



India's Electoral Bond Scheme: Declared Unconstitutional by the Court

Vinod Rai

Summary

The Supreme Court struck down, as unconstitutional, the electoral bond scheme introduced by the Bharatiya Janata Party government in 2018. The Court upheld the voter's right to transparency and felt that the source of corporate funding through electoral bonds could not be opaque. It restrained the State Bank of India from issuing more bonds and directed it to reveal the details of past funding to the Election Commission of India which would be placed on its website.

In a historical verdict, the Indian Supreme Court struck down the Electoral Bond (EB) scheme, notified by the government in 2018, as unconstitutional. In a verdict seen as reaffirming faith in free and fair elections, a five-judge bench unanimously felt that the scheme violated the citizen's right to information and provided opacity to the source of funding.

It would be recalled that while introducing the [EB scheme in the budget for 2017-18](#), the government had underlined that transparency in political funding is fundamental to the fairness of the election process. The government had introduced amendments to various Acts to permit such funding. However, the scheme was challenged by the Association for Democratic Reforms and others.

In its verdict, [the Court held that all the amendments](#) made in the Representation of People Act (RPA), the Companies Act (CA) and the Income Tax Act (ITA) as violative of the fundamental right to information under Article 19(1)(a) and the Right to Equality (Article 14) of the Constitution. The amendment in Section 29C of the RPA excluded the EBs from the requirement of mandatory reporting by political parties to the Election Commission of India (ECI). Section 13A(b) of the ITA was amended to make cash donations of only ₹2,000 (S\$24), received other than by way of cheque, bank draft, electronic clearing system or EBs, eligible for tax exemption from income tax.

The amendment of Section 182(1) and Section 183(3) of the CA had the effect of making every company, loss-making or profit-making, eligible to make unlimited corporate funding to political parties as the earlier ceiling of 7.5 per cent of profits was removed. The Court has restrained the State Bank of India (SBI) from issuing any more EBs. It has directed the bank to submit the details of EBs purchased since 12 April 2019 (the date of the interim order of the SC) to the ECI. The details to be submitted shall include the date of purchase of each electoral bond, the name of the purchaser and the denomination of the electoral bonds purchased.

The SBI has also been directed to submit the details of the political parties which received and deposited the contributions through EBs from the date of the same interim order. The details to be furnished shall include the date of encashment and the denomination of each of the electoral bonds. These details have been directed to be furnished by 6 March 2024. The ECI has been further directed to publish the information received from the SBI on its website by 13 March 2024.

What are Electoral Bonds?

Electoral bonds are bearer instruments, like currency notes. They are sold in denominations of ₹1,000 (S\$12), ₹10,000 (S\$120), ₹100,000 (S\$1,200), ₹1 million (S\$12,000) and ₹10 million (S\$120,000). They can be bought by individuals, groups and corporate organisations and donated to the political party of their choice, which can then redeem them free of interest after 15 days.

While the political parties are required to reveal the identities of all donors who donate more than ₹20,000 (S\$240) in cash, the names of those donating via EBs have been exempted from being revealed.

Concerns Raised against the Scheme Raised in 2017

Institutions such as the RBI and ECI had expressed reservations against the scheme prior to its introduction. The RBI had argued that the amendment would enable multiple non-sovereign entities to issue bearer instruments as RBI is the sole authority for issuing bearer instruments which have the potential to become currency. The RBI had also felt that while the identity of the person or entity purchasing the bearer bond will be known because of the *Know Your Customer* requirement, the identities of the intervening persons/entities will not be known, and this would impact the principles of the Prevention of Money Laundering Act 2002. The RBI had also reiterated the possibility of shell companies misusing bearer bonds for money laundering transactions.

The ECI had opposed the scheme on the grounds that EBs would have an adverse impact on the transparency of political funding of political parties. The ECI felt that the amendment to exempt reporting of funds received through EBs from reporting under the Contribution Report as prescribed in the RPA, would be a retrograde step as far as transparency of donations was concerned. It also felt that companies contributing to the political parties must declare party-wise contributions in the profit and loss account to maintain transparency in the financial funding of the political parties and that the earlier provision prescribing a cap on corporate funding should not be deleted because unlimited corporate funding would increase the use of black money for political funding through shell companies.

Grounds for Striking Down the Scheme

In striking down the scheme, the Court has upheld the basic feature of the Constitution that in a democracy, voters are the most important stakeholders and that in any legal framework of political funding, the interest of a public good must prevail over a political party's

preferences. The EB scheme was seen to violate the RTI, since in any election, the voter must have the right to know the source of funding of a political party for whom he is going to vote. The Court held that while the information about a voter's right to privacy has to be protected, the legislation cannot infringe on his right to information. This is critical in the case of corporate funding as compared to individual donations. The Court also held that in allowing unlimited corporate funding, the ability of loss-making companies to contribute violates the right to equality and it exacerbates the influence companies wield over political parties. Permitting loss-making companies to contribute increases the risk of such companies making [quid pro quo arrangements](#) as they are more likely to influence policy than any profitable entity.

In striking down the scheme, the Court appears to have placed the voter's right to transparency on a pedestal and held that opaque corporate donations are purely business transactions which may influence policymaking. The verdict has been widely acclaimed as protecting the basic features of Indian democracy.

.....

Mr Vinod Rai is a Distinguished Visiting Research Fellow at the Institute of South Asian Studies (ISAS), an autonomous research institute in the National University of Singapore (NUS). He is a former Comptroller and Auditor General of India. He can be contacted at isasvr@nus.edu.sg. The author bears full responsibility for the facts cited and opinions expressed in this paper.