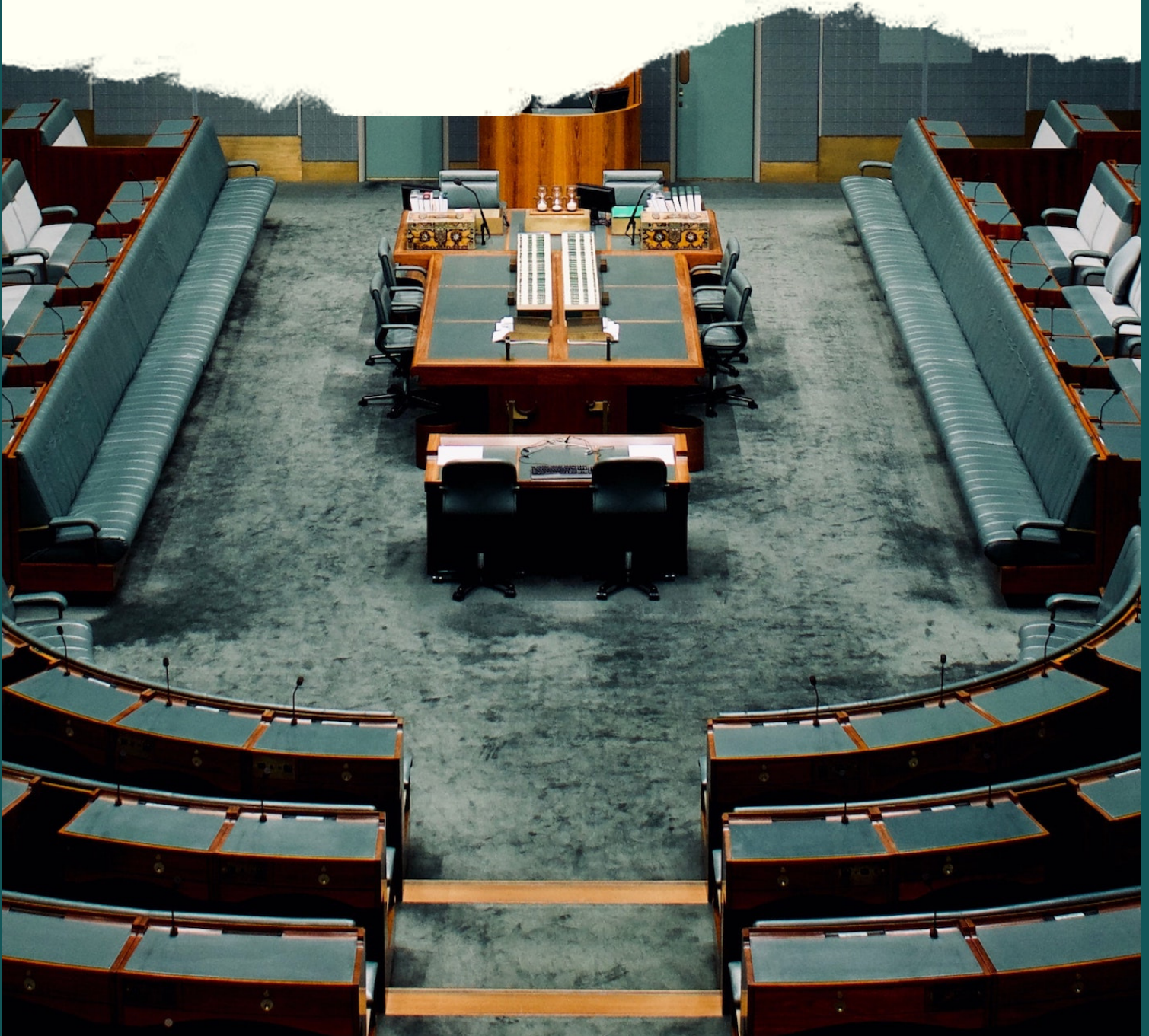




THE 15TH NALSAR - JUSTICE B.R. SAWHNY MEMORIAL MOOT COURT COMPETITION 2022

MOOT PROPOSITION



MOOT PROPOSITION

1. Republic of Eurekaia is the world's largest democratic country. Eurekaia gained independence from the British rule and transformed into a constitutional and democratic republic in 1950 with a federal structure like that of India. Jagratha Raksha Party (“JRP”) and Eurekaia Democratic Party (“EDP”) are the two largest political parties in Eurekaia. In 2010, JRP won the general election to the Parliament of Eurekaia¹ with a decent majority and formed the Central Government along with its allies.
2. In 2015, JRP and its allies managed to secure the required majority of seats in the Parliament after a closely fought election. The second term of the JRP-led Government was not as promising. By the end of 2018, there was strong public resentment against the Government as no real reforms were being initiated to deal with gripping issues of governance and economy. Riding on this anti-incumbency sentiment, EDP started occupying the political space by scrutinising every move or rather, inactions, of the Government. By mid-2019, it was evident that in the forthcoming elections in May 2020 Eurekaia would vote the EDP to power with substantial majority. During the election campaign, EDP made several promises to the electorate through their detailed election manifesto along with a campaign slogan: *EDP will come, Eurekaia will be clean.* The manifesto contained promises to build world-class government hospitals and schools in rural areas, clean the framework of funding political parties, weed out black money and corruption, and to decriminalise the political space among others.
3. Results of the 2020 parliamentary elections favoured the EDP which won a resounding majority of 306 seats in the Lok Sabha and formed the Central Government with ease. The first three years of the new government were spent in trying to execute reforms in the agriculture sectors and those concerning national security. However, the EDP Government introduced a spate of legislative reforms in 2024 to serve other electoral promises in their manifesto.
