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Electoral Bonds: An Unconstitutional Path for Democracy

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The nexus between politics and money is not just a global phenomenon but also deeply rooted in Indian politics, where the adage 'money talks' often rings louder than any political speech. Political finance in India has a lengthy history, with ruling parties often attempting to legalize their illegal funding, known as corruption. In 2018, a similar mechanism called electoral bonds was introduced, recently struck down by the Supreme Court, calling it unconstitutional. Many corporations that purchased electoral bonds were raided by the Enforcement Directorate (ED), raising concerns about legalizing corruption. The concept of electoral bonds lacks transparency, contradicting its claimed purpose of enhancing transparency and combating corruption. This article aims to analyze the controversies that led to the demise of electoral bonds, originally promoted for their potential to promote transparency and reduce corruption. It will delve into the objectives, criticisms, controversies, and the issue of unconstitutionality surrounding electoral bonds. After all, money and politics are two sides of one coin.

Keywords: *electoral bonds, fiscal year, transparency, curbing black money, unconstitutional.*

INTRODUCTION

On February 15, 2024, the Supreme Court of India delivered a landmark judgment, striking down the Electoral Bonds Scheme introduced in 2017 and labeling it as unconstitutional¹. The

¹ *Association for Democratic Reforms & Anr v Union of India & Ors* WP 880/2017

Constitution serves as the foundation for the pillars of democracy. In the context of India, the use of electoral bonds raised serious questions about the very foundation of democracy. 'The Electoral Bond Scheme,' introduced with the claimed intention of enhancing transparency in political funding, had been articulated by the former finance minister Arun Jaitley and, more recently, highlighted by former Law Minister and Bharatiya Janata Party leader, Ravi Shankar, as having a meritorious objective of bringing transparency to political funding². However, as time passed, this electoral bond scheme became a subject of critical debate, raising questions about its compatibility with the constitutional ethos of the world's largest democracy. Some people called it a big scam done by the government; some said it was the only option to stop cash transactions. Supporters argue that it protects donors from being exploited by other parties, but it's worth noting that transparency is not the enemy of privacy; it's the opposite. The more transparency we have, the more privacy we have because there's no ambiguity or confusion about how data is being used. The electoral bonds scheme was primarily meant to reduce the use of cash in political funding and provide privacy to the donor, but in the pursuit of privacy, the scheme neglects the idea of transparency in the election process of a democratic country like India. While privacy is essential, hindering transparency in the name of privacy contradicts the basic principle of democracy. Attorney General KK Venugopal representing the union argued that the electoral bond scheme was introduced to ensure privacy for donors, asserting that they need not fear anything from any other political party. However, this argument contradicts the democratic ideal, as transparency is a fundamental requirement across all government-related activities. In politics or government-related aspects, true transparency acts as a safeguard for privacy, creating a safe environment where citizens can engage in politics without fear and confusion. In politics, the more transparency we have, the more privacy we have. Electoral bonds are often labeled as the biggest legalized scam designed by the former finance minister, Arun Jaitley. But the truth is not yet revealed. However, it raises questions regarding the health of democracy, the constitution, and the honesty of the government itself. Through this article, we'll embark on a journey to explore the whole mechanism of electoral bonds, from their

² 'Objective was to bring transparency: BJP after the Supreme Court judgment on electoral bonds' *The Economic Times* (16 February 2024) <<https://economictimes.indiatimes.com/news/politics-and-nation/objective-was-to-bring-transparency-bjp/articleshow/107732369.cms>> accessed 18 February 2024

inception to their recent controversies and the pivotal judgment by the Supreme Court of India that struck down the entire concept of electoral bonds. This article will delve into how the very existence of electoral bonds poses a threat to democracy.

A COMPREHENSIVE OVERVIEW OF INDIA'S ELECTORAL BOND SCHEME

Electoral Bonds: Electoral bonds are financial instruments that do not carry the name of the buyer or payee. They are also referred to as bearer banking instruments³. These bonds serve as a means of funding political parties in India. Electoral bonds function as tools that people can use to make donations to political parties in the country. Essentially, electoral bonds are a form of promissory note, which is a commonly used instrument for financial transactions. A promissory note is a written promise by one party (issuer or maker) to pay a specific amount of money to another party (the payee). It is important to note that the concept of electoral bonds is unique to India and not widespread. The way these electoral bonds are used in India is distinct.

Electoral Bonds Scheme: The electoral bonds scheme was first introduced through the Finance Act, of 2017, as an integral component of the union budget. In his budget speech, the former Finance Minister, Arun Jaitley, stated that the government aims to introduce a new mechanism for political funding to foster transparency⁴. The Electoral Bonds scheme was notified in 2018 via Gazette Notification. The central aim of the electoral scheme was to bring transparency to political funding by promoting digital transactions and reducing the use of cash. The government referred to the scheme as an 'electoral reform,' aligning with the country's shift towards a 'cashless digital economy.'

According to the provisions of the scheme, companies and individuals who are citizens of India can purchase bonds from the State Bank of India (SBI) and donate them to an eligible political party. The bonds can be purchased either singly or jointly with other citizens.⁵ Electoral bonds can be bought during specific times throughout the year, namely at the start of every quarter:

³ Electoral Bond Scheme, cl 2(a)

⁴ 'Union Budget 2017: Read Arun Jaitley's full speech here' (Budget Speech 2017-2018) *India Today* (01 February 2017) <<https://www.indiatoday.in/budget-2017/story/union-budget-2017-arun-jaitley-full-speech-text-aam-budget-958361-2017-02-01>> accessed 21 February 2024

⁵ Electoral Bond Scheme, cl 3(1)

January, April, July, and October. In each of these months, the government has allocated the first 10 days for people to purchase electoral bonds. Therefore, individuals interested in buying can do so during the initial 10 days of January, April, July, and October⁶. In the year of national elections for the Lok Sabha (House of People), an additional period of 30 days is specified by the government⁷. During this period, people can also buy electoral bonds. On November 7, 2022, an amendment was made through the Electoral Bond (Amendment) Scheme, 2022. This amendment introduced a new paragraph stating that, during the year of general elections to the Legislative Assembly of States and Union Territories with the Legislature, an additional period of fifteen days would be specified by the Central Government⁸. This means that, in addition to the existing 70 days, there will now be a total of 85 days during which Electoral Bonds can be made available.

These bonds came in different amounts, such as Rs 1,000, Rs 10,000, Rs 100,000, and Rs 1 crore, giving donors flexibility in choosing their contribution⁹. The State Bank of India (SBI) was one of the authorized banks where these bonds could be obtained¹⁰. To purchase these bonds, a donor had to have a KYC-compliant account with SBI, ensuring that their details were verified¹¹. The process involved providing personal information like name, identification documents, and address¹², which was a standard requirement for transparency and legality. It's important to note that the information provided by the buyer was treated as confidential by SBI, by clause 7(4) of the Electoral Bonds Scheme¹³. This confidentiality ensured that the donor's details were not disclosed to others. However, the scheme was struck down, rendering it ineffective and no longer in operation.

