



Supreme Court Invalidates Electoral Bonds Scheme

For Prelims: [Supreme Court of India](#), [Electoral Bond](#), [Right to Information](#), [Representation of the People Act \(RPA\), 1951](#), [Finance Act, 2017](#), [Proportionality test](#), [Electoral trusts scheme](#)

For Mains: Right to Information, Transparency & Accountability, Electoral Bonds Scheme

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Why in News?

In a landmark decision, a five-judge Constitution Bench of the [Supreme Court \(SC\) of India](#) unanimously struck down the [Electoral Bond Scheme \(EBS\)](#) and associated amendments as unconstitutional, sparking significant ramifications for political financing in India.

- The SC asserted that the EBS violated the [fundamental right to information](#) guaranteed under [Article 19\(1\)\(a\) of the Constitution](#).

What is the SC Ruling on the Electoral Bond Scheme?

- The SC declared the EBS and the amendments made to the [Finance Act, 2017](#), the [Representation of the People Act \(RPA\), 1951](#), the [Income Tax Act, 1961](#), and the [Companies Act, 2013](#), as unconstitutional.
 - Before these amendments, political parties were subject to stringent requirements, including declaration of contributions above **Rs 20,000 and a cap on corporate donations**.
- **Restoration of Status Quo by SC:**
 - The SC's judgement reinstated the legal framework before the Finance Act, 2017, in several statutes crucial to political party funding.
 - **Representation of the People Act, 1951:**
 - Section 29C mandated political parties to **disclose donations exceeding Rs 20,000**, balancing the **right to information with donor privacy**.
 - **Finance Act, 2017 Intervention:**
 - Introduced an exception exempting donations via Electoral Bonds from **disclosure requirements**.
 - **SC Verdict:**
 - Struck down the amendment, emphasising the **importance of transparency and privacy balance**.
 - **Companies Act, 2013:**
 - Section 182 **restricted corporate donations, imposing a cap** (7.5% of the average profits of the preceding three fiscal years) and disclosure requirements.
 - **Finance Act, 2017 Intervention:**
 - Removed the cap and disclosure obligations for corporate donations.
 - **SC Verdict:**
 - Nullified the amendment, citing concerns about **unchecked corporate**

influence on elections.

◦ **Income-tax Act, 1961:**

- Section 13A(b) mandated the maintenance of records for contributions above Rs 20,000.

• **Finance Act, 2017 Intervention:**

- Exempted Electoral Bond contributions from record-keeping requirements.

• **SC Verdict:**

- Struck down the amendment, upholding **voters' right to information**.

▪ **Proportionality Test:**

- The SC applied the [proportionality test](#) to examine whether the scheme violated **the right to information of the voters** and the transparency of the electoral process.
- The proportionality test serves as a crucial judicial standard to evaluate the balance between **state action and individual fundamental rights**.
 - The Constitution protects **fundamental rights outlined in Part III**, including the right to **free speech (Article 19(1))**. Any interference with these rights must comply with "**reasonable restrictions**" **specified in Article 19(2)**, assessed through the proportionality test.
 - Article 19(2) allows the **government to impose reasonable restrictions on freedom of speech and expression**.
 - These restrictions can be in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with Foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.
 - The proportionality test gained prominence in the [K.S. Puttaswamy v. Union of India, 2017 ruling, affirming privacy as a fundamental right](#).
 - Upheld in the [Aadhaar Act ruling of 2018](#), the proportionality test ensures that state actions do not **disproportionately infringe upon fundamental rights** while pursuing legitimate government interests.
 - **Government's Argument and State Interests:**
 - The government argued that [curbing black money](#) and **protecting donor anonymity** are legitimate state interests.
 - Donor anonymity was presented as essential for upholding the **right to privacy of donors, a fundamental right**.
 - The government contended that the right to information doesn't extend to seeking information that is not in the state's possession or knowledge.
 - **SC Stance:**
 - The Court dismissed donor anonymity as a legitimate state aim, **prioritising the voters' right to information** under Article 19(1)(a) of the Constitution over anonymity.
 - It emphasised the crucial role of the right to information in fostering participatory democracy and holding the government accountable.
 - SC applied the concept of the "**double proportionality**" test. This approach involves balancing competing fundamental rights here, the **right to information and the right to privacy**.
 - SC highlighted that the proportionality test applies when rights clash with state action. But for balancing both rights, the court goes further, ensuring the **state chooses the least restrictive methods for both rights** and avoids disproportionate impacts.
 - SC highlighted the availability of **less intrusive methods**, such as the [electoral trusts scheme](#), to achieve the state's objectives effectively.

