

ELECTORAL BONDS: ECONOMIC RATIONALITY AND WAY FORWARD

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Abstract Elections form the bedrock of the largest democracy in the world - India. Since Independence, as many as 15 Lok Sabhas have been formed through elections, the first one being held in 1951–52. Elections provide a way for people to assert their voice, and opinion and choose the person whose priorities and ideas match with them most. Elections in India are also a platform for the public to voice their resentment against a ruling party. By voting for other parties and helping elect a different government, citizens demonstrate that they possess ultimate authority. India has held 17 parliamentary elections till 2019. The 18th parliament election is scheduled for 2024. Elections are also held for the state assemblies. Elections have become expensive over the years. A report by the Center for Media Studies in New Delhi has estimated the total expenditure on the general elections to be around 60,000 crores. The Government of India launched the scheme of Electoral Bond to fund the engagement of political parties in elections. Besides violating the rights of voters, the scheme suffered from many serious flaws. It turned out to obliterate the fine distinction between the public and corporate finance. The Association for Democratic Reforms approached the Supreme Court of India to declare the scheme unconstitutional. Taking note of the serious flaws, the scheme was declared unconstitutional in March 2024 by the Supreme Court of India. The policymakers assert that the abolition of the Electoral Bond scheme is not in the national interest. India now needs to reinvent the scheme.

Keywords Electoral Bonds, Amendments in Law, Cash Donations, Conditional Validity, Transparency

INTRODUCTION

The purpose of this article is to examine the rationale for opting for the Electoral Bond (EB) by the Government of India as an instrument to enable political parties to mobilise funds to finance elections at the central and state levels. The scheme introduced in 2018 was declared unconstitutional in March 2024 by the Supreme Court of India. The article begins by providing the background of the Association for Democratic Reforms (ADR) which approached the Supreme Court of India questioning the constitutional validity of issuing the EB. The article then states the genesis of the EB, the process of how it was unveiled, and the arguments for declaring it unconstitutional. This follows an aggregative analysis of the scheme pointing out its perils. Finally, the article refers to the basic flaws in the scheme and concludes by suggesting the way forward.

THE ASSOCIATION FOR DEMOCRATIC REFORMS (ADR)

The ADR was established in 1999 by a group of professors from the Indian Institute of Management (IIM) Ahmedabad. ADR's goal is to improve governance and strengthen the democracy by continuous work in the area of Electoral and Political Reforms. The ambit and scope of its work is in the following areas:

- Corruption and criminalisation in the political process.
- Empowerment of the electorate through greater dissemination of information relating to the candidates and the parties, for a better and informed choice.
- Need for greater accountability of political parties.
- Need for inner-party democracy and transparency in party functioning.

Appalled by the prospects of breeding corrupt electoral funding practices, the ADR took up the case of getting the EB scheme declared unconstitutional by the Supreme Court of India.

THE GENESIS

To establish “transparency in electoral funding,” Finance Minister Arun Jaitley recommended EBs in his Budget Speech on 31 January 2017. “The country has not been able to evolve a transparent method of funding political parties, which is vital to the system of free and fair elections,” stated the finance minister, even after 70 years of independence (Budget 2018–2019 Speech of Arun Jaitley Minister of Finance, 2018). The finance minister mentioned the two previous changes that had been implemented. The one about a tax exemption given to businesses that made donations by openly declaring them in their financial records. The second concerned notifying the Election Commission of India (EC) of any monetary donations that political parties received

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more than ₹20,000. According to the finance minister, “political parties continued to receive most of their funds through anonymous donations which were shown in cash,” therefore not much changed as a result.

