

The Democratic Reform Project and Ors.

VS

The Union of Bharat Nadu

1. Bharat Nadu is a federal country with a multiparty system and parliamentary form of government. Bharat Nadu is the second most populated country in the world, with nearly a fifth of the world's population. It is the largest democracy in the world in terms of the number of voters.
2. Elections are a regular exercise in Bharat Nadu. There has not been a single year since its independence where election either for the State Assemblies or Parliament has not been held. The superintendence, direction, and control of Parliamentary elections as well as Assembly elections of the States and the Union Territories is vested in a body called the Election Commission of Bharat Nadu by virtue of Article 324 of the Constitution of Bharat Nadu.
3. Organising a political party in such a vast country takes a substantial amount of financial resources as the parties have to run their offices throughout the country, pay staff salaries, travelling expenses, election campaigns, publicity, rallies, tours, and other election-related establishments. Expenditure for an election campaign runs into hundreds of crores. Parties rely on donations to fund their election campaigns. These donations come from different sources like the general public, political workers, small businesses, large industrialists, and corporate houses. The main statutory provisions which deal with donations to political parties are Section 29B of the Representation of the People Act, 1951 (RoPA) which entitles parties to accept voluntary contributions by any person or company, except a Government Company, and Section 29C of the RoPA which, inter alia, provides that every political party shall furnish a report to the Election Commission of Bharat Nadu concerning the details of contributions received by it in excess of Rs 20,000 from any person in order to avail the income-tax relief as per the provisions of Income-tax Act, 1961.
4. This system had resulted in the opaqueness of political funding, thereby giving rise to a plethora of issues. Since political parties were not required to disclose the name of the person or company if such donation does not exceed Rs.20,000, the parties used to break up the donations from various questionable sources into parts not exceeding Rs.20,000 and therefore escape from the obligation of disclosing the names. A report published by an independent civil society organisation called The Democratic Reform Project revealed that more than 50% of funds received by the political parties came from unknown sources.

5. The 20th Law Commission of Bharat Nadu while highlighting the necessity for more transparency and accountability in political party funding and expenditure noted, “money, often from illegitimate sources, results in “undisguised bullying” when it is used (both authorised and unauthorised) to buy muscle power, weapons, or to unduly influence voters through liquor, cash, gifts. Currency notes come first in containers, then in truckloads, moving to wholesale/small retail forms, and finally to suitcases and in people's pockets.”
6. Bharat Nadu People's Party (BNPP) is one of the two major political parties in Bharat Nadu along with the United National Congress Party (UNC). It is also the largest political party in the world in terms of membership. The BNNP leaders in recent times have come into the news for their favorable ties with the major industrialists and corporate houses of Bharat Nadu.
7. BNNP is the largest political party in terms of representation in the Union Parliament. BNNP, along with its allies, has formed a political alliance called the National Democratic Front (NDF), which holds 282 out of 545 seats in the Lower House of the Union Parliament. Though the NDF has a substantial majority in the Lower House, they do not hold a majority in the Upper House in which they hold 80 out of 245 seats.
8. In order to “cleanse the corruption in political funding,” the Government of Bharat Nadu enacted the Political Donations (Regulation) Act, 2017 (PDR Act) [**Annexed**]. The Act provided for the creation of Electoral Bonds as a new instrument for political donations, and the constitution of a bank called the 'Bharat Nadu Daan Bank' to process political donations. Additionally, some other significant changes were made to four legislations through the PDR Act, which was passed as a money bill by the Union Parliament. The provisions in four legislations which were amended to enable the 'Electoral Bond Scheme' are as follows (See Annexure for details of the Amendments)
 - a) Section 31 of the Reserve Bank of Bharat Nadu Act, 1934, through Section 3 of the PDR Act;
 - b) Section 29C of the Representation of the People Act, 1951 (RoPA), through Section 4 of the PDR Act;
 - c) Section 13A of the Income Tax Act, 1961, through Section 5 of the PDR Act; and
 - d) Section 182 of the Companies Act, 2013, through Section 6 of the PDR Act.
9. The overall effect of these amendments is
 - a) It introduced 'Electoral Bond' as a new instrument to make donations to the political parties. An electoral bond is an instrument that can be used by individuals and corporations incorporated in Bharat Nadu to make donations to political parties. Bonds can be purchased in denominations ranging from Rs 1,000 to Rs 1 crore from the Bharat Nadu Daan Bank using a KYC compliant bank account,

with no upper limit on the donation amount. Political parties can encash the electoral bond within 15 days. The identity of the donor has to be kept anonymous and known only to the Bank.