▪ **Directions Issued:**

- The State Bank of India (SBI) has been ordered to immediately stop the issuance of any further electoral bonds and furnish details of such bonds purchased by political parties since 12th April 2019, to the [Election Commission of India \(ECI\)](#). Such details must include the date of purchase of each bond, the name of the purchaser of the bond and the denomination of the bond purchased.
- The ECI shall subsequently publish all such information shared by the SBI on its official website by 13th March 2024.
- Electoral bonds within the validity period but not encashed by political parties must be

returned, with refunds issued to purchasers by the issuing bank.

What are Electoral Bonds?

▪ About:

- Electoral bonds, the scheme introduced in 2018 allowing anonymous funding to political parties.
 - These bonds function as financial instruments, akin to promissory notes or bearer bonds, specifically designed for contributions to political parties.
- The EBS was first announced in the 2017 Budget Session. It was later notified in January 2018 as a source of political funding through amendments to the **Finance Act of 2017**, the **Representation of the People Act of 1951**, the **Income Tax Act of 1961**, and the **Companies Act of 2013**, to enable the Electoral Bonds Scheme.
 - The amendments allowed electoral bonds to cut through many of the **restrictions on political party** funding by completely doing away with the **donation limit for companies** and removing the requirements to declare and maintain a record of donations through electoral bonds.

▪ Donations Through Electoral Bonds:

- Electoral bonds are issued by the [State Bank of India \(SBI\)](#) and its designated branches and are sold in multiple denominations of Rs 1,000, Rs 10,000, Rs 1 lakh, Rs 10 lakh, and Rs 1 crore.
- Donors can purchase electoral bonds through a [Know Your Customer \(KYC\)- compliant account](#) and subsequently transfer the funds to political parties.
- Donors, whether individuals or companies, can purchase these bonds, and the **identities of the donors remain confidential, both to the bank and the recipient political parties.**
- Donations made via electoral bonds **enjoyed 100% tax exemption** under the scheme.
- Notably, there is **no limit on the number of electoral bonds** that a person or company can purchase.

▪ Eligibility to Receive Funds via Electoral Bonds:

- Only political parties registered under Section 29A of the RPA, 1951, and which secured not less than 1% of the votes polled in the last elections to the Lok Sabha or a state legislative assembly, are eligible to receive electoral bonds.

What are the Recommendations on Funding of Political Parties?

▪ Indrajit Gupta Committee on State Funding of Elections, 1998:

- Endorsed **state funding of elections to establish a fair playing field** for parties with less financial resources.
- **Recommended limitations:**
 - State funds to be allocated only to [national and state parties](#) with allotted symbols, not independent candidates.
 - Initially, **state funding should be provided in kind**, offering certain facilities to recognised political parties and their candidates.
 - Acknowledged economic constraints, advocating **partial rather than full state funding.**

▪ Election Commission's Recommendations:

- The 2004 report of the Election Commission emphasised the **necessity for political parties to publish their accounts annually**, allowing scrutiny by the general public and concerned entities.
 - Audited accounts, ensuring accuracy, should be made public, with auditing performed by [Comptroller and Auditor General-approved firms.](#)

▪ Law Commission, 1999:

- Described **total state funding of elections as "desirable"** under the condition that **political parties are prohibited from receiving funds from other sources.**
- The Law Commission's 1999 report proposed amending the **RPA, 1951, introducing**

section 78A for maintenance, audit, and publication of political party accounts, with penalties for non-compliance.

How does Global Political Funding Differ from India?