Only political parties registered under section 29A of the Representation of the People Act, 1951, and have secured at least one percent of votes in the last general election (Lok Sabha or state

⁶ Electoral Bond Scheme, cl 8(1)

⁷ Electoral Bond Scheme, cl 8(2)

⁸ The Electoral Bond (Amendment) Scheme 2022

⁹ Electoral Bond Scheme, cl 5

¹⁰ Electoral Bond Scheme, cl 3(4)

¹¹ Electoral Bond Scheme, cl 4(2)

¹² Electoral Bond Scheme, cl 7(5)

¹³ Electoral Bond Scheme, cl 7(4)

legislative assembly) can use Electoral Bonds.¹⁴ These bonds can only be cashed by a political party through a bank account with an authorized bank, ensuring that only eligible parties can utilize these bonds.¹⁵ The State Bank of India was authorized to issue and encash Electoral Bonds through its initially designated eleven branches, later increased to twenty-nine branches. Electoral Bonds are valid for a specific duration of fifteen calendar days from the date of issuance, meaning they must be utilized within this time frame. If an electoral bond is deposited after the expiration of the fifteen-day validity period, no payment will be made to the political party that received the bond¹⁶. In simple terms, the bonds must be used, encashed, or utilized within the given time limit, or else they will lose their value, and the amount will be deposited into the Prime Minister's Relief Fund¹⁷. If the eligible political party deposits the electoral bond into its account within the validity period, the amount mentioned in the bond will be credited to the party's account on the same day, ensuring immediate processing¹⁸.

LEGAL FRAMEWORK SURROUNDING ELECTORAL BONDS SCHEME, 2018

The introduction of electoral bonds in India led to changes in the legal framework for political funding. These amendments were implemented by the Finance Act of 2017¹⁹. One major change was the reduction in the maximum amount individuals could contribute to registered political parties, decreasing from ₹20,000 to ₹2,000.

- **Representation of the People Act, 1951:** Earlier, Section 29C of the Representation of the People Act, 1951, required political parties to reveal donations exceeding Rs 20,000²⁰. However, the Finance Act of 2017 created an exception, through Section 137 of the act stating that donations made through electoral bonds were exempt from disclosure requirements²¹.

¹⁴ Electoral Bond Scheme, cl 3(3)

¹⁵ Electoral Bond Scheme, cl 12

¹⁶ Electoral Bond Scheme, cl 12(2)

¹⁷ Electoral Bond Scheme, cl 12(1)

¹⁸ Electoral Bond Scheme, cl 6(2)

¹⁹ Finance Act 2017

²⁰ Representation of the People Act 1951, s 29(C)

²¹ Finance Act 2017, s 137

- **Income-tax Act, 1961:** Under the Income-tax Act, 1961, Section 13A, it was required to maintain records for contributions above Rs 20,000, including the name and address of the contributor²². However, Section 11 of the Finance Act of 2017 exempted electoral bond contributions from record-keeping requirements, eliminating the mandatory obligation for individuals or corporations to provide detailed information about their political contributions.²³
- **Companies Act, 2013:** In terms of corporate donations, the Companies Act, 2013, under Section 182, had conditions before the amendments. For example, the company cannot donate more than 7.5 percent of its average profits for three years, and the company must disclose the name of the party it donated to²⁴. Section 154 of the Finance Act of 2017 removed the cap and disclosure obligations for corporate donations²⁵. The introduction of electoral bonds effectively eliminated the limit on contributions made by corporations to registered political parties.
- **Reserve Bank of India Act, 1934:** Previously, as per the RBI Act, Section 31 only authorized the RBI or the Central Government to draw, make, or issue any bill of exchange or promissory notes for payment²⁶. However, after the Finance Act made changes by adding Section 135, it allowed the Central Government to permit any scheduled bank to issue electoral bonds²⁷. Under certain conditions, scheduled banks were authorized to issue electoral bonds for political funding.

This change allowed any individual, firm, or special interest group to donate an unlimited sum to any political party without disclosing the amount. These changes raised concerns as they enabled unrestricted donations to political parties without disclosure, impacting transparency and accountability in the political funding process.

²² Income tax Act 1961, s 13(A)

²³ Finance Act 2017, s11

²⁴ Companies Act 2013, s 182

²⁵ Finance Act, 2017, s 154

²⁶ Reserve Bank of India Act 1934, s 31

²⁷ Finance Act 2017, s 135

CONTRIBUTION OF ELECTORAL BONDS IN POLITICAL FUNDINGS

From the initiation of the Electoral Bonds Scheme until its annulment by the Supreme Court, the total value of bonds sold by the State Bank of India amounted to Rs. 16,518.11 crore. This information, disclosed by the State Bank of India in response to a Right to Information query, revealed that these bonds were issued in 30 tranches between March 2018 and January 2024. According to the Association for Democratic Reforms (ADR), the overall value of electoral bonds printed since the commencement of the scheme reached Rs. 28,531.50 crore. Out of this, bonds worth Rs. 16,518.11 crore were sold, and political parties encashed electoral bonds worth a total of Rs. 16,492.10 crore. Surprisingly, according to the right to information filed by Lokesh Batra 194 bonds valued at Rs. 23.8874 crores remained uncashed by any political party, leading to the transfer of this sum to the Prime Minister's National Relief Fund (PMNRF)²⁸. Reports indicate that corporates contributed almost half of the total funds garnered through electoral bonds, with the remaining contributions coming from 'Other Sources.' These bonds are estimated to constitute more than 50% of the overall political funding for political parties, exceeding 90% for some.

BREAKDOWN OF PARTY-WISE COLLECTION OF ELECTORAL BONDS

Bhartiya Janata Party (BJP): The Bhartiya Janata Party (BJP) had substantially relied on funding through electoral bonds, receiving over 55% of its income, approximately more than Rs. 6,566.1249 crores, from Electoral Bonds, as reported by the Election Commission and the Association for Democratic Reforms (ADR)²⁹. In the fiscal year 2014-15, the Bhartiya Janata Party (BJP) emerged as the top-earning national party, declaring a substantial income of Rs 970.43 crore. However, this figure saw a significant decline of 41.17% in the next fiscal year 2015-16,

²⁸ Shemin Joy, 'Infographic | Electoral bonds in numbers' *Deccan Herald* (15 February 2024) <<https://www.deccanherald.com/india/infographic-electoral-bonds-in-numbers-2895993>> accessed 20 February 2024

²⁹ Ajay Tomar, 'Electoral bonds' biggest beneficiary: BJP got 55% of all 'audited' funds under now 'unconstitutional' scheme' (ADR, 15 February 2024) <<https://adrindia.org/content/electoral-bonds%E2%80%99-biggest-beneficiary-bjp-got-55-all-%E2%80%98audited%E2%80%99-funds-under-now->>> accessed 22 February 2024

dropping to Rs 570.86 crore³⁰. Notably, over 70% of the BJP's income during this period came from undisclosed sources, leading to the party surpassing the Congress as the wealthiest political entity in the final year of UPA-II.