The finance minister suggested financing through EB in response to political parties’ unwillingness to accept monetary contributions made anonymously and their disapproval of checks and other transparent payment methods. Donors may acquire these EBs from approved institutions using solely digital payments and checks. The proposed amendment stated that the EBs must be “redeemable within the prescribed time limit from issuance of bond” and “redeemable only in the designated account of a registered political party.” Additionally, the finance minister set a ₹2,000 cap on the amount of monetary donations from a single individual. Specific amendments to the Income Tax Act and RBI Act were suggested in the Finance Bill that was introduced with the Budget to institutionalise EBs. To provide the central government the authority to “authorize any scheduled bank to issue the EB,” the RBI Act of 1934 was changed. A bond issued by any scheduled bank under the program announced by the national government was referred to as an EB. The Income Tax Act 1961 change removed the need to name the party in the firm’s books and made contributions made through EBs eligible for deduction under Section 88GGB, just like other company donations.

UNVEILING THE SCHEME

“The first impression I got from this announcement in Budget 2017-18 was that a devious way had been designed for funnelling company donations to the ruling party,” said Subhash Chandra Garg, the former finance secretary, who was in Washington, DC, on the day the program was unveiled (Garg, 2023). The announcement was harshly criticised. The opposition thought that the plan would give the ruling party exclusive access to all political money. Officials from the Reserve Bank of India (RBI) saw EBs similar to bearer bonds and were concerned that they would be misused for money laundering. The EC believed that the funding source for the EBs was opaque. In July 2017, the concerned budget division called a meeting with the Reserve Bank of India and an EC official. The RBI’s requirements were satisfied, but the EC refused to participate in any decision-making. In theory, the EC opposed EBs. Only those political parties that received one percent of the total votes cast in the most recent national or state election were deemed eligible. These EB plan characteristics were authorised by the minister, and the letter was sent to the Prime Minister’s Office (PMO) for deliberation. The PMO agreed with the idea. One of the EC Members expressed concerns that the EB program might

promote political financing by shell companies before the proposal was forwarded to the Law Ministry. The plan was presented to the EC by the Finance Secretary. The PMO was notified by the Finance Secretary about the presentation to the EC, which said nothing more about it until the Communist Party of India (CPI) filed a petition in the Supreme Court in 2018. In its affidavit filed in court, the EC expressed opposition to the EB plan. With the RBI on board, the main component of the EB program was authorised at the highest level of government in late August or early September. The government-approved scheduled banks were to issue the bonds in tangible form. The governor of the RBI, however, expressed doubts about banks other than the RBI issuing bonds. The governor of the RBI desired that the bonds be issued digitally. It was believed that these plans would eliminate the donor’s anonymity about political parties. Following a protracted debate, the RBI Governor stated, “The RBI should let it be if the government decides to issue EBs in the script through State Bank of India (SBI)” during a Committee of the Central Board meeting. The Reserve Bank of India (RBI) never offered feedback on the proposed EB program or officially approved it. The Ministry of Law took issue with the reasoning behind the one percent vote share threshold that determines whether political parties are eligible to receive EB money. Nevertheless, the condition was convinced to be handled as a policy problem rather than a legal one by the Ministry of Law. After that, the Law Ministry acquiesced to the demands made by the Department of Economic Affairs (DEA). Nonetheless, the ADR filed a writ to the Supreme Court against the EBs even before the announcement. The stay was not granted by the court. The sale of bonds was to be available for some time every quarter in the calendar region, for an extra 30 days before the national general election and for an extra 30 days in the states where assembly elections were scheduled. The Supreme Court reduced the period from 45 days to 40 days on 12 April 2019, in an interim decision. Its interim ruling required political parties to provide information in an envelope to the EC about which corporation or individual gave which particular EBs to which party to guarantee the integrity of election funding. The ADR filed petitions before the Supreme Court in September 2017 contesting the Finance Act’s modifications. According to the petitions, the acts were illegally approved as money bills to evade the Rajya Sabha’s inspection. According to Supreme Court Observer reports, the petitioners further contended that the election Bond Scheme encouraged non-transparency in political fundraising and would result in widespread election malfeasance. The Supreme Court’s ruling was disputed by the ADR. However, the court declined to issue a stay. Notification of the plan began on 2 January 2018. The Electoral Bond Scheme was

modified on 7 November 2022, to increase the number of bond-sale days from 70 to 85 during the year when assembly elections were scheduled. This modification was made just before the elections in Gujarat and Himachal Pradesh.