- b) No donation above Rs 2000 can be made otherwise than by an Account Payee cheque drawn on a bank on an Account Payee bank draft or use of electronic clearing system through a bank account or an electoral bond.
 - c) A bank called the 'Bharat Nadu Daan Bank' was constituted exclusively to handle donations to political parties by giving it the power to issue Electoral Bonds.
10. This enactment was met with mixed responses from the public and institutional stakeholders. It was lauded by one section of the public as the scheme would ensure traceability of the money. On the other hand, some expressed that the scheme had the potential to increase black money circulation and money laundering.
11. The Democratic Reform Project raised objections on the nature of the scheme introduced by the enactment. They expressed that the Electoral Bond scheme had paved the way for anonymous donations to political parties, which is going to have severe repercussions for transparency in political funding. It could provide a channel to convert black money into white. Additionally, keeping the source secret would lead to big corporate houses trying to extract favours from the ruling party. In this way, private interests would take precedence over the public interest in the Government's policies. Therefore, they filed a petition in the Supreme Court of Bharat Nadu praying for the PDR Act to be declared unconstitutional as it is an obstruction to holding free and fair elections.
12. Mr. Ramakant, a journalist and a keen political observer, raised questions on the certification of the PDR Act as a money bill. He contended that the Act had not met the conditions specified in Article 110 of the Constitution of Bharat Nadu to be certified as a money bill by the Speaker of the House. Furthermore, the bill was passed as a money bill in order to bypass the scrutiny by the Upper House as the ruling party does not have numbers in the Upper House to get the bill passed. He added that the successive governments have misused the Money Bill provision in order to avoid scrutiny of the Upper house and have adopted similar tactics to pass some other enactments, thereby undermining the bicameral nature of the Bharat Nadu Parliament. Similar questions were also raised in various other media platforms. On being asked about this question in an interview, the Attorney General of Bharat Nadu said, "certification of a particular Act as a Money Bill is an internal function of the Parliament. If there is any dispute, the Speaker applies his mind and takes a decision. No one can question the bonafide decision of the Speaker, and all members abide by the decision." Finding the justification to be unsatisfactory, Mr. Ramakant filed a petition in the Supreme Court of Bharat Nadu challenging the certification of Political Donations (Regulation) Act as a Money Bill by the Speaker of the Lower House and consequently quashing of the Act.

13. Ms. Vishrutyi, an RTI activist, filed an RTI application with the Bharat Nadu Daan Bank asking the names of the individuals and corporations who have purchased an electoral bond and the amount of each bond. The Bank denied her request citing “the information sought by the applicant cannot be disclosed as it is in a fiduciary capacity, disclosure of which is exempted under 8(1)(e) and 8(1)(j) of RTI Act, 2005.” After exhausting all appeal mechanisms and having received no satisfactory reply, she filed a petition in the Supreme Court of Bharat Nadu, contending that denial of the information about donors is a violation of peoples' right to know about a matter of public interest.
14. Mr. X, who has purchased Electoral Bonds, filed an intervening application contending that revealing the identity of the purchaser of the electoral bond violates his right to privacy.
15. Supreme Court admitted all the petitions and clubbed them together for a common hearing. The Court also added Mr. X as an intervener. The matter is posted for final hearing on 28th and 29th March 2020. The following are the issues for consideration before the Court:
 - a) Whether the electoral bond scheme violates the basic structure of the Bharat Nadu Constitution.
 - b) Whether the denial of information about purchasers of Electoral Bonds by Bharat Nadu Daan Bank is justified.
 - c) Whether the decision of the Speaker of the Upper House certifying a bill as 'Money Bill' amenable to judicial review.
 - d) Whether the impugned legislation is a money bill under Article 110 of the Bharat Nadu Constitution.

Note:

1. Laws and the Constitution of Bharath Nadu are similar to Laws and the Constitution of India. Supreme Court of Bharath Nadu considers the precedents of the Supreme Court of India as binding.
2. Participants may frame any other issue(s) and/or sub-issue(s) in addition to the ones listed above.
3. Participants are not allowed to use events after 5th February 2020.

Annexure

The Political Contribution (Regulation) Act, 2017

An act to amend the law relating to donations to political parties and to provide a new transparent and traceable instrument to operationalise donations to political parties.

1. Short Title and Commencement – (1) This Act may be called the Political Contribution (Regulation) Act, 2017.

(2) This Act shall come into force on 1st of April 2017.

2. Definition. - In this Act, unless the context otherwise requires,

- (a) “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;
- (b) “authorised bank” means the Bharat Nadu Daan Bank or any other bank which may be notified by the Central Government to issue and encash the electoral bonds in the branches specified;
- (c) “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.

PART I: AMENDMENTS TO EXISTING STATUTES

3. Amendment to Section 31 of the Reserve Bank of Bharat Nadu Act, 1934. - In the Reserve Bank of Bharat Nadu Act, 1934, in section 31, after sub-section (2), the following sub-section shall be inserted, namely:—

(3) Notwithstanding anything contained in this section, the Central Government may authorise any bank to issue electoral bond.