- **Emphasis on Parties vs. Candidates:**
 - **Global Example:**
 - In the United States, political funding often centres around **individual candidates**, with extensive fundraising efforts directed towards supporting their campaigns.
 - **India's Context:**
 - Conversely, **India and other [parliamentary systems](#)** prioritise funding frames centred on **political parties**, where donations are channelled to support party activities and campaigns collectively.
- **Donations Regulation:**
 - **Global Practice:**
 - Many jurisdictions impose **bans or limits on certain donors**, such as foreign entities or corporations, to prevent undue influence in political funding.
 - For instance, US federal law imposes varying contribution limits based on the type of donor.
 - Conversely, countries like the UK do not set contribution limits but instead opt for **expenditure limits as a method of regulation**.
 - **India's Context:**
 - India regulates donations but lacks specific limits on individual contributions. This contrast raises concerns about the potential influence of large donors in Indian politics.
- **Expenditure Limits:**
 - **Global Norms:**
 - Expenditure caps are common in global funding frameworks to mitigate financial dominance and ensure a level playing field for candidates or parties.
 - Jurisdictions like the UK enforce expenditure limits on political parties, such as the restriction of not spending more than **30,000 Euros (approximately Rs 30 lakh) per seat**.
 - **India's Context:**
 - India's regulatory landscape **lacks legal expenditure limits on parties**, allowing them to spend freely on campaigns, potentially distorting electoral outcomes.
- **Public Financing:**
 - **Global Trend:**
 - Many countries **offer public funding for political parties** based on various criteria.
 - For example, in Germany, parties receive funds based on factors like past election performance, membership fees, and private donations. Additionally, political party foundations receive state funding.
 - Seattle, US, has experimented with "**democracy vouchers**," where eligible voters receive vouchers to donate to their chosen candidates.
 - **Indian Context:**
 - **India's public financing mechanisms are limited**, with initiatives like the Electoral Bonds Scheme raising concerns over transparency and accountability.
- **Balancing Transparency and Anonymity:**
 - **International Practices:**
 - Many jurisdictions aim to balance transparency and anonymity by **allowing small donors to remain anonymous while requiring disclosures for large donations**.
 - For instance, in the UK, parties must report donations exceeding 7,500 pounds in a calendar year, while in Germany, the limit is 10,000 Euros.
 - The rationale behind this approach is that **small donors are less likely to wield significant influence** and are more vulnerable to victimisation, while **large donors are more prone to engage in quid pro quo arrangements**.
 - **Indian Context:**

- In contrast, India lacks donation limits on individuals and legal expenditure caps on parties, allowing unrestricted spending on campaigns.

▪ **Chilean Experiment:**

- The Chilean experiment aimed to **achieve anonymity** in party funding to prevent quid pro quo arrangements.
 - Under this system donors could transfer money to the **Electoral Service**, which would then forward it to the party without revealing the donor's identity.
 - However, **coordination between donors and parties undermined the system's effectiveness**, as revealed by scandals in 2014-15.

UPSC Civil Services Examination, Previous Year Question (PYQ)

Prelims

Q1. 'Right to Privacy' is protected under which Article of the Constitution of India? (2021)

- (a) Article 15
- (b) Article 19
- (c) Article 21
- (d) Article 29

Ans: (c)

Q2. Right to Privacy is protected as an intrinsic part of Right to Life and Personal Liberty. Which of the following in the Constitution of India correctly and appropriately imply the above statement? (2018)

- (a) Article 14 and the provisions under the 42nd Amendment to the Constitution.
- (b) Article 17 and the Directive Principles of State Policy in Part IV.
- (c) Article 21 and the freedoms guaranteed in Part III.
- (d) Article 24 and the provisions under the 44th Amendment to the Constitution.

Ans: (c)

Mains

Q. The Right to Information Act is not all about citizens' empowerment alone, it essentially redefines the concept of accountability." Discuss. **(2018)**

Q. Examine the scope of Fundamental Rights in the light of the latest judgement of the Supreme Court on Right to Privacy. **(2017)**