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## FULL DISCLOSURE ON ELECTORAL BONDS AND THE ASSOCIATED CHALLENGES

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### Abstract:

The central government had on January 29, 2018, notified the electoral bond scheme. Electoral bond is like a promissory note that can be bought by any Indian Citizen or company incorporated in India from select branches of State Bank of India. The buyer can then donate the same to any eligible political party of his/her choice. Monies received from electoral bonds will be deposited in a bank account verified by the Election Commission. All the transactions for electoral bonds can be done only through that account.

Analysts point out that electoral bonds are most likely the first of its kind instrument in the world used for funding political parties. While the United States has Political Action Committees which receive money from individual and corporate donors and manage them, they do not have any scheme that allows citizens to directly purchase a bond and donate the same to a political party. The introduction of the electoral bond scheme is part of what appears to be a growing trend away from transparency and accountability, two values which were already sparse in relation to Indian political parties as per Vidhi Centre for Legal Policy report, published in March 2018.

Opponents to the scheme allege that since the identity of donor of electoral bonds has been kept anonymous, it could lead to an influx of black money. Others allege that the scheme was designed to help big corporate houses donate money without their identity being revealed.

The honourable Supreme Court in its order said that while it wanted to hear the matter at length at a later stage, for the interim it wanted a situation where the balance was not tilted in anyone's favour.

### Introduction of the Scheme of Electoral Bond:

The Government of India has notified the scheme of Electoral Bonds to cleanse the system of political funding in the country. The electoral bonds were introduced with the Finance Bill (2017). On January 29, 2018, the BJP led NDA Government notified the Electoral Bond Scheme 2018. The broad features of the scheme are:

1. Electoral Bond would be a bearer instrument in the nature of Promissory Note and an interest free banking instrument. A citizen of India or a body incorporated in India will be eligible to purchase the bond.
2. Electoral bond would be issued/purchased for any value, in multiples of ₹1,000, ₹10,000, ₹1,00,000, ₹10,00,000 and ₹1,00,00,000 from the specified branches of the State Bank of India (SBI).
3. The purchaser would be allowed to buy electoral bond(s) only on due fulfilment of all the extant KYC norms and by making payment from a bank account. It will not carry the name of payee. Electoral Bonds would have a life of only 15 days during which it can be used for making donation only to the political parties registered under section 29A of the Representation of the Peoples Act, 1951 (43 of

- 1951) and which secured not less than one per cent of the votes polled in the last general election to the House of the People or a Legislative Assembly.
4. The bonds under the Scheme shall be available for purchase for a period of 10 days each in the months of January, April, July and October, as may be specified by the Central Government. An additional period of 30 days shall be specified by the Central Government in the year of the General election to the House of People.
  5. The bond shall be encashed by an eligible political party only through a designated bank account with the authorised bank.

### **The Intention behind the Introduction of Electoral Bonds in India**

According to the BJP led NDA Government, electoral bonds were introduced to ensure that all the donations made to a political party would be accounted for in the balance sheets without exposing the donor details to the public.

The government said that electoral bonds would keep a tab on the use of black money for funding elections. Earlier the donors had no options but to donate cash after siphoning off money from their business.

Democracies across the world is being undermined by the money. In a large democracy like India electoral funding is highly unregulated. The greater the inequality of political funding, the greater the chances of public policy is tilted towards the interest of super rich, ignoring the interests of vast majority, particularly the poor and vulnerable.

There is a clear relationship between a country's policy on electoral donations and the public decisions made. For example outdoor smoking advertisements by cigarette companies are banned in almost all the countries except Germany because it is the only country where all the political parties receive a good amount of funding from cigarette companies.

In the year 2018 , it is concluded on the basis of an extensive survey and research that there is a direct co-relation between electoral spending and electoral success.

American Supreme court Judge Justice Louis Brandeis has rightly commented “We can have democracy in this country, or we can have great wealth concentrated in the hands of a few, but we cannot have both”. The growth of economic inequality fuels the growth political in equalities and vice versa, resulting in a dangerous vicious cycle.

### **IMPORTANCE OF ELECTORAL BONDS**

It ensures that the funds being collected by the political parties are accounted for money and Election commission of India should conduct the scrutiny of financial documents submitted by the political parties.

