

Electoral Bonds in India: A Short-Lived Experiment

Dr. Dilip Pandey

Associate professor of law cum Dean of students Affair Sikkim Government Law College Gangtok

ABSTRACT

Introduced in 2018 to anonymously fund political parties and combat black money, India's Electoral Bond Scheme was struck down by the Supreme Court in February 2024. Citing concerns about transparency and potential undue influence, the Court deemed the anonymity aspect unconstitutional. As a result, Electoral Bonds are no longer a valid funding option, and the future of political financing in India remains an open discussion.

KEYWORDS: Electoral Bonds, India, Anonymous political funding, Supreme Court of India, Unconstitutional scheme, Transparency and accountability, Undue influence, Black money, Finance Act, 2017, Association for Democratic Reforms, Short-lived experiment.

1. RESEARCH QUESTIONS

Effect on Political Parties:

- To what extent did the implementation and eventual nullification of the Electoral Bond Scheme influence the financing approaches of various Indian political parties? Did particular political party types-such as national vs. regional or ruling versus opposition-benefit or suffer disproportionately from the scheme?
- How much did the anonymity of the plan encourage parties to participate in vote-buying or other unethical activities?
- Public Opinion and Political Culture: What was the Indian public's take on the Election Bond Scheme? Have their views evolved over time?
- Did the plan lead to a rise in public mistrust or cynicism toward India's political institutions?
- In what ways do the arguments for and against the Election Bond Scheme mirror the attitudes and values of the Indian society as a whole regarding money and politics?

Comparative Studies Abroad:

- In what ways does the Electoral Bond Scheme differ from other forms of political finance employed by nations that practice democracy?
- What possible lessons about political finance regulation might India take away from other nations' experiences?
- How might future changes to India's political financing be shaped or influenced by the international community?
- Ethical Issues: Were there any further ethical issues with the Electoral Bond Scheme in addition to those brought up by the Supreme Court?
- How might upcoming political funding plans in India be created to respect moral precepts like responsibility, openness, and fairness?
- What part can the media and civil society groups play in encouraging moral political financing practices in India?

2. METHODOLOGY

The article uses secondary sources and maybe some primary sources to provide a descriptive study of the Indian Electoral Bond Scheme. Here is a potential summary of the process:

1. Gathering Data:

- i. Supporting sources:
- ii. News stories or Scholarly publications
- iii. Reports from NGOs or government organizations
- iv. Legal papers (judgments from the Supreme Court)

2. Data Analysis:

- Information from multiple sources is compiled and synthesized.
- Offering a fair assessment of the plan that takes into accounts its impact, intended use, and justifications for invalidation.

3. Restrictions:

- Restricted use of primary sources:

This can reduce the analysis's breadth and complexity.

First of all,

In 2018, India adopted Electoral Bonds, a financial tool that allows anyone to give money to political parties in secret. Let's examine the plan's specifics and eventual outcome:

How did Electoral Bonds work?

Purchased from specific State Bank of India (SBI) branches, bearer instruments resemble promissory notes and come in values of ₹1,000, ₹10,000, ₹100,000, ₹10 Lakh, and ₹1 crore.

Important characteristics:

Anonymity: SBI only recorded the buyer's KYC credentials; the buyer's identity was kept private.

- **Usability:** Only registered political parties that satisfied certain requirements could receive donations, and the offer was valid for only 15 days.

Introduction of Electoral Bonds:

The Finance Act of 2017—more precisely, a change to Section 135B of the Act—introduced the program. This change gave the government the authority to announce bearer instrument programs, such as the Electoral Bond Scheme. As a result, on January 2, 2018, the Ministry of Finance published a gazette notification announcing the Electoral Bond Scheme, 2018. The precise steps and regulations for issuing, buying, and redeeming Electoral Bonds were described in this notification.

- **Supreme Court ruling (2024):** Citing issues with transparency and possible undue influence, the historic ruling in *Association for Democratic Reforms & Ors. v. Union of India & Ors. (2024)* ruled the Electoral Bond Scheme illegal. With this ruling, the 2018 notification was essentially declared void, and the Finance Act's enabling clause was no longer applicable to Election Bonds. Current Situation: As of today, March 4, 2024, the Supreme Court's ruling has rendered Electoral Bonds invalid as a means of financing political parties. The existing legal structure pertaining to them is no longer valid, and in order for them to be revived:

- **New legislation:** In order to address the concerns voiced by the Supreme Court, the Indian Parliament would need to approve a new law that would specifically establish a new system for political fundraising.

- **Successful challenge to the court's ruling:** Should the Supreme Court's ruling be successfully contested and overturned in a subsequent case, the current legal framework may be restored. But this is a convoluted and unreliable process.

