



Mains Practice Question

Q. Analyze the factors behind the Supreme Court's decision to strike down the Electoral Bonds Scheme. Propose recommendations for improving transparency in political funding in India. (250 words)

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Approach

- Start the answer with a discussion that sets a context for the question.
- Analyze the factors behind the Supreme Court's decision to strike down the Electoral Bonds Scheme.
- Propose recommendations for improving transparency in political funding in India.
- Conclude suitably.

Introduction

Electoral bonds are money instruments like promissory notes, which can be bought by companies and individuals in India from the State Bank of India (SBI) and donated to a political party, which can then encash these bonds. In a unanimous verdict, the Supreme Court declared the electoral bond schemes unconstitutional and ordered the State Bank of India (SBI) to cease issuing electoral bonds with immediate effect.

Body

Some of the key factors behind the Supreme Court's decision to strike down the Electoral Bonds Scheme :

- **Violation of the Right to Information:** The court held that the scheme, by permitting anonymous political donations, infringed upon the fundamental right to information under Article 19(1)(a) of the Constitution.
 - It pointed out that such a right is not only restricted to fulfilling the freedom of speech and expression but plays a key role in furthering participatory democracy by holding the government accountable. Thus, it is not just a means to an end but an end in itself.
- **Possibility of Quid Pro Quo Arrangements:** The verdict highlighted that economic inequality leads to differing levels of political engagement because of the deep association between money and politics. As a result, there is a legitimate possibility that financial contribution to a political party would lead to quid pro quo arrangements.
- **Not Proportionally Justified to Curb Black Money:** Relying on the proportionality test laid down in its 2017 verdict in the **KS Puttaswamy case**, which upheld the right to privacy, it underscored that the government did not adopt the least restrictive method to achieve its objective.
 - As examples of such least restrictive methods, the Chief Justice cited the ₹20,000 cap on anonymous donations and the concept of Electoral Trusts which facilitate the collection of political contributions from donors.
- **Unlimited Corporate Donations Violate Free and Fair Elections:** The court found that amendment made to Section 182 of the Companies Act, 2013, permitting unlimited political contributions by companies, to be manifestly arbitrary.
 - The provision allows Indian companies to make financial contributions to political parties

under specific conditions. However, through the Finance Act, of 2017, crucial changes were introduced, including the removal of the prior cap on the amount that companies can donate to political parties - 7.5% of the average profits of the preceding three fiscal years.

- **Amendment to Section 29C of RPA, 1951 Quashed:** Initially, Section 29C of the Representation of the People Act, 1951, required parties to declare all contributions higher than ₹20,000, and specify whether they were received from individual persons or companies.
 - However, the Finance Act, of 2017, amended this provision to create an exception wherein such a requirement would not apply to donations received through electoral bonds.
 - Striking down the amendment, the court observed that the original requirement to disclose contributions of more than ₹ 20,000 effectively balanced the voters' right to information with the right to privacy of donors.

Some measures required to improve transparency in political funding in India:

- **Comprehensive Legal Reforms:** Enact and implement comprehensive legal reforms to regulate political party finances, election expenditures, and the sources of funding.
 - This may include revisiting and strengthening existing laws or introducing new legislation to address loopholes.
 - Encourage cross-party consensus on the need for electoral funding reforms
- **Independent Electoral Oversight:**
 - Strengthen the role of independent electoral oversight bodies, such as the Election Commission of India, to monitor and enforce compliance with campaign finance laws. Provide these bodies with adequate resources and autonomy.
- **Limits on Expenditure:** Expenditure limits safeguard politics from a financial arms race. They relieve parties from the pressure of competing for money even before they start to compete for votes. Though the RoPA, 1951 sets a limit on expenditure incurred by a candidate but it doesn't set any such cap on the political parties.
 - Some countries impose an expenditure limit on political parties. For example, in the UK, political parties are not allowed to spend more than Euro 30,000 (about Rs 30 lakh) per seat.
- **Transparency in Political Party Funding:** Mandate political parties to disclose all sources of funding, including details of donors and the amounts received.
 - Ensure that this information is easily accessible to the public and regularly updated.
 - Introduce an upper limit on the amount that can be donated to political parties to curb the influence of large corporate contributions.
 - In the UK, a party needs to report donations received from a single source amounting to a total of more than Pounds 7,500 in a calendar year. The analogous limit in Germany is Euros 10,000.
- **Providing Public Funding to Parties: The Second Administrative Reforms Commission** (2008) advocated partial state funding to curb "illegitimate and unnecessary funding" of election expenses.
 - For instance, in Germany, parties receive public funds on the basis of their importance within the political system.
- **The Chilean Experiment:** Under the Chilean system of "reserved contributions", donors could transfer to the Chilean Electoral Service the money they wished to donate to parties, and the Electoral Service would then forward the sum to the party without revealing the donor's identity.
 - If the complete anonymity system worked perfectly, the political party would not be able to ascertain the sum donated by any specific donor — and would find it extremely difficult to strike quid pro quo arrangements.
- **Establishing National Election Fund:** Another option would be to establish a National Election Fund to which all donors could contribute. The funds could be allocated to parties based on their electoral performance. This would eliminate the so-called concern about donors' reprisals.
 - Under the Chilean system of "reserved contributions", donors could transfer to the Chilean Electoral Service the money they wished to donate to parties, and the Electoral Service would then forward the sum to the party without revealing the donor's identity.

Conclusion

By embracing transparency in electoral funding in India, the nation can fortify the foundations of its

democratic institutions and empower citizens with the knowledge and confidence that their electoral choices are influenced by ideas and values rather than the undue influence of financial interests.

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