

ANALYSING THE ELECTORAL BOND SCHEME, 2018

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I. ABSTRACT

The Finance Act, 2017, was introduced in the Lok Sabha to give effect to the financial proposals of the Union Government for the Financial Year 2017-18 with the primary objective to curb the ever-growing menace of deep-rooted corruption and black money circulating within the political class. The Act introduced a system of Electoral Bonds which could be issued by the scheduled bank for the purpose of electoral funding. Ironically, the objective of transparency in election funding was sought to be achieved, as against the earlier system, by keeping the names of the donors anonymous. The funding received by the political parties is the major source of income for the political parties. The scheme envisages the goal of eliminating corruption and inflow of black money. But in reality, there is reluctance on the part of existing Political Establishments to introduce transparency and accountability within parties. This has only permitted corruption to percolate further in the electoral process.

The Electoral Bonds Scheme, 2018 was introduced as an alternative to cash donations made to the political parties but now the same has become the centre of controversy over the allegations that it flouts the concept of free and fair election, citizens 'Right to Know' and certainly does not qualify to be a reasonable restrictions under Article 19 (2) of the Indian Constitution. However good the scheme may appear to be but the fact that the donor's name would be kept confidential and several other amendments brought in force in various Acts still remain a point of discussion.

This paper focus on the amendments brought in force to effectuate the issuance of electoral bonds and analyze the legality of the Electoral Bonds as a step towards transparency. The paper also highlights the purpose of the scheme, intention of the government for introduction of such scheme and what are the challenges faced by this scheme.

Key-Words: *Electoral Bonds, Corruption, Black-money and Transparency.*

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II. INTRODUCTION

The concept of electoral bonds was introduced by the Finance Bill, 2017 and the P.M Narendra Modi led NDA government notified the Electoral Bond Scheme, 2018 on 29th of January, 2018. The scheme was made to alternate the cash donations and ensure transparency in the political funding. Electoral Bonds are like the promissory notes which can be purchased by any individual who is the citizen of this country or any body corporate which was established or incorporated in India. Thereafter, an individual could donate the electoral bond to any eligible political party of his or her choice. The term 'Eligible Party' in the above context means only those parties which are registered under Section 29A of the Representation of People's Act, 1951 (Act 43 of 1951) and have secured at least one percent of votes in last or recent Lok Sabha elections.

As said earlier, the bonds can be purchased by an individual or a body corporate digitally or through cheque. Then this bond is donated to a political party. And for encashing the donated bonds, the qualified political parties are allotted verified accounts by the Election Commission of India and only this account can be used for all electoral bonds' transactions. These Electoral accounts are issued by selected branches of State Bank of India. The 29 specified State Bank of India branches are in cities such as New Delhi, Gandhinagar, Chandigarh, Bengaluru, Bhopal, Mumbai, Lucknow, Chennai, Kolkata, and Guwahati.

The Electoral Bonds are available for purchase for ten days at the beginning of every quarter of the year i.e. in January, April, July, and October. The first ten days of these months have been specified by the government in the year of Lok Sabha elections. Apart from this, the said donations are tax-deductible and a donor will get a deduction, and the receiver i.e. the political party, will get tax exemption, as long as returns are filed by the political party. Moreover, the bonds can be issued in multiples of Rs 1,000, Rs 10,000, Rs 100,000 and Rs 1 crore. The Money can be encashed by that particular party through the issued Bank Account under the permission of the authorized banks within that particular period.

The important feature of this scheme, as claimed by the government, is that it does not reveal the identity of the donor i.e., the identity of the donor remains anonymous. Therefore, the identity of the owner is only known to the political party to which the donor donates the electoral bond. And interestingly, the amendments brought in force to effectuate the scheme show that Contribution Reports of the political parties does not reflect the contributions received through electoral bonds but only reflects the quantum of donation so received by the parties. Ironically, this is so done to bring about transparency in political financing or funding of political parties.

III. AMENDMENTS BROUGHT ABOUT TO EFFECTUATE ELECTORAL BONDS

The introduction of the Electoral bonds was sought to bring about transparency and accountability in political funding, while preventing future generation of black money. And in order to achieve this objective of transparency and accountability several amendments were brought about in the following laws in the following manner.

1. Reserve Bank of India Act 1934: Section 31 (3) was inserted by virtue of which the Central Government could authorize any scheduled bank to issue Electoral Bonds.
2. Representation of Peoples Act 1951: A proviso was added to section 29C (1) by virtue of which the political parties were not required to disclose any information of the contribution received by way of an electoral bond. In other words, the political parties were not required to disclose the identity of individuals and companies who made donations through electoral bonds bought from the commercial banks.
3. Income Tax Act 1961: Section 13A was amended to insert in clause (b) of the first proviso words "other than contribution by way of electoral bonds" and new clause (d) was inserted which specified that donations exceeding Rs 2000 would be received by a cheque or through electoral bonds. Also, IT Act was sought to be amended to exclude donations received by these political parties through electoral bonds from being reported to the IT Department every year in order for them to continue to avail the exemption from paying income tax.
4. Companies Act, 2013: Section 182 of the Act was amended to remove the said limit of 7.5% of the net profits of the last 3 years for the company to make donations to the political parties and the requirement of a company to disclose the names of the political parties to which a contribution has been made in their annual statement of account the name(s) of the political parties. The companies are no longer required to disclose the break-up of contributions made to different political parties.
5. Foreign Contribution Regulation Act, 2010: Section 2 of the Act was amended to exempt the foreign companies with subsidiaries in India to fund political parties.

