

ELECTORAL BONDS AND OPACITY IN POLITICAL FUNDING

(Updated as on March 27, 2023)

A. About Electoral Bonds

Electoral Bond is a **financial instrument for making donations to political parties** as has been first pronounced by the Finance Minister in the Union Budget 2017-18. According to the **Electoral Bond Scheme, 2018**, electoral bond is a bond issued in the nature of a **promissory note**, which shall be **bearer** in character. A bearer instrument is one, which does not carry the name of the buyer or payee, no ownership information is recorded and the holder of the instrument (i.e. political party) is presumed to be its owner.

The Scheme, which was notified on January 2, 2018, allows individuals (who are citizens of India) and domestic companies to donate these bonds — **issued in multiples of Rs 1,000, Rs 10,000, Rs 1 lakh, Rs 10 lakh, and Rs 1 crore** — to political parties of their choice, which have to redeem them within 15 days. A person being an individual can buy bonds, either singly or jointly with other individuals. **No limit** exists on the number of electoral bonds that a person (including corporate entities) can purchase. 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 (PMRF). So far, **168 bonds amounting to a total of Rs 23.6868 cr (0.197%) were deposited in the PMRF**. Thus, 99.803% of the bonds purchased during the twenty-five phases were encashed by the political parties within the validity period.

Only those political parties which fulfill the following criteria are eligible to receive electoral bonds – (i) **registered under section 29A of the Representation of the People Act, 1951** and (ii) **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, as the case may be. In accordance with the Electoral Bond Scheme, 2018, the **section 29C of The Representation of the People Act, 1951** has been **amended to remove the obligation of political parties to keep a record of the identity of donors** who give any sum of money through Electoral Bonds or report the same to the Election Commission of India (ECI) annually.

B. Why the Electoral Bond Scheme, 2018 is arbitrary, unconstitutional and problematic:

1. 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.

2. 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'.
3. 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.
4. An RTI application was filed with the Indian Security Press (ISP) to seek details of total cost of printing of electoral bonds; ISP denied disclosure of the information citing that the information would "adversely affect the economic interests of the country" warranting protection under section 8(1)(a) of the RTI act. However, recently the CIC directed the ISP to provide the total cost of printing as well as the associated costs, calling the denial of information by CPIO unacceptable.
5. 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 12,000 cr.**
6. Various central agencies like Reserve Bank of India's (RBI), ECI, even the Law Ministry and various MPs of the Rajya Sabha had not only shown their apprehension but had also given repeated warnings to the government against the Electoral Bond Scheme stating that it has the potential to increase black money circulation, money laundering, cross-border counterfeiting and forgery. These institutions had strongly opposed the mechanism of electoral bonds and made serious reservations against it and termed it as a "bad precedent". Not only were the objections disregarded, but even the suggestions made to make the Scheme less vulnerable to fraud were ignored by the government.
7. The ECI had stated on record that "that any donation received by a political party through an electoral bond has been taken out of the ambit of reporting and therefore, is a retrograde step and needs to be withdrawn. ECI further stated that in such a situation it can never be ascertained whether the political party has taken any donation from government

companies and foreign sources. Instead of paying any heed towards ECI's concerns, the central government blatantly lied in the Rajya Sabha that any such reservations were raised by the Commission. The then Finance Minister justifying the scheme stated that the donors asked for hiding their identity due to fear of political retribution by opposition parties in future when they would come to power. RTI applications by activists revealed that there was no evidence of such a claim from corporates/donors.