4. In March 2024, the Parliament passed the Finance Act 2024 which paved way for a new scheme called ‘Electoral Finance Bond’ (“EFB”) as a tool to fund political parties. An EFB is similar to a promissory note and eligible persons can purchase EFBs to donate money to their

¹ The House of the People (“Lok Sabha”) of Eurekaian Parliament has 545 seats that are contested in every election.

MOOT PROPOSITION

preferred political parties. In fact, there is no upper limit on the amount that can be donated via EFBs. Moreover, EFBs can be bought only from designated branches of the National Bank of Eurekaatia using Know Your Customer (“KYC”)-compliant bank accounts of the donor. Thereafter, recipient political parties must encash the donated EFBs within 15 days from the date of issue. But the feature of the scheme that the donor’s identity and amount donated will be known only to the bank that issued the EFB while such details will be kept anonymous to the public gathered significant criticism. For further details of the EFB Scheme, see **Annexure I**.

5. Interestingly in December 2022, before the EFB scheme was introduced, the Central Government had openly rejected the Eurekaatia Law Commission’s proposal in its 333rd Report to introduce state funding of electoral expenditures of political parties. The Commission’s rationale was that it would remove the unholy *quid-pro-quo* nexus between corporations and political parties as well as ensure a more level playing field for all political parties during elections. Through the press conferences held by the Finance and the Law ministries, the Government had indicated that state funding is not practical as it will be difficult to ensure candidates do not procure funds from other sources beyond what the State has provided. Further, the Government had pointed out that existing campaign and related electoral activities are expensive and hence, could be financed only if they receive large amount of funds which can be granted only by corporations. Hence, the idea was dismissed as not being conducive for maintaining the equilibrium of the public exchequer.