Moving forward to the fiscal year 2016-17, the BJP declared its income of Rs 1,034.27 crore and the highest expenditure of Rs 710.057 crore. During this period, the party experienced a noteworthy increase of 81.18% in its income, rising from Rs 570.86 crore to Rs 1,034.27 crore³¹. The trend continued in 2017-18 when the BJP reported its highest earnings of Rs 1,027.339 crore, constituting 85.70% of the total income of all parties. Additionally, electoral bonds played a crucial role, accounting for 95% of the total bonds purchased, and approximately 21% of voluntary donations amounting to Rs 989.7 crore³². Only two parties received these bonds and which BJP grabbed the highest percentage.

The fiscal year 2018-19 marked a significant upturn for the BJP, witnessing a remarkable income growth of nearly 135%, totaling Rs 2,410 crore. Electoral bonds, designed for anonymous donations to political parties, played a pivotal role, contributing over 60% to the BJP's income, amounting to Rs 1,451 crore. This success was noteworthy, given that it occurred just a year after the scheme's inception, showcasing its effectiveness.

The ruling BJP reported a total income of ₹3,623.28 crore for the financial year 2019-20 but utilized only 45.57% of it, amounting to ₹1,651.022 crore. The party received donations through electoral bonds worth ₹2,555.0001 crore. According to the Association for Democratic Reforms (ADR), the BJP's income increased by 50.34%, or ₹1,213.20 crore, from ₹2,410.08 crore to ₹3,623.28 crore between 2018-19 and 2019-20. The ADR also stated that electoral bonds worth ₹3,429.5586 crore were redeemed by political parties in 2019-20, with 87.29% of this amount received by four national parties – BJP, INC, AITC, and NCP.³³

³⁰ *Ibid*

³¹ *Ibid*

³² *Ibid*

³³ *Ibid*

However, in the fiscal year 2020-21, there was a significant divergence as the BJP's income experienced a sharp decline of almost 80% compared to the previous year, totaling Rs 752.33 crore. Voluntary contributions and income from electoral bonds amounted to Rs 577.97 crore and Rs 22.38 crore, respectively. The following fiscal year 2021-22 showed a remarkable recovery, with the BJP declaring a total income of Rs 1,917.12 crore, marking a 154.82% increase from the previous fiscal year. Electoral bonds worth Rs 2,673.0525 crore played a significant role, constituting 67.79% of encashed bonds by national parties³⁴.

In the fiscal year 2022-23, the BJP's total income increased from ₹1,917 crore in 2021-22 to ₹2,361 crore, as per the annual audit report by the Election Commission. This rise suggests a strong financial performance during that period. Notably, a recent report from The Hindu highlighted that about 54% of the BJP's total income in 2022-23, amounting to an impressive Rs 2,120.06 crore, came from electoral bonds. This underscores the significant impact of electoral bonds on the party's financial situation. During the same year, the BJP received ₹1,294.14 crore through electoral bonds alone, making up almost 54% of its total income³⁵. Additionally, the party received Rs. 825.92 crore from other forms of donations. The Association for Democratic Reforms (ADR) reported that the BJP relied on electoral bonds for more than 70% of its donations³⁶, highlighting a significant dependence on this source for financial support. This substantial financial backing through electoral bonds raised questions about the transparency and influence of this funding method on the BJP's financial structure.

The BJP heavily depended on electoral bonds as a source of income. Since the commencement of the scheme, bonds have contributed a decent percentage of income, reaching up to 65% in certain fiscal years. In specific years, more than half of the income was traced back to electoral bonds, showcasing the party's dependency on them. This heavy reliance raises concerns about transparency because the donors' identities are kept anonymous, making it hard to know where the funds are truly coming from. It's interesting to note that there are sudden increases in funding during election periods, prompting questions about the reasons behind this and who

³⁴ *Ibid*

³⁵ *Ibid*

³⁶ *Ibid*

might be contributing during these times. The lack of transparency in identifying the contributors to electoral bonds has been criticized because it raises worries about the possible influence of undisclosed corporate interests on political decisions. In 2022-23, the Bhartiya Janata Party (BJP) received over 70% of the donations given to political parties from electoral bonds, as reported by the Association for Democratic Reforms (ADR).

India National Congress (INC): The Congress received a total value of more than 1400 crores in electoral bonds, constituting 68% of its total income. Since the commencement of their annulment, it stands as the second-highest recipient of electoral bonds after the BJP, which received 6,566.1249 crores. In FY 2014-15, the Indian National Congress (INC) declared the second-highest income of Rs 593.31 crores, following the BJP, forming 31.74% of the total income of the National Parties. In that fiscal year, INC received Rs 207.407 crores through donations from various sources, but more than 70% came from unknown sources. During FY 2015-16, INC declared a total income of Rs 261.56 crores, with 26.11% (Rs 68.30 crores) declared unspent by the party³⁷. The total income of Congress INC in 2016-17 was 225.36 crores. The income of INC decreased by 14% (Rs 36.20 crores) from Rs 261.56 crores in FY 2015-16 to Rs 225.36 crores in FY 2016-17.³⁸

In the year of the commencement of the scheme, Congress' income fell to Rs 199 crores in 2017-18 from Rs 225 crores in 2016-17. Only Rs 5 crores out of the Rs 199 crores came in the form of electoral bonds. The grand old party's receipts were less than 20% of BJP's total income of Rs 1,027 crores in that year, according to its annual audit report for 2017-18 submitted to the Election Commission. Out of the first two parties to receive electoral bonds, Congress was the one with 5% electoral bonds in that fiscal year.