4. Amendment to Section 29C of the Representation of the People Act, 1951. - In the Representation of the People Act, 1951, in section 29C, in sub-section (1), the following shall be inserted, namely:—

Provided that nothing contained in this sub-section shall apply to the contributions received by way of an electoral bond.

5. Amendment to Section 13A of the Income Tax Act, 1961. - In section 13A of the Income-tax Act, with effect from the 1st day of April, 2017—

(I) in the first proviso,—

(i) in clause (b),—

(A) after the words “such voluntary contribution”, the words “other than contribution by way of electoral bond” shall be inserted;

(B) the word “and” occurring at the end shall be omitted;

(ii) in clause (c), the word “; and” shall be inserted at the end;

(iii) after clause (c), the following clause shall be inserted, namely:—

'(d) no donation exceeding two thousand rupees is received by such political party otherwise than by an Account Payee cheque drawn on a bank or an Account Payee bank draft or use of electronic clearing system through a bank account or through electoral bond.

(II) after the second proviso, the following proviso shall be inserted, namely:—

“Provided also that such political party furnishes a return of income for the previous year in accordance with the provisions of sub-section (4B) of section 139 on or before the due date under that section.”.

6. Amendment to Section 182 of the Companies Act, 2013. -In the Companies Act, 2013, in section 182—

(i) in sub-section (1),—

(a) first proviso shall be omitted;

(b) in the second proviso, —

(A) the word "further" shall be omitted;

(B) the words "and the acceptance" shall be omitted;

(ii) for sub-section (3), the following shall be substituted, namely:—

"(3) Every company shall disclose in its profit and loss account the total amount contributed by it under this section during the financial year to which the account relates.

(3A) Notwithstanding anything contained in sub-section (1), the contribution under this section shall not be made except by an Account Payee cheque drawn on a bank or an Account Payee bank draft or use of electronic clearing system through a bank account:

Provided that a company may make a contribution through any instrument, issued pursuant to any scheme notified under any law for the time being in force, for contribution to the political parties.”.

PART II: ELECTORAL BOND SCHEME

7. Eligibility for purchase and encashment of electoral bond.-(1) the electoral bond under this Scheme may be purchased by a person, who is a citizen of Bharat Nadu or incorporated or established in Bharat Nadu.

(2) A person being an individual can buy electoral bonds, either singly or jointly with other individuals.

(3) Only the political parties registered under section 29A of the Representation of the People Act, 1951 (43 of 1951) and 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, shall be eligible to receive the electoral bond.

(4) the electoral bond shall be encashed by an eligible political party only through a bank account with the authorised bank.

8. Applicability of Know Your Customer Norms.-(1)The extant instructions issued by the Reserve Bank of Bharat Nadu regarding Know Your Customer norms of a bank's customer shall apply for buyers of the electoral bonds.

(2) The authorised bank may call for any additional Know Your Customer documents, if it deems necessary.

9. Denomination.—the electoral 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.

10. Validity of Bond.- (1) the electoral bond shall be valid for fifteen days from the date of issue and no payment shall be made to any payee political party if the electoral bond is deposited after expiry of the validity period.

(2) the electoral bond deposited by any political party to its account shall be credited on the same day.

11. Periodicity of issue of electoral bonds.- (1) the electoral 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.

(2) An additional period of thirty days shall be specified by the Central Government in the year of general elections to the House of People.

12. Interest.- No interest shall be payable on the electoral bond.

13. Issuing offices and commission payable.-No commission, brokerage or any other charges for issue of electoral bond shall be payable by the buyer against purchase of the electoral bond.

14. Payment options.-(1) All payments for the issuance of the electoral bond shall be accepted in Bharat Nadu rupees, through demand draft or cheque or through Electronic Clearing System or direct debit to the buyer's account.

(2) Where payment is made through cheque or demand draft, the same shall be drawn in favour of the issuing bank at the place of issue such electoral bond.

15. Encashment of the electoral bond.-(1) the electoral bond can be encashed only by an eligible political party by depositing the same in their designated bank account.

(2) The amount of electoral bonds not encashed within the validity period of fifteen days shall be deposited by the authorised bank to a separate account called the un-encashed deposit account.

16. Tax treatment. - The face value of the electoral 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.

17. Trading of bonds. - the electoral bonds shall not be eligible for trading.

PART III: BHARAT NADU DAAN BANK

18. Establishment of the Bharat Nadu Daan Bank. - A Bank to be called the Bharat Nadu Daan Bank shall be constituted to issue instruments in the nature of Electoral Bonds and carry on other business in accordance with the provisions of this Act and for the purpose of giving effect to the Electoral Bond Scheme.

19. Power to make rules. – The Central Government is empowered to make rules relating to the procedure for making application for purchase of electoral bonds and any other rule incidental and ancillary to give effect to the provisions of this act.