

Illegal Payments in Connection with an Election Failure to keep Election Accounts :

Whoever without the general or special authority in writing of a candidate incurs or authorizes expenses on account of the holding of any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to five hundred rupees :

Provided that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate.

Unauthorized and Unapproved expense incurred by a candidature is prevented by this section to an extent that it is illegal in an election, the section primarily seeks to curb the menace of corruption in elections.

Whoever being required by any law for the time being in force or any rule having the force of law to keep accounts of expenses incurred at or in connection with an election fails to keep such accounts shall be punished with fine which may extend to five hundred rupees.

This section basically necessitates the candidate to maintain proper accounts of the expenditure done in an election.

Conclusion

The concept of free and fair election relates to political liberty and equality. Being 'Free and Fair' in matters of election connotes that no one under the electoral process is in bondage of another or is influenced by another person in any way. If elections are conducted in an unlawful manner, the public will lose their trust in the procedure of elections and in Democracy. Hence, Free and fair elections are the foundations of democratic form of Government.

ELECTORAL BONDS – A SOURCE OF UTILISATION OF BLACK MONEY

By

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01. Introduction:

A Political Party is an Association of Persons registered with Election Commission of India and it is governed by its own rules and regulations within the purview of Election Commission of India and their guidelines from time to time. A Political Party can own assets in its name like any other person and receive donations/contributions from its members and others. It also can have some other income generated on its assets such as, rental income, interest on deposits and sale of properties *etc.* The Political Parties shall

maintain and audit their books of accounts as required, and shall file the Income tax returns like any other person for claiming of exemption.

02. Sources of Income and taxability of Political Parties:

The following incomes of a Political Party is exempted under Section 13-A of the Income Tax Act, 1961

01. Donations and Membership fees:

The main sources of income for any political party is from the contributions or

donations from general public and they also collect membership fee from its members. The donations may be either for general purpose or to meet any specific purpose, such as, building fund, election campaign *etc.*

All donations must be received only through account payee cheque or any other mode of electronic transfer, cash donations are limited to Rs.2,000/- only and a cash donation of more than Rs.2,000/- shall be treated as anonymous donation and put to tax in the hands of the political parties. A Political party has to record, maintain and submit the particulars of the donors whose contribution is more than Rs.20,000/- to the Election Commission of India every year and also to the Income Tax Department whenever asked for *i.e.*, at the time of scrutiny of the Income Tax Returns filed by them. The present Government bought controversial scheme of “Electoral Bonds” as the another way of receiving donations in the year 2018.

02. Rental Income and Income from deposits *etc.*

Rent received from the buildings owned by the political party, Interest on fixed deposits, Income received on investments and other miscellaneous sources of income, such as sale of party literature, scrap *etc.*

03. Capital Gains:

The profit or gain on sale of fixed assets, shares *etc.*, is known as capital gain, if the holding period is less than two years it is known as short term capital asset and the profit on sale of such asset shall be treated as short term capital gain and any asset whose holding period is two years or more, it will be treated as Long Term Capital Asset and the profit on sale of such asset is known as Long Term Capital Gains.

03. Electoral Bonds - Purchase, Acceptance and Utilisation :

The Ministry of Finance, Department

of Economic affairs by Notification dated 2.1.2018 in exercise of powers under Section 31(3) of the Reserve Bank of India Act had promulgated a scheme called ‘The Electoral Bond Scheme, 2018’ where under an ‘Electoral Bond’ has been defined as “*a bond issued in the nature of promissory note which shall be a bearer banking instrument and shall not carry the name of the buyer or payee.*”

An electoral bond is like a promissory note that can be bought by any Indian citizen or company incorporated in India from select branches of State Bank of India. The citizen or corporates then donate the same to any political party of their choice. The bonds are similar to bank notes that are payable to the bearer on demand and are free of interest. An Individual or party will be allowed to purchase these bonds digitally or through cheque.

Utilisation of electoral bond is very simple. The bonds are issued in multiples of Rs.One thousand, Rs.Ten Thousand, Rs.One Lakh and Rs.One crore. These bonds will be available at 29 specified branches of State Bank of India. A donor with a KYC complaint account can purchase the bonds and can then donate them to the party or individual of their choice. Now the receiver can encash the bonds through the party's verified account. Validity of the electoral bond will be only for fifteen days.