Indian National Congress (INC) saw the highest growth in its annual income in FY 2018-19 ahead of the Lok Sabha elections of 2019. The party reported Rs 918 crores of income in 2018-19, which is 361% more than its income in the previous financial year. The figures suggest that the Congress party, which had been reporting a drop in its annual income for four consecutive

³⁷ *Ibid*

³⁸ *Ibid*

years, recovered financially. Congress received Rs 383 crores through electoral bonds, accounting for nearly 42% of its total income. The income of both parties in 2018-19 was the highest they received in 18 years, and 2018-19 saw the highest annual growth in their incomes, as it was an election year. INC's total income was Rs 682.21 crores, while the party spent Rs 998.158 crores, exceeding its income for that year by 46.31%. The income of INC decreased by 25.69% (Rs 235.82 crores) from Rs 918.03 crores during FY 2018-19 to Rs 682.21 crores during FY 2019-20. The party received 317.861 crores through electoral bonds. INC's total income was Rs 285.765 crores, while the party spent Rs 209 crores, with party expenditure for that year being 73.14% of its total income. Income of INC decreased by 58.11% (Rs 396.445 crores) from Rs 682.21 crores during FY 2019-20 to Rs 285.765 crores during FY 2020-21. The party received 11 crores through electoral bonds³⁹. BJP also experienced a decrease, but it was stable compared to INC.

INC's total income was Rs 541.275 crores, while the party spent Rs 400.414 crores, which is 73.98% of its income. The income of INC increased by 89.41% (Rs 255.51 crores) from Rs 285.765 crores during FY 2020-21 to Rs 541.275 crores during FY 2021-22. The party received 2336.0995 crores through electoral bonds. As per reports, Congress spent its income on Bharat Jodo Yatra. In 2022-23, the Congress earned Rs 171 crores from electoral bonds. A distant second to the BJP, Congress declared an income of Rs 452.37 crores and expenditure of Rs 467.13 crores in 2022-2023, as per its annual audit report published by the ECI on January 31⁴⁰. As compared to the ruling party, the major opposition has a modest amount of electoral bonds, but still, it is the second-highest.

All India Trinamool Congress (AITC): Over five years since the initiation of the Electoral Bonds Scheme, the 'All India Trinamool Congress (AITC) received a substantial sum of Rs. 1610 crores through electoral bonds, significantly influencing the party's financial landscape. Examining AITC's financial journey, in FY 2016-17, the party reported a total income of Rs 6.39 crores. The subsequent fiscal year, 2017-18, witnessed a slight decrease in total income to 5.167 crores, with no bonds received during this period. However, a notable shift occurred in the election year,

³⁹ *Ibid*

⁴⁰ *Ibid*

2018-19, where AITC's total income surged to Rs. 192.6573 crores, bolstered by a significant inflow of 97.280 crores through electoral bonds.

This trend continued in the following fiscal year, 2019-20, with a total income of Rs. 143.6763 crores, out of which 100.465 crores were attributed to electoral bonds. In 20-21, AITC's total income amounted to Rs. 132.5378 crores, and electoral bonds played a substantial role, contributing 42 crores to the party's financial resources. The financial health of the party was further detailed in FY 2021-22, where AITC reported a total income of Rs. 545.745 crores. During this period, the party received a substantial sum of 528.1430 crores through electoral bonds. In the most recent fiscal year, 22-23, AITC continued to benefit from electoral bonds, accumulating a noteworthy 325.1000 crores. This trend underscores how the introduction of the Electoral Bonds Scheme has played a pivotal role in helping the party increase its income over time.

Other Parties: Since the inception of the Electoral Bonds Scheme until its nullification, various political parties received significant sums through electoral bonds. The Nationalist Congress Party (NCP) secured 63.75 crores, while the Telangana Rashtra Samithi (TRS) received 383.653 crores. The Telugu Desam Party (TDP) obtained 146.6 crores, and the Yuvajana Sramika Rythu Congress Party (YSR-C) amassed 382.44 crores. Notably, the Biju Janata Dal (BJD) received a substantial amount of 774 crores, and the Dravida Munnetra Kazhagam (DMK) secured 616.5 crores. The Shiv Sena (SHS) and Aam Aadmi Party (AAP) received 101.38 crores and 94.285 crores, respectively. Janata Dal (United) (JDU) and Samajwadi Party (SP) obtained 24.4 crores and 49.3 crores, respectively. Additionally, Janata Dal (Secular) (JDS), Shiromani Akali Dal (SAD), All India Anna Dravida Munnetra Kazhagam (AIADMK), Rashtriya Janata Dal (RJD), Jharkhand Mukti Morcha (JMM), Sikkim Democratic Front (SDF), and Maharashtrawadi Gomantak Party (MGP) received 13.53 crores, 7.26 crores, 6.05 crores, 2.5 crores, 1 crore, 0.5 crores, and 0.55 crores, respectively⁴¹. This financial support through electoral bonds played a

⁴¹ 'How much money did political parties get through electoral bonds? Supreme Court judgment reveals' *Bar and Bench* (15 February 2024) <<https://www.barandbench.com/news/money-political-parties-share-electoral-bonds-supreme-court-judgment>> accessed 20 February 2024

crucial role in shaping the economic landscape of these political entities, influencing their financial stability and resources.

The analysis suggests that the ruling BJP gained substantial advantages from electoral bonds, a point consistently argued by the Opposition, including the Congress. They claim that electoral bonds might enable what's commonly known as quid-pro-quo deals, involving exchanges of favors for financial support. It's noteworthy that the Communist Party of India (Marxist) (CPI(M)) took a different approach by rejecting donations through electoral bonds. However, other Opposition parties, despite expressing disagreement with the system, opted to receive funds through this controversial financial tool. This underlines the Opposition's need for funds, leading them to utilize the scheme even though they were initially against it. It reflects a strategic choice, considering that not participating could result in the ruling party dominating the donation landscape.

City-Wise Distribution of Electoral Bonds: In major cities such as Mumbai, Chennai, Kolkata, Hyderabad, and New Delhi, a substantial number of Rs 1 crore electoral bonds were sold. Kolkata, a city in West Bengal, particularly stands out as the top city with the highest number of electoral bonds (EB) sold between 2018 and 2024, recording a sale of 7,834 EBs. West Bengal's regional party is the All India Trinamool Congress (AITC). Reports indicate that AITC received more than Rs. 1600 crores through electoral bonds, making it the second-highest recipient among all political parties. Interestingly, AITC didn't receive any bonds in the first year of the scheme, but within five years, it accumulated significant funding, ranking 2nd among the bond recipients. The increase in electoral bond transactions in Kolkata might be linked to the fact that it played a crucial role in the 2021 West Bengal Legislative Assembly election, where AITC emerged victorious. Notably, in that year, AITC's income through electoral bonds reached the highest, amounting to Rs. 528.1430 crores. This suggests a concerning trend, which raises constitutional concerns.