6. The Finance Act enabled the EFB scheme by making specific amendments to the Reserve Bank of Eurekaatia Act 1951, the Representation of the People Act 1951 (“RPA 1951”), and the Income Tax Act 1961 (“ITA 1961”). Section 29C of the RPA 1951 was amended to the extent that, in the annual contribution reports that are submitted to the Election Commission of Eurekaatia (“ECE”), now onwards political parties need not indicate details like names of the donor and the corresponding amounts donated by them if such donations are received via EFBs. Similarly, Section 13A of the ITA 1961 was altered as well. Section 13A provides exemption of all voluntary contributions received by political parties from the payment of income tax. This benefit is extended only if political parties comply with three conditions. One, they should maintain relevant books of accounts and other documents so as to enable the assessing officers to properly deduce its income from there. Second, in those relevant books of accounts, political parties must record each voluntary contribution in excess of 20,000

MOOT PROPOSITION

Eurekatia Rupees with details like the name and address of persons who made such contributions. Third, political parties, in the past, ought to have complied with the direction that existed under Section 29C of the RPA 1951 prior to its amendment by the Finance Act as mentioned earlier. However, Section 13A was amended by the Finance Act to allow political parties to exclude details of EFB donations from being recorded in their books of accounts maintained for the benefit of income tax exemption. Apart from these two, no other legislative changes were made by the Finance Act to facilitate the EFB Scheme.

7. There were a few public commentators who supported this scheme arguing that the despite being one of the largest democracies in the globe, Eurekatia had not been able to evolve a clean electoral funding system devoid of black money until the arrival of the EFB scheme. Yet, the EFB scheme was highly criticised for cutting down the transparency in electoral funding. What furthered the opposition against the EFB Scheme was the fact that since its introduction, as per EDP's annual audit reports submitted to the ECE, more than 60% of the total voluntary monetary contributions received by the ruling party were through EFBs.
8. Following this, various writ petitions in the nature of Public Interest Litigation ("PIL") were filed before the Supreme Court under Article 32 of the Constitution of Eurekatia challenging the EFB Scheme and related statutory amendments. The lead petition was filed by the True Democratic Society, an independent think-tank working on areas electoral laws and policies. They argued that the EFB Scheme create an opaque political party funding system and hence, violated several fundamental rights. *[True Democratic Society and Ors. v. Union of Eurekatia]*
9. The other major legislative change initiated by the EDP Government during this period resulted in creating a new ground for disqualifying persons from contesting in elections. In May 2024, the Government introduced the Amendment Bill No. 9 of 2024 which sought to add Section 8B of RPA 1951. This new provision would disqualify individuals from contesting in elections if criminal charges have been framed against them by trial courts. The Bill introduced in the Parliament reads as:

MOOT PROPOSITION

8B. Bar on contesting in elections. —

(1) *Such persons, who are otherwise eligible to contest an election according to this Act, shall be disqualified from doing so if a competent court has framed a criminal charge against them under the Code of Criminal Procedure, 1973 for a cognizable offence.*

Provided that such disqualification shall not apply when a criminal charge has been framed less than one year before the date of scrutiny of nominations for the upcoming election under Section 36 of this Act.

(2) *Any disqualification under sub-section (1) shall continue till the time such persons are discharged or acquitted by a competent court.*

10. While introducing the Bill in the Lok Sabha, the Union Law Minister underscored there was an urgent need to introduce stricter rules other than disqualification upon conviction in certain criminal cases as mandated in Section 8 of RPA 1951 in order to send positive signals about the purity of our democracy to the entire world. Further, the Minister relied on the data produced by the Tajio Institute for Kanoon Reforms, an independent think tank working on reforms in the justice delivery system. Their study showed that 34% of all the Members of Parliament (“MPs”) elected in the 2015 parliamentary elections were facing criminal cases at that time. Further details of this study can be found in Annexure II of this proposition.

11. Certain petitions were filed by Members of Legislative Assembly (“MLAs”) from the State of Virashtra before the Supreme Court challenging the validity of this Bill on that ground that it was unconstitutional to disqualify a citizen from contesting in elections before being found guilty and convicted in a criminal case. However, these petitions were dismissed by the Court as being premature because the constitutional validity of a parliamentary bill cannot be challenged before it formally becomes an Act. In the due course of time, after debates and scrutiny in both the Houses of the Parliament, the Bill was passed with a few changes. On 29 June 2024, the Bill received the assent of the President of Eurekaia and Section 8B of the RPA 1951 came into force.

