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ELECTORAL BONDS UNVEILED: A SPECTACULAR SAGA OF SHATTERED EXPECTATIONS

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I. ABSTRACT

In the sinister world of political funding, Electoral bonds emerged as a boon. This article delves into the journey of electoral bonds, tracing their inception, implementation, and impact on the political landscape. It analyses the initial expectations set by the electoral bond scheme against the backdrop of the actual outcomes, shedding light on the discrepancies and controversies surrounding this financial instrument. The article presents a compelling narrative of how electoral bonds have deviated from their intended course, ultimately leading to a landscape of shattered expectations.

II. KEYWORDS:

Electoral Bonds, Transparency, Political Funding, Supreme Court, Corruption, State Bank of India (SBI), Black Money.

III. WHAT IS THE ELECTORAL BOND SCHEME?

The Electoral Bond scheme is a financial instrument for providing donations to political parties while keeping the donor's identity anonymous. This scheme was introduced in the Finance Bill, 2017 during the Union Budget 2017-18.²³ The electoral bond is a type of pledge that is issued as a bill of exchange and is a bearer. A bearer instrument is an instrument that does not display the name of the buyer or recipient and does not record information about the owner, and the holder (political party) of the instrument is considered its owner. This scheme was notified on January 2nd, 2018, Under the 2018 scheme, certain branches of the State Bank of India allow individuals (citizens of India) and domestic companies to donate these bonds, issued in multiples

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² Finance Act, 2017, s. 135, No. 7, Acts of Parliament, 2017

³ Wikipedia-https://en.wikipedia.org/wiki/Electoral_Bond

of Rs 1000, Rs 10000, Rs 1 lakh, Rs 10 lakh, Rs 1 crore, to political parties according to their will. An individual can buy bonds singly or jointly with other individuals. No limit exists on the number of electoral bonds one can purchase.⁴ The eligibility criteria for a party to accept these bonds are, a party registered under section 29A of the Representation of the People Act 1951, who received at least 1 percent of the votes cast in the last General Election to the House of People or the Legislative Assembly of the State, shall be eligible to receive the Electoral Bonds.

IV. WHY WAS THIS SCHEME INTRODUCED

In the labyrinth of corrupted political funding, this scheme was looked upon as the sole solution for solving this for once and all, as before the introduction of this scheme there were many instances of the corrupted political landscape such as the the 2G spectrum scam, which came to light in 2010. This scandal involved the underpricing and illegal allocation of telecom licenses, leading to significant financial losses to the government. The scam exposed the deep-rooted corruption in political funding, with politicians and businessmen allegedly involved in bribes and kickbacks⁵. As highlighted by the Corruption Precipitations Index, India`s rank in 2017 was underwhelming at 81.⁶ The Electoral Bond Scheme, launched by the NDA government in January 2018, was aimed at transforming the political finance landscape. The main goals were to increase transparency, limit the use of dark money, and strike a balance between donor anonymity and accountability. By channeling donations through official banking channels, efforts have been made to ensure that all donations are properly recorded on political party balance sheets. This allowed donors to donate without publicly revealing their identity, preventing undue influence. However, the plan has been criticized for its potential impact on democratic processes and its lack of full implementation.⁷

⁴ Constitutionality of the Electoral Bond Scheme available at <https://www.scobserver.in/cases/association-for-democratic-reforms-electoral-bonds-case-background/>

⁵ 2G Spectrum Scandal available at https://www.thehindu.com/topic/2G_Spectrum_Scandal/

⁶ Corruption Precipitation Index available at <https://www.transparency.org/en/cpi/2017>

⁷ What are Electoral Bonds? Why were they Introduced? Available at <https://www.businesstoday.in/>

V. CRITIQUES AND LEGAL CHALLENGES

The Supreme Court of India's involvement in the scrutiny of electoral bonds has been pivotal, leading to significant legal battles that focused on the transparency and constitutionality of the scheme. Initially, the Supreme Court issued orders for the government to disclose details of electoral bonds, emphasizing the need for transparency in political funding. Despite these orders, the government's non-compliance highlighted the ongoing tension between the judiciary's push for accountability and the executive's defense of the scheme's privacy provisions.⁸