Further data reveals that other cities with notable Electoral Bond (EB) transactions include Mumbai (5,426), Hyderabad (4,812), New Delhi (3,662), Chennai (1,869), and Gandhinagar (1,189). Additionally, electoral bonds were purchased in Bhubaneswar (857), Bengaluru (826),

Jaipur (309), Chandigarh (205), Lucknow (109), Panaji (411), Thiruvananthapuram (87), Raipur (124), Guwahati (162), Bhopal (60), Visakhapatnam (80), and Patna (8)⁴².

IMPACT ON ELECTION YEAR

The 2019 Lok Sabha elections, reported by Bloomberg as the world's most expensive election, cost over \$8.7 billion, doubling the expenditure of the 2014 elections⁴³. The use of electoral bonds is controversial because it has been observed that, regardless of whether at the state or center, the ruling party has received a substantial amount of donations, especially in election years. The electoral bonds scheme was notified in 2018, just a year before the General election.

In the 30 phases of bond sales until January 2024, electoral bonds worth Rs 16,518.10 crore were sold, with a significant amount, Rs 4,794.68 crore, sold during the four phases between January and May 2019, leading up to the Lok Sabha elections. Notably, nearly 30 percent of the total bond sales occurred right before the Lok Sabha elections in 2019. The period leading to the conclusion of the Lok Sabha polls in 2019 witnessed four phases of elections January 1 and 10, March 1 and 15, April 1 and 20, and May 6 and 10. The highest sale during the 30 phases took place in the April 1-20, 2019 period, with bonds worth Rs 2,256.37 crore being sold⁴⁴. The January 2019 phase saw the sale of bonds worth Rs 350.36 crore, while the March 2019 window witnessed a sale of Rs 1,365.69 crore, and Rs 822.26 crore in May 2019. In the overall 30 phases of the sale until January, electoral bonds worth Rs 16,518.10 crores were sold, and of this, Rs 4,794.68 crores or 29.02 percent were sold during the four phases between January and May 2019⁴⁵, just before the Lok Sabha elections that year. It's noteworthy that all bonds sold during these five months were encashed by the beneficiary political parties, except for Rs 9.05 crore.

⁴² Shyma Rauf, 'Kolkata tops the list of cities with most electoral bond sales' *Deccan Herald* (16 February 2024) <<https://www.deccanherald.com/india/kolkata-tops-list-of-cities-with-most-electoral-bond-sales-2897630>> accessed 20 February 2024

⁴³ Bibhudatta Pradhan and Shivani Kumaresan, 'India's Bitterly Fought Election Becomes the World's Most Expensive' *Bloomberg* (03 June 2019) <<https://www.bloomberg.com/news/articles/2019-06-03/india-s-bitterly-fought-poll-becomes-the-world-s-most-expensive>> accessed 20 February 2024

⁴⁴ Rauf (n 42)

⁴⁵ Joy (n 28)

An analysis of sales since February 2018 reveals that the ruling BJP has been the major beneficiary of electoral bonds. According to the Election Commission, the Bhartiya Janata Party (BJP) received about three-fourths, or 76%, of the electoral bonds sold in the financial year 2019-20⁴⁶. However, it's important to note that electoral bonds only make up a small part of overall political spending. In the 2019 Lok Sabha elections, which were the most expensive in the world at that time, the total expenditure was around Rs. 55,000 crores. The BJP's spending capacity in the election year increased significantly from 1998 to 2019. It has been reported that about 45% of the total expenditure in the 2019 general election amounted to more than 25,000 crores of rupees.

DOES THE USE OF ELECTORAL BONDS CURB BLACK MONEY

Electoral bonds were introduced in India to tackle the issue of black money in the democratic process. In a democracy, people form political parties with similar ideas to lead the country. Periodic elections are held to decide which political party will form the government. However, since political parties are not businesses and work for the country's betterment, they need funding for various activities like campaigns, rallies, and promotions. In the past, parties used to get funds from the public through legal means like donations or even illegal methods like forcing or threatening certain companies. Corporations play a significant role in elections, and to secure funding, political parties often approach business people or wealthy individuals. Unfortunately, this led to corruption, as many transactions were in cash, leaving no record. This created two problems: individuals avoiding taxes and trying to influence the government for personal gain, and candidates misusing party funds for personal purposes. Sometimes, even candidates running for elections were involved in these illegal fundings, leading to instances where politicians were found with black money or cash in their homes during income tax raids. The case of a distillery company in Odisha, owned by a Congress MP's family, facing a cash seizure of Rs 351 crore after an income-tax department search, serves as evidence of the ongoing challenges related to black money in political funding.

⁴⁶ *Ibid*

In response to these challenges, electoral bonds were introduced in the 2017–18 budget by former Union Minister Arun Jaitley. The aim was to bring transparency to political funding by ensuring that political parties receive donations through formal banking channels. This move was expected to reduce cash transactions and make the funding process more legal and auditable by government authorities. Former Union Minister Mr. Arun Jaitley, in his speech on the 2017 budget, acknowledged that electoral bonds weren't a perfect solution, but they represented a significant improvement over completely anonymous cash donations. Before drawing any conclusions, it's essential to understand two main points:

(1) Firstly, electoral bonds aim to encourage donations through formal channels, enhancing the visibility of money flow. The government's objective is to prevent money laundering and discourage illicit practices associated with cash donations.

(2) The second point is that electoral bonds might have successfully shifted political donations away from cash, achieving one of their primary goals. An ADR report from July 2023 highlights that a significant percentage of total donations for major political parties came from electoral bonds between FY 2016–17 and FY 2023–23. While this data doesn't cover unaccounted or unknown cash donations, the shift towards electoral bonds aligns with the key objective behind their introduction. It wouldn't be entirely wrong to say that the transformation of donations into a more formal and legalized process wasn't fully accomplished – it was not even half done, but it marked the beginning of a change in the way political funding received contributions.

ROLE OF PRIVACY AND CONFIDENTIALITY IN POLITICAL FUNDING?

Electoral bonds are viewed as a way to formalize political funding and bring a level of confidentiality to the process. The idea was to clean up the political system by introducing some transparency compared to the previous non-transparent cash donation system. According to Arun Jaitley, the former Union Minister, electoral bonds were not a perfect solution, but they represented a significant improvement over completely anonymous cash donations. The focus was on making the donation process more formal and legal. Jaitley emphasized the importance of transparency by suggesting that donors declare the number of bonds they purchased, and

political parties should declare the number of bonds they received. This disclosure, he argued, introduced some level of transparency compared to the previous non-transparent cash donation system.⁴⁷

One significant aspect of electoral bonds is the confidentiality they provide to donors. The identity of donors remains confidential, reducing the risk of retaliation or intimidation based on their political affiliations. This is crucial, as corporations and companies may face problems if they support a losing party when a new government is formed. The advocates of electoral bonds argue that this confidentiality protects individuals and entities from potential backlash or coercion. It allows contributors to remain private about their political affiliations or contributions. While electoral bonds have been successful in reducing the use of cash and providing a degree of confidentiality, they are not without challenges. Striking a balance between complete transparency and complete confidentiality is crucial for a healthy electoral democracy.

