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ELECTORAL BOND: LACK OF TRANSPARENCY IN THE ELECTORAL SYSTEM OF INDIA

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The concept of Electoral Bonds has led to be one of the corrupt method of political funding, wherein it was put forth, especially to ensure that there was a transparent method for political funding. In the case of Association for Democratic Reforms V Union of India 2024 INSC 113, Electoral Bonds was declared to be against the principles of the Indian Constitution, as it violated the right to information for the Indian voters, which has later proved to be against the system of democracy.

Electoral Bonds are a type of financial instrument resembling a promissory note specifically introduced for the purpose of political funding. In a promissory note, the details of the payer and payee are mentioned. But in the case of Electoral Bonds, the details of the payer and payee are not mentioned. That is because to ensure transparency and secrecy in between the parties. Former Union Minister Arun Jaitley during the 2017 to 2018 Union Budget, introduced the concept of Electoral Bonds. He stated that after all these years of Independent India, there is no transparent and legitimate system of political funding to support the idea of free and fair elections. The system of electoral bonds was introduced to make sure there shall be a free and fair election taking place.

On the 14th of May, 2016 in the Finance Act, 2016 was enacted, it also amended Section 2(1)(j)(vi) of the Foreign Contribution Regulation Act, 2010 (FCRA), which frames the definition of “foreign source” which shall allow the foreign companies which holds majority share in Indian companies, to fund political parties. Before the above mentioned amendment, foreign companies were denied from funding political parties under the Foreign Exchange Management Act, 1999. The Finance Act, 2017 also amended the Representation of Peoples Act, 1951, The Reserve Bank of India Act, 1934, The Income Tax, 1961 and the Companies Act 2013. The Finance Act, 2017 amended the Section 13A of the Income Tax Act, from maintaining an elaborate documents of funds received from electoral bonds. The Finance Act, 2017 also amended the Section 31 of the Reserve Bank Act which permitted the Central government which let any scheduled bank to issue electoral bonds. Section 182 of the Companies Act, 2013 was also amended, which led to revision of the

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maximum limit of funds which can be donated to a political party. Before the said amendment, companies could only donate a maximum of 7.5 percent of three years of the company's net profits.

The Amendments were highly vague as they allowed any scheduled bank to issue electoral bonds, and it also did not make it mandatory. The accounts of the payer and payee not being maintained made it very easy for political parties to involve in corruption and circulation of black money. After the Amendments were introduced, there were petitions filed by two Non-Governmental organizations, challenging the amendments, challenging the amendments stating that there is only non-transparency in the said process and there is a lot of possibilities for misuse of power. There was high possibility of corruption involved under the name of law. Also, to add on, the petitions filed by the NGO's Association of Democratic Reforms (ADR) and Common Cause and the Communist Party of India, argued that the Finance Acts had wrongfully passed them under the ambit of money bills.

The Electoral Bond Scheme was introduced on 2nd of January, 2018 by notification issued by the Ministry of Finance. Under the said Scheme, there were specific offices of State Bank of India (SBI) were only authorised to sell electoral bonds. The Bonds can be purchased from SBI only.

There were scheduled to be sold for 10 days in the months of January, April, July and October, every consecutive year. The details of the payer and payee will be anonymous, but the details of the payer and payee should be kept in record by State Bank of India. Political parties which shall secure 1% or more votes in the general election of Lok Sabha. The bond shall be withdrawn by the concerned political party. The said timeline for the same is 15 days. After the 15 days period ends, the rest of the funds which has not been withdrawn shall be deposited to the Prime Minister's Relief Fund.

On the 12th of April 2019, the Supreme Court of India under the bench of Chief Justice Ranjan Gogoi, with Justices Deepak Gupta, Sanjiv Khanna instructed all the political parties to submit the details of funds donated, donors, and all the bank account numbers in a sealed cover to the Election Commission of India. There wasn't a stay imposed on the scheme as the issue had various complications which has to be clearly analysed.

On November 2019, an urgent application was filed, and another application on October 2020 just prior to the Bihar elections. On the year of 2021, the Association of Democratic Reforms approached the court, before the bond sales. The application was considered by bench which was subsequently led by Chief Justice S.A. Bobde, with Justices A.S. Bopanna and

V.Ramasubramanian.On the 26th of March 2021,the stay was denied by the Bench, and the said Bench denied the concern with regards to funds by foreign companies having offices in India. They were also discouraged from filing multiple applications for the same relief.

The Petitioners again filed an application before the 2024 elections.On the 31st of October, 2023, a five-judge Constitutional Bench led by Chief Justice D.Y Chandrachud,with Justices Sajiv Khanna, B.R.Gavai, J.B.Pardiwala and Manoj Misra heard the arguments of the case which got extended to almost 3 days.On the 2nd of November 2023 the Constitutional Bench reserved the Judgement of the case.On the 15th of February 2024,The Court rejected the Electoral Bond Scheme. Further,the Court also directed that the sale of electoral bonds shall be stopped with immediate effect.The Supreme Court of India directed the SBI to submit records of purchasers of electoral bonds from the enactment to date.The Court also directed the Election Commission of India to make the said record of information available to the public, which led to the protection of right to information of the people of India.