political contributions from taxation. By exempting such contributions from tax liabilities, the government aimed to encourage greater participation in the political process and facilitate financial support for political parties.

However, these exemptions were not without conditions. The amendments imposed certain requirements on political parties to ensure transparency and accountability in their financial dealings. Political parties were expected to adhere to specific guidelines and regulations to qualify for tax exemptions on political contributions. This move was crucial in promoting a culture of financial integrity and responsible governance within the political sphere.

Moreover, the alterations to the Representation of Peoples Act in 2017 had a direct impact on the disclosure requirements for political parties. These modifications focused on enhancing transparency and accountability in political funding, particularly in relation to electoral bonds. The changes mandated stricter reporting mechanisms for political parties, requiring them to provide detailed information on the receipt and utilization of electoral bonds.

By modifying the disclosure requirements, the amendments aimed to shed light on the flow of funds within the political system and ensure that electoral bonds were being utilized in a transparent and accountable manner. This shift towards greater disclosure was instrumental in fostering public trust and confidence in the political process, as it allowed for greater scrutiny of financial transactions and contributions to political parties.

Overall, the impact of these changes on the Income Tax Act and the Representation of Peoples Act was significant. By introducing exemptions for political contributions while imposing conditions on political parties and enhancing disclosure requirements, the amendments aimed to create a more transparent and regulated framework for political funding in India.

### **Concerns Raised by Regulatory Bodies**

The concerns raised by regulatory bodies in India, specifically the Reserve Bank of India (RBI) and the Election Commission of India (ECI), regarding the Electoral Bond Scheme are significant. The RBI, as the central banking institution of the country, expressed reservations about the scheme, emphasizing that existing payment methods like cheques, demand drafts, and electronic fund transfers

could already achieve the scheme's objectives of enabling transparent political funding.

The RBI's main concern was that introducing a new financial instrument, the electoral bond, might not necessarily enhance transparency in political donations. The central bank argued that the existing payment methods provided a clear audit trail and could effectively facilitate political contributions without the need for a specialized bond.

On the other hand, the Election Commission of India, responsible for conducting elections in the country, also voiced concerns about the Electoral Bond Scheme. The ECI highlighted those amendments made to various acts, such as the Representation of the People Act, the Reserve Bank of India Act, and the Income Tax Act, to facilitate the scheme could potentially undermine transparency in political donations.<sup>4</sup>

The ECI's primary worry was the impact of the scheme on the transparency of political funding. The amendments allowing for anonymity of donors through the scheme raised concerns about accountability and the ability to track the sources of political funding. The ECI cautioned that this anonymity could lead to a lack of transparency and make it challenging to identify the origins of political contributions.<sup>5</sup>

In conclusion, the concerns raised by the RBI and the ECI underscore the ongoing debate surrounding the Electoral Bond Scheme and its implications for the transparency and integrity of political funding in India. These regulatory bodies have emphasized the importance of a more comprehensive and transparent approach to political financing to uphold the fairness and credibility of the electoral process.

## **Constitutional Challenges and Court Ruling**

The Supreme Court's recent ruling on electoral bonds has been a significant development in the ongoing efforts to ensure free and fair elections in India. The case presented the Court with two key constitutional challenges that it had to address.

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<sup>4</sup> <https://indianexpress.com/article/explained/explained-law/sc-electoral-bonds-hearing-explained-9006289/>

<sup>5</sup> <https://www.thehindu.com/opinion/op-ed/did-the-electoral-bonds-scheme-enable-extortion/article68002243.ece>

Firstly, the petitioners argued that the unlimited corporate funding through electoral bonds violated the principle of political equality enshrined in Article 14 of the Constitution. They contended that this disproportionately favoured wealthy corporations, undermining the democratic process by giving them undue influence over electoral outcomes.

The Supreme Court agreed with this argument, noting that the treatment of corporate and individual contributions as equal was arbitrary and lacked any reasonable basis. The Court emphasized that transparency in political funding is crucial to combat corruption and uphold the integrity of the electoral system.

Secondly, the petitioners challenged the electoral bond scheme on the grounds that it breached the fundamental right to freedom of expression under Article 19(1)(a). By withholding information on political contributions, the scheme was argued to be an unreasonable restriction on the public's right to know about the sources of funding for political parties.