CRITICISM AND CONTROVERSIES

Since their introduction, electoral bonds have been a source of significant controversy, leading many to question whether they have genuinely fulfilled their intended objectives or unintentionally contributed to opacity in political financing. The questions surrounding electoral bonds encompass a wide range of concerns, from their potential impact on democracy and the overall health of the democratic process to the introduced lack of transparency. Critics emphasize potential issues, including the facilitation of money laundering, the legalization of corruption, compromise, and violation of fundamental rights, and the utilization of this scheme to legitimize illegal funds.

The act of spending on campaigns is often likened to an investment, one that holds the promise of returns, with interest, once a candidate assumes office. Some critics posit that electoral bonds may have been implemented with the primary goal of restricting funding available to opposition

⁴⁷ Suyash Rai and Anirudh Burman, 'Analyzing the Benefits of Electoral Bonds | John Rawls on a Fair Society' (*Carnegie India*, 17 November 2023) <<https://carnegieindia.org/2023/11/17/analyzing-benefits-of-electoral-bonds-%7C-john-rawls-on-fair-society-pub-91044>> accessed 20 February 2024

parties, given their usual financial disadvantage compared to the ruling party. These challenges have become inherent to the ongoing discussions surrounding electoral bonds. Notably, objections to the system have been raised by significant institutions such as the Reserve Bank of India (RBI) and the Election Commission of India (ECI). This criticism and controversy raised fundamental questions about the impact of electoral bonds on the democratic process, financial fairness, and the potential consequences for political transparency and accountability.

RBI'S OBJECTION

Before the 2017 Budget, the Finance Ministry and the RBI had several discussions about electoral bonds. As the Finance Ministry was figuring out the details and language for the bonds, they realized changes to the RBI Act were needed. This realization came just four days before the budget presentation on January 28, 2017. In a hurry, a bureaucrat sent a brief email seeking the RBI's opinion on the proposed changes.

The RBI replied on January 30, expressing serious concerns about issues like money laundering, lack of transparency, and potential misuse related to the electoral bond scheme. The RBI argued that allowing multiple non-sovereign entities to issue bearer instruments could harm people's trust in the banknotes issued by the Central Bank. Moreover, the RBI worried about transparency, pointing out that the person buying the bond might not be the actual contributor to the political party, which goes against the transparency goal. They also highlighted the risk of shell companies using bearer bonds for money laundering. The RBI suggested that electoral contributions could be made using existing methods like cheques and electronic payments, questioning the need for a new bearer bond⁴⁸.

The Finance Ministry disagreed with the RBI's concerns, considering them misguided and too late in the budget timeline. In 2017, the RBI Governor, Urjit Patel, voiced worries about potential misuse of electoral bonds, especially by shell companies, and suggested using digital forms instead of physical ones. This ongoing discussion reflected the tensions between the Finance

⁴⁸ "The electoral bonds' story: From Arun Jaitley convincing his secretary to the RBI's issues' *Money Control* (15 February 2024) <<https://www.moneycontrol.com/news/politics/the-electoral-bonds-story-from-arun-jaitley-convincing-his-secretary-to-the-rbis-issues-12280101.html>> accessed 20 February 2024

Ministry and the RBI regarding the introduction of electoral bonds. In a democratic country, decisions impacting financial systems and political funding should ideally involve a transparent and consultative process to ensure the integrity of democratic principles. However, this scenario is not just unethical but also undemocratic and unprofessional. You can't expect this in the world's largest democracy.

OBJECTION FROM THE ELECTION COMMISSION OF INDIA (ECI)

The Election Commission of India (ECI) has been actively working against issues related to black money and the lack of transparency in Indian elections. They strongly opposed the introduction of electoral bonds, a system that allows hidden donations to political parties. The ECI raised concerns about potential foreign influence, the strengthening of corrupt ties between business and politics, and legal loopholes that could enable the flow of questionable money through shell companies. However, the government ignored these concerns. ECI's main objection was that electoral bonds would seriously undermine the transparency of political funding. They pointed out that the changes made by the Finance Act of 2017 exempted political parties from reporting donations received through electoral bonds, which they considered a step backward in transparency. They also recommended reintroducing a cap on corporate funding to prevent the misuse of black money through shell companies.

Interestingly, when asked by a Member of Parliament, the Finance Ministry denied that the ECI had raised concerns about electoral bonds, leading to a cover-up. The Finance Ministry claimed they did not receive formal complaints, exploiting technicalities, but later, it was revealed that these excuses were false; indeed, they received the objections. Initially, in 2017, the ECI, along with others like the central bank and Members of Parliament, expressed concerns about the compromise of electoral transparency due to electoral bonds. However, after a year, the ECI surprisingly changed its stance and supported electoral bonds. Critics argue that the government implemented electoral bonds to promote opacity⁴⁹.

⁴⁹ Udit Misra, 'On what grounds RBI, EC objected to electoral bonds scheme' *The Indian Express* (16 February 2024) <<https://indianexpress.com/article/explained/explained-law/on-what-grounds-rbi-ec-objected-to-electoral-bonds-scheme-9164077/>> accessed 20 February 2024

In a recent case, the ECI informed the Supreme Court that the changes allowing electoral bonds and removing restrictions on donations, including foreign contributions, would likely increase the use of illicit funds (black money) in elections. This alteration could seriously impact the transparency of financial contributions to political parties, leading to the potential manipulation of Indian policies.

ELECTORAL BONDS HAVE FACED CONSISTENT CRITICISM FOR THEIR POTENTIAL NEGATIVE IMPACT ON DEMOCRACY

In a democratic country, transparency and confidentiality are crucial principles. However, electoral bonds have been criticized for lacking transparency in revealing the source of funds. Although they provide confidentiality and privacy, concerns arise regarding the secrecy surrounding donor identities. Achieving both confidentiality and transparency is challenging, as these two principles often seem contradictory. The donor's identity remains undisclosed to the public and the Election Commission, making it hard to trace the origin of political contributions. This lack of transparency means voters are unaware of which individuals, companies, or organizations are funding political parties and to what extent. In a representative democracy, citizens should have complete information when casting their votes for those who will represent them in Parliament.

Civil rights societies argue that the concept of donor anonymity threatens the essence of democracy. The government initially claimed that electoral bonds would bring transparency to the political funding system. However, if this was the intention, opponents argue that details of such donations should be made public. Currently, neither the bond purchaser nor the receiving political party is required to disclose the donor's identity. This lack of disclosure leaves shareholders of a corporation unaware of the company's contributions, and voters are left in the dark about how and through whom a political party has been funded.