8. Government has also made SBI accept expired electoral bonds worth Rs 20 crores sold in illegal window.
9. Electoral bonds carry unique alphanumeric characters hidden in the top right corner of the bonds. It is visible only under ultraviolet light, and invisible to the naked eye. In its affidavit, the government repeated its earlier claim that the alphanumeric characters are embedded for security reasons – but that argument has been debunked by many experts. Series of articles reported by 'The Quint' and many other reports clearly states that such a feature existing in the bonds are for the obvious reason that the ruling government wants to keep a concealed track on the donors. The anonymity clause does not apply to the government of the day, which can always access the donor details by demanding the data from SBI. Thus, the only people in dark about the source of these donations are the Indian public and opposition parties.
10. The Former Election Commissioner of India Mr. S.Y Quraishi in an interview had also stated; *“While buying an electoral bond, one needs to furnish their KYC details. The serial number of the bond, matched with the KYC details, will clearly reveal who donated how much money to which political party.”*
11. The Finance Ministry has broken its own rules by approving the unscheduled and illegal sale of electoral bonds for State Assembly elections on many occasions.
12. Electoral Bonds are to be issued for a period of 10 days in the months of January, April, July and October and additional 30 days are provided during an election year. However, in February, 2019, before the Lok Sabha, 2019 elections, the Finance Ministry had fixed a total period of 45 days for issuing the bonds in the month of March, April and May. Whereas the days fixed for issuing the bonds in the month of March and May were to be related to the period of 30 days allowed for an election year. The Supreme Court in its interim order dated 12th April, 2019 had ordered deletion of additional 5 days given by the Ministry for the sale and purchase of bonds.

Period of issuance	Normal/Assembly/Lok Sabha	States
Mar.01-10, 2018	Normal. In lieu of the January 2018 Notification	Meghalaya, Nagaland and Tripura elections were held in Feb 2018
Apr. 02-11, 2018	Normal	
May 01-10, 2018	Assembly	Karnataka
Jul. 02-11, 2018	Normal	
Oct. 01-10, 2018	Normal	
Nov.01-10, 2018	Assembly	Chhattisgarh, MP, Mizoram, Rajasthan, Telangana.
Jan.01-10, 2019	Normal	
Mar.01-15, 2019	Special Window for LS	
Apr. 01-20, 2019	Normal of 10 days + Special Window for LS polls of 10 days	
May 06-10, 2019	Special Window for LS of 10 days	Had to be cut short because of the Interim Order of the SC.
Jul. 01-10, 2019	Normal	
Oct. 01-10, 2019	Normal	
Jan.13-22, 2020	Normal	
Oct. 19-28, 2020	Normal	Sought ECI clearance since Bihar elections had been announced.
Jan.01-10, 2021	Normal	

Courtesy: *Newslandry*

13. **Sale and Purchase of EBs during Bihar Assembly Elections, 2020:** The issuance of electoral bonds by the State Bank of India, between October 19 and 28 (phase XIV), just ahead of the Bihar Assembly elections is also a case in point. The Scheme notification dated 02.01.2018 stipulates sale of electoral bonds in January, April, July and October. However, after the 13th phase in January 2020, the window for sale of bonds was not opened in April and July, but was opened in October, right before the Bihar elections. Clearly, the donations made through electoral bonds play a crucial role for the election campaigns of the political parties, reiterating that access to information regarding funding of political parties is integral to independent and informed exercise of vote and in ensuring free and fair elections.
14. The Law Ministry repeatedly objected to the Finance Ministry's stipulation that political parties must have a 1% vote share in Lok Sabha or State Assembly elections in order to be eligible for the Scheme. The Law Ministry continued to point that the Scheme should be aligned with the Representation of Peoples Act, 1951.
15. The fact that a majority of the bonds were received by a single party and a huge proportion of these bonds were purchased and redeemed (by parties) during the time of elections severely impacts the level-playing field, a central component of contemporary democracy.
16. In a situation where donations received through electoral bonds are not reported, it can never be ascertained whether a political party has taken any donation in violation of provisions of the Representation of the People Act, 1951 which prohibits the political parties from taking donations from government companies and foreign sources.