CHALLENGING THE CONSTITUTIONAL VALIDITY

On 16 October 2023, the ADR filed a petition challenging the EB program's constitutionality, which permitted anonymous contributions to political parties. Five justices made up the Constitutional Bench, which was established by the Chief Justice of the Supreme Court. A five-judge Constitution bench led by the Chief Justice of the Supreme Court began considering arguments against the plan on 31 October 2023. On November 2, following three days of back-to-back hearings, the SC postponed rendering a decision. The Supreme Court ruled on 15 February 2024, that the EB program was unconstitutional.

The Supreme Court ruled that the Election Bond Scheme and the Finance Act 2017 provisions, which revised the Representation of People Act 1951 and the Income Tax Act 1961, were unconstitutional because they violated citizens' right to information under Article 19(1)(a) of the Constitution by withholding information about political party funding. Article 14 of the Constitution was deemed to be violated and arbitrary by the Finance Act 2017 revisions to the Companies Act 2013 provisions allowing business organisations to support political parties indefinitely. The court ruled that anonymous EBs violated both Article 19(1)(a) and the right to information. Additionally, the EC was directed by the Supreme Court to post-EB donation records on its website by 13 March 2024, and to obtain this information from the State Bank of India. The State Bank of India asked the Supreme Court on 4 March 2024, for an extension of time, until 30 June 2024, to give the EC of India access to information on EBs. The State Bank of India was mandated to provide information on EBs by the close of business on 12 March 2024, after the Supreme Court rejected SBI's request for an extension of the deadline on 11 March 2024.

AGGREGATIVE ANALYSIS

With 81 percent of the total unknown income of national parties over the fiscal years 2019–20 and 2021–22, EB income was a major contributor. This indicates a significant dependence on EBs as the main unreported financing source. The Bhartiya Janata Party (BJP), the ruling party, received the majority of the private donations. The EBs that each individual has acquired is shown in Table 1.

Table 1: Electoral Bonds Purchased by Individuals

(₹ crore)

Name of the Individual	Name of the Party	Electoral Bonds Purchased
Lakshmi Niwas Mittal	BJP	35
Rahul Bhatia	AITC*	20
Rajesh M Agrawal	Congress	20
Inder Thakurdas Jaisinghani	BJP	14
Rajesh Mannalal Agrawal	BJP, BRS**	13
Harmesh Rahul Joshi	BJP	10
Rahul Jagannath Joshi	BJP	10
Raju Kumar Sharma	BJP	10
Saurabh Gupta	BJP	10
Anita Hemant Shah	BJP	8
Kiran Mazumdar Shaw	BJP	4

Source: The Economic Times, Hyderabad, 25 March 2024, p.3.

*All India Trinamool Congress **Bharat Rastra Samithi

During the time under reference, the BJP was the primary recipient of donations made through EBs. Donations to the party increased dramatically from ₹210 crores in 2017–18 to ₹2,555 crores in 2019–20, with some volatility in the following years. This pattern demonstrates the BJP's robust financial support via EBs. The BJP received 47.46 percent of the share of EBs during the period under reference. The funds that the BJP received as donations through EBs between 2017–18 and 2022–23 are displayed in Table 2.

Table 2: Electoral Bonds to BJP

(₹ crore)

Fiscal Year	Donations Received
2017-18	210.00
2018-19	1,450.89
2019-20	2,555.00
2020-21	22.38
2021-22	1,033.70
2022-23	1,294.15

Source: <https://indiacsr.in/analysis-political-party-electoral-bonds/>

The biggest amount of money was channelled into the category of bonds with a denomination of about one crore, where 12,999 bonds were sold, accounting for 54.13 percent of the total number of bonds. These bonds made up a staggering 94.25 percent of the total capital, or ₹12,999 crore, in terms of money. This pattern emphasises how important big donations are to the way that EBs finance politics.