### **CONCERNS WITH THE ELECTORAL BONDS**

RTI Activist Commodore Lokesh Batra (Retd) has revealed that over 92% of the electoral bonds sold are of Rs. 1 Crore denomination.

In 2014, the Delhi High Court held that both Congress and BJP were guilty of accepting donations from two companies registered in India but whose controlling shareholder was Vedanta, a foreign company. The court viewed the transaction was in contravention of the Foreign Contribution Regulation Act (FCRA), 1976. Following this indictment, both parties in fact all the political parties came together and the government amended the FCRA through annual finance bills to legalise the violations. The amendments and subsequent changes brought in by the current government enabled new and regressive pathways that afford full anonymity to corporate and foreign political donors.

Even though Electoral Bond scheme acts as a measure against the old under the table donations, some provisions of the scheme are causes of grave concern such as:-

1. **Anonymity:** There is no obligation on the part of the donor( Individual or Corporate) or the Political Party to reveal from where the donations come from
2. **Transparency:** It is not binding on the part of the Companies to declare the names of political parties to which they have donated , so shareholders wo'nt know where their money has gone
3. **There are possibilities of making Electoral Bonds a convenient channel for black money.**

### PROVISIONS CONTROVERSIAL

- Doing away with the 7.5% cap for corporate donations.
- No need for companies to reveal their political contributions in their profit and loss statements.
- In practical sense only profit making corporates should part their fund for electoral bonds, but as per the existing provisions, the companies that are in existence for 03 years can make political contributions and this undermines the schemes intent. As a result of which it has become easy for dying, troubled or shell companies to make an unlimited donations anonymously.
- Since the bonds are bought through State Bank of India, the Government is always in a position to know who the donor is, this puts ruling party in a favourable position.
- The Election Commission of India had asked that the limit for reporting donations (which is Rs.20, 000/-) should be brought down to Rs.2, 000/-, but instead, the Government has reduced the maximum contribution by cash to Rs.2, 000/-.
- It could become a channel for business to round-trip their cash parked in tax heavens to political parties for a favour.

### A NEW FORM OF ANONYMITY

While hearing a Public Interest Litigation (PIL) by the Association of Democratic Reforms (ADR), the Supreme Court downplayed the concerns of corrupting influence of anonymous corporate and foreign money. Because of huge election expenses many genuine candidates are fearing to contest the elections. So frankly the voters are left with the option of “match the following”.

Earlier, only profit making domestic companies could contribute to political parties, now even the loss making ones can. Earlier, foreign companies or companies where the controlling stake was held by a foreign company couldn't contribute, now they can. It is really astounding what motivates the loss making companies to make election funding?? So India's political parties could theoretically be fully funded by a foreign company operating in India or by a foreign entity through a shell company. The concurrent introduction of electoral bonds brought a new form of anonymity to thousands crores of donations. As per the extant provisions only the ruling party via State Bank of India has full account of all donations vide electoral bonds. The parliament, The Election commission and the Opposition Parties do not have this information, nor do the public.

The ADR PIL challenged the constitutionality of electoral bonds in Supreme Court. In March 2021, before the West Bengal Elections, Supreme Court refused to stay the sale of electoral bonds but the honourable court insisted the submission of several documents which supposedly establish a paper trail on such donations.

This is impractical and plainly incorrect. The Right to Information Act (RTI) of 2005 enables easier access to information held by public authorities. No ordinary person has the resources to navigate documents on obfuscating government websites or pore over income tax returns. The few civic and non-profit organisations that attempt to simplify information to enable accountability have been systematically delegitimised.

Forget about the individual donors, even the registered entities to not divulge the political donations in their financial statements. In informal rough mathematical computations, there are around 25 lakh potential donors comprising of companies and firms. This includes about 12.6 lakh private limited companies as of January 2021 and to some extent their financial statements are accessible on the website of Ministry of Corporate Affairs. But for the remaining 50% of the firms, they have no regulatory mandate to submit their annual reports except filing their annual tax returns.

Even if these documents are indeed filed and available in the public domain, they will not specify donations to parties. Conveniently, the Finance Bill of 2017 amended section 182 of the company's act of 2013 to remove the requirement for declaring the disaggregated donations to political parties.