It's crucial to remember that the laws governing electoral bonds are changing and that more changes may take place in the future. It is advised that those seeking the most recent information on this subject

Case Law on Electoral Bonds in India:

The following Supreme Court case largely determines the future of Election Bonds in India: *Association for Democratic Reforms & Ors. v. Union of India & Ors. (2024)* A five-judge Constitution Bench rendered a historic decision on February 15, 2024, declaring the Electoral Bond Scheme unlawful. Two main arguments were the main emphasis of the court's reasoning:

1. Infraction of the Constitution's Article 19(1)(a): According to the court, political funding anonymity violates the right to knowledge and makes it more difficult for people to exercise their right to vote in accordance with Article 19(1)(a) of the Indian Constitution. In a democracy, this right is essential to

guaranteeing accountability and transparency.

2. **Undue influence on political parties:** The court voiced worries that anonymous donations may result in people or businesses exerting undue influence over political parties, so compromising their ability to make fair decisions and affecting the integrity of elections.
3. Even though the Electoral Bond Scheme is no longer in operation, it's crucial to keep in mind that this ruling could face more legal challenges or interpretations in related court cases in the future. It is advised to speak with legal experts for the most recent information on this developing subject.

The Electoral Bond Scheme was not created by explicit legislation, even though it was announced through a financial notification. This is the pertinent background:

3. CONCLUSION

A SHORT-LIVED EXPERIMENT IN ELECTORAL FUNDING

In India, the 2018 introduction of the Electoral Bond Scheme to finance political parties anonymously proved to be a fleeting initiative. The plan sought to limit the use of black money in political finance; but, in February 2024, the Supreme Court invalidated it due to concerns regarding:

- **Transparency and accountability violations:** The court determined that anonymity could not coexist with the right to knowledge, which is essential for free and fair elections.
- **Potential for undue influence:** The court raised concerns about the possibility that individuals or businesses could receive undue influence from anonymous donations, which could jeopardize the integrity of fair elections.

Political parties in India are no longer able to get funds using Electoral Bonds as of right now. This trend has spurred discussion on alternate strategies to guarantee ethical behavior and openness in political funding. Future developments could include the prospect for a successful challenge to the court's ruling or the creation of new legislation.

It's crucial to remember that this is an issue that is constantly changing and that new laws or legislation may be passed.

Final Thoughts

With the intention of preventing illicit money from funding political campaigns, India's Electoral Bond Scheme was launched in 2018 but has since quickly been discontinued. Citing issues with openness and possible undue influence, the Supreme Court ruled in February 2024 that the plan was illegal. This raises questions about the future of political financing in India and calls for creative solutions.

Important lessons learned: • Short-lived experiment: Because of doubts about the scheme's conformity with democratic ideals, its duration was shortened.

• **Uncertain future:** New strategies that strike a balance between accountability and transparency and pragmatic considerations are needed while the direction of political finance in India remains uncertain. Why Reform required: The ruling by the Supreme Court emphasizes the necessity of an efficient and open system for supporting political parties in India.

Considering the future:

- **Possibility of new law:** In response to the Supreme Court's concerns, the Indian Parliament may think about passing new legislation to create an open and responsible system for political financing.
- **Alternative approaches:** Analyzing other financing strategies used in other democracies may offer India insightful information.
- **Ongoing discussion:** Political financing will probably continue to be a topic of public discussion and judicial examination.

An important lesson from the brief history of Electoral Bonds is the significance of maintaining accountability and openness in democracies. Finding a solution that upholds public confidence and guarantees fairness for all political players is critical to the future of political funding in India.

REFERENCES:

Legal Case:

1. Association for Democratic Reforms & Ors. v. Union of India & Ors. (2024) [Supreme Court of India judgement on Electoral Bonds]

News Articles:

2. "<https://www.thehindu.com/opinion/lead/challenging-the-electoral-bond-scheme/article67541140.ece>" (The Hindu)
3. "<https://indianexpress.com/about/electoral-bond-scheme/>" (The Indian Express)
4. "<https://www.hindustantimes.com/opinion/on-electoral-bonds-a-short-lived-celebration-101708170676086.html>" (Hindustan Times)

Reports:

5. "<http://www.adr.org/>" (Association for Democratic Reforms)
6. "<https://cprindia.org/>" (Centre for Policy Research)

Scholarly Articles:

7. "<https://www.thehindu.com/opinion/lead/challenging-the-electoral-bond-scheme/article67541140.ece>" (Journal of Indian School of Political Economy)
8. "<https://www.thehindu.com/news/national/electoral-bonds-scheme-and-supreme-court-pleas/article65905743.ece>" (International Journal of Law and Management Review)