SC Verdict on Electoral Bonds

Why in news?

Recently in a landmark unanimous judgment, the Supreme Court struck down electoral bond scheme as “unconstitutional and manifestly arbitrary”.

What is electoral bond scheme?

- **Launch year**- 2018
- **Aim**- To ‘cleanse the system of political funding in the country’ and make political donations transparent.
- **Promissory notes-** It is an Interest-free bearer bond or a money instruments that can be purchased by companies and individuals in India from authorised branches of the ***State Bank of India (SBI).***
- **Amendments**- The government brought in amendments to Acts to introduce the Electoral Bond Scheme via the Finance Act of 2016 and 2017.
- These acts are Representation of the People Act, 1951, (RPA), the Companies Act, 2013, the Income Tax Act, 1961, and the Foreign Contributions Regulation Act, 2010 (FCRA), through the Finance Acts of 2016 and 2017.
- **Donor**- A person being an individual can buy Electoral Bonds through cheque/digital payment, *either singly or jointly* with other individuals by approaching the banks.
- **Eligibility criteria**- Eligible individuals, including Indian citizens and entities incorporated in the country, can procure these bonds from specified branches of the State Bank of India.
    - A Hindu Undivided Family (HUF)
    - A company
    - A firm
    - An Association of Persons (AOP) or a Body of Individuals (BOI), whether incorporated or not
    - Every other artificial juridical person
    - Any office, agency or branch owned or controlled by an artificial judicial person
- **Condition-** These bonds are sold in multiples of Rs 1,000, Rs 10,000, Rs 1 lakh, Rs 10 lakh, and Rs 1 crore.
- They can be purchased through a KYC-compliant account to make donations to a political party.
- The political parties have to encash them within a stipulated time.
- **Anonymity-** The name and other information of the donor are *not entered* on the instrument and thus electoral bonds are said to be anonymous.
- **Maximum limit**- There is *no cap* on the number of electoral bonds that a person or company can purchase.
- **Taxation**- The donors *would receive a deduction* for their contributions, and the recipient political party would be eligible for tax exemption, contingent upon the filing

of returns by the political party.

- **Prior to the introduction of the scheme**-
  - The political parties were required to make all donations above Rs 20,000 public, and
  - No corporate company was allowed to make donations amounting to more than 10% of their total revenue.

To know more about electoral bond scheme click here

Who can receive funding via electoral bonds?

- **Eligibility-**Political parties that secured *at least 1% of the votes* polled in the recent Lok Sabha or State Assembly elections and are registered under the RPA can get a verified account from the Election Commission of India (ECI).
- **Validity**-The bond amounts are deposited in this account *within 15 days* of their purchase. If a party does not encash any bonds within this period, the SBI deposits them into the ***Prime Minister's Relief Fund.***
- **Purchase time**-They are available for a *period of 10 days* in a gap of four months (January, April, July and October).
- **Election period**- They are also open for 30 days in Lok Sabha election years.

What are the arguments for the electoral bonds?

- **Digitalised funding**- Electoral bond aims to make political funding digitised and safe.
- **Curbs black money**-The bonds are redeemed in a bank account under the purview of the government, it reduces malpractice and the chances of tax evasion.
- **Improves accountability**-Electoral bonds promote transparency and accountability as they can be redeemed only through designated banks.
- **Checks and balance**- Electoral bonds act as a deterrent for political parties focused solely on fundraising, as only registered parties securing a minimum of 1% of the votes in general elections qualify for electoral funding.

What are the arguments against electoral bond?

- **Enables backdoor lobbying**- It provides opportunities for corporations via electoral bond to political parties in power to get some favours.
- **Opens shell companies**- Recent amendments to Foreign Contribution Regulation Act (FCRA) provides that even a loss-making company or a company that does no business (a pure shell company) can also donate.
- **Influence of foreign powers**- The amendment to the FCRA permitted foreign companies with subsidiaries in India to fund Indian political parties would expose "Indian politics and democracy to international lobbyists" having their own agendas.
- **Lack of transparency**- *Section 29C of the RPA* had been amended to exempt political parties from informing the Election Commission about the details of contributions made to them through electoral bonds.
- **Selective anonymity**- The contributions made in this scheme will be known only the government, since the SBI comes under government donations to the opposition can come under scrutiny by an investigative agency, which leads to selective anonymity.

