

The validity of the electoral bonds scheme

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Introduction:

A Constitution Bench headed by Chief Justice DY Chandrachud, on November 2, reserved its judgment on petitions challenging the validity of the electoral bonds scheme.

What is electoral bond?

1. The electoral bonds system was introduced in 2017 by way of a Finance bill and it was implemented in 2018.
2. They serve as a means for individuals and entities to make donations to registered political parties while maintaining donor anonymity.

Features:

1. State Bank of India (SBI) issues the bonds in denominations of Rs 1,000, Rs 10,000, Rs 1 lakh, Rs 10 lakh, and Rs 1 crore.
2. Payable to the bearer on demand and interest-free.
3. Purchased by Indian citizens or entities established in India.
4. Can be bought individually or jointly with other individuals.
5. Valid for 15 calendar days from the date of issue.

Authorized Issuer:

1. State Bank of India (SBI) is the authorized issuer.
2. Electoral Bonds are issued through designated SBI branches.

Eligibility of Political Parties:

1. Only the political parties registered under Section 29A of the Representation of the People Act, 1951 and have secured not less than 1% of the votes polled in the last general election to the House of the People or the Legislative Assembly, are eligible to receive electoral bonds.

Purchase and Encashment:

1. Electoral Bonds can be purchased digitally or through cheques.
2. Encashment only through an authorized bank account of the political party.

Transparency and Accountability:

1. Parties must disclose their bank account with the Election Commission of India (ECI).
2. Donations are made through banking channels, ensuring transparency.
3. Political parties are obligated to explain the utilization of the funds received.

What is being challenged in SC against electoral bond?

1. The proceedings focused on arguments about the voters' right to information vis-a-vis the right to confidentiality of donors.

Government's stance:

1. The government held that the anonymity of donors is essential to save them from harassment.
2. There is a limit to citizens 'right to know' and a reasonable restriction is allowed over 'right to know'.

Issues with electoral bonds:

1. The ECI, in a letter to the Ministry of Law and Justice, warned that electoral bonds, coupled with preceding legislative changes, could lead to the proliferation of shell companies to channel black money into the political system via these bearer bonds.
2. The limit of 7.5 per cent of profits that a company could donate was not just raised but eliminated, allowing a company to donate 100 per cent of its profits to a political party.
3. Even loss-making companies could now make political donations, potentially legitimising crony capitalism.
4. The BJP government passed a retroactive amendment via a 2016 finance bill, replacing the 1976 Act with the modified 2010 statute.
5. This move effectively shields any foreign financing of Indian elections from scrutiny. This is a matter of great national concern.

Citizens 'right to know':

1. The citizens' right to know was settled by the apex court in 2003 when it mandated candidates to declare their financial dealings and criminal cases while filing nominations.
2. In the 2003 ruling in People's Union for Civil Liberties v Union of India and the 2002 judgment in Union of India v Association for Democratic Reforms, the Supreme Court mandated the ECI to obtain and disclose to the public background information relating to candidates running for office, including information on their assets, criminal records, and educational background.
3. The Court ruled that the right to know about public officials is derived from the constitutional right to freedom of expression.

Way forward:

1. One option worth considering is to eliminate private funding and introduce public funding for political parties.
2. This might not exceed ₹10,000 crore every five years, based on cumulative party collections as declared.
3. Another option to do away with the "need" for secrecy would be to establish a National Election Fund to which all donors could contribute.
4. The funds could be allocated to parties based on their electoral performance. This would eliminate the so-called concern about donors' reprisals.

Conclusion:

Without transparency of political funding, free and fair elections are not possible. Free and fair

elections and the integrity of our electoral process have been repeatedly declared by the apex court as a part of the basic structure of the constitution.

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