Section 8B now reads as:

8B. Disqualification from contesting in elections. —

(1) *Such persons, who are otherwise eligible to contest an election according to this Act, shall be disqualified if a competent court has framed a criminal charge against them under the Code of Criminal Procedure, 1973 for an offence punishable by at least five years of imprisonment:*

MOOT PROPOSITION

Provided that such disqualification shall not apply when a criminal charge has been framed less than one year before the date of scrutiny of nominations for the upcoming election under Section 36 of this Act.

(2) Any disqualification under sub-section (1) shall continue till the time such persons are discharged or acquitted by a competent court.

12. In July 2024, George Sebastian who is an MLA from the State of Salmoa filed a writ petition before the Supreme Court challenging the constitutionality of the newly inserted Section 8B of the RPA 1951 on the ground that the provision violated Article 21 of the Constitution among other constitutional provisions. *[George Sebastian v. Union of Eurekaia]*

13. As the 2025 parliamentary elections were approaching close by, another issue was brewing in the State of Omegaland. Omegaland being the largest and the most populous State of Eurekaia has been the focus for all major political parties during elections because it houses the highest number of parliamentary seats. The number would have been even higher, but the delimitation exercise in the country has been frozen and has not been conducted since 1971 due to a constitutional amendment to that effect. The main justification of the amendment was to ensure that the low populations of the southern states should not cost them their representation. As such, the freeze was deemed as necessary to ensure federal balance.

14. Omegaland has a diverse population with many factions of Hindus, Jains, Muslims, and Christians living together. The Schedule Castes (“SC”) and the Scheduled Tribes (“ST”) also enjoy reservation in seats in proportion to their population in accordance with Article 330 of the Constitution. So, if in the latest census, SC form 10% of the population, 10% of the parliamentary seats will be reserved for them, and so on.

15. A.Y. Bisht, a popular JRP leader, has been very vocal about his support for the upper castes and he rejects the idea of reservations. His opinion, that the act of reservation is discriminatory and unfair to the upper castes, has led to a lot of outcry and criticism. Consequently, it is declared that the constituency that he generally contests elections from, will be reserved for an SC candidate in the 2025 elections and thereafter until reviewed. Fearing a backlash for Bisht’s comments, JRP refuses to let him contest from another seat. Outraged, he files a writ petition in the Supreme Court challenging the computation of reserved seats. His argument is that due to the delimitation freeze, the total number of seats in the State do not reflect the increase in

MOOT PROPOSITION

population. But because the reservation of seats is done based on the latest census, the increase in the SC/ST populations has been updated with every census. With the total number of seats being constant, this means that the SC/ST reserved seats are now increasing disproportionately with respect to the total number of seats available to the non-reserved candidates. He claims that the number of seats of reserved candidates in the State (see Annexure III for the data) ought to be lower due to delimitation irregularities and usage of two different census data for total seats and computing reserved seats respectively. He challenges the computation of reserved seats, and also calls for declaration of delimitation freeze as unconstitutional. *[A.Y. Bisht v. Union of Eurekaia]*

16. Meanwhile, another petition concerning the interpretation of the RPA 1951 was filed in the Supreme Court by Lal Mahesh Diwan. Mr. Diwan is a famous historian who has been serving as an under-trial prisoner in the Vihar Jail for the last four years. He is awaiting the completion of the trial in a case in which he is accused of Seditious u/s 124A of the Eurekaia Penal Code. The Vihar Jail is located in New Mojoland and is the largest jail in Eurekaia. New Mojoland is the capital city of Eurekaia. As per the data released in 2019-2020 by the concerned governmental agencies of Eurekaia, Mojoland has a prison population of 17,534 inmates out of whom, 14,355 are undertrial prisoners. However, as per Section 62(5) of the RPA 1951, such persons confined in prisons are not allowed to vote in elections. Section 62(5) reads as:

62. Right to vote.—

(5) No person shall vote at any election if he is confined in a prison, whether under a sentence of imprisonment or transportation or otherwise, or is in the lawful custody of the police for being accused of an offence punishable by at least three years of imprisonment:

Provided that nothing in this sub-section shall apply to a person subjected to preventive detention under any law for the time being in force.

