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 statues:

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