17. **Number of political parties in India has increased manifold since the inception of Electoral Bond Scheme:** Electoral bonds have patently endorsed and encouraged black money by permitting political parties into becoming a breeding ground for money. There is already a rampant nexus between money and muscle power, hence, only the rich and powerful will get the tickets to contest elections. In January, 2017, there were a total of 1500 political parties in India. According to the latest Gazette Notification issued by the Election Commission of India dated 23rd September, 2021, there are a total of 2,858 political parties registered with the Commission. 2,796 or 97.83% of registered political parties are unrecognised parties.
18. The number of registered unrecognised political parties has increased more than twice in the last 10 years. From 1112 parties in 2010, the number has spiked to 2,301 in 2019 and in 2021, the number rose to 2,858. It is important to note that the number of such parties increases disproportionately during the year of Parliamentary elections especially. The reason for this glut of new parties definitely points out the needle of suspicion towards government's controversial electoral bonds and unlimited and anonymous corporate donations. **A vast majority of these parties will never contest elections. These parties may be involved in money laundering activities or may simply be using their status to turn black money into white.** As per media reports, on 21 June 2022, after scrutiny, the ECI has taken action against more than 2,100 registered unrecognised political parties for flouting rules and ordered the deletion of such 111 political parties that it found to be non-existent.
19. The Chief Election Commissioner of ECI is learnt to have pushed for this power to withdraw registration of political parties. The poll panel had been writing to the government to grant it power under the Representation of the Peoples Act to de-register a political party on certain grounds. It believes that many political parties get registered, but never contest elections. Such parties exist only on paper. The possibility of forming political parties with an eye on availing the benefit of income tax exemption also cannot be ruled out, the Election Commission (EC) feels.
20. The Lok Sabha 2019 elections have been termed as the 'most expensive election ever, anywhere' with a staggering Rs 55,000-60,000 crore was estimated to have been spent during the 2019 Parliamentary elections by the Centre for Media Studies (CMS) report. Overall, expenditure in the last six Lok Sabha elections between 1998 and 2019 had seen a near six-fold jump from Rs 9,000 in 1998 to over Rs 55,000 crore in 2019.

21. Lok Sabha, 2019 elections also witnessed the highest ever anonymous funding through electoral bonds. Between FY 2017-18 & 2018-19, political parties received a total of Rs 2,760.20 cr from electoral bonds.
22. An [investigation](#) conducted by 'The Reporters' Collective has found that only 19 political parties have received funds via electoral bonds; while as many as 105 parties submitted the data in a 'sealed cover' in May 2019, when the apex court was hearing petitions challenging the legality of the bonds. Only 17 political parties of the 105 named in the EC's sealed envelope received funds through electoral bonds and a number of parties that had submitted their details to the EC were not aware of what electoral bonds were.
23. The State Bank of India **sold electoral bonds worth Rs 1,213 crore in January 2022**. The value of the bonds sold this time was the highest ever in the run-up to Assembly elections since the beginning of the Electoral Bond Scheme in 2018. Electoral bonds were sold between January 1 and 10 as part of the 19th tranche of the scheme. The amount of Rs 1,213 crore was nearly double that sold before the last Assembly elections in April 2021 (Rs 695 crore).
24. **There is no list of political parties eligible to receive donations through electoral bonds**, as per the eligibility criteria mentioned in the Scheme, available in the public domain or on the website of the ECI. **In a reply to ADR's RTI application dated 10th October, 2019, ECI responded that it has not compiled any such list.**
25. There are three petitions challenging the Electoral Bonds Scheme — one jointly filed in 2017 by ADR and non-profit Common Cause, another filed in 2018 by the Communist Party of India (Marxist) and the third is filed by Congress leader Dr Jaya Thakur — all largely asking for the same relief. The details of the petition filed by ADR are provided in **Annexure – I**.