Table 3: Denomination-Wise Sale of Electoral Bonds
(₹ crore)

Denomination	No. of Electoral Bonds Sold	Amount
1 Crore	12,999 (54.13%)	12,999 (94.25%)
10 Lakhs	7,618 (31.72%)	761.80 (5.52%)
1 Lakh	3,088 (12.86%)	30.88 (0.22%)
10 Thousand	208 (0.86%)	0.21 (0.001%)
1 Thousand	99 (0.41%)	0.21 (0.001%)
Total	24,012	13,791.89

Source: <https://indiacsr.in/analysis-political-party-electoral-bonds/>

The sale of EBs fluctuated between denominations across 27 stages between March 2018 and July 2023, revealing

differing preferences among contributors on the amounts of their contributions. A total of 24,012 EBs were sold for a whopping ₹13,791.89 crore in total.

The largest winner was the BJP, which unveiled the EB plan in 2019. Several firms donated a total of around ₹6,000 crore to it. Notably, businesses like Megha Engineering, Qwik Supply Chain, Vedanta, and Bharti Airtel were among the top donors to the BJP. Nine corporations made contributions to the BJP totalling more than ₹100 crores, with Megha Engineering topping the list with ₹519 crores. Future Gaming and Hotel Services, as well as Birla Carbon India, were other noteworthy contributors. Table 4 shows the top donors of political parties.

Table 4: Top Donors of Political Parties

Party	Top Donor	Percentage Donation
Bharatiya Janata Party	Megha Engineering and Infrastructure Ltd	9.6
All India Trinamool Congress	Future Gaming	33.7
Indian National Congress	Vedanta Ltd	8.8
Bharat Rastra Samithi	Megha Engineering and Infrastructure Ltd	16.1
Biju Janata Dal	Essel Mining	22.6
Dravida Munnetra Kazhagam	Future Gaming	78.7
Yuvajana Sramika Rythu Congress Party	Future Gaming	45.7
Telugu Desam Party	Shirdi Sai Electricals Ltd	18.3
Shiv Sena	B G Shirke Construction Technology Pvt Ltd	53.3
Rashtriya Janata Dal	IFB Agro Industries Ltd	47.6
Aam Aadmi Party	Avees Trading Finance Pvt Ltd	15.3
Janata Dal (Secular)	Rithwik Projects Pvt Ltd	23.0
Sikkim Krantikari Morcha	Future Gaming and Hotel Services Pvt Ltd	30.1
Nationalist Congress Party	Qwik Supply Chain	32.3
JanaSena Party	Western UP Power Transmission Co Ltd	47.6
Samajwadi Party	Keventer Foodpark Infra Ltd	71.2
Janata Dal (United)	Megha Engineering and Infrastructure Ltd	71.4
Jharkhand Mukti Morcha	Vedanta Ltd	37.0
Shiromani Akali Dal	Fastway Transmissions Pvt Ltd	68.9
Sikkim Democratic Front	Future Gaming and Hotel Services Pvt Ltd	90.9
Maharashtrawadi Gomantak Party	V M Salgaocar Corporation Pvt Ltd	63.6
Jammu and Kashmir National Conference	Bharti	100.0
Goa Forward Party	Goa Carbon Ltd	57.1

Source: The Economic Times, Hyderabad, 25 March 2024, p.3.

Table 5 shows details of top corporate donors which accounted for about 85 percent of donations for most parties.

Table 5: Top Corporate Donors Accounting for 85 Percent of Donations

Top Corporate Donor	Total Contribution (₹ crore)	Share of Top Three Parties in Total Funding (Percentage)	Party	Top Contribution (₹ crore)
Future Gaming and Hotel Services Pvt Ltd	1365	87.8	AITC	542
Megha Engineering and Infrastructure Ltd	966	89.4	BJP	584
Qwik Supply Chain Pvt Ltd	410	100	BJP	375
Vedanta Ltd	400	98.7	BJP	230.2
Haldia Energy Ltd	377	100	AITC	281
Bharti Airtel Ltd	247	99.4	BJP	236.4
Essel Mining & Industries Ltd	224	100	BJD	174.5
Western UP Power Transmission Co Ltd	220	95.5	AITC	110
Keventer Foodpark Infra Ltd	195	94.6	BJP	144.5
MKJ Enterprises Ltd	192	85.4	Cong	91.6

Source: The Economic Times, Hyderabad, 25 March 2024, p.3.

