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Mains iMPACT – 11/10/2024

ELECTORAL BOND

SYLLABUS:

GS 2 > Election funding >> Electoral bond Scheme

REFERENCE NEWS:

The Supreme Court has dismissed a plea seeking a review of its February 15, 2024 judgment holding the Electoral Bonds Scheme, 2018 unconstitutional. A five-judge bench of CJI D Y Chandrachud and Justices Sanjiv Khanna, B R Gavai, J B Pardiwala, and Manoj Misra said that “there is no error apparent on **the face of the record**” of its February ruling.

ELECTORAL BONDS:

- The Electoral Bond Scheme in India was introduced in 2018 as a mechanism for funding political parties while maintaining donor anonymity.
- The scheme aims to make political funding transparent while ensuring that donors' identities remain undisclosed to the public, addressing concerns about the influence of black money in electoral processes.

Features of the Electoral Bond Scheme:

- **Nature of Bonds:** Electoral Bonds are **financial instruments** akin to promissory notes that can be purchased by any citizen of India or a company incorporated in India. The bond itself is a **bearer instrument**, meaning ownership is determined by possession, and it **does not carry the name of the donor**. Bonds are issued in **denominations** of ₹1,000, ₹10,000, ₹1 lakh, ₹10 lakh, and ₹1 crore.
- **Who Can Buy and Redeem:** Electoral Bonds can be purchased by any **Indian citizen or entity**, whether individually or jointly. Political parties registered under **Section 29A of the Representation of the People Act, 1951** and that secured at least **1% of votes** in the last general or state election are eligible to receive donations via electoral bonds. These bonds can be redeemed only by eligible political parties through their **designated bank accounts**.
- **Availability of Bonds:** The bonds are available for purchase at designated branches of the **State Bank of India (SBI)** during specific periods throughout the year. Typically, the bonds can be bought during **four 10-day windows** in January, April, July, and October, as notified by the government. In the year of general elections, an additional **30-day window** is provided.
- **Anonymity:** One of the defining features of the Electoral Bond Scheme is that it provides **donor anonymity**. Neither the public nor the Election Commission is informed of the identity of the donors. The **State Bank of India (SBI)** knows the identity of the buyer but does not disclose it publicly, ensuring that the name of the donor remains confidential.

- **Validity:** Electoral Bonds have a limited validity period of **15 days** from the date of purchase. They must be encashed by political parties within this period in their authorized bank accounts, or they expire.
- **No Interest or Tax Deduction:** The Electoral Bonds do not carry any **interest**, and no **tax deduction** is available to the donor on contributions made through these bonds. However, political parties that receive the donations must **declare the amount received** through bonds in their contribution reports.

RECENT SC JUDGEMENT REGARDING ELECTORAL BOND SCHEME:

Association for Democratic Reforms & Anr v. Union of India & Anr:

- **Violation of Right to Information under Article 19(1)(a)**
 - SC asserted that transparency regarding funding to political parties is crucial for informed electoral decisions, affirming that the scheme infringes upon the right to information as enshrined in Article 19 (1)(a).
 - The scheme is also in conflict with the Representation of Peoples Act 1951, , which requires the political parties to disclose their contributions and expenditures.
- **Lack of proportionality between scheme objectives and restrictions imposed**
 - The restrictions imposed by the electoral bond scheme on the right to information are **disproportionate to the objectives of curbing black money** in electoral financing and protecting donor privacy.
- **Infringement on the right to donor privacy**
 - Scheme infringes upon the **right to donor privacy** by not adequately protecting the anonymity of donors and exposing them to potential harassment or discrimination based on their political affiliations.
- **Violates Principles of Equality**
 - The electoral bond scheme **violates principles of equality** by favouring certain political parties, creating disparities between donors and voters, and undermining transparency.
- **Failure to adopt the least restrictive method to curb black money**
 - The scheme does not represent the least restrictive method for achieving the objective of curbing black money in electoral financing, as there are other less restrictive alternatives available.
- **Concerns over unlimited political contributions by companies**
 - Allowing unlimited political contributions by companies enhances their influence over the political process, potentially leading to preferential treatment and undermining the democratic principles of equality and fairness.

(2.1: Corporate companies and individuals who purchased electoral bonds)

PURCHASERS OF ₹100 CRORE & ABOVE	Number of companies	Total amount (in ₹ crore)	Chairman/Managing Director/Director
Future Gaming And Hotel Services Private Limited	1	1,368.0	Santiago Martin
Megha Engineering and Infrastructures Limited (MEIL)	2	1,186.0	Pamireddy Pithi Reddy
MK Jalan Group	4	616.9	M. K. Jalan
Sanjiv Goenka Group	6	609.0	Sanjiv Goenka
Aditya Birla Group	7	545.8	Kumar Mangalam Birla
Qwik Supply Chain Private Limited	1	410.0	Vipul Pranlal Mehta, Sridhar Titti, Tapas Mitra
Vedanta Group	1	402.4	Sunil Duggal
Bharti Group	3	247.0	Sunil Bharti Mittal
Jindal Group	5	195.5	Sajjan Jindal
Torrent Group	3	184.0	Sudhir Mehta/ Samir Mehta

- The Supreme Court also mandated the SBI to disclose details of electoral bonds to the ECI for transparency by March 31, 2024.

Table 1: Encashers of electoral bonds (political parties)

Encashing party name	Total amount of encashed electoral bonds from April 12, 2019 To January 24, 2024 (in ₹ crore)	% of total
Bharatiya Janata Party	6,060.5	47.5
All India Trinamool Congress	1,609.5	12.6
President, All India Congress Committee	1,421.9	11.1
Bharat Rashtra Samithi	1,214.7	9.5
Biju Janata Dal	775.5	6.1
DMK Party In Parliament	639.0	5.0
YSR Congress Party	337.0	2.6
Telugu Desam Party	218.9	1.7
Shiv Sena (Political Party)	158.4	1.2
Rashtriya Janata Dal	72.5	0.6
Aam Aadmi Party	65.5	0.5
Other parties	195.8	1.5
GRAND TOTAL	12,769.1	100.0

REVIEW OF SC JUDGEMENT:

The Supreme Court rarely entertains reviews of its rulings, except on narrow grounds to correct grave errors that have resulted in a miscarriage of justice.

A ruling by the Supreme Court is final and binding. However, **Article 137** of the Constitution grants the SC the power to review its judgments or orders. A review petition must be filed within 30 days of the pronouncement of the judgment. Except in cases of death penalty, review petitions are heard through “circulation” by judges in their chambers, and not in an open court. Lawyers make their case through written submissions and not oral arguments. The judges who passed the verdict decide on the review petition as well.

KEY RECOMMENDATIONS FOR A TRANSPARENT ELECTORAL FUNDING:

○ **State Funding of Elections:** As recommended by **Indrajeet Gupta Committee**. Reduces corporate influence on political parties. Ensures fair access to resources for all political parties, including smaller or newly formed parties. Transparency is ensured since all funding comes from the government and is publicly disclosed.

● **Direct State Funding:** The government provides direct funds to political parties based on certain criteria (e.g., vote share, number of seats, etc.).

● **Indirect State Funding:** The government provides non-monetