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Constitutionality of Electoral Bond Scheme vis-a-vis Right to Information

This article analyses the constitutionality of electoral bond scheme on the touchstone of Right to Information under Indian Constitution and attempts to assess far reaching impact of the scheme and eventually it discusses the recent judgement of Hon'ble Supreme Court of India in the case of '*Association for Democratic Reforms & Anr. v. Union of India & Ors.*'

What is Electoral Bond Scheme:

The Electoral bond scheme was introduced in 2018 by Ministry of finance pursuant to amendment in section 31(3) of the Reserve Bank of India Act, 1934 which conferred wide power on central government to authorise any bank to issue electoral bond.

Electoral bonds are those instruments or securities which are purchased or used by any person for the purpose of anonymous donation to any political parties. The phrase '*any person*' in the scheme means a person who is citizen of India or a body incorporated or established in India. Under this scheme only a political party duly registered under section 29A of the Representation of People Act, 1951 has entitlement to encash an electoral bond. The feature of the aforesaid scheme which make it a debatable and controversial issue and eventually became the reason for striking down it by hon'ble Supreme Court in its recent judgement ¹is that the information furnished by the buyer of bond was to be treated as confidential by the issuing bank. The anonymity of contributor is prime characteristics of scheme.

Amendments were made to various statutes by Finance Act 2017 which allowed immeasurable, unfettered and unregulated funding of political parties through the means of Electoral Bonds.

Section 11 of Finance Act, 2017 had amended section 13A of Income Tax Act 1961 to the extent that it exempted political parties from maintaining a record or information of the contributions received by it through electoral bonds. The said Act by way of an amendment

¹ Association for Democratic Reforms and Anr. v. Union of India and Ors., 2024 SCC OnLine SC 150

under section 154, has also omitted first proviso of section 182, Companies Act, 2013 and thereby removed the maximum limit on donation that a company could made to a political party.

Furthermore, section 29C² which mandates all political parties to prepare a detail report in respect of the contributions or donation received by it. A proviso was inserted by way of an amendment under section 137 of Finance Act, 2017 that exempted political party from publishing contributions/ donation received through electoral bonds in reports publish under said section.

Evidently, the cumulative effect of these amendments was that it facilitated the opaque and unfettered to political parties as the identity of buyer was kept anonymous.

Impact of Electoral Bond Scheme on Right to Information:

It is well settled that right to information is an integral part of right to speech and expression enshrined under Article 19(1)(a)³. It is imperative to ensure transparency, accountability, good governance and to ensure participation of common man in governmental and administrative functions. Without access to information of public interest freedom of speech and expression is meaningless and without freedom of speech and expression democracy is meaningless. RTI is a basic facet of democracy and rule of law⁴.

Under this scheme, political parties are not required to disclose the identity of person/ entity making donation to it. This impugned scheme permits parties to receive anonymous huge donation and in turn preferential treatment, political favours, increased influence on policy decision and hence increased control on democratic process of the country.

The said scheme not only permit anonymous funding but also encourage money laundering and promotes corruption. Its apposite to consider the effect of the scheme from the standpoint of the shareholders and other stakeholders of the company. The scheme is detrimental to their interest and right to know the beneficiaries of the contributions made by the concerned company. EBS has legitimized unlimited anonymous donations and thereby unchecked corporate influence on political decisions by large scale companies, unknown and hidden entities.

² The Representation of People Act, 1951, §29C, No.43, Acts of Parliament, 1950 (India)

³ INDIA CONST. art. 19, cl. 1(a)

⁴ RBI vs Jayantilal N Mistry, (2016) 3 SCC 525

It's undisputed fact that information pertaining to the fundings to political parties such as the name of donor, the quantum of donation is crucial and the repercussion of not providing access to this information is that public is not only kept in dark but also have no say in the matter of public importance.

➤ **Association for Democratic Reforms & Anr. v. Union of India & Ors -An Overview:**

In this case Writ Petition was filed under Article 32⁵ for striking down the Electoral bond Scheme and the amendments made by Finance Act 2017 to RBI Act, Companies Act and Income Tax Act on the ground that the scheme and impugned amendments are in violation of Article 19(1)(a) and 21 of Constitution of India.

Issue: whether non-disclosure of information of donor under the impugned scheme and amendments to various statutes are violative of right to information of citizen under Article 19(1)(a) of constitution of India?

Court observed that EBS along with the amendments stipulates that company making contribution is now exempted from disclosing the name of party to which contribution is made, the only requirement is to disclose the total amount contributed to political parties. Nevertheless, as per clause 7(4) of the said scheme the bank is under mandate to furnish the details of buyer of bond when demanded by competent court or upon the registration of a criminal case by law enforcement agencies.

Considering the close nexus between the money and politics under the impugned scheme Court opined that there is reasonable likelihood that impugned scheme would lead to *quid pro quo* arrangements. Further, the information pertaining to bonds would assist a voter to evaluate the correlation between the policy and contribution made.

The court while rejecting the submission made by union that political party are unaware about the details of the contributor as the bank could not disclose such details held that the scheme is not fool-proof. There are sufficient gaps in the Scheme which enable political parties to know the particulars of the contributions made to them. Thus, information about funding to a political party held to be essential for a voter to exercise their freedom to vote in an effective manner.

⁵ INDIA CONST. art. 32

Court held that the Electoral Bond Scheme, and the amendments made to various statute in pursuance of Finance Act, 2017 are violative of Article 19(1)(a) and hence unconstitutional.