17. Diwan was aggrieved by this provision which will disable him to vote in the upcoming elections in 2025. Hence, he filed a writ petition in the Supreme Court challenging the constitutional validity of Section 62(5) of the RPA 1951. *[Lal Mahesh Diwan v. Union of Eurekaia and Ors.]*
18. As all these writ petitions though filed at different points of time in 2024 raise several substantial questions of election and constitutional laws, the Supreme Court admitted Diwan's

MOOT PROPOSITION

petition and clubbed it with the other petitions. By the following Order, the Court fixed a date for hearing all these petitions together:

ITEM NO.1

COURT No.1

SECTION I

SUPREME COURT OF EUREKATIA

RECORD OF PROCEEDINGS

Writ Petition No(s) .8757, 8760, 8861, and 8878/2024

Date: 29/12/2024

The matters were called upon for hearing today. Upon hearing the counsel, the Court made the following:

ORDER

Learned counsel for the petitioners and the respondents heard. At the request of the learned Attorney General for Eurekaia, list the matter(s) on 10/01/2025 for hearing on the following questions:

A. True Democratic Society and Ors. v. Union of Eurekaia: Whether the EFB Scheme, including the Finance Act's provisions which amended the RPA 1951 and the ITA 1961 are unconstitutional?

B. A.Y. Bisht v. Union of Eurekaia: Whether the constitutional amendment which introduced the freeze on delimitation is unconstitutional? Whether the process of apportionment of seats to different states, and to reserved categories in the State, contravenes is unconstitutional?

C. George Sebastian v. Union of Eurekaia: Whether Section 8B of the RPA 1951 is liable to be struck down as being unconstitutional?

D. Lal Mahesh Diwan v. Union of Eurekaia: Whether Section 62(5) of the RPA 1951 is liable to be struck down as being unconstitutional?

ASSISTANT REGISTRAR

NOTE FOR THE PARTICIPANTS

1. As far as the petition in *True Democratic Society and Ors. v. Union of Eureka* is concerned, the participants should assume that the Finance Act was passed by the Eureka Parliament legally through proper constitutional methods and there is no challenge to the Act or the EFB Scheme on that basis.
2. There is no preliminary issue concerning clubbing of petitions that needs adjudication. Participants should focus on the questions on merit.
3. The legal system applicable to India, with all its legislation (including subordinate legislation like rules, orders, and schemes), and judgments, applies *as it is* to the Republic of Eureka, subject to the directions in Point No.4 of this Note. The Supreme Court of Eureka has the same powers and functions as the Supreme Court of India.
4. Participants must note that the Proposition has explicitly modified the text of the Indian laws or other facts at certain parts of this Proposition to suit this Competition's requirements.
5. The issues identified may be divided into sub-issues and can be added to or amended upon.

ANNEXURES TO THE PROPOSITION

ANNEXURE I

This EFB scheme of Eurekaatia is *pari materia* to India’s Electoral Bonds Scheme of 2018 except for certain modifications as indicated in this Annexure and other parts of the moot court proposition:

THE GAZETTE OF EUREKATIA

EXTRAORDINARY

PART II—Section 3—Sub-section (ii)

PUBLISHED BY AUTHORITY

NEW MOJOLAND, TUESDAY, MARCH 29, 2024

**MINISTRY OF FINANCE
(Department of Economic Affairs)**

NOTIFICATION

New Mojoland, the 29th of March, 2024

S.O. 27(E). — In exercise of the powers conferred by sub-section (3) of Section 31 of the Reserve Bank of Eurekaatia Act, 1951 (3 of 1951), the Central Government hereby makes the following Scheme, namely: —

1. Short title and commencement. — (1) This scheme may be called the Electoral Finance Bond Scheme, 2024.

(2) It shall come into force on the date of its publication in the Official Gazette.