Future Gaming and Hotel Services, owned by lottery king Sebastian Martin, was the scheme's largest donor, having bought bonds valued at ₹1,365 crore, according to SBI statistics. Megha Engineering & Infrastructures, placed second, gave ₹966 crore, while Qwik Supply Chain, affiliated with Reliance, bought bonds valued at ₹410 crore. The top five buyers of EBs spent more than ₹3,446 crore between April 2019 and February 2024. They included huge industrial conglomerates, a lottery corporation operating in various states, and a company that developed the Kaleshwaram dam. The ED has been investigating Future Gaming and Hotel Services Pvt Ltd and other related companies since 2019. In May 2023, raids were conducted in Coimbatore and Chennai to investigate allegations of violating the Prevention of Money Laundering Act (PMLA). The business was accused of selling lottery tickets issued by the Sikkim government in Kerala.¹

EBS: THE PERILS

The scheme received harsh criticism from several sources. There was concern that the scheme would corrupt the entire political process, turning democracy into a farce.

¹ <https://www.hindustantimes.com/india-news/electoral-bonds-lottery-king-to-infra-firm-among-top-donors-101710444659029.html>

EBS AND EXTORTION

Several corporations under investigation purchased EBs, according to information provided by the SBI and examined by the Enforcement Directorate (ED), Central Bureau of Investigation (CBI) and Income Tax (IT) Department. The ruling party at the Center encashed a sizable chunks of these. It is believed that these organisations were being utilised to find businesses and take money from them. Furthermore, we looked into whether businesses that had charges against them gave to the ruling parties in the hopes that the investigations would drag on for a while or would end completely. Significant associations have also been seen between businesses that provide substantial gifts and obtain valuable government connections in exchange. According to reports, the EB plan makes sure that bribes may be sent through banking channels for pre-paid, post-paid and post-raid payments. It is said that after giving election bonds to the ruling party, 38 corporate entities acquired 179 government connections and projects valued at ₹3.8 lakh crore. Two weeks after the business was granted the Outer Ring Road contract, the BRS government of Telangana cashed the bonds offered by IRB Infra Limited. Only a few weeks had passed since the acceptance letter was issued when the bonds were purchased (The Hindu Bureau, 2024, March 24). According to Raghuram G. Rajan and Rohit Lamba, if the public saw that companies from sectors that benefitted from tariff protection, from state subsidies, from

the auction of public assets or from public-sector bank loans, donated more, they could put two together and vote in a more informed way (Rajan & Lamba, 2023).

EBS AND AMENDMENTS IN THE LAWS

Following the amendment of at least four statutes, three of which the court ruled to be illegal, the EB program was created. Unlike previous practices when only profit-making corporations may give a set amount of their income, the program permitted even loss-making enterprises to donate. The reforms made it easier to establish front organisations through which political parties might receive anonymous funds. The RBI and the ECI, among others, expressed concern that this would result in the creation of dark money and occult political funding. It is disclosed that “A staggering ₹2,717 crores has been spent by 19 companies that the Ministry of Finance designated as ‘high risk’ due to their violations of the Prevention of Money Laundering Act in 2018.” Up to 18 of the 19 corporations that had purchased EBs were absent from the next yearly lists of “high-risk” companies. The question arises if their removal from the list was due to their financial support of the ruling party.

EBS AND CASH DONATIONS

The flow of unreported cash donations was not much affected by the ₹2,000 cash donation ceiling reduction since contributors may still divide up big sums of money into smaller, untraceable payments. Parties disclosing big EB revenue suggest that the program gained traction as a major source of fundraising, but one that added more anonymity rather than necessarily decreased cash donations. The data raises concerns over the usage of shell companies for donations since it surprisingly shows a low number of significant corporations among the donors. The scheme has not achieved its claimed objectives of raising financial transparency and decreasing the influence of money in politics. A Delhi-based firm named Hub Power gave ₹95 lakh using EBs in April 2019, during the Lok Sabha elections. The GST department of the Delhi government has admitted that Hub Power was a fictitious business that was purportedly founded “to commit fraud.”⁸ The shell companies have been used to route corporate profit-making companies’ books, leading to EB funding by tiny companies, many benami entities with no discernible business.

