



THE HINDU ANALYSIS

16th March 2024

by saurabh
pandey



THE HINDU



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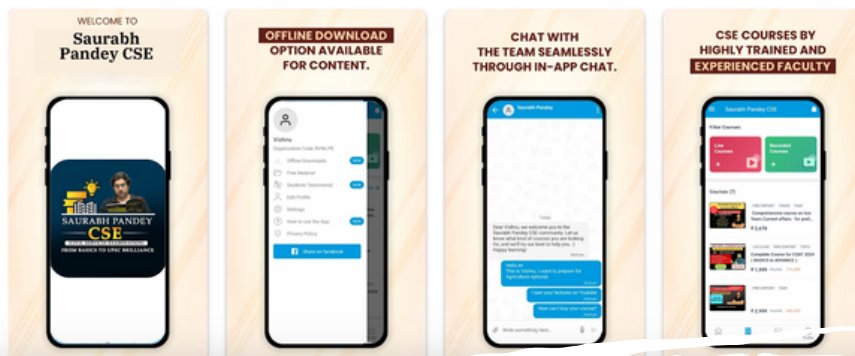


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Why has SBI not disclosed codes of bonds: SC

Top court sends SBI a notice over the missing unique codes and lists the case for March 19

SC to return original documents that the Election Commission submitted after making digital copies

According to the SBI, 22,217 electoral bonds were purchased and 22,030 were redeemed

The Hindu Bureau
 NEW DELHI

The Supreme Court on Friday asked the State Bank of India (SBI) why it had not disclosed the unique alphanumeric numbers of individual electoral bonds to the Election Commission (EC) for publication on its official website.

"In our judgment of February 15, we had directed disclosure specifically of all the details of the electoral bonds, including date of their purchase, the amount, names of purchasers, the political parties which redeemed the bonds, etc. But the bank has not disclosed the numbers of the bonds purchased and encashed.

Why?" Chief Justice of India D.Y. Chandrachud, heading a five-judge Bench, asked.

The court issued a notice to the bank and listed the case for March 19.

The Bench further agreed to return to the EC the documents regarding electoral bonds which the poll body had given the court, in compliance with judicial orders passed on April 12, 2019 and November 2, 2023.

'No copies retained'

In its judgment on February 15, the five-judge Bench had directed the EC to publish the confidential information submitted in the court, along with details of electoral bonds. However,

Untangling the bond

A timeline of the electoral bonds issue in the Supreme Court

- **March 15, 2019:** An affidavit filed by the Ministry of Finance in the Supreme Court specifies that electoral bonds have "unique hidden alphanumeric serial numbers as an in-built security feature"
- **February 15, 2024:** A Constitution Bench of the Supreme Court directs that "SBI must disclose details of each electoral bond encashed by political parties"
- **March 12:** SBI hands over details of electoral bonds purchased by anonymous donors and redeemed by political parties to the EC
- **March 15:** A Constitution Bench asks why the SBI did not give the unique serial numbers to the EC. Issues notice to the bank



the EC filed an application on March 14, saying that it had given the court the originals of the documents and not retained any copies.

The Commission said that it had handed over to

the Supreme Court a sealed cover containing 106 sealed envelopes, and then sealed boxes containing 523 sealed envelopes, in two tranches in pursuance of the judicial orders of April 2019 and No-

Many top donors were under ED, I-T Dept. scanner

CHENNAI

An analysis of the companies which feature among the top purchasers of electoral bonds shows that a significant number of them were under the Enforcement Directorate's or the Income Tax (I-T) department's scanner at some point of time in the past five years. » **PAGE 4**

ember 2023.

"We presumed you would have retained copies," Chief Justice Chandrachud told advocate Amit Sharma, appearing for the EC.