C. ADR's data analysis of Electoral Bonds

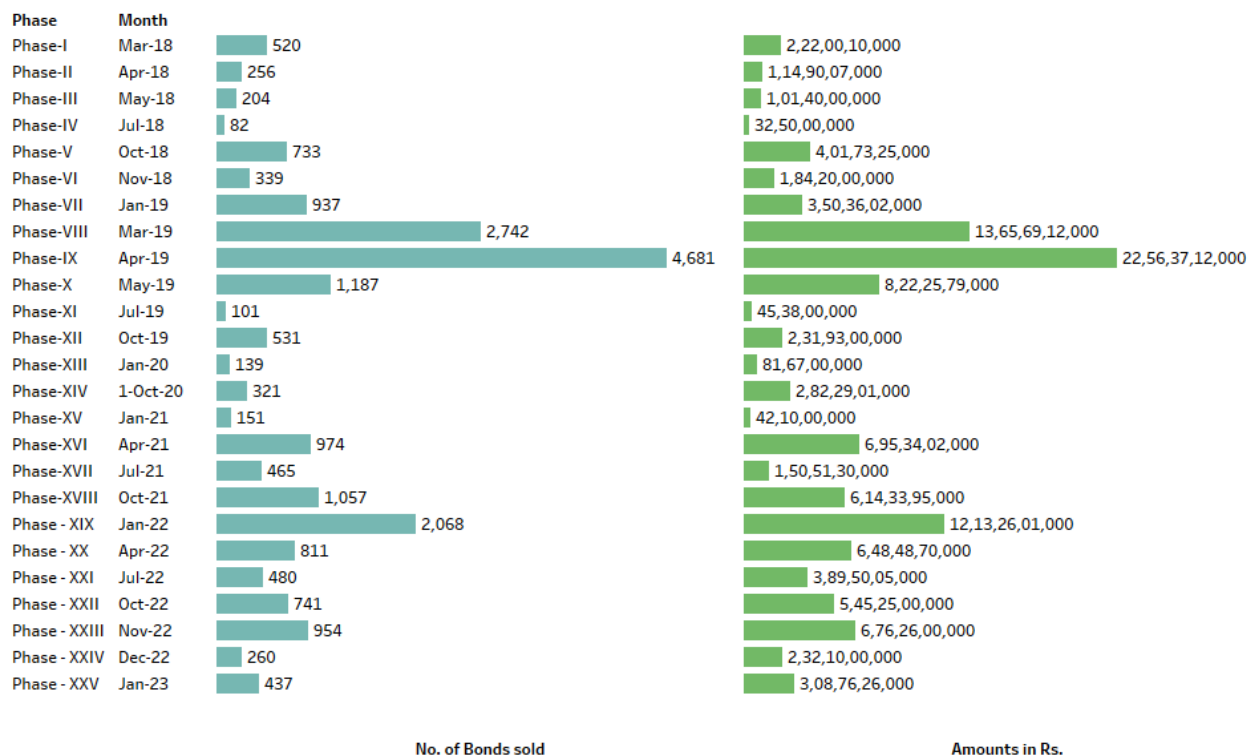
ADR analysed the total number and value of electoral bonds purchased and redeemed by the political parties, branch-wise and denomination-wise, in the twenty-five phases from March 2018 to January 2023. The preliminary findings revealed that –

1. A total of **21,171 Electoral Bonds** worth **Rs 12,008.5977 cr** have been sold in **twenty-five phases between March 2018 to January 2023**. **21,003 bonds** worth **Rs 11,984.9109 cr** were redeemed during this period. **30.162%** of the total value of electoral bonds were

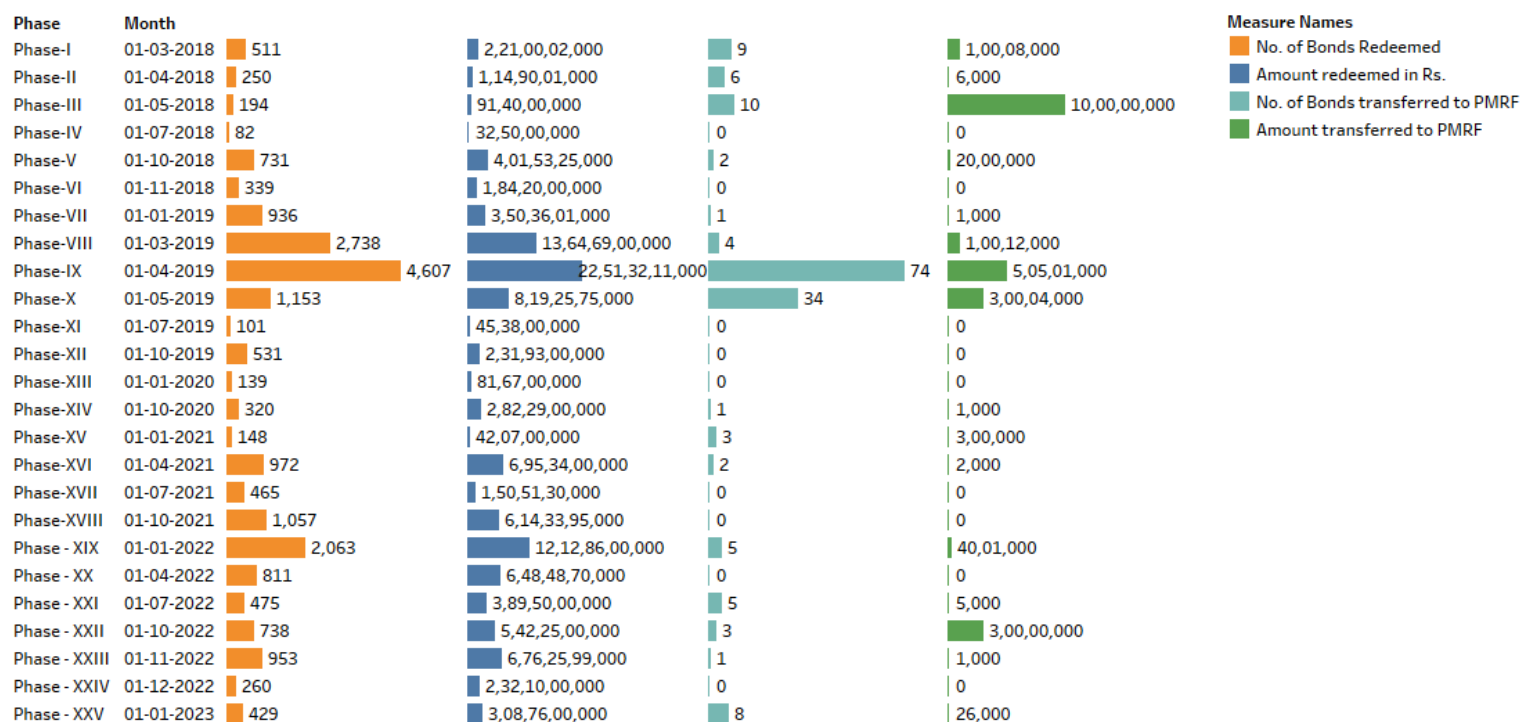
purchased in two months alone – **March and April 2019** – the period of general elections. Below is the phase-wise break-up of the total bonds sold during all 25 phases.