In a landmark judgment dated February 15, 2024, the Supreme Court deemed the electoral bonds scheme unconstitutional, ordering the State Bank of India (SBI) to disclose all details of the donors, the amounts purchased, and the recipients. This decision underscored the Court's concern over the potential for money laundering and the unfair advantage it provided to certain political parties, thereby violating the right to information.⁹ Furthermore, the Court mandated the SBI to furnish details of donations through electoral bonds to the Election Commission of India (ECI), which was instructed to publish these details on its website by March 13, 2024, marking a significant step towards enhancing transparency in political funding.¹⁰

The use of shell companies for the sole purpose of funding money into politics has had a detrimental impact on the fairness and transparency of the political system. These companies, often created exclusively for political funding, are essentially hollowed-out entities that obscure the true origins of the funds. Shell companies have long been misused for political funding, creating a lack of transparency and fairness in the political system. These companies are often used as a means to hide the true source of funds and bypass campaign finance regulations. One example of this misuse can be seen in the case of the 2014 Lok Sabha elections in India. It was discovered that several shell companies were used to funnel illegal funds into political campaigns,

⁸ Electoral Bonds: What are they? What does the newly released data reveal? Would it make an impact available at <https://www.businessinsider.in/politics/electoral-bonds-what-are-they-what-does-the-newly-released-data-reveal-would-it-make-an-impact/articleshow/108524339.cms>

⁹ Wikipedia- https://en.wikipedia.org/wiki/Electoral_Bond

¹⁰ Electoral Bonds: Where Did They Come From, Where Did They Go? Available at - <https://thewire.in/government/electoral-bonds-where-did-they-come-from-where-did-they-go>

allowing candidates to exceed expenditure limits and influence the outcome of the elections.¹¹ This not only undermines the fairness of the electoral process but also highlights the corruption that can arise from such practices. This lack of transparency not only undermines the fairness of the political process but also raises legal and ethical concerns. Such practices can enable undisclosed entities to exert influence on political decisions without being held accountable. To address these issues, it is imperative to implement stricter disclosure requirements, enhance due diligence procedures, and enforce legal reforms to prevent the misuse of shell companies for political funding. By doing so, the integrity of the political process can be upheld, promoting greater transparency and fairness in political finance.¹² The controversy surrounding electoral bonds reflects broader debates on the balance between donor privacy and the public's right to know, highlighting the challenges of reforming political funding mechanisms in India.

VI. IMPACT ON POLITICAL FUNDING AND DEMOCRACY

The electoral bonds scheme in India has significantly influenced political funding and raised questions about its impact on democracy. Notably, the Bharatiya Janata Party (BJP) emerged as the primary beneficiary, receiving a substantial portion of the donations through this scheme. The BJP encashed about 1,300 crores worth of electoral bonds during the 2023 financial year, accounting for nearly half of the total donations. Conversely, the opposition Indian National Congress received only about 10% of the donations¹³, highlighting a disparity in funding that critics argue could undermine the democratic process by favoring certain political entities over others.^{14,15}

¹¹ Political Party: Who pays for the party? Available at [Political funding: Who pays for the party? - India Today](#)

¹² Should loss-making, shell firms be barred from political funding? Here's what FM had to say available at [Should loss-making, shell firms be barred from political funding? Here's what FM had to say \(msn.com\)](#)

¹³ Electoral Bonds: A Catalyst for Opaque Political Financing. *Economic and Political Weekly*, 59(23), 12-19.

¹³ What were India's Electoral Bond and how did they power Modi's Party <https://www.reuters.com/world/india/what-were-indias-electoral-bonds-how-did-they-power-modis-party-2024-02-16/>

¹⁵ India's Supreme Court scraps electoral bonds, calls them 'unconstitutional' available at <https://www.aljazeera.com/news/2024/2/15/indias-supreme-court-scraps-electoral-bonds-calls-it-unconstitutional>