- **Use for other purposes-** The scheme is a misnomer as the money can be used for any purpose after it is withdrawn, the party is not mandated to give details about expenditure of money from the electoral bond.
- **Tool for money laundering-** RBI terms electoral bonds as *'opaque financial instruments'*, it points out that the bonds are transferable any number of times like currency, their inherent anonymity can be exploited for money laundering.
- It protects criminals from being prosecuted under Prevention of Money Laundering Act and Prevention of Corruption Act.
- **Uneven playing field**- The scheme would distinctly favour the ruling government of the time, as the guarantee of anonymity would allow the government to provide concessions in the form of licenses, leases, policy changes and government contracts.
- **Unfair discrimination**- The scheme gives anonymity to corporate donors but citizens who are donating Rs 2000 in cash will disclose their names. This may also lead to the overshadowing of citizens' voices by corporates in a democracy.
- **Create black money**- The scheme reroute non-anonymous funding from normal banking channels to anonymous electoral bonds.
- **Diminish shareholders influence-** The companies funnel money to political parties without any oversight from shareholders, it denies the owners of said company the ability to decide how their company should act in the political sphere.
- **Trade electoral bonds**- Though there is prohibition on trading of electoral bonds the person could be an aggregator of bonds and may give the bonds to ten others.

What is Supreme Court's verdict on electoral bond?

- **Violates Article 19(1)(a)-** The scheme and the amendments made to the RPA, Income Tax Act violated the voter's right to information about political funding.

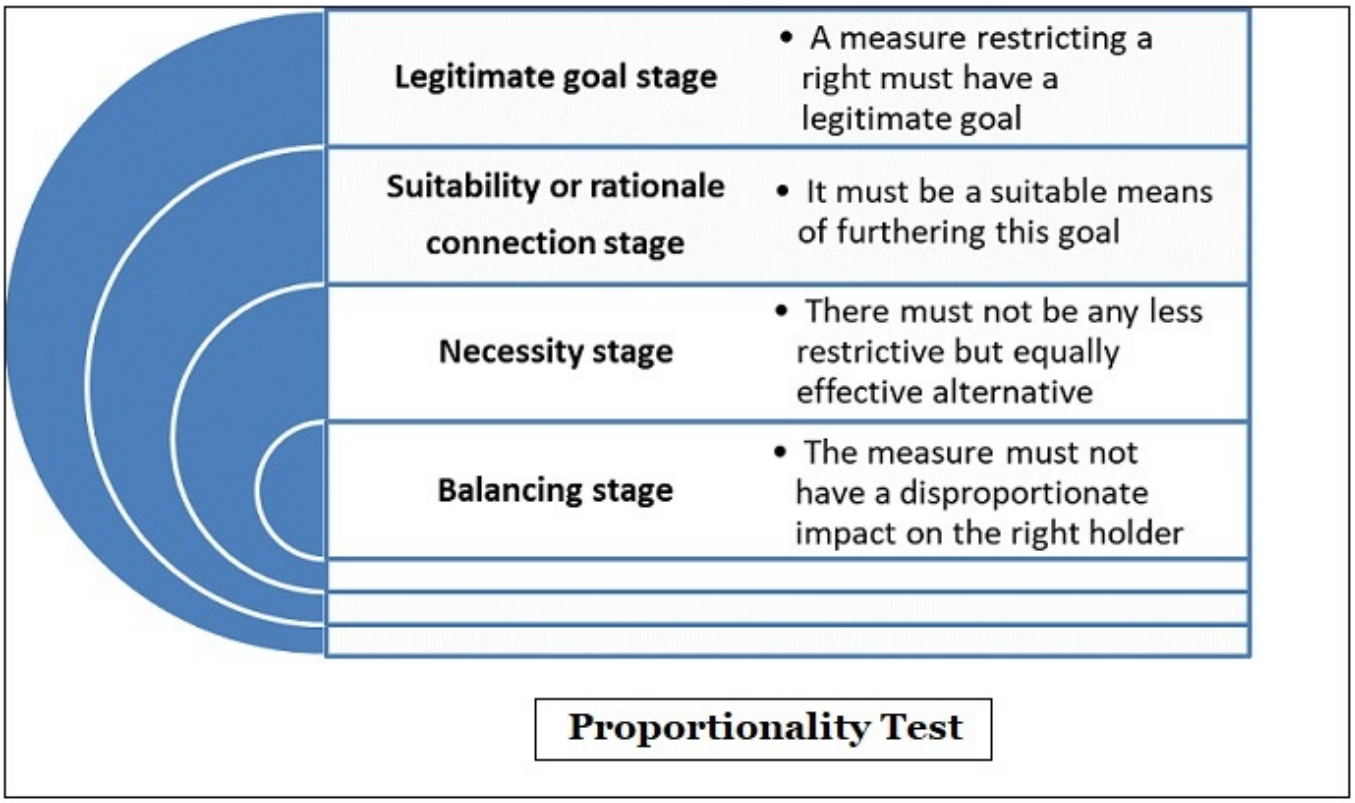
  Article 19 (1)(a) in the Constitution of India guarantees all citizens the "right to freedom of speech and expression

