



Electoral Bonds: A Way To Electoral Transparency Or A Way To Hide Black Money In Broad Day Light.

Madhav Pandit

Asian Law College, Noida, India

ABSTRACT

“Liberty cannot be preserved without a general knowledge among the people, who have a right and a desire to know”

—John Adams

In today's world we live in Democracy which is considered the best governance system because of its qualities like Transparency, Rights, Liberty, and the right to elect their own leader by themselves this process is called election. This process has to be transparent and corruption free because this process is the sole spirit of democracy but in contemporary times we have come across the recent ruling of Honorable Supreme Court of India in which the electoral bonds were declared unconstitutional on the ground that they are curbing the right of people to know and it is also working as a handy man to help black money to get to political parties without disclosing their identities to the people of India this is increasing the impurities in the sole spirit of Democracy: the election. This paper examines the perspective of The Supreme court, The Ruling Party, and the Opposition Party. It highlights the noteworthiness of the topic by emphasizing how the court upheld democratic principle of transparency against potential abuse of anonymous political funding.

KEYWORDS: Democracy, Transparency, Rights, unconstitutional, anonymous, Political funding.

INTRODUCTION: -**1) Background on political funding in India: -**

Political funding has been active in Indian Elections since first election that was in 1951. It has been an opaque affair in India. In the beginning there were no rules and regulations about electoral funding. But political parties got funding all of which was unregulated which indicates the role of black money and corporate influence in elections. It was pervasive yet invisible to the public. The first incident that came into public limelight regarding the political funding was in 1957 in The Bombay High Court in case of Jayantilal Ranchhoddas Koticha And ... vs Tata Iron and Steel Co. Ltd.¹

Then in the year 1961 came the Income Tax Draft of 800 pages its main function was to regulate income tax in the whole country. Then the political parties were arguing that companies should not have to pay tax on funding because it is a social work. Political parties plead were not heard at that time. So, in the year 1979 they amended and inserted articles in Income Tax act of 1961 which were 13A, 80GGB, 80GGC which made the donations to political parties by individual or corporate companies 100% tax deductible.

Then comes a new player in the game. That was Swatantra Party a regional party which was arguing and supporting business free from government control. So, all the businessman were happy with their ideology of free business from government. The outcome was shocking for the ruling party that was Indian National Congress it lost in 9 states to Swatantra Party in 1967 because now they were getting more funding because of their business-friendly policies. The Indian National Congress was not happy with their defeat. In 1969 article 293A of The Companies Act was abolished which made funding to political parties by businesses and corporates, illegal. Now from here the illegal ways to get funding emerged, because both were dependent on each other the businessman for license and permissions and the political parties or politicians for donations for their election campaigning

The illegal way was hidden from public eyes but it came to limelight in June 1978 in Calcutta High Court, In the case of Graphite India Ltd. And Anr. vs Dalpat Rai Mehta and Anr.² In this case the shareholder of Graphite India Ltd Mr. Dalpat Rai Mehta came across an item of expenditure of Rs. 1,52,000 stated to have been incurred for advertisements in the All-India- Congress Committee Souvenirs. It was further alleged that the aforesaid expenditure paid to a political party in any manner is a contribution to a political party for a political purpose in contravention and in violation of the provisions of Section 293A of the Companies Act. And Graphite India Ltd was not the only company who was doing the political funding secretly through advertisement there were around 180 more companies who were donating or had donated around 16 crore rupees to congress for advertisement but there was no advertisement of any company which were to be published in The Congress Magazine. This was a shocking discovery for the people of India there were many cases against the parties for taking black money

¹ Jayantilal Ranchhoddas Koticha And vs ... Tata Iron and Steel Co. Ltd. Equivalent citations: AIR1958BOM155, (1957)59BOMLR738, ILR1958BOM149, AIR 1958 BOMBAY 155, ILR (1958) BOM 149, (1957) 27 COM CAS 604, 59 BOM LR 738

² Graphite India Ltd. And Anr. vs Dalpat Rai Mehta and Anr: Equivalent citations: [1978]48COMPCAS683(CAL), 82CWN903

illegally and it is said that some parties even got funding from the foreign nations. So, to prevent foreign involvement in our country in the year 1976 came the Foreign Contribution Regulation Act in which political parties, Judges or Judiciary members, Journalists, Office bearers, and government servants were restricted from taking any foreign contribution.