2. **37.007%** of the total value of electoral bonds were redeemed by parties in three months alone – **March 2019** (phase VIII), **April 2019** (phase IX) & **May 2019** (phase X) – the period of Lok Sabha elections 2019.

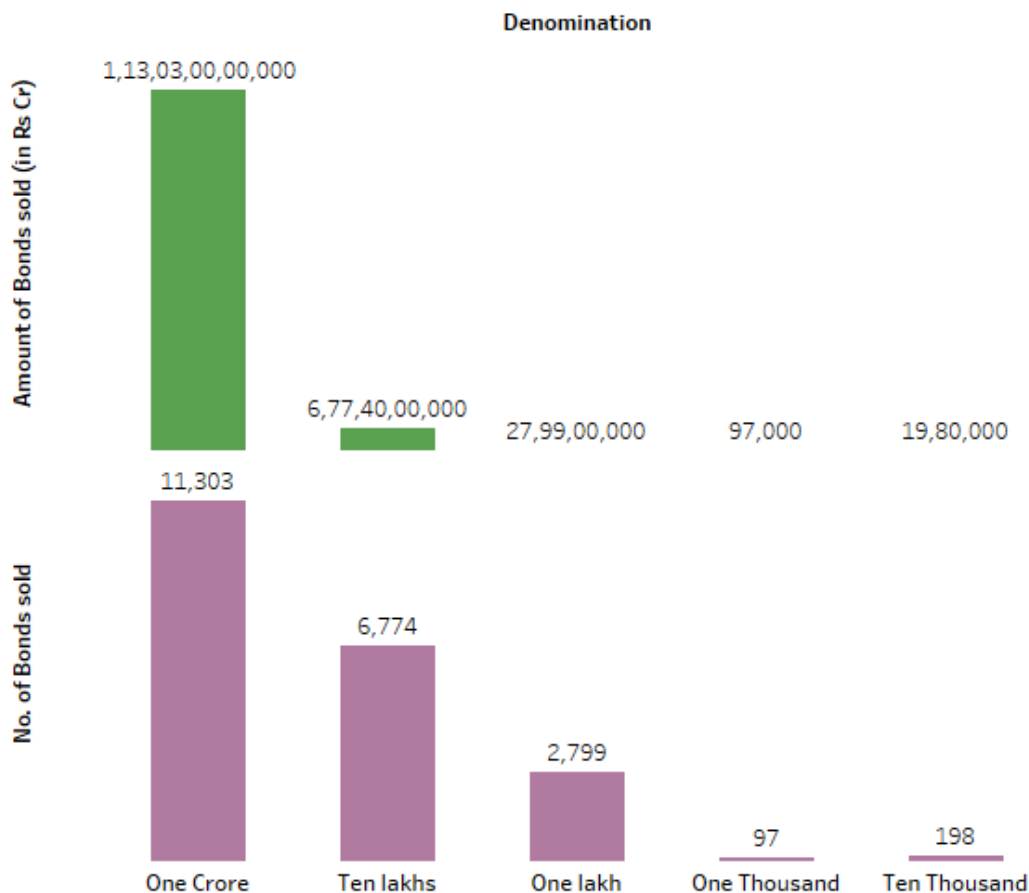
Phase-wise EBs sold from March 2018-January 2023