The concerns extend beyond the distribution of funds to the broader implications for transparency and accountability in political financing. The Election Commission of India and various critics have voiced apprehensions that the lack of transparency facilitated by the anonymity of electoral bonds could lead to an unchecked flow of 'black money' into the political arena. This, in turn, might increase the influence of money in politics¹⁶, potentially distorting the democratic process and leading to policy decisions that favor wealthy donors over the public interest. Furthermore, the Supreme Court's ruling to ban electoral bonds has sparked discussions on the future of political funding in India. Advocates for transparency argue that this decision could lead to greater disclosure of donor identities and donations received by each political party, thereby enhancing the transparency of political funding. However, political parties still have other avenues for funding, including direct funding from corporations, which they are required to declare. This ruling could potentially shift the landscape of political financing, emphasizing the need for comprehensive reforms to ensure a fair and transparent system.¹⁷

VII. RECENT DEVELOPMENTS AND SUPREME COURT VERDICT

Despite the Indian government's defense of the Electoral Bonds scheme as a measure to enhance transparency and accountability in political funding, the Supreme Court's ruling on February 15, 2024, in the case of Association for Democratic Reforms Vs Union of India¹⁸, declared the system unconstitutional. The Court's directives were clear and multifaceted. Firstly, the Supreme Court ordered the SBI to reveal the identities of bond buyers and provide detailed information about the bonds redeemed by each political party. This decision aimed at eliminating the anonymity that had previously shrouded political donations, thus ensuring a higher degree of transparency in political funding. Following the Court's order, the SBI complied by sharing comprehensive details on bonds, including unique numbers, purchasers, and

¹⁶ SC verdict on Electoral Bonds: A misjudgment for Indian Democracy available at [SC verdict on electoral bonds: A misjudgment for Indian democracy | The Indian Express](#)

¹⁷ Electoral Bonds: The Safeguards of Indian Crumbling Democracy available at <https://carnegieendowment.org/2019/11/25/electoral-bonds-safeguards-of-indian-democracy-are-crumbling-pub-80428>

¹⁸ Ass'n for Democratic Reforms V. Union of India, W.P. (C) No. 333/2015 (India).

encashers, with the Election Commission of India (ECI).¹⁹ The ECI was then directed to upload this information on its official website, making it accessible to the public and ensuring an added layer of transparency. The Supreme Court's decision to scrap the electoral bond system marked a significant shift in the landscape of political funding in India. By eliminating anonymous donations, the ruling aimed to curb the influence of undisclosed financial contributions on the political process²⁰. The Court also called for an immediate cessation of bond issuance by the SBI and mandated the sharing of all bond purchase details since April 2019 with the ECI.²¹ The court also emphasized the fact that this particular scheme was hindering Article 19(A) of the Indian Constitution, in India, citizens have the freedom to express their opinions, ideas, and thoughts through various means, including writing, speech, and visual representations. By striking down the scheme, the court emphasized the importance of transparency and accountability in political funding while safeguarding citizens' fundamental rights. This series of directives underscores a concerted effort by the judiciary to enhance transparency and accountability in political funding, addressing concerns over the use of black money and the potential for financial manipulation within the electoral system.

VIII. CONCLUSION

While the initial intent behind electoral bonds was to clean up the channels through which political parties receive funding, the practice raised pertinent questions about the balance between privacy and public accountability. The Supreme Court's decision to deem the scheme unconstitutional and mandate full disclosure of transaction details marks a pivotal moment in the pursuit of transparency, illustrating the judiciary's role in shaping policies that affect the democratic framework of the nation.

¹⁹ Why India's Supreme Court Eliminated Anonymous Political Donations available at <https://time.com/6696481/india-electoral-bonds-supreme-court/>

²⁰ Supreme Court Orders 'complete disclosure' on electoral bonds from SBI available at <https://www.thehindu.com/news/national/electoral-bonds-case-supreme-court-says-state-bank-of-india-must-provide-full-details/article67963507.ece>

²¹ Why India's Supreme Court Eliminated Anonymous Political Donations available at <https://time.com/6696481/india-electoral-bonds-supreme-court/>

This ruling not only challenges the current mechanisms of political financing but also sets a precedent for the evaluation of future reforms in this area. The implications of this judgment extend beyond the immediate reactions of political entities and into the broader conversation about democracy and the influence of money in politics. By compelling a move towards more transparent practices, the verdict has the potential to redirect the flow of political contributions in a manner that ensures a higher degree of accountability. As India navigates the aftermath of this landmark decision, the ongoing dialogue between privacy rights and the public's right to know remains a critical consideration for all stakeholders involved in the democratic process.