Critics of the electoral bond scheme suggest that keeping donor identities anonymous may lead to an influx of black money. Some allege that the scheme was designed to assist large corporate houses in donating money without revealing their identities. The Congress party even likened

donations made through electoral bonds to money laundering. In 2019, the Election Commission of India described the system as a step backward in terms of transparency in donations. Concerns persist that electoral bonds could potentially be misused to introduce illicit money into the political system. Despite the introduction of electoral bonds, the imbalance in funding distribution among political parties, especially favoring the party in power, remains unaddressed. Critics argue that this discrepancy undermines the principle of a fair and level playing field in democratic elections.

UNNECESSARY AMENDMENTS

The introduction of electoral bonds came with certain amendments, the Finance Act, 2017⁵⁰, amended Income-tax Act, 1961⁵¹, Reserve Bank of India Act, 1934⁵², and Representation of the People Act, 1951⁵³. The government emphasized transparency by conducting electoral bond transactions through the formal banking system. This was seen as an assurance that only legitimate entities using legal funds could avail of the scheme. However, the transparency ends here. The donor has no obligation to report the donation, and the political party receiving the bond is not required to disclose the donor's identity. Consequently, each bond transaction lacks transparency, and this opacity is not a mere byproduct but an inherent part of the scheme's design. When the Modi government introduced this new funding law Finance Act, of 2017, it also removed several requirements aimed at improving transparency in political funding such as the Companies Act, of 2013⁵⁴. The previous law capping corporate donations was abolished, companies were no longer obligated to disclose their donations in their financial statements, and foreign companies, previously restricted from funding Indian parties, could now do so through their Indian subsidiaries. The main issue raised was about allowing the companies in loss to make political funding through electoral funds or others. The question arises: why was this legalized? Such donations were not allowed before, but after the amendment, it became possible for financially struggling companies to make secret contributions to the ruling party and

⁵⁰ Finance Act, 2017

⁵¹ Income tax Act, 1961

⁵² Reserve Bank of India Act 1934

⁵³ Representation of the People Act 1951

⁵⁴ Companies Act 2013

potentially receive benefits from the party in power. If you aimed at providing confidentiality, what is the meaning of allowing a non-profit company to make political funding, how does this even relate with each other?

LEGALIZE CORRUPTION

Funds in politics have always been a source of corruption in India. For regular citizens, it's not surprising to hear that the secret flow of money supporting politicians is a big reason behind corruption in the country. Politicians and the people working with them have become very adaptable at using laws and policies to secure funds for their campaigns. The way Electoral Bonds (EBs) work allows unlimited, secret donations from anyone, and this kind of system is akin to making corruption legal. It has to be believed that big companies can essentially support the party in power and influence government decisions through these bonds. Major-General Anil Verma from the Association for Democratic Reforms (ADR) says that donors see these secret contributions as an 'investment.' The use of Electoral Bonds has also made people question whether elections are fair. Verma says that these bonds have made elections less equal, with most donations going to the party in power, no matter who is leading it⁵⁵.

The news that around 30 companies gave nearly Rs 335 crore to the Bhartiya Janata Party (BJP) in five years and faced government actions during the same time is a cause for concern. Some of these companies even contributed more money after facing these actions. This shows a worrying pattern, suggesting a possible link between companies giving money and the government's actions. This situation speaks volumes about corruption in Indian politics and challenges the idea of democracy. The unequal sharing of money and the chance that big companies can influence political decisions go against the main ideas of a fair and democratic election process.

VERDICT OF SUPREME COURT:

On February 15, 2024, the Supreme Court made a significant decision in the case of the Association for Democratic Reforms & Anr. v Union of India & Ors. The court ruled against the

⁵⁵ Sanjay Raman Sinha, Association for Democratic Reform, 'Political Funding Under Scrutiny' (*ADR India*, 11 November 2023) <<https://adrindia.org/content/political-funding-under-scrutiny>> accessed 20 February 2024

use of electoral bonds, marking a crucial moment in the country's political finance landscape. This decision was reached by a five-judge constitution bench, with Chief Justice DY Chandrachud, and Justices Sanjiv Khanna, BR Gavai, JB Pardiwala, and Manoj Misra unanimously declaring the electoral bonds scheme unconstitutional. It's important to note that Justice Sanjiv Khanna provided a concurring opinion, presenting additional thoughts on specific aspects.

Chief Justice D.Y. Chandrachud emphasized a fundamental clash between corporate influence and citizen rights in the democratic process. The court, in the landmark judgment of *Association for Democratic Reforms & Anr v Union of India & Ors*⁵⁶, held that anonymous electoral bonds violate the right to information under Article 19(1)(a) of the Constitution of India⁵⁷. Consequently, the electoral bond scheme introduced by the government was declared unconstitutional. Additionally, the Supreme Court struck down amendments to the Income-tax Act 1961⁵⁸, the Representation of People Act, of 1951⁵⁹, and the Companies Act, of 2013⁶⁰, which facilitated anonymous political contributions. This decision has broader implications, as it underscores the importance of transparency in the political funding process, ensuring citizens' right to information is upheld. The court's ruling questioned the validity of allowing anonymous contributions, which could impact the democratic principles of the nation. Here's the breakdown and its implications:

The Electoral Bond Scheme and Finance Act Amendments are connected to the electoral process, not economic policy: A key aspect of the judgment is that the Electoral Bond Scheme and Finance Act Amendments are argued to be related to economic policy⁶¹. However, the Supreme Court, after scrutiny, determined that they are more connected to the electoral process. This conclusion was drawn based on the essence of the Finance Act Amendments, which primarily involve provisions for keeping electoral financing information confidential and

⁵⁶ *Association for Democratic Reforms & Anr v Union of India & Ors* WP(C) No 880/2017

⁵⁷ Constitution of India 1950, art 19(1)(a)

⁵⁸ Income tax Act 1961

⁵⁹ Representation of People Act 1951

⁶⁰ Companies Act 2013

⁶¹ Finance Act 2017

allowing unlimited corporate funding to political parties. These aspects, according to the court, align more with the electoral process than economic policy.

Scope of Article 19(1)(a): The argument made in court was that the Electoral Bond Scheme and Finance Act Amendments violated the right to information about political contributions, as guaranteed under Article 19(1)(a) of the Constitution. The Supreme Court emphasized two key aspects based on its previous judgments:

- **Importance for Good Governance:** The right to information is crucial for good governance, transparency, and accountability. The court stated that citizens have a responsibility to hold the government accountable for its actions, and this duty can only be fulfilled if the government operates openly and avoids secrecy.
- **Essential for Informed Participation:** The court recognized that the right to information is essential for citizens to form opinions on social, cultural, and political issues. It emphasized that freedom of speech and expression includes the right to acquire information, enabling people to engage in debates on various matters.

