Concerns with Electoral Bonds

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What is the issue?

- The Government issued a notification in January, 2018 on electoral bonds, which was provided in the Finance Act 2017.
- Despite being argued as an effective tool for cleaning political funding, there are some serious concerns with electoral bonds.

What were the earlier provisions?

- The incongruity of political parties depending on corporate funds to fight elections and sustain democracy is at times troubling.
- To address this, the **Representation of People Act 1951** was amended in 2003, and sections 29B and 29C were inserted.
- **Section 29B** says political parties may accept contributions of any amount from any person or company.
- This is however except any contributions from a government company or foreign source.
- **Section 29C** says that every political party which receives such funding should prepare a report on contributions above Rs.20,000.
- They should also submit the same to the Election Commission before the income tax returns are filed.
- If any party fails to do this, it will not get tax exemption for that year under the Income Tax Act.
- Similarly, **Section 13A of the Income Tax Act** 1961 provides for exemption of all voluntary contributions received by a political party from payment of income tax.
- But such exemption is conditional on -
    i. the recipient party maintaining such books of accounts and other documents
    ii. maintaining a record of such contributions and the names and addresses of donors as well as amounts above Rs.20,000
- This provision also says that if the party fails to submit the report as stipulated in Section 29C, it will not get the tax exemption.
- **Section 139 (4B) of the IT Act** deals with furnishing of income returns by

parties.
- It requires a political party to furnish **total income including the exempted contributions** with all the particulars.

What are the recent amendments?

- The Finance Act, 2017 amended both the above mentioned Acts.
- It also exempted electoral bonds from the purview of section 29 C of the RP Act 1951 as well as section 13 A of the IT Act 1961.
- Henceforth, income received by way of electoral bonds is not required to be disclosed in the report to the Election Commission.
- Further, political parties are not required to maintain any record of the same or the names and addresses of donors of these bonds.

What are the concerns?

- **Secrecy** - The electoral bonds scheme has been to keep the identity of the donor absolutely confidential.
- The authorised bank will not disclose any information about the purchaser of the bonds to any authority for any purpose.
- Also, the bank will not know who the recipient of the bonds is.
- This secrecy and confidentiality in the case of political funding is a serious concern.
- **Black Money** - A legal provision introduced by the Centre last year mandated contribution above Rs.2,000 to be made only through cheques, drafts, etc.
- This provision should adequately take care of the problem of black money flowing into the coffers of political parties.
- But by introducing electoral bonds, the Government has defeated this purpose.
- **Opaque** - The scheme conceals from public scrutiny the identity of the corporates and donors who contribute to political parties.
- The Election Commission will neither be allowed to have a record of the electoral bonds received by a political party.
- It is also not clear whether the I-T authorities will have an opportunity to get all the details of the contribution.
- **Legal incongruity** - Section 13A, as amended, rules out the need to maintaining record of the electoral bonds or details of the donor.
- This provision seems to be in contradiction with Section 139 (4B) of the IT Act which deals with furnishing information.
- **Taxation system** - Taxing is a sovereign function. It is the social policy to tax all incomes for the benefit of society.
- So, all tax statutes lay down specific conditions for exempting any particular

category of income.

- But the amendments, excluding all the existing conditions, in favour of the bonds goes against the scheme of taxation laws.
- Any legislative exclusion of public scrutiny of financial transactions having a bearing on public revenue is against constitutional policy.
- **Legal** - The notification prohibits disclosure of any information about a donor to any authority which is a substantive provision.
- Notably, a notification issued under an Act cannot make a substantive provision. Only an Act can make such a provision.
- Also, this notification has been issued under section 31 of the RBI Act 1934 which does not contain any such provision.
- Legally, a notification which is a subordinate legislation cannot travel far outside the parent Act.
- In all, the electoral bonds have some legal incongruities and basic differences with constitutional and democratic principles.

Source: BusinessLine

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