The Supreme Court accepted this contention as well, ruling that the lack of transparency in the electoral bond scheme violated the citizens' right to information, which is an integral part of the freedom of expression. The Court held that the public's right to know the source of political funding is essential for informed decision-making and meaningful participation in the democratic process.

In its landmark judgment, the Supreme Court has sent a clear message that the Constitution's commitment to political equality and freedom of expression must be upheld, even in the face of powerful corporate interests. The ruling underscores the crucial role of the judiciary in safeguarding the democratic foundations of the country, particularly in the context of evolving challenges posed by the influence of money in politics.<sup>6</sup>

This decision is a testament to the Supreme Court's unwavering dedication to interpreting the Constitution in a manner that upholds the core values of democracy, transparency, and accountability. It serves as a reminder that the judiciary remains a vital check on the exercise of power, ensuring that the government and other influential actors do not undermine the principles of free and fair elections.

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<sup>6</sup> MANU/SC/0112/2024



## **Conclusion: Upholding Democratic Principles**

In conclusion, the Supreme Court's judgment on the Electoral Bond Scheme underscores the importance of transparency, accountability, and fairness in political funding. The Court's decision to strike down the scheme as unconstitutional is a significant victory for upholding fundamental rights, particularly the right to information and equality in representation, which are crucial for a vibrant democracy.

The ruling sets a precedent for ensuring that electoral processes remain free from undue influence and uphold the democratic values enshrined in the Constitution. By directing the State Bank of India to stop issuing electoral bonds and disclose details of past purchases and encashments to the Election Commission of India, the Court has taken a crucial step towards restoring transparency in political funding.

The Court's observation that the anonymity provided by the scheme infringes upon the right to information under Article 19(1)(a) of the Constitution is particularly noteworthy. The right to know, especially in the context of elections, is an integral part of the right to freedom of expression and plays a key role in ensuring informed decision-making by voters[2].

Moreover, the Court's acknowledgment of the possibility of quid pro quo arrangements due to the deep association between economic inequality and differing levels of political engagement is a significant recognition of the potential for abuse in the system. By highlighting the need for the government to adopt the least restrictive method to achieve its objective of curbing black money, the Court has emphasized the importance of proportionality in restricting fundamental rights[2].

The Court's directions to the Election Commission of India to publish the information shared by the State Bank of India on its official website within a week of receiving it is a crucial step towards ensuring transparency and accountability in the electoral process[1]. This move will enable citizens to access information about the sources of funding for political parties, allowing them to make informed choices during elections.

Furthermore, the Court's order for the return of valid but unencashed electoral bonds to the issuing bank and the subsequent refund of the amount to the purchaser's account is a practical measure to

address the immediate concerns raised by the scheme.<sup>7</sup>

In the broader context, the judgment serves as a reminder that the integrity of elections is fundamental to the functioning of a democracy. By upholding the principles of transparency and fairness in political funding, the Supreme Court has taken a significant step towards strengthening the democratic fabric of the nation.<sup>8</sup>

However, it is important to note that the judgment is not the end of the road in the fight for electoral reforms. Continued efforts by civil society, the media, and the judiciary will be necessary to ensure that the spirit of the ruling is upheld and that the electoral process remains free from the influence of money and power.<sup>9</sup>

In conclusion, the Supreme Court's judgment on the Electoral Bond Scheme is a landmark decision that reaffirms the importance of transparency, accountability, and fairness in political funding. By striking down the scheme as unconstitutional and directing the disclosure of information on contributions received by political parties, the Court has taken a crucial step towards upholding democratic principles and ensuring the integrity of the electoral process.

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<sup>7</sup> <https://www.mondaq.com/india/corporate-and-company-law/1429008/electoral-bonds-scheme-unconstitutional-supreme-courts-conclusions--directions>

<sup>8</sup> <https://www.scobserver.in/cases/association-for-democratic-reforms-electoral-bonds-case-background/>

<sup>9</sup> <https://scroll.in/article/1065397/electoral-bonds-what-we-know-so-far-what-we-will-know-soon-and-what-we-may-never-know>