2. Definition. — In this Scheme, unless the context otherwise requires, —

(a) “**electoral finance 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 National Bank of Eurekaatia authorised to issue and encash the bonds in the branches specified in Annexure I to this notification;

MOOT PROPOSITION

(c) “**issuing branch**” means a designated branch of the authorised bank specified in Annexure I for issuing electoral bonds;

(d) “**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.

3. Eligibility for purchase and encashment of electoral bond. — (1) The Bond under this Scheme may be purchased by a person, who is a citizen of Eurekaatia or incorporated or established in Eurekaatia.

(2) A person being an individual can buy 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 and secured not less than one per cent of the votes polled in the last general election to the Lok Sabha or the Legislative Assembly, as the case may be, shall be eligible to receive the bond.

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

4. Applicability of Know Your Customer (“KYC”) Norms. — (1) The extant instructions issued by the Reserve Bank of Eurekaatia regarding KYC norms of a bank’s customer shall apply for buyers of the bonds.

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

5. Denomination. — The bonds shall be issued in the denomination of `1000, `10,000, `1,00,000, `10,00,000 and `1,00,00,000 Eurekaatia Rupees.

6. Validity of Bond. — (1) The 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 bond is deposited after expiry of the validity period.

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

7. Procedure for making application for purchase of bonds. — (1) Every buyer desirous of purchasing bond can apply with a physical or through online application in the format specified in Annexure II to this notification.

(2) Every application shall contain particulars as per the format in Annexure-II and shall be accompanied with the specified documents.

MOOT PROPOSITION

(3) On receipt of an application, the issuing branch shall issue the requisite bond, if all the requirements are fulfilled.

(4) The information furnished by the buyer shall be treated confidential by the authorised bank and shall not be disclosed to any individual or authority for any purposes, except when demanded by a competent court or upon registration of criminal case, by any law enforcement agency.

(5) A non-KYC compliant application or an application not meeting the requirements of the scheme shall be rejected.

8. Periodicity of issue of bonds. — (1) The bonds under this Scheme shall be available for purchase by any person for a period of ten days each in the months of January, April, July and October as may be specified by the Central Government.

(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.

9. Interest. — No interest shall be payable on the bond.

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

11. Payment options. — (1) All payments for the issuance of the bond shall be accepted in Eurekaia 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 bond.

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

(2) The amount of bonds not encashed within the validity period of fifteen days shall be deposited by the authorised bank to the official account of the Prime Minister's Relief Fund.

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

14. Trading of bonds. — The bonds shall not be eligible for trading.

Annexures to the Scheme [Omitted]

[F. No. 4(23)-B(W&M)/2017]
RAJ DUTT, Jt. Secy.

MOOT PROPOSITION

ANNEXURE II

Data collected by the Tajjo Institute for Kanoon Reforms after analysing the self-sworn affidavits filed before the ECE by 539 MPs who won the General Election in May 2020:

MPs with criminal cases against them	MPs with serious criminal cases against them ²	Attempt to Murder	Murder	Hate Speech	Rape	Other crimes against women	Kidnapping
233 (43%)	159 (29%) Note: This percentage was merely 14% after the 2010 parliamentary elections.	30	29	19	3	16	6

ANNEXURE III

Data from the latest Census for the State of Omegaland:

Total Population of the State	199812341
SC Population in the State	41357608
Total Constituencies in the State (according to the last delimitation in 1971)	80
Total Seats Reserved	17
Total Constituencies in the State (corrected to the current population)	89

² Some of the main categories of serious criminal cases have been indicated in the subsequent columns.