The court also highlighted that the right to information extends beyond just public information about state affairs. It includes information necessary for participatory democracy, contributing to the realization of democratic goals by fostering self-development at both individual and group levels.

Voter's Right to Know: In the context of voters, the court referred to previous cases where it was held that any information promoting democratic participation should be provided to citizens, even if it raises privacy concerns. The court observed that voting decisions are not solely based on the individual candidate's capabilities. The design of the electoral voting machine includes both the names of candidates and the symbols of the political parties endorsing them. Voters often consider the capabilities of the candidate along with the ideology of the political party. Consequently, the court concluded that political parties are a 'relevant political unit in the democratic electoral process' in India. Information about the funding of political parties

becomes essential for voters to assess any potential link between policymaking and financial contributions.

Impact on Political Funding: Money can act as a tool to influence election results by (i) buying votes; (ii) spending money on political campaigns; and (iii) making it harder for new candidates and political parties to join the election. The Supreme Court emphasizes that we can't understand the issue with the scheme without looking at how money influences politics. The judgment delves into how the scheme impacts the way political parties receive funds. It highlights that the scheme establishes a secretive financial system, granting substantial influence to large corporations over political entities through undisclosed donations. The Court distinguishes corporate donations made with expectations of receiving benefits in return and individual contributions reflecting genuine political support. According to the Court, the former jeopardizes the integrity of political engagement and policy-making. It notes that this arrangement goes against the democratic principle of 'one person, one vote' because it allows wealthy corporations to wield greater influence in politics.

Rejected curbing black money argument: The Supreme Court highlighted that the right to information, as per Article 19(1)(a)⁶² of the Constitution, can only be restricted based on the grounds specified in Article 19(2)⁶³. Although one could argue that the intention behind the Scheme and the Finance Act Amendments was to curb black money, considered as 'public order' under Article 19(2), the Court clarified that 'public order' refers to 'public safety and tranquillity' and 'disorder involving breaches of local significance' rather than the broader issue of national upheavals. Therefore, the goal of curbing black money doesn't align with the grounds listed in Article 19(2).

The Court also examined whether the proposed means would effectively reduce black money, and it concluded affirmatively, assuming that non-disclosure of information about political spending logically connects to the goal of curbing black or unregulated money. However, the Court stated that the least restrictive means test of the proportionality doctrine is not met. It

⁶² Constitution of India 1950, art 19(1)(a)

⁶³ Constitution of India 1950, art 19(2)

means the Scheme is considered more restrictive than necessary. The Court argued that there are alternative methods, aside from electoral bonds, to achieve the goal of curbing black money. Furthermore, the Court pointed out that the earlier system of electoral funding, involving contributions through cheques, bank drafts, electronic clearing systems, and electoral trusts, was adequate for curbing the use of black money. In simple terms, the Court concluded that the Scheme is not the best and least restrictive way to prevent black money in the electoral process.

Balancing right to information and right to privacy: The Supreme Court faced a challenge in balancing two fundamental rights: the right to information and the right to privacy. It clarified that there's no hierarchy between these conflicting rights and applied the double proportionality test. This test checks if the means used are suitable, necessary, and proportionate to the State interest, justifying any infringement of fundamental rights. The Court, however, found the Scheme failed this test, rejecting the argument that it balances the mentioned rights.

Unconstitutionality of Electoral Bonds: Based on the observations, the Court declared amendments to the Income Tax Act, 1961⁶⁴, and the Representation of People Act, 1951⁶⁵ unconstitutional. Since anonymity is crucial to the Scheme and considering other modes of contributions, the Court struck down the entire Scheme as unconstitutional. Additionally, Section 154 of the Finance Act⁶⁶, amending Section 182(3) of the Companies Act, 2013⁶⁷, was also held unconstitutional. The amendment required companies to disclose contributions, not just through electoral bonds but through all transfer modes. The Court found it violated the right to information of voters by not providing details about contributions to specific political parties.

Companies Act amendment allowing unlimited corporate funding and no party-specific disclosure held as unconstitutional: The Court invoked the doctrine of 'manifest arbitrariness' to strike down Section 182 of the Companies Act,⁶⁸. Originally enacted to combat corruption, amendments allowed unlimited corporate contributions to political parties without specifying

⁶⁴ Income Tax Act 1961

⁶⁵ Representation of People Act 1951

⁶⁶ Finance Act 2017, s 154

⁶⁷ Companies Act 2013, s 182(3)

⁶⁸ Companies Act 2013, s 182

the recipient party. The Court deemed this as unrestrained corporate influence, violating principles of free and fair elections and political equality. The 2017 amendment, removing the cap on donation limits, was ruled 'violative' of the Constitution and 'manifestly arbitrary' for treating contributions by companies and individuals alike and not distinguishing between profit-making and loss-making companies' contributions to political parties.⁶⁹

CONCLUSION

The introduction of electoral bonds sparked significant debate, with the primary goal, according to former Finance Minister Arun Jaitley, being to ensure privacy and reduce cash transactions in political funding. While the scheme did succeed in protecting donors' privacy from other political parties and upholding democratic principles, it came at the expense of transparency, contradicting constitutional and democratic ideals. Notably, the Bhartiya Janata Party (BJP) emerged as the biggest beneficiary of electoral bonds, amassing a substantial amount of 6566 crores, followed by the Congress and the All India Trinamool Congress (AITC). Electoral bonds played a pivotal role in augmenting political parties' income, with the ruling party consistently receiving the highest donations through this method during election years. This escalating income trend raises concerns about the overall health of our democracy.

Although the Supreme Court eventually declared the electoral bond scheme unconstitutional, their decision came after a significant delay. The Court directed the State Bank of India (SBI) to cease issuing electoral bonds and mandated the disclosure of bond details to the Election Commission of India (ECI) since April 12, 2019. However, the Court's delay allowed political parties to amass substantial funds for upcoming elections, prompting questions about the case's importance and the reasons behind the Supreme Court's prolonged consideration. The matter remains open for discussion, especially regarding the legality of funds collected by political parties through electoral bonds, as highlighted by senior advocate Kapil Sibal. He emphasized that electoral bonds are viewed as illegal transactions in the eyes of the law, and such transactions typically entail disgorgement, implying a return of the funds. Citizens are urging

⁶⁹ *Ibid*

for these funds to be utilized for public welfare, but the outcome remains uncertain. Lastly, it's crucial to acknowledge that there is currently no straightforward solution to corruption, emphasizing the importance of candidates' character and their decisions regarding the acceptance or rejection of illegal funds.