The court ordered its

Rahul accuses Modi of running 'extortion racket'

THANE

In a blistering attack on Prime Minister Narendra Modi over the electoral bonds, Congress leader Rahul Gandhi on Friday accused Mr. Modi of "running the world's largest extortion racket". He alleged that the funds amassed through electoral bonds scheme were used to split parties. » **PAGE 4**

Registry to scan and digitise copies of the documents in the course of the day and finish the work by tomorrow. The originals will be returned to the EC along with a digitised copy. The ready availability of a

digitised copy, provided by the Supreme Court itself, will help avert any delay in the publication of these documents on electoral bonds.

The court, in its February 15 judgment, had required the SBI to provide the EC with the complete details, including dates of purchase; the names of the purchasers; and the denominations of the bonds purchased; along with the details of bonds redeemed by political parties, including their dates of encashment and denominations.

The SBI had said that 22,217 electoral bonds were purchased and 22,030 were redeemed by political parties between April 1, 2019 and February 15, 2024.



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ELECTORAL BONDS INDEPTH ANALYSIS

- The legal framework to introduce the Electoral Bond Scheme
- On 14 May 2016, the Finance Act, 2016 came into force. It amended Section 2(1)(j)(vi) of the Foreign Contribution Regulation Act, 2010 (FCRA), which defines “foreign source”, to allow foreign companies who have a majority share in Indian companies to donate to political parties. Previously, foreign companies were prohibited from donating to political parties under the FCRA and the Foreign Exchange Management Act, 1999.
- On 31 March 2017, the Finance Act, 2017 amended the Representation of the People Act, 1951 (RoPA), the Reserve Bank of India Act, 1934, the Income Tax Act, 1961, and the Companies Act, 2013.
-

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- **Section 11 of the Finance Act, 2017 amended Section 13A of the Income Tax Act exempting political parties from keeping a detailed record of contributions received through electoral bonds.**
- **Section 135 amended Section 31 of the RBI Act. This permitted the Union government to “authorise any scheduled bank to issue electoral bond[s].”**
- **Section 137 introduced a proviso to Section 29C of RoPA, exempting political parties from publishing contributions received through electoral bonds in “Contribution Reports.” These reports disclose contributions received by parties “in excess of twenty thousand rupees” from companies and individuals.**

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- **.Section 154 amended Section 182 of the Companies Act, 2013 which removed the upper limit on how much a company could donate to a political party. Previously companies could only donate up to 7.5 percent of three years of the company's net profits.**



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.The Contours of the Electoral Bond Scheme, 2018

- On 2 January 2018, the Ministry of Finance issued a notification that introduced the Electoral Bond Scheme, 2018.
- Under the 2018 Scheme, certain branches of the State Bank of India (SBI) were authorised to sell electoral bonds. Bonds can be purchased in denominations of ₹ 1,000, ₹10,000, ₹1,00,000, ₹10,00,000, and ₹ 1,00,00,000 from the SBI.

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- They are to be sold for 10 days in January, April, July, and October each year. The identity of the purchaser remains anonymous to everyone, except the SBI, who must record the buyer's Know Your Customer (KYC) details.
- Political parties which secured more than one percent votes "in the last general election to the House of the People or a Legislative Assembly" are eligible to accept donations through electoral bonds. The political parties must encash the bond within 15 days of receiving it. After this period ends, the funds are deposited to the Prime Minister's Relief Fund.
-

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- **Election Commission of India on the Electoral Bonds Scheme**
- On 25 March 2019, the Election Commission of India (ECI), one of the respondents, filed an affidavit opposing the Electoral Bond Scheme.
- The affidavit claimed that the scheme is contrary to the goal of transparency in political finance. It also claimed that the ECI had shared a letter to the Union Government on 26 May 2017, warning against the “repercussions/impact on the transparency aspect of political finance/funding.” .”

