

## **Balancing Rights to Privacy and Information - Electoral Bonds Case**

### **What is the issue?**

The electoral bonds scheme in its present form fails to recognise the complementary nature of the rights to privacy and information.

### **What are electoral bonds?**

- Electoral bonds are issued by a notified bank for specified denominations.
- Those who want to donate to a political party can buy these bonds by making payments digitally or through cheque.
- Then they are free to gift the bond to any registered political party.

### **What is the government's rationale?**

- Despite massive campaign spending in India, there is barely any public scrutiny of such spending.
- The opaque nature of the transactions makes it hard for scrutiny.
- Electoral bonds were thus introduced in 2017 when the Finance Act amended four different statutes:
  1. the Reserve Bank of India Act, 1934
  2. the Representation of Peoples Act, 1951
  3. the Income Tax Act, 1961
  4. the Companies Act, 2013 (Click [here](#) to know more on the changes)
- The government argued that the use of bank routes would likely reduce under-the-table cash transactions and thus promote transparency in election funding.
- It said that transactions through banks would incentivise the use of white money.
- Moreover, the KYC requirements of banks would ensure paper trails.
- Recently, the Centre responded to the CPI(M)'s petition challenging the scheme and argued that the scheme has a two-fold purpose:
  - i. enhances transparency in political funding
  - ii. protects the right to privacy of donors

### **How does it dilute the earlier regulations?**

- Under the scheme, both the purchaser of the bond and the political party receiving the money have a right to not disclose the identity of the donor.
- Also, the policy dismantles several restrictions that previously checked illegal corporate sponsoring. E.g. removing a cap on corporate sponsorship
- Donations can now be made by anyone; even foreign donations are now allowed.
- The requirement that a company has to be in existence for 3 years for it to make political donations has also been removed.
- This ignores all the concerns regarding the use of shell companies to siphon black money into the system.

### **What are the concerns?**

- These changes show that access to the paper trails will be outside the scope of public scrutiny as it will lie exclusively with the banks.
- As bonds can be issued only by public sector banks, the only entity with full knowledge of the transactions will be the Central government.
- In effect, the electoral bonds scheme amplifies the opacity by not disclosing the identity of the donor.
- The scheme thus undermines the complementary nature of the rights to privacy and information in making the state more transparent.
- Moreover, money laundering often takes place through banks.
- So the government's argument that the use of banks will reduce under-the-table transactions does not hold.

### **Why should identity be disclosed?**

- The Centre informed the Supreme Court that protecting the privacy of electoral bond buyers is vital.
- Certainly, the right to privacy in India safeguards the individual's autonomy and dignity.
- But it is subject to restriction on the basis of "compelling public interest".
- If the information pertains to matters which affect the lives of others, or is closely linked to a public person, it must be disclosed.
- The same logic can then be extended to the funding of political parties.
- Significantly, the funder's actions are bound to have an influence on the policy decisions of the party, if the party wins.
- The policy choices and decisions of public officials have to be brought under public scrutiny.
- This is to ensure that they have not acted in a manner that unfairly benefits them or their benefactors.
- A clear conflict of interest would likely arise if important policy decisions are taken that could affect the donors to the party.

- So the policy on electoral bonds should recognise the complementary nature of the rights to privacy and information, which is essential to make the state more accountable.

**Source: The Hindu**