The electoral bonds are available for purchase for 10 days in the beginning of every quarter. The first 10 days of January, April, July and October has been specified by the Government for purchase of electoral bonds and additional period of 30 days shall be specified by the Government in the year of Lok Sabha elections.

Any Party which is registered under Section 29-A of the Representation of Peoples Act, 1951 and has secured atleast one percent of the votes polled in the most recent general elections or assembly elections is eligible to receive Electoral Bonds. The

party will be allotted a verified account by the Election Commission of India and the Electoral Bond transactions can be made only through this account.

The Electoral bonds will not bear the name of the donor. Thus, the political party might not be aware of the donor's identity.

The electoral bonds are exempted in the hands of the recipient or the political party provided they file the income tax returns and a donor also gets deduction from his Gross Total Income under Sections 80-GGB and 80-GGC.

04. Supreme Court on Electoral Bonds:

In *Association for Democratic Reforms and another v. Union of India and others*, WP (Civil) No.880 of 2017, WP No.333 of 2018, WP No.59 of 2018 and WP No.439 of 2018, challenging the introduction of Electoral Bonds alongwith the amendments carried in the other Acts, such as Income Tax Act, Companies Act, Reserve Bank of India Act. The Hon'ble Supreme Court in its *interim direction* ordered all the political parties who have received donations through Electoral Bonds shall submit to the Election Commission of India in sealed cover, detailed particulars of the donors as against the each Bond; the amount of each such bond and the full particulars of the credit received against each bond, namely, the particulars of the bank account to which the amount has been credited and the date of each such credit.

05. Sale and Redemption of Bonds from March, 2018 to January, 2021:

A total of 12,924 Electoral Bonds worth Rs.653.73 cr. have been sold in fifteen phases between March, 2018 to January, 2021. 12,780 bonds worth Rs.6,514.50 cr. were redeemed during this period. 55.43% of the total values of electoral bonds were purchased in two months alone – March and April, 2019 – the period of general election.

92.046% or Rs.6,015 cr. of the total value of bonds purchased were in the denomination of Rs.1 crore indicating that these bonds are being purchased by Corporates rather than individuals and 9,108 Electoral Bonds worth Rs.5,013.52 cr or 76.96% of the total electoral bonds redeemed between March, 2018 and January, 2021 were encashed in New Delhi (while maximum value of bonds were purchased in Mumbai) where National Parties head quarters are located.

Between Financial Years 2017-18 & 2018-19, political parties received a total of Rs.2,760.20 cr. From electoral bonds a whopping 60.17% or Rs.1,660.89 cr. of this was received by a single party which is the ruling political party.

National parties have received the maximum corporate donations of Rs.881.26 cr in the FY 2018-19. The amount was Rs.563.19 cr in FY 2016-17 and Rs.573.18 cr in the FY 2014-15 (during which the 16th Lok Sabha Elections were held). Between FY 2012-13 and 2018-19, donations from corporates to National parties increased by 974%.

06. Electoral Bonds – Advantages to Political Parties :

The Ruling parties both in Centre and the States are in advantageous position in receiving the donations as they can influence Corporate and other Business Communities to donate more and more to them for the oblivious reasons. The business community also donates a small percentage to the opposition parties to buy Peace.

07. Electoral Bond Scheme, 2018 is arbitrary, unconstitutional and problematic :

The Finance Act, 2017, which introduced the system of Electoral Bonds for the purpose of electoral funding, was passed as the Money Bill. The Amendments brought through the Act do not require political parties to mention the names and addresses of those contributing by way of electoral bonds in their contribution reports filed

with the Election Commission of India annually. This will have a major implication on transparency in political party finances and will fundamentally alter the perception around political donations.

Electoral Bonds infringe the citizen's fundamental 'Right to Know'. Such an unreasonable and irrational restriction on information at the cost of larger public interest is a severe blow to the very fundamentals of transparency and accountability. Making the political class even more unanswerable and unaccountable by withholding crucial public information goes against the very spirit of 'Democracy and Rule of Law'.

Moreover, while electoral bonds provide no details to the citizens, the said anonymity does not apply to the Government of the day, which can always access the donor details by demanding the data from the State Bank of India (SBI). This implies that the only people in dark about the source of these donations are the taxpayers. It may also be noted that the printing of these bonds & SBI Commission for facilitating the sale and purchase of the bonds is paid from the taxpayers' money by the Central Government.

