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# ELECTORAL BONDS

*Prepared by Smt. Minakshi Sharma, Joint Director (23035037) of Lok Sabha Secretariat under the supervision of Shri Satyavijay Ram, Additional Director, Ms. Manju Jain, Director and Smt. Kalpana Sharma, Additional Secretary.*

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## **ELECTORAL BONDS**

### **Introduction**

The Government of India announced a new scheme of electoral bonds in 2017. On 29 January 2018, the Government of India notified the Electoral Bond Scheme 2018 *vide* Gazette Notification S.O. 29 (E), dated 02<sup>nd</sup> January 2018. Under this scheme, bonds for contributions to political parties can be issued by the State Bank of India, and can be bought by any donor with a Know Your Customer (KYC) compliant account.

### **Why Electoral Bonds?**

According to the Central Government, electoral bonds were introduced to ensure that all the donations made to a party would be accounted for in the balance sheets without exposing the donor details to the public. According to the Government, electoral bonds would keep a tab on the use of black money for funding elections. In the absence of electoral bonds, donors would have no option but to donate by cash after siphoning off money from their businesses.

### **Eligibility for purchase and encashment of Election Bonds**

As per provisions of the Scheme, Electoral Bonds may be purchased by a person, who is a citizen of India or incorporated or established in India. As defined in Section 2(d) of the Gazette Notification, a “person” includes- (i) an individual; (ii) a Hindu undivided family; (iii) a company; (iv) a firm; (v) an association of persons or a body of individuals, whether incorporated or not; (vi) every artificial juridical person, not falling within any of the preceding sub-clauses; and (vii) any agency, office or branch owned or controlled by such person.

A person being an individual can buy bonds, either singly or jointly with other individuals. A donor with a KYC-compliant account can purchase the bonds and can then donate them to the party or individual of choice.

## **Salient features of Electoral Bonds**

- The bonds shall be issued in the denomination of Rs. 1000, Rs. 10,000, Rs. 1,00,000, Rs.10,00,000 and Rs. 1,00,00,000. The State Bank of India (SBI) has been authorised to issue and encash Electoral Bonds through its select Designated Branches. The extant instructions issued by the Reserve Bank of India regarding KYC norms of a bank's customer shall apply for buyers of the bonds. The authorised bank may call for any additional Know Your Customer documents, if it deems necessary.
- The bonds under this Scheme shall be available for purchase by any person for a period of ten days each in the months of January, April, July and October as may be specified by the Central Government. An additional period of thirty days shall be specified by the Central Government in the year of general elections to the House of People.
- Only the Political Parties registered under Section 29A of the Representation of the People Act, 1951 (43 of 1951) and which secured not less than one per cent of the votes polled in the last General Election to the House of the People or the Legislative Assembly of the State, shall be eligible to receive the Electoral Bonds.
- Electoral Bond means 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. Thus, as the Electoral bonds will not bear the name of the donor, the political party might not be aware of the donor's identity
- The Election bonds can be encashed only by an eligible political party by depositing the same in their designated bank account. The Electoral Bond deposited by an eligible Political Party in its account shall be credited on the same day.
- The Electoral Bonds shall be valid for fifteen calendar days from the date of issue and no payment shall be made to any payee Political Party if the Electoral Bond is deposited after the expiry of the validity period. As per

Gazette Notification S.O. 29 (E), dated 02nd January 2018, the amount of bonds not encashed within the validity period of fifteen days shall be deposited by the authorised bank to the Prime Minister Relief Fund.

- The face value of the bonds shall be counted as income by way of voluntary contributions received by an eligible political party, for the purpose of exemption from Income-tax under section 13A of the Income-tax Act, 1961.

### **Supportive measures to make the Electoral Bond Scheme Effective**

- Prior to 2017, Section 182 of the Companies Act, 2013 stipulated that a company could donate only up to 7.5% of its average profit of the last three years, and must disclose this amount and the beneficiary political party. The government moved an amendment in the Finance Bill to ensure that this proviso would not be applicable to companies in the case of electoral bonds. Now, through the electoral bonds, there is no limit to the amount companies can donate, and the requirement for such firms to have existed for the last three years on a profit-making basis has also been deleted. The implication is that even loss-making companies or shell companies can be used to purchase electoral bonds. Essentially, then, corporate entities – and individuals – can now funnel unlimited amounts to a political party through electoral bonds, anonymously.
- Moreover, under Section 13A of the Income Tax Act, companies contributing through electoral bonds will not even be required to keep records of such donations, and if no records are mandatorily maintainable, no questions can presumably be asked by IT authorities. Even more, the Representation of People Act, 1951 has been amended to exempt parties to inform Election Commission of any amount received above Rs 2,000, if made through electoral bonds. The result is complete financial opacity: EC cannot name the donors, and the IT department,

even if questioned under the RTI Act, can claim confidentiality granted to assesses.

- Foreign funding to political parties emanated from the budget of 2018 and issues two aspects of receiving foreign funding: Changing the definition of what a foreign entity is; Legislating/legalising foreign funding that political parties have received since 1976. The threshold before this was only 2010. The Finance Bill of 2018 as passed by Parliament made amendments to the Finance Act of 2016 to get retrospective amendments, changing the foreign contribution tolerance limits from 2010 to 1976. This means that initially, all foreign donations received before 25 September 2010 could be put under scrutiny. This amendment pushes this date back to 5 August 1976, effectively giving it a retrospective effect. Thus, the Government has now exempted from scrutiny all foreign funding to parties retrospectively from 1976.
- The Government has also amended the Foreign Contribution Regulation Act, 2010, which prohibits political candidates and parties from accepting donations from abroad. Furthermore, the amended Companies Act now allows any foreign company registered in India to make contributions through bonds to political parties, overruling legitimate doubts about who or where its real owners are, or what its source of funding is.

### **Views on Electoral Bonds**

Experts are of the view that if the electoral bonds scheme has been introduced to bring about greater transparency, the government must not restrain from allowing details of such donations to be made public.

Experts and several politicians say that since neither the purchaser of the bond nor the political party receiving the donation is required to disclose the donor's identity, the shareholders of a corporation will remain unaware of the company's contribution. Voters, too, will have no idea of how, and through whom, a political party has been funded.

Opponents of the electoral bonds scheme argue that since the identity of the donor has been kept anonymous, it could lead to an influx of black money. Some others allege that the scheme was designed to help big corporate houses donate money without their identity being revealed. According to civil rights societies, the concept of donor "anonymity" threatens the very spirit of democracy. Donations made through electoral bonds are equivalent to money laundering.

### **Supreme Court and Electoral Bonds**

A plea by non-profit organization Association for Democratic Reforms (ADR) to put the controversial scheme on hold, is pending before the Supreme Court. On 12 April 2019, the Supreme Court ordered all the political parties who have received donations through Electoral Bonds, to submit to the Election Commission of India (ECI) 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, namely, the particulars of the bank account to which the amount has been credited and the date of each such credit.

The Election Commission of India (ECI) has not commented on the merits of the scheme, however raised concern about the anonymity issue.

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