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- Further, they submitted that exempting political parties from sharing details regarding contributions would keep information on foreign funding in the dark.
- The affidavit stated, “unchecked foreign funding of political parties in India, which could lead to Indian policies being influenced by foreign companies

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- On 1 April 2019, the Union government submitted a rejoinder claiming that the EBS was “a pioneer step in bringing electoral reforms, to ensure that the spirit of transparency and accountability in political funding is maintained.”
- The Union claimed that political parties largely received funds through cash donations, leading to an “unregulated flow of black money.”
- The Union assured that these issues would no longer hamper political funding because there is only one authorised bank—the State Bank of India—that can issue such bonds.
- Further, providing KYC details ensure accountability.

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- On 15 February 2024, the Court unanimously struck down the Union's 2018 Electoral Bonds (EB) Scheme.
- The Bench held that the Scheme violated the voters' right to information enshrined in Article 19(1)(a) of the Constitution.
- The Court also directed that the sale of electoral bonds be stopped with immediate effect. SBI was directed to submit details of the Electoral Bonds purchased from 12 April 2019 till date, to the ECI.
- This will include details of the purchaser as well as the political parties that the bonds were given to.
- Further, the Court ordered the ECI to publish the information shared by SBI on its official website within one week from the receipt of the information (by 13 March 2024)..

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New ECs take charge; Supreme Court refuses to stay their appointments

Krishnadas Rajagopal
Sreeparna Chakrabarty
NEW DELHI

Former bureaucrats Gyanesh Kumar and Sukhbir Singh Sandhu assumed charge as Election Commissioners on Friday, a day after their selection by a high-powered panel chaired by Prime Minister Narendra Modi. The Supreme Court refused to intervene immediately on a petition urging a stay on their appointments, on the grounds that the hurry and lack of transparency shown by the government has sent a wrong message that the two retired IAS officers are "favourable" to the regime in power.

This is the first time that Election Commissioners have been appointed in accordance with the new Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023, which was brought in by the government last December, and which replaces the Chief Justice of India with a Cabinet Minister in the selection panel chaired by the Prime Minister.

Appearing before a three-judge Bench headed

by Justice Sanjiv Khanna, the petitioners – including Association for Democratic Reforms and Congress leader Jaya Thakur and others, represented by senior advocates Kapil Sibal, Vikas Singh, and advocate Prashant Bhushan – said the enactment of the new law, which gives the Union government a dominant role in the selection and appointment of Election Commissioners, had worked to its advantage.

However, the Bench relied on a technical point that legislative enactments are not "normally" stayed. The court adjourned the case to March 22.

Listing out the series of circumstances which raised suspicions about the process, advocate Prashant Bhushan said that the government had deliberately advanced the meeting of the high-profile selection committee by a day to time the appointments ahead of the court hearing on Friday.

The petitioners argued that this law had been enacted to get the better of a March 2023 Supreme Court judgment in the Anoop Baranwal case, which had called for a fair and transparent appointments' mechanism, with

the participation of the Chief Justice of India as a member of the selection committee.

'In favour of Centre'

The petitioners argued that even this law, which rolled the dice heavily in favour of the Union government, was violated when the "minority" member of the selection committee and leader of the largest Opposition party, Adhir Ranjan Chowdhury, found himself reduced to the status of a figurehead by a majority vote on Wednesday.

Mr. Chowdhury was given 212 names of candidates only a day prior to the selection committee meeting. He had told the media that he was provided the names of shortlisted candidates only 10 minutes prior to the appointment. This was a violation of Section 6 of the 2023 Act, which required the selection panel members to be given ample opportunity to make a considered decision regarding the candidates.

Mr. Kumar and Mr. Sandhu were appointed following vacancies created by the sudden resignation of EC Arun Goel, and the retirement of EC Anup Chandra Pandey.



Task at hand: Gyanesh Kumar and Sukhbir Singh Sandhu assumed charge as ECs on Friday. PTI



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.What does the Constitution say?