- **Unconstitutional**- The Court rules that the amendment to the Companies Act which allows blanket corporate political funding is unconstitutional as it violates free and fair election.
- **Fosters corruption**- The absolute non-disclosure of the source of political funding through electoral bonds promotes corruption.
- **Culture of quid pro quo**- - The contributions made by companies are purely business transactions made with the intent of securing benefits in return with the ruling party to introduce a policy change or for bagging a license.
- **Economic inequality**-The amendments promoted "economic inequality" by giving corporations with financial power an unsurpassable advantage over ordinary citizens in the electoral process and political engagement.

  This is violative of the principle of free and fair elections and political equality captured in a value of 'one person, one vote'

- **Right to donor privacy**- The financial contributions to political parties are made as an expression of support and as a quid pro quo measure.
- The latter type of contributions, especially by large corporations and companies should not be covered by the right to privacy of political affiliation, as they may be used to influence policies.
- **Failed the test of proportionality**- The primary justification for the scheme is curbing the use of 'black money' for political or electoral funding by allowing donations through banking channels. It has failed the test of proportionality, as it was not the least restrictive measure to abridge the voters' right to know.

The proportionality test was laid down in 2017 verdict in the KS Puttaswamy case which upheld the right to privacy.



- **Arbitrary provision**- The amendments to the Companies Act removed the cap of 7.5% of a company's profit that can be donated to political parties without any requirement to disclose details of the recipient parties in its profit and loss accounts.
- **Quashed amendment to RPA, 1951**- The original disclosure requirement would not apply to donations received through electoral bonds, this was struck down to foster a delicate balance between the voters' right to information and the donors' right to privacy.

Section 29C of RPA, 1951 mandated political parties to declare all contributions exceeding Rs 20,000

- **Stop issuing electoral bonds**- The State Bank of India, which is the only authorised bank to issue electoral bonds, have been asked to immediately stop issuing it.
- **Publish information**- The SBI has been directed to issue purchase details with the date of purchase, name of purchaser and denomination since 2019 to the Election Commission.
- The Election Commission of India shall subsequently publish all such information shared by the SBI on its official website by 13 March 2024.
- **Refund-** Electoral bonds that are within the validity period of 15 days but have not yet been encashed by the political party will have to be returned following which the issuing bank will refund the amount to the purchaser's account.

What lies ahead?

- RBI recommended that the political funding can be ensured through formal banking channels like normal cheque, demand draft or any electronic or digital mode of payment.
- The political parties and corporates will fall back upon the pre-2018 route of splitting the funding into cash donations of less than Rs 20,000 per donation.
- Post the Supreme Court verdict, only profitable corporates would be able to make political donations within the limit of a maximum of 7.5% of profits.
- The judgment shows judiciary's commitment in promoting voter rights and preserving the purity of elections.

References

1. Economic Times- Explained what are electoral bonds
2. The Hindu- Why SC strike down electoral bond

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