EBS AND SBI

The SBI attempted to mislead the Court and postpone providing information by claiming that it would take four

more months to gather data, a process that it eventually finished in a matter of hours. The Court’s 3-week deadline for disclosure was stressed, and this delay was important since it attempted to stretch the revelation past the election date, compromising voters’ access to knowledge. Moreover, the integrity of the EB system may be jeopardised if the alphanumeric code was recorded on the parts of the depositor and buyer and was just intended as a security measure rather than an audit trail. This move by the government-owned bank SBI may have compromised the integrity of the election process by giving the governing party access to private information.¹⁰ It is feared that the ruling party in power may misuse such bonds by pressurising banking officials to learn the names of donors and recipients thwarting donating large sums to the Opposition through these bonds.

EBS AND TRANSPARENCY

The Finance Act 2017, which introduced the system of EBs for electoral funding, was passed as the Money Bill. The amendments brought through the Act did not require political parties to mention the names and addresses of those contributing by way of EBs in their contribution reports filed with the EC annually. This was viewed to have a major implication on transparency in political party finances and was deemed to fundamentally alter the perception around political donations.

The EB transparency was a major drawback. The EC upheld this by emphasising that it supported openness. The main issue of disagreement was the donor’s identity. Election bond proponents contend that this encourages people and organisations to employ bonds as opposed to other questionable funding methods (Rajan & Lamba, 2023). Since the government doesn’t know who its funders are, it can’t favour any one person or group of people. Opponents of EBs, on the other hand, said that this measure deliberately reduced transparency (Sethi, 2018, January 04). The payee’s anonymity was purposefully chosen to obfuscate the election process and prevent voters from knowing who is receiving donations (Venkataramakrishnan, 2018, April 02). Raghuram G. Rajan and Rihit Lamba support this assertion by saying that EBs in their current form are no solution to cronyism and probably exacerbate it as these bonds do not improve transparency.

It is necessary to ask whether the voter needed to be aware of the party’s funding source at all. This was only due to the voter’s right to make an educated decision throughout the voting process. A crucial component of making this decision comprehends the source of a party’s funding and any potential ramifications. It is also essential to maintaining openness. Furthermore, it is unlikely at best that the donor’s name would be kept a secret from the party since it is hard

to completely forbid communication between donors and parties.

THE BASIC FLAWS

The scheme was an attempt to integrate electoral funding with the financial system through commercial banking channels by keeping the capital market regulator at bay. It ignored the distinction between public finance and corporate finance. The scheme, devoid of constitutional safeguards, clearly functioned against the basic principles of democracy by coming in conflict with the voter's right to know about the funding of elections. Further, the consultation process among the Finance Ministry, Prime Minister's Office, RBI, EC and Law Ministry lacked cohesiveness and intensity.

THE WAY FORWARD

What else if not EBs? Re-inventing the EB scheme is necessary. Electoral spending should be made clean. It should minimise incumbency bias. An upper limit on electoral funding needs to be imposed. The elections shouldn't be financed by foreign or illicit funds. To quote the ADR, "Quid Pro quo," in which gifts are made in exchange for government favours, ought to be closely monitored. It is necessary to establish fairness using a limit of minimum expenditure and openness about the matter. It is important to guarantee transparency by placing restrictions on both individual and corporate donations (Shastri, 2024). Corrupt election finance ruins socioeconomic change, negatively affecting the public and eroding their confidence in democracy (Kumar, 2024, 30 March). The consultation process among the various agencies should be designed with due care and cohesiveness. The scheme should not operate as a 'good relations tax' amounting to the donors contributing a bit instead of the tax exemptions granted to them. In re-inventing the scheme, the experiences of countries funding political parties for elections may also be studied.

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