Phase-wise bonds encashed and transferred to PMRF out of total bonds sold

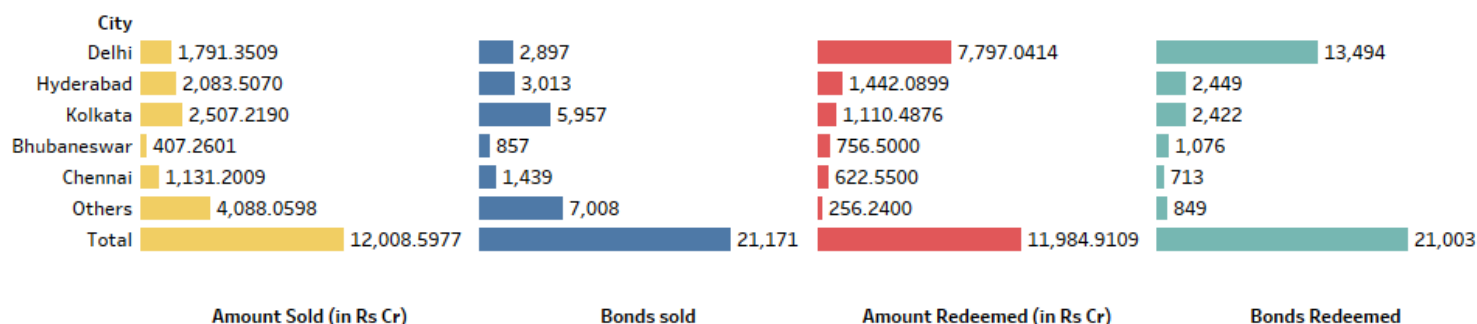


Denomination-wise sale of Electoral Bonds during 25 phases



3. **94.124% or Rs 11,303 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.
4. **13,494 Electoral Bonds worth Rs 7797.0414 cr or 65.057%** of the total electoral bonds redeemed between March 2018 and January 2023 were encashed in **New Delhi** (while maximum value of bonds were purchased in Mumbai) where National Parties' headquarters are located. City-wise data on sale and encashment of bonds from is given below.

