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Electoral bonds

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Why is in news? What are electoral bonds, how has govt defended them, what court has to decide

A five-judge bench of the Supreme Court led by Chief Justice of India DY Chandrachud is expected to hear a batch of petitions challenging the constitutional validity of the Centre's electoral bonds scheme.

Notified on January 2, 2018, the scheme introduced instruments through which **anyone in the country could donate money to political parties anonymously**. This is not the first time the scheme has ended up before the top court since its inception in 2017.

Besides challenging the constitutionality of the electoral bonds scheme, the petitioners have asked the court to **declare all political parties as public offices to bring them under the ambit of the Right to Information Act** and compel political parties to disclose their income and expenditure.

ECI's stance:

In its submission to the Standing Committee on Personnel, Public Grievances, Law, and Justice in May 2017, the ECI **objected to the amendments in the RPA exempting political parties from disclosing donations received through electoral bonds** while describing the move as a "retrograde step".

In a letter written to the Law Ministry, the Commission even **asked the government to "reconsider" and "modify" the above amendment**.

On March 25, 2019, as part of the ongoing challenge to electoral bonds in the SC, the ECI filed an affidavit flagging the issue of laws being **changed to allow political parties to receive contributions from foreign companies**, allowing "**unchecked foreign funding of political parties**" which could lead to "Indian policies being influenced by foreign companies".

Centre's stance:

Attorney General of India told the Supreme Court, by way of written submissions, that **the citizens' right to know is subject to reasonable restrictions**.

Stating that "there can be no general right to know anything" without "reasonable restrictions", the AG responded to the petitioner's prayer for a "declaration that citizens have a right to know as an aspect/facet of the right to freedom of expression," based on which they have the right to access the details of contributions to political parties.

Defending the Centre's scheme, the AG said that it "**extends the benefit of confidentiality to the contributor**" and **promotes the contribution of clean money**. Adding that the scheme adheres to tax obligations, he said that it doesn't fall foul of any existing rights.

About Electoral bonds:

First **announced during the Union Budget session in 2017**, "electoral bonds" are **interest-free "bearer instruments"**, which means that they are payable to the bearer on demand, similar to a promissory note.

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The Electoral Bond Scheme was **notified on January 29, 2018**.

An Electoral Bond is like a **promissory note** that may be purchased by a person **who is a citizen of India or incorporated or established in India**.

A person being **an individual can buy Electoral Bonds**, either singly or jointly with other individuals.

The bonds are like banknotes that are payable to the bearer on demand and are interest-free.

State Bank of India is authorised to issue and encash these bonds.

Electoral bonds are purchased anonymously by donors and are **valid for 15 days from the date of issue**.

As debt instruments, these can be bought by donors from a bank, and the political party can then encash them.

These can be redeemed only by an eligible party by depositing the same in its designated account maintained with a bank.

The bonds are **issued by SBI in denominations of Rs 1,000, Rs 10,000, Rs 1 lakh, Rs 10 lakh and Rs 1 crore**.

The bonds are available for purchase by any citizen of India for a **period of ten days** each in the months of January, April, July and October as may be **specified by the Central Government** — and an **additional 30 days** of sales in a **Lok Sabha** election year.

The scheme was then **amended in November 2022 to add another 15 days of sales in any Assembly election year**.

Importantly, electoral bonds can **only be used to donate to political parties registered under Section 29A of the Representation of the Peoples Act, 1951**, securing **at least 1% of the votes polled in the last election** to the House of the People or a Legislative Assembly.

Section 29A of the RPA - deals with the registration of associations and bodies as political parties with the Election Commission.

Need for electoral bonds:

The Centre's rationale behind introducing the electoral bonds scheme was to **"cleanse the system of political funding in the country"** and bring about **"transparency in electoral funding in India"**.

In the Union Budget speech on February 1, 2017, then-Finance Minister Arun Jaitley said, "Even 70 years after Independence, the country has **not been able to evolve a transparent method of funding political parties** which is vital to the system of free and fair elections. Political parties **continue to receive most of their funds through anonymous donations shown in cash**."

To tackle these problems, Jaitley proposed electoral bonds while suggesting that the amount of money that a party could accept in cash from anonymous sources be reduced from Rs 20,000 to Rs 2,000.

Consequently, the **Finance Act(s) of 2016 and 2017 amended four separate legislations** to make way for the electoral bonds scheme, including the **Foreign Contribution Regulation Act, 2010; the RPA, 1951; the Income Tax Act, 1961; and the Companies Act, 2013**.

Eligibility of Political Parties:

Only the Political Parties **registered under Section 29A of the Representation of the People Act (RPA), 1951 (43 of 1951)** and which **secured not less than one percent of the votes polled in the last General Election** to the

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House of the People or the Legislative Assembly of the State, shall be **eligible** to receive the Electoral Bonds.

Benefits of Electoral Bonds:

More Transparency: It helps the political parties to operate in a more transparent manner with the election commission, regulatory authorities and the general public at large.

Ensures Accountability: Donations through Electoral Bonds will **only be credited in the party bank account disclosed with the ECI**. As encashment of all the donations are through banking channels, every political party shall be **obliged to explain how the entire sum of money received** has been expended.

Discouraging Cash: The Purchase will be possible only through a limited number of notified banks and that too **through cheque and digital payments**. Cash will not be encouraged.

Maintains Anonymity: The individuals, groups of individuals, NGOs, religious and other trusts are permitted to donate via electoral bonds without disclosing their details. Therefore, the **identity of the donor is being preserved**.

Challenges for Electoral Bonds:

Hindering Right to Know:

Voters will not know which individual, company, or organisation has funded which party, and to what extent.

Before the introduction of electoral bonds, political parties had to **disclose details of all its donors**, who have donated **more than Rs 20,000**.

The change infringes the citizen's 'Right to Know' and **makes the political class even more unaccountable**.

Shallow Anonymity:

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 the dark about the source of these donations are the taxpayers.

Unauthorized Donations:

In a situation where the contribution received through electoral bonds are not reported, on perusal of the contribution report of political parties, it cannot be ascertained **whether the political party has taken any donation in violation of provision under Section 29B of the RPA, 1951** which **prohibits the political parties from taking donations from government companies and foreign sources**.

Leading to Crony-Capitalism:

It could become a **convenient channel for businesses to round-trip their cash parked in tax havens** to political parties for a favour or advantage granted in return for something.

Anonymous funding might lead to **infusion of black money**.

Loopholes:

Corporate Entities may not enjoy the benefit of transparency as they might have to disclose the amount donated to the Registrar of Companies;

Electoral bonds **eliminate the 7.5% cap on company donations** which means even loss making companies can make unlimited donations etc.

Way Forward:

There is a **need for effective regulation of political financing** along with bold reforms to break the vicious cycle of corruption and erosion of quality of democratic polity.

It is **crucial to plug the loopholes in the current laws** to make the entire governance machinery more accountable and transparent.

Switching to digital transactions is one quick fix that can be used. This guarantees the donor acceptable privacy and adequate transparency.

Voters can also help bring in **substantial changes** by demanding awareness campaigns. If voters reject candidates and parties that overspend or bribe them, democracy would move a step higher.

The **Right to Information Act** can improve transparency by including political parties.

At the same time, the bonds should **ensure** that the funds being collected by the political parties are **accounted for clean money from the appropriate channels** without any obligation of give and take.