There are some concerns associated with the usage of electoral bonds. As per Mr. T.S. Krishnamurthy (Former Chief Election Commissioner), the government will not know how many times, the bond has been sold in the market before being encashed by the political party, so he suggested for setting up an Election Fund and donations to various political parties should be collected by keeping the EC in the loop with compulsory PAN number.

### **ELECTORAL BONDS AND SECTION 25 OF THE COMPANIES ACT 1956**

Under Section 25, it allows the formation of a company involved in charity without setting up a trust or a society, which will exist as a legal entity but the catch is any company set up under this section must utilise/re-invest all income towards achieving the same objective, i.e unlike a regular company no money will go out of the company either in the of profits or dividends.

#### **Advantages:**

- Very easy to set up.
- No minimum Paid up Capital or Authorised Capital
- Tax benefits are provided

According to a recent report by the Association for Democratic Reforms(ADR) for the financial year 2018-19, political parties have declared income/donations worth Rs.1,931/ Crore through these bonds. The BJP has received nearly 75 per cent (Rs.1, 451 crore) of the donations. The Congress received 20 per cent (Rs. 383 crore) and the TMC got around 5 percent ( Rs.97 crore). The CPI (M), BSP and CPI declared no income from electoral bonds, while the NCP is yet to submit it's income details for the year with Election Commission of India.

The report points out that the main source of income for the parties is donations and contributions. The BJP and Congress reported a high concentration of donations forming nearly 97 % and 60.08 % of their income respectively. The BSP reported most of it's income from bank interest, while CPI(M)'s revenue came from fees and subscriptions.

There is a major problem here. We know the incomes of these parties but we do not know who funded them. Most parties reported an increase in income but we don't know how they had raised the money.

Electoral Bonds were supposed to make political funding more transparent, but these numbers indicate that the process is still very opaque.

This leads us to the main problem of Indian democracy- political corruption. Since there is no limit to donations and we don't know who the donors are, there is always a risk of parties pushing their donors agenda instead of working for the benefit of the public.

In this backdrop let see how the political parties in other leading democracies fund themselves.

## DONATIONS AND NORMS

In countries like the United Kingdom (UK), Australia and the United States(US), political donors must register themselves with the competent authority, if their donations cross a set limit.

In the above democracies the Election Commission publishes a list of donations and loans accepted by each political party regularly. They include details like name of the donor, the amount paid or if it was public funding etc. Individual members of parliament must report donations and loans they accept.

In US, one way that the candidates use to fund their campaign is through Political Action Committees or PACs. The US Federal Election Commission, in its website says these are formed by corporations, labour unions, trade associations or other organisations or individuals to channel voluntary contributions they raise to candidates running for the US House of Representatives, Senate and the office of the president. These PACs are of two forms: Separate segregated funds (established and administered by corporations, labour unions or trade associations to solicit contributions from their members only) and non-connected committees ( free to solicit contributions from general public).

Super PACs and Hybrid PACs are commonly used methods of funding political campaigns, though the way they receive and spend funds are different. They are subject to various limitations and prohibitions.

## CONCLUSION

It is impossible for an average voter to pore over the documents of lakhs of entities and track the potential company and firm donors. Further, recipient wise information is un-available. Unlike the tall claims of electoral bonds enabling transparency, it is only RTI applications with the SBI that offer a glimpse into the crores of money funding political parties and therefore influencing public policies. If they chose to, the Supreme Court or the legislature could order full and real time dis-closure, to the actual benefit of transparency and accountability. Instead, meagre civil society resources are expended in filing PILs and RTI applications, at significant personal risk.

In effect, electoral bonds give political power to companies, wealthy individual donors and foreign entities, thus diluting the universal franchise of one voter one vote. Every vote is not equally valuable if companies can influence policies through hidden donations. The winner of this arrangement is the ruling party, whether at Centre or in a State and the loser is the average voter. Companies and Political parties could exercise moral leadership and voluntarily disclose the identity of the identity of recipient and donors, as the Jharkhand Mukti Morcha recently did. Till then, voters are stuck with a ruling party with war chests of resources, being subject to relentless election campaigns, while donors surreptitiously and directly influence policy.

## References:

1. **Electoral Bond Scheme 2018, Gazette notification No.20 dated 2<sup>nd</sup> Jan 2018**
2. **Asso. for Democratic Reforms(ADR) report for the financial year 2018-19**