March 2018 - January 2023: City-wise sale of Electoral Bonds during 25 phases



5. Between FY 2017-18 & 2018-19, political parties received a total of Rs 2,760.2036 cr from electoral bonds. A whopping **60.173% or Rs 1,660.89 cr** of this was **received by a single party which is the ruling political party**. For the **FY 2018-19**, ADR analysis found that **4 National parties namely BJP, INC, NCP & AITC** declared receiving a total of **Rs 1960.68 cr** while **7 Regional parties** namely BJD, TRS, YSR-C, Shiv Sena, TDP, JDS & SDF received **Rs 578.49 cr** from donations via electoral bonds
6. **As per the annual audit report of BJP submitted with the Election Commission**, the party had received **Rs 210 crore** worth contribution in the form of electoral bonds for FY **2017-18**. This was a whopping **95% of all the electoral bonds purchased in 2017-18**. For **FY 2018-19**, **BJP** had received **Rs 1,450.89 cr** worth electoral bonds and **INC** had received **Rs 383.26 cr** worth electoral bonds. **In FY 2019-20**, **BJP** declared receiving **Rs 2555.0001 cr** while **INC** received bonds worth **Rs 317.861 cr**. In FY 2019-20 **more than 62% of the total income of seven National Parties came from Donations through Electoral Bonds** (Rs 2993.826 cr). **More than 52% of the total income of National Parties and 53% of the total income of Regional Parties analysed by ADR for FY 2018-19 came from donations received through electoral bonds.**
7. In FY 2020-21, there are 8 National and 31 Regional parties whose audit reports are available on the ECI website. Only **8 parties (3 National and 5 Regional) have declared donation through Electoral Bonds of Rs 325.06 cr**. 3 National parties namely BJP, INC and AITC collected **5.42% (Rs 74.46 cr) of their total income from donations through Electoral Bonds** for FY 2020-21. (BJP- Rs 22.385 cr, AITC- Rs 42.00 cr and INC- Rs 10.075 cr, YSR Congress- Rs 96.25 cr, DMK- Rs 80.00 cr, BJD- Rs 67.00 cr, AAP- Rs 5.95 cr and JDU- Rs 1.40 cr). As per the **data shared by SBI** in response to ADR's RTI application, **Electoral Bonds worth Rs 324.36 cr were redeemed by parties in FY 2020-21.**
8. Despite receiving a lower share of electoral bonds in 2020-21, the BJP retains a major share of the bonds redeemed by end of 2020-21. A total of Rs. 6.5 thousand crores worth bonds were redeemed by 19 political parties from 2017-18 to 2020-21. This includes 4 recognized national parties and 15 recognized state parties. The **BJP has redeemed Rs. 4.23 thousand crores worth EBs from 2017-18 to 2020-21, which is 65% of the total amount** during these years. This is nearly 6 times that of second placed Indian National Congress, which has redeemed Rs. 716 crores till 2020-21. The two regional parties of BJD & YSRCP occupy the next two places followed by Trinamool Congress, a recognized National party.
9. Given the anonymity provided to donors by the scheme, it is seen that Electoral Bonds have emerged as the most popular mode of donations to National Political parties for FY 2020-21 as well. Only 3 National Parties (BJP, INC and AITC) have received from Donations through Electoral Bonds (Rs 74.46 cr), wherein identity of the donor is not disclosed to the public. Of the Regional parties that have submitted their audit reports, 5

Regional Parties (YSR-C, DMK, BJD, AAP and JDU) have declared receiving donations through Electoral Bonds worth Rs 250.60 cr.

10. 4 National parties namely **BJP, AITC, INC** and **NCP** collected **55.09% (Rs 1811.9425 cr)** of their total income from donations through Electoral Bonds for FY 2021-22. **BJP** received donations through Electoral Bonds worth **Rs 1033.70 cr**, **AITC** received **Rs 528.143 cr**, **INC** received **Rs 236.0995 cr** and **NCP** received **Rs 14.00 cr**. As per the **data shared by SBI** in response to ADR's RTI application, **Electoral Bonds worth Rs 2673.0525 cr were redeemed by parties in FY 2021-22**. **67.79% of this has been redeemed by National Parties**. Among Regional Parties, **TRS, TDP, YSR-C, BJD, AAP, DMK, JDU, SP and SAD** declared receiving income from Electoral Bonds in FY 2021-22.

Party-wise EBs declared in the audit reports for the last five years (in Rs Cr)



11. In FY 2019-20, the 5 National parties received a total of **Rs 1013.805 cr** via voluntary contributions **above Rs 20,000** out of which **91% or Rs 921.95 cr** was from **corporates/business houses** alone. Donations from corporates to National parties **increased by 143%** from the period between 2004-12 to 2019-20.

12. **National parties have received 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%.**

D. Recommendations of ADR

1. ADR proposes that the Electoral Bond Scheme, 2018 should be entirely scrapped.
2. 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, along with 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 a true picture of the financial position of the political parties is revealed to the general public.
3. A list of all political parties eligible to receive donations through electoral bonds as per the eligibility criteria mentioned in the Electoral Bond Scheme, 2018 should be compiled and regularly updated on the basis of the vote share secured by the parties in the last General Election to the House of the People or 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.
4. Express penalties, apart from losing tax benefits, should be imposed on political parties for any non-compliance with the disclosure provisions.
5. Political parties that remain 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.
6. 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.
7. 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.
8. 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.
9. Political parties in compliance with Central Information Commission's order dated 3rd June, 2013 must be brought under the ambit of RTI Act, 2005.