Now there were no more legal ways to contribute to political party by funding them. But there was need of approval, registration, permissions on the side of big corporates and there was need of money on the side of politicians they both were dependent on each other for their own greed and good. So, many new illegal ways were discovered and the funding continued without any disturbance behind the scenes where the general public was not able to see this that their own money was being given to politicians and the corruption rose rapidly. In the year 1985 came good news and a sigh of relief for both politicians and corporates the ban on the article 293A of the Companies Act was lifted by the Rajiv Gandhi Government and to ensure and maintain transparency and to extinguish the corruption completely now there were some conditions applied and they were to be followed strictly the conditions were:

- There will be a limit on the amount donated. It will be the company's last three year's profits 5% to 7.5%.
- The amount cannot exceed the limit of 25000 rupees even if the profits are more than 25000.
- The company will have to disclose in their financial report to whom they donated and how much they donated.

Now this all became a game of chances for the big corporate houses because if they donated to Party A and Party B won. So, the party B will harass them by issuing notices and not giving permits. It became a pain in the head for corporate houses. To solve this dilemma TATA came with an idea of electoral trust in 1996. In which the companies would make a group and then that group known as electoral trust will donate money to political parties this system created a buffer zone for companies and it safeguarded them from harassment by political parties. This system had no public listing number, it was unregulated only controlled by companies. So, the shareholder also did not know which party had got the donation from his company but they can know that the company has donated money. It was a wonderful safeguard for companies and other companies also followed this example. After sometime the government intervened in the electoral trust system by making laws regarding which company is eligible to construct its own electoral trust or cannot.

The time was passed slowly after this and then in 2003 The Representation of the People's Act was amended the limit of donation was lowered to 20,000 only whoever donates more than the prescribed limit will have to follow some conditions and submit the following documents to The Election Commission of India under section 29c of The Representation of The People's Act 1951

29C. Declaration of donation received by the political parties: -

(1)The treasurer of a political party or any other person authorized by the political party in this behalf shall, in each financial year, prepare a report in respect of the following, namely.

(a)the contribution in excess of twenty thousand rupees received by such political party from any person in that financial year.

(b)the contribution in excess of twenty thousand rupees received by such political party from companies other than Government companies in that financial year.

(2)The report under sub-section (1) shall be in such form as may be prescribed.

(3)The report for a financial year under sub-section (1) shall be submitted by the treasurer of a political party or any other person authorized by the political party in this behalf before the due date for furnishing a return of its income of that financial year under section 139 of the Income-tax Act, 1961 (43 of 1961) to the Election Commission.

(4)Where the treasurer of any political party or any other person authorized by the political party in this behalf fails to submit a report under sub-section (3), then, notwithstanding anything contained in the Income-tax Act, 1961 (43 of 1961), such political party shall not be entitled to any tax relief under that Act.

It was a significant step to curb the increasing corruption and suppress the flow of black money and ultimately eliminate it from the elections in India, but it became a boon to the corrupt and greedy politicians of our country because they found a loophole which made this entire initiative useless in countering black money. The political party has its own auditor and they used it with malevolent intention by taking the donation more than 20000 and disclosing it in their financial report as 19500,19800 etc. The donor was donating them in crores in their office and to prevent any difficulties to arise from them and for the donor they created fake receipts of 19500 to safeguard their donor and themselves from corruption charges and it worked for them because they have their own auditor. The greedy politicians used this method to fill their own pockets. A is a donor he donated 100 crores to party B now 50 crore was kept by the politician and the remaining 50 crore reached the party fund and there will be no action even if it's illegal and morally wrong because they will issue the receipt of less than 20,000 rupees amount like 19,600.

The Election Commission of India had identified the flaw and had been demanding from a decade now to political parties to do their financial year auditing from a prescribed panel of Controller Auditor General of India. Because it's just like the cat (political party) is asked to guard the milk (donation) without stealing.

In this context the electoral bonds were introduced by The Bhartiya Janata Party in 2017 with the aim to reform political funding and make it transparent to the masses of India. Under the electoral bond scheme donations could be made anonymously to political parties through selective branches of State Bank of India. The bearer bonds, are available in denomination of Rs 1,000 to Rs 1 crore, with a tenure of 15 days in which they have to be encashed

by recipient parties. If the time limit of 15 days is crossed the bonds are not encashed then automatically, they will be deposited in Prime Minister Relief Fund.

The scheme was justified as a legitimate way of donating to political parties and maintaining the privacy of donors. The previous methods of donation were portrayed as a way of breeding black money into system and being open to misuse. Electoral bonds, as bearer bonds were bought as a cure to funnel “white money” transparently into the system. However, right from the start the scheme faced criticism from opposition parties, non-government organizations, transparency activists raised serious concerns. They argued the scheme legitimated unlimited donation without any safeguard and donors’ transparency was given more value than people’s right to know. All this routed via-through the state bank of India the secrecy around donors was being enabled by the government itself, unlike the previous system of electoral trusts run by the private sector.