Electoral bonds have surely emerged as a vital instrument to both endorse and encourage opacity by not only opening the floodgates of indefinite and mysterious donations but also legitimizing the illicit money in our electoral and political process, to the tune of more than Rs.6,500 cr.

08. Electoral Bonds encouraging Generation of black money.

The following are the effects and results of introducing Electoral Bonds and amendments of other Acts to facilitate the scheme.

01. Foreign companies can donate to any political party. It is not allowed earlier and may lead to foreign countries influence on political parties and on the Government.

02. No limit for donations to political parties. Earlier maximum of 7.5 per cent of its average three years net profits as political donations.
03. No disclosure in their annual statement of accounts. Earlier companies had to disclose their political donations in the annual statement of accounts.
04. Indian, foreign and even shell companies can now donate to political parties without having to inform anyone of the contribution.
05. Identity of the donor has been kept anonymous; it could lead to an influx of black money. That the scheme was designed to help Big Corporate houses donate money without their identity being revealed and the concept of donor "anonymity" threatens the very spirit of democracy.
06. Donations made through electoral bonds are equal to money laundering.
07. Shareholders of the companies and the voters have no idea of funding to a political party.

09. Conclusion:

The Electoral Bonds Scheme, 2018 should be entirely scrapped or else to continue, the following necessary precautions to be taken care of :

1. In the case of continuance of the Scheme, the principle of anonymity of the bond donor enshrined in the Electoral Bond Scheme, 2018 must be done away with. All political parties which receive donations through electoral bonds should declare in their contributions reports the total amount of such donations received in the given financial year, alongwith the detailed particulars of the donors as against each bond; the amount of each such bond and the full particulars of the credit received against each bond. The procedures and reporting framework

for the above must be standardized to ensure that the true picture of the financial position of the political parties is revealed to the general public.

2. A list of all political parties eligible to receive donations through electoral bonds as per the eligibility criteria mentioned in the Electoral Bonds Scheme, 2018 should be compiled and regularly updated on the basis of the vote share secured by the parties on the last General Election to the House of the People for the Legislative Assembly of the State contested. This list must be made available in the public domain through the websites of the ECI, the SBI and hard copies of the same shall also be available at the 29 branches of SBI authorised for the sale of electoral bonds.
3. Express penalties, apart from losing tax benefits, should be imposed on political parties for any non-compliance with the disclosure provisions.
4. Political parties that are inactive over a prolonged period, do not take part in any election and continue to receive donations through Electoral Bonds should be de-listed by the ECI from time to time to ensure that such parties are unable to benefit from the Electoral Bond Scheme, 2018.
5. The ECI should be entrusted with the responsibility to oversee that no political party ineligible to receive donations through electoral bonds in accordance with the Electoral Bond Scheme, 2018 is able to encash these bonds.
6. All National and Regional political parties must provide all information on the funds received through electoral bonds under the Right to Information (RTI) Act. Full details of all donors should be made available for public scrutiny under the RTI.
7. Scrutiny of financial documents submitted by parties to be conducted annually by a body approved by Comptroller and Auditor General (CAG) and the Election Commission.
8. Political parties in compliance with Central Information Commission's order dated 3rd June, 2013 must be brought under the ambit of RTI Act, 2005.

JUSTICE D.Y. CHANDRACHUD : HARBINGER OF JUSTICE THAT OUR SUPREME COURT NEEDS

By

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Justice Dr. *Dhananjaya Yeswant Chandrachud* was born on November 11, 1959 to former Chief Justice of India, Justice Y.V. *Chandrachud*. He practiced law at the Bombay High Court and Supreme Court of India. He was designated as Senior Advocate by the Bombay High Court in June, 1998 and in the same year was appointed as the Additional Solicitor General of India. He appeared in several important cases involving Rights of Bonded Women

Workers, Rights of HIV Positive Workers, Contract Labour and Rights of Religious and Linguistic Minorities. On 29th March, 2000, Justice *Chandrachud* was appointed as Additional Judge of the Bombay High Court. On 31st October, 2013, he took oath as the Chief Justice of the Allahabad High Court until he was appointed as a Judge of the Supreme Court on 13th May, 2016. Justice *Chandrachud* is likely to serve as the Chief Justice of India for a period of