Annexure - I

ADR's petition challenging Finance Act, 2017; Electoral Bonds and Removal of company's limit to donate: W.P (C) 880/2017

This petition challenges the Finance Act, 2017 which was enacted as a money bill which introduced the electoral bond scheme for the purpose of electoral funding. The Act has also removed the previous limit of 7.5% of the company's average three-year net profit for political donations. A company is no longer required to name the political parties to which such contributions are made. The donors' name is also not revealed to the public. These amendments will result in opaqueness, heighten the odds of conflict of interest and also drastically increase black money and corruption. It will also lead to the creation of shell companies and rise of benami transactions to channelize the undocumented money into the political and electoral process in India.

Current Status of the matter:

On 5th March, 2019 ADR and Common Cause filed the first application for stay against the sale/purchase of electoral bonds for Lok Sabha 2019 elections. In the stay application ADR had contended that enormous amounts of corporate funding would be received by political parties during the general elections and this would play a critical role in the elections. In response to ADR's application, the Supreme Court in its interim order dated 12th April, 2019 directed all political parties to submit details of donations received via Electoral Bonds to the Election Commission of India in a sealed cover on or before 30th May 2019.

On 29th November 2019, ADR and Common Cause filed a second application for stay against the sale/purchase of Electoral bonds to bring on record certain vital documents which have surfaced recently and have a strong bearing on the instant case.

On 26th October, 2020 ADR and Common Cause filed a third application for an urgent listing of the petition before the Supreme Court of India. The application for an urgent hearing was filed because;

- ADR's petition was last heard by the Supreme Court on 20-01-2020 and hasn't been listed since then, i.e., for the last 9 months, even though very significant questions concerning democratic functioning of the country are raised in the instant matter which requires urgent adjudication.

- Right before the Bihar Legislative Assembly Elections, the State Bank of India, in the XIV Phase of sale, issued Electoral Bonds through its 29 Authorized branches w.e.f. 19.10.2020 to 28.10.2020.
- Whereas the Electoral Bond Scheme dated 02-01-2018 clearly stipulates sale of electoral bonds in January, April, July and October months of each year; however, the window was not opened in April and July, but was opened in October'20, right before the Bihar Legislative Elections, 2020.

On 9th March, 2021, ADR and Common Cause filed a fourth application for stay on any further purchase of Electoral Bonds before the upcoming state elections in West Bengal, Tamil Nadu, Kerala, Puducherry and Assam as it would further increase the illegal, illicit and anonymous political funding.

On 15th November, 2022, ADR filed an *additional affidavit* in the Supreme Court against amendment dated 07-11-2022 to the Electoral Bond Scheme, 2018 that allowed an additional period of 15 days for sale of EBs which shall be specified by the Central Government in the year of General Elections to the Legislative Assembly of States and Union territories with Legislature. The affidavit submitted that the amendment has been done by the government to ensure that increased amount of donations can be made in a completely opaque manner before state elections as well.

On 1st December, 2022, ADR filed a *Supplementary Affidavit* in the Supreme Court to place on record some significant information culled out from RTI responses received from the Ministry of Finance which revealed that the subordinate officials from the Ministry of Finance, Department of Economic Affairs and Ministry of Law and Justice had warned the senior officials of the Finance Ministry against the amendment **since the matter is sub-judice before the Supreme Court in W.P (C) 880/2017 and MCC period is in force**. These officials in their official communication had suggested *that “any modification on the issuance of the dates from the ones envisaged by Clause 8 of the said Electoral Bonds Scheme will require; a) Obtaining a legal opinion on the matter from Ministry of Law and Justice; b) Obtaining a clearance from Election Commission of India since the MCC is in place on account of announcement of State Assembly elections.” Evidently*, the senior officials of the Finance Ministry including the Finance Minister overruled the proposal of the subordinate officials and stated that *“the concurrence of ECI for the amendment or for the issuance from the MCC perspective is not needed. However, ECI may be informed about the proposed issuances”*

Next date of hearing: Next date of hearing: The matter will be heard on 11th April, 2023. The SC bench will also decide whether the petition should be referred to a Constitutional Bench.