IV. REPERCUSSIONS OF SUCH AMENDMENTS

The electoral bonds scheme was brought in force to bring about some transparency and accountability in the political funding. But the amendments made to the above-mentioned legislations go far beyond than what is sought to be achieved. The scheme has, in fact, opened the doors for unlimited political donations, even from foreign companies, and have legitimized electoral corruption, and at the same time has ensured complete opaqueness in political funding.

The consequence of the amendment made to the Representation of People's Act, 1951 is that the annual contribution reports of political parties which has to be furnished to the Election Commission of

India need not mention names and addresses of those contributing through electoral bonds. This question the very objective of transparency when the political parties are not bound to file contributions received through electoral bonds. The citizens right to know is also an important constitutional right. In consequence of the same, the Election Commission of India regularly displays the contribution reports of the political parties on its website by which citizens get to know about the contributions made to various political parties and the source of such contribution. But the introduction of the electoral bonds has made the entire political funding an opaque process as the Election Commission and the citizens of the country will not get to know the vital information regarding political contributions.

The consequence of the amendment made to the Companies Act, 2013 is that it has removed a cap of 7.5% of the net profits of the last 3 years for the company to make donations to the political parties and has also done away with the requirement disclosing the names of the political parties to which a contribution has been made in their annual statement of account. This has allowed the loss-making companies to make political donations out of their capital or reserves and influence the policies of the government. The result of this is that the corporate funding would increase manifold as there is no limit as to how much the companies can donate. The most vital aspect of this amendment is that it opens up the possibility of companies being brought into existence by unscrupulous elements primarily for routing funds to political parties through opaque instruments like electoral bonds. This can have an adverse effect as there is a danger of quid pro quo for the benefits passed on to such companies or their group companies by the elected government. This amendment infringes the very basic Right to Know enshrined under Article 19 of the Indian Constitution and cannot be saved by virtue of reasonable restriction under Article 19(2) because it is an irrational restriction on information at the cost of the larger public and it is a dent on the very principles of transparency and accountability.

The objective of such amendments was to curb black money. But in reality, the black money which is generated by the companies or individuals is pumped back to the political parties to reap favorable policy decisions.

The consequences of the amendment to the Income Tax Act, 1961 is that any income of a political party even by way of voluntary contributions received by a political party from any person are excluded from computing the total income of the previous year of such political party. But the same is subject to the conditions that such political party keeps and maintains such books of account and other documents, maintains a record of voluntary contribution in excess of twenty thousand rupees and their accounts are audited by an accountant as defined under law for time being in force and consequently furnish a report to the Election Commission.

That Section 29C of the Representation of People's Act, 1951 provides that every political party shall furnish a report to the Election Commission with regard to the details of contributions received by it in excess of twenty thousand rupees from any person in order to avail the income-tax relief as per the

provisions of Income-tax Act, 1961. But by the insertion of sub-section (3) in Section 29C the political parties are not required to disclose any information of the contribution received by way of an electoral bond. In other words, the political parties were not required to disclose the identity of individuals and companies who made donations through electoral bonds bought from the commercial banks.

The consequences of the amendments to the RBI Act, 1934, Representation of People's Act, 1951, and IT Act, 1961 is that the annual contribution reports of political parties need not disclose the names and addresses of those contributing through electoral bonds. It is ironic how transparency can be maintained or brought about without disclosing the contributions received by the political parties through electoral bonds. This has only made the political parties more unanswerable and unaccountable causing annoyance, inconvenience, and obstruction to the citizens at large by withholding crucial public information regarding political funding.

The consequences of the amendment to the Foreign Contribution Regulation Act, 2010 is to exempt the political parties from foreign funds scrutiny and that too with retrospective effect from 1976. This amendment was brought in effect to by-pass the Delhi High Court judgment in 2014 wherein it had charged both Congress and BJP for receiving foreign funds from the firm Vedanta and its subsidiaries, in violation of the existing FCRA Act, and the RPA Act which specifically prohibits parties from accepting contributions from a foreign source. In addition, it had asked the Election Commission to take action against the two political parties. But with this amendment the political parties are excluded from such scrutiny with retrospective effect from 1976. Thus, any political party receiving funds from a foreign source is not to be held accountable in violation of the FCRA Act and the RPA Act. When compared to major democracies, they have tightened their disclosure rules. For instance, in US, the political party has to provide the name, occupation, employers and addresses of all individuals who contribute more than \$200 to political entities and in the United Kingdom, the party has to disclose information about the donor when they make any contribution above £7,500.

Comparatively, India is the world's largest democracy and it has, by way of such electoral reform, legitimized financial opacity, and political unaccountability.

V. CONCLUSION

The concept of Electoral Bonds was brought into existence with the objective to bring about greater transparency and accountability in the political funding but it rather became the centre of controversy as on one hand government claimed transparency in the political funding and on the other decided not to reveal the identity of the donor and keep it anonymous. This not only evades the concept of free and fair elections but also violates the citizen's 'Right to Know'.

In order to achieve the objective of this scheme various amendments were made to the existing legislations but there were a number of drawbacks of such amendments. The scheme opened the doors for unlimited political donations, even from foreign companies, legitimized electoral corruption, and ensured complete opaqueness in political funding. The aim to eliminate corruption and keep a tab on the influx of black money for funding elections appeared to be nowhere in sight. The outcome of this scheme did not turn out to be as expected as it made the political finance regime opaquer thus creating incentives for corruption leading to citizen's loss of faith in the democratic process.