With the general elections of 2024 approaching the scrutiny of electoral bonds had sharpened with opposition claiming that it is only supporting the ruling parties war chest and crippling their own fundraising. The issue was brought in Supreme court to check whether or not electoral bonds are constitutionally valid. The Supreme court struck down the scheme completely as illegal, arbitrary and unconstitutional making a landmark victory for transparency.

2) WHAT ARE ELECTORAL BONDS AND HOW DO THEY OPERATE?

Electoral bonds were first introduced in 2017 through the union budget by late finance minister Mr. Arun Jaitley. It acts as a bearer- instrument, bonds were available in the multiples of 1,000, 10,000, 100,000 or 1 crore. The bonds were initially available in 29 designated branches of State Bank of India and the SBI was made the exclusive banker for the issuance of the bonds to donors and under this scheme it was authorized to open special designated branches to aid donors and companies to donate to their preferred parties.

To purchase a bond, if the buyer had already an account in SBI they won’t need to do much but if they do not have an account in SBI they will have to provide basic KYC details like name, PAN number and address. The bank can record the details of the buyer of bonds but cannot share it with anyone public, election commission or any other authority. The privacy of the buyer was protected by the banking confidentiality norms of SBI under this scheme.

The buyer bought the bonds from SBI by transferring the bond value in cash or via electronic transfer to SBI account and specified the preferred party he wanted to donate. The money will be debited from the buyers account and in return he will get the physical bond certificate in 4 days via banking channel or post. It was essentially a bearer bond with only the value and serial number on it without any details of the buyer\donor the buyer could donate it to his preferred party anonymously.

There was a time limit of 15 days in this time if the bond is not encashed by the party, then it would not be refunded to neither the party or the donor. Automatically it will be deposited in Prime Minister Relief Fund. It was not like that the bonds were available all the time of the year they were available to be purchased by buyer

in the months of January, April, July, and October for a period of first 10 days in these months. However, the time period to buy can be extended at the times of general election it can be up-to 15-30 days of the months.

The parties that the donor can donate must have to clear the criteria's to be able to take donation through electoral bond scheme the criteria are specified are as follows: -

- Parties must be registered under section 29A of the Representation of the people's Act, 1951.
- Got more than 1% vote in last general elections.

3) WHY ELECTORAL BONDS WERE DECLARED UNCONSTITUTIONAL BY SUPREME COURT

On the historic day of 15 February 2024 in the case of State Bank of India vs Association for Democratic Reforms and Others.... The Five Judges constitutional bench declared the electoral bond scheme unconstitutional. On the grounds that it prioritized the privacy of donor over the right to information of people protected by the Constitution under article 19(1)(a). By enabling unlimited anonymous

Political donations electoral bonds deprived the voter of the vital information that they needed to make informed decision during elections. If the voters do not know which entity is funding their party and what interests it may represent it severely compromises the spirit of democracy. By a 4:1 majority the Supreme court ruled that the electoral bond seriously compromised transparency in political funding, going against the fundamental right of right to information of citizens. The scheme had allowed anonymous donations to political parties. The scheme was introduced in 2017 by amending the Finance act and representation of people's act, it opened a window for unchecked corporate donations to the political parties.

3.1) No limits on corporate donations

A major ground for objection against the electoral bond scheme was the removal of ceiling on the company donations to political parties, previously it was 7.5% of total profit of 3 years of a company not exceeding the limit set under the companies act 1985 when under the rule of Rajiv Gandhi, the sec 293A of the company's act was lifted allowing for legal funding to political parties under some conditions which were mentioned in above paragraphs. This cap was lifted by the electoral bond scheme, this would allow unlimited and unregulated funding from corporate to political parties, with no transparency requirements either, it marked a severe setback to democratic accountability. Political outcomes could be overtly influenced by corporate interests pumping in limitless money anonymously.

With no restraints and check on the funding coming from the corporate sector to political parties this can give birth to institutionalized corruption and quid pro quo can emerge between political parties and big corporates can influence crucial policies which were to be shaped for the wellbeing of state and its people but with unlimited and unchecked funding from corporate it can be speculated that now the policies will be formed while keeping in mind the profit of big corporates who donated to the ruling party during the time of election. But the government

defended its stance by stating that capping donations would push corporate money back into black channels. It was better to receive such funding transparently even if the donor names were not disclosed.