- **Article 324 provides for the composition of the Election Commission of India (ECI). It consists of the CEC and two other ECs.**
- **The Constitution provides that the appointment of the CEC and EC shall, subject to the provisions of any law made by Parliament, be made by the President.**
- **While the existing parliamentary law provides for their conditions of service, it is silent with respect to appointments**
-



- **.The Supreme Court in this case, in March 2023, held that there has been a legislative vacuum due to the absence of any law by Parliament in the last 73 years (since the adoption of the Constitution) with respect to the appointment of the CEC and EC.**
- **The independence of the ECI is essential for ensuring free and fair elections that is paramount for a vibrant democracy.**

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- In the past, the Dinesh Goswami Committee on Electoral Reforms (1990) and the Law Commission in its 255th report on Electoral Reforms (2015), had suggested that the CEC and ECs should be appointed by a committee consisting of the Prime Minister, the Chief Justice of India (CJI) and the Leader of the Opposition or the largest Opposition party in the Lok Sabha.
- Considering these recommendations, the Supreme Court, exercising its powers under Article 142 (to issue directions for doing 'complete justice' in any matter), laid down that the CEC and ECs shall be appointed by a committee consisting of the Prime Minister, the CJI and the Leader of the Opposition or the largest opposition party in the Lok Sabha.
- It said that this mechanism shall be in place till Parliament enacts a law on this matter.

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What does the proposed law provide?

- **The CEC and other ECs shall be appointed from persons who are holding or have held a post equivalent to the rank of Secretary to the Government of India.**
- **There shall be a search committee headed by the Minister of Law and Justice, who shall prepare a panel of five persons for consideration to the selection committee.**
- **The CEC and EC shall be appointed by the President on the recommendation of this selection committee consisting of the Prime Minister, the Leader of Opposition in the Lok Sabha and a Union Cabinet Minister to be nominated by the Prime Minister.**
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- On December 12, the Rajya Sabha passed The Chief Election Commissioner and other Election Commissioners (Appointment, Conditions of Office and Terms of Office) Bill, 2023.
- It provides for the procedure for appointment of the Chief Election Commissioner (CEC) and the other two Election Commissioners (ECs).
- The CEC and EC shall be appointed by the President on the recommendation of this selection committee consisting of the Prime Minister, the Leader of Opposition in the Lok Sabha and a Union Cabinet Minister to be nominated by the Prime Minister.

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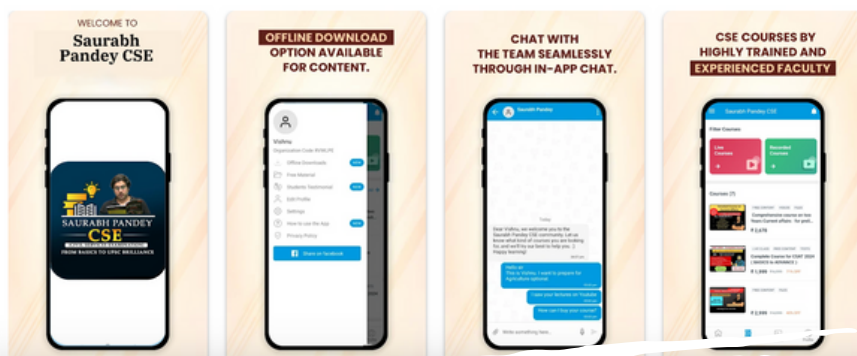

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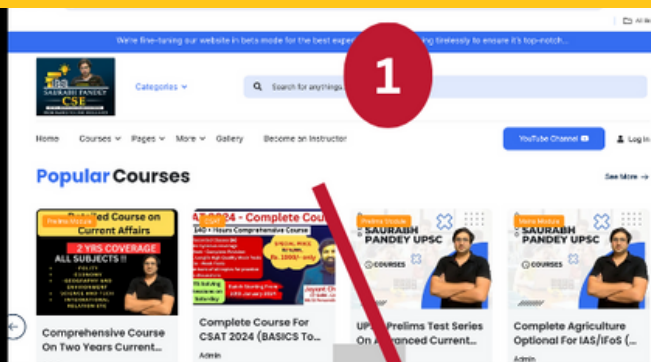
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