3.2) **Bonds violates the right to information**

The Supreme court in its verdict, ruled decisively that the electoral bonds scheme violated the right to information which is a fundamental right of citizens of India protected by the constitution of India. By enabling unlimited anonymous and unchecked funding to political parties through electoral bonds, it deprived the voters of the crucial information needed to make informed choice during the elections. The court held that the right to information under article 19(1)(a) could only be restricted on reasonable grounds like sovereignty, integrity, security, public order, etc. anonymous political funding does not qualify as a reasonable ground on which the right to information can be restricted.

The judges ruled that the transparency is vital for the functioning of democracy and political funding should be done through transparent ways which the voters are aware of. If the voters don't know which entity is donating to their political party and what interests they represent, it severely compromises the spirit of democracy. Upholding the PILs against electoral bonds, the Court affirmed that removing transparency requirements and caps on donations was antithetical to free and fair democracy. The verdict stated that the anonymous funding can create a breeding ground for corruption and can harm the interests of public and nation wellbeing. Policies could get shaped not for the betterment of people and nation but due to quid pro quo between political parties in power and big donors. Anonymity of political funding prevents scrutiny of such improper influences. Responding to the government's emphasis on privacy of donors, the Court held that the right to transparent elections outweighed such privacy concerns. Political parties and candidates voluntarily subject themselves to public scrutiny. Hence, voters have the right to know the financial origins of parties seeking power. By banning opaque electoral bonds, the Court has asserted people's right to know crucial details on the forces seeking political power through financial means.

3.3) **Failed to curb black money as claimed**

A key plank of the Supreme courts' verdict was that the electoral bonds failed to curb the black money for which it was devised for and it failed miserably in achieving the goal of curbing black money and increasing the transparency in the process of electoral funding. The government had claimed that by requiring donations to be made through formal banking channels, electoral bonds would expand the formal economy and curb the use of illicit cash in elections. However, the Court found no evidence that the scheme had led to genuine transparency or reduced black money. In fact, rather than curbing the black money the electoral bonds acted as a window to

circulate the black money from corporate to political parties. By enabling unlimited and unchecked donation and removing the requirement for transparency through electoral bonds it facilitated opacity rather than transparency. The Supreme court noted that rather than promoting transparency the electoral bonds does exactly the opposite it undermined the transparency in electoral funding. Prevented regulatory oversight on donations and fostered accountability. The claims that the electoral bonds were a way to reduce corruption in electoral funding through banking channels was just a hollow justification. Upholding the right to information, the Court noted that transparency requirements are internationally recognized tools to curb illicit funding in politics. By enabling anonymous funding through corporate donors to political parties, the bonds have failed to clean up the political finance and get it free from the hands of corruption as claimed by the government.

By removing limits on political donations, electoral bonds also opened the floodgates for money laundering under a legitimate instrument. The Association for Democratic Reforms pointed out that opaque bonds are more damaging than cash donations. The latter at least left some paper trail. Shell companies can still be used to purchase bonds anonymously using illicit funds and donate them to parties. Far from reducing black money, bonds actually legitimized illicit donations due to lack of transparency.

3.4) **Prioritized donor privacy over transparency**

The Supreme court has accorded that the electoral bonds have given undue weightage to the donor's privacy while compromising the transparency in the process of doing so. The electoral bonds while upholding the anonymity of the donor, the electoral bonds scheme compromised the citizens right to information in regards to electoral funding to make informed choice.

The Supreme court has observed that the donations above Rs 2000 were already to be reported to the election commission. Electoral bonds enhanced privacy of the donors significantly by removing this transparency rule itself, rather than making exceptions to disclosure requirements for certain cases. The Supreme court while upholding the citizens right to information ruled that the transparency could only be restricted on reasonable and justified grounds like public order or incitement and constitutional grounds. The anonymity of donors did not meet the threshold of reasonable restrictions to become a ground for reasonably restricting the citizens right to information. The Court has affirmed that privacy cannot be a catch-all justification to deny public information, especially in cases of possible conflicts of interest like electoral funding. Transparency is the default norm of a well-established democracy.

Moreover, the court has noted that parties and candidates voluntarily subject themselves to public scrutiny by being a part and contesting elections. Details of their funding is a matter of significant public interest. Voters have the right to information and on its basis, they have the right to make well informed choice in election. They have a right to be informed that their chosen party in power is funded by a legal entity or a benign source and it can severely affect the policy formation because of quid pro quo between political parties and big corporates the policy can be manipulated to be in favor of corporates rather than being in the favor and wellbeing of the nation and public.

By striking down the bonds as unconstitutional the Supreme court of India had upheld the citizens right to information and transparency in the electoral funding process. The court asserted that anonymizing the details of funding under the grab of protecting privacy was untenable. It observed that voters have the right to information if quid pro quo resulted between donors and parties through significant contributions

Made by big corporates that can affect the fate of the nation and the public. The balance must tilt in favor of transparency in the process of electoral funding because it holds a pivotal value for a voter in choosing its representative. This upholds integrity, accountability, and limits potential of conflict of interests.

4) Conclusion

4.1) Importance of political transparency in electoral processes

The Supreme court's landmark judgement to strike down electoral bonds and declaring them as unconstitutional has emphasized the critical need for transparency and accountability in electoral funding. By banning the electoral bonds because it prioritized the donor's privacy over the people's right to information, the court has upheld the citizens right to information to strengthen the Indian electoral democracy. This conclusion holds immense significance because the elections are the arteries of a democratic system. The fairness in election system and the faith of a common men in the process shapes the quality of democracy and governance. Opaque electoral funding if unchecked for a longer period of time has the power to erode this trust of people that they have in the electoral system of India.

When the powers to influence the policies that are crucial for a nation and its people's development can be manipulated because of big money flow behind closed doors from corporate or other entity that holds only their profit in view even if it is a loss to the whole nation, it spawns corruption the trust of the public in election system depletes. The spawning of corruption can lead to conflict of interest and policy distortions that can severely hurt the welfare of the public. The common man has every right to know the financial hand upon which the political parties and candidates contest election to gain the power to make policies of administration and welfare of people. Transparency in electoral funding will ensure if the political parties are getting the funding from a source that is not thinking of the welfare of the nation and can manipulate the policies for his own good and it can cause severe loss to the soul of democracy, it can be scrutinized by the public it is ensured by transparency. Such scrutiny fosters accountability and safeguards against quid pro quo deals between political elites and their financial patrons. That in the long run can deplete the trust of the people in elections. Therefore, transparency becomes integral to free, fair and ethical democratic processes.

By ordering the SBI for the disclosure of donor details for electoral bonds and all large contributions, the Supreme Court has assertively restored essential transparency standards in India's electoral financing system. This upholds the citizen's right to information and ability to assess the forces seeking to shape political power. The electoral bonds case also demonstrates that opacity in the name of reforms can be more damaging than status quo. Like

electoral bonds rather than becoming a tool to counter the black money circulation and increase the transparency in electoral funding process it became a window through which the corruption in electoral funding started surviving and prospering until the court struck it down as unconstitutional. This affirms why election reforms must strengthen democratic principles, not dilute them. In conclusion, the Supreme Court's commendable ruling striking down electoral bonds will strengthen the integrity and fairness of India's electoral democracy. It reaffirms that transparency in political funding is non-negotiable for free, ethical and accountable democratic processes.

4.2) Need of balanced policies for electoral financing

The recent case of electoral bonds has rightly highlighted the need and importance for an evolving and fair regulatory framework for keeping a check on the process of electoral funding in India. Meanwhile the supreme court has rightly struck down the electoral bonds scheme because it was restricting the citizens right to information and that on without any reasonable restriction or constitutional ground that can justify the restriction of right to information of citizen, the court does not consider donor's privacy as a legitimate and reasonable ground on which the voters can be denied the right to information. It compromised the transparency which was the basic aim of the electoral bonds scheme without the knowledge of the political party's donor and his ideology or the viewpoint of the donor of a political party a voter can not make informed decision. The source of funding may be beneficial and may be severely harmful for the nation and its citizens wellbeing. And when a decided to participate in the election process through contesting elections to be able to be in power and make policies and administer the whole country, the donor and the political party are already under the public domain and the amount and its source are a matter of public scrutiny.

while the Supreme Court restored the 7.5% limit on corporate donations, a case can be made for raising this cap reasonably to around 10-15% of profits. A higher limit allows legitimate funding aligned with companies' interests, without opening floodgates for disproportionate influence. Such nuanced rules distinguish between transparency needed in big donor funding which can skew policies versus building a wider base through smaller donations from individuals, professionals, and enterprises. In conclusion, the electoral bonds judgement had rightly highlighted that there is a need for a policy for managing the process of electoral funding in India but without compromising the citizens right to information maintaining transparency and accountability. While the Court has firmly reiterated the importance of transparency to voters, balanced regulations are also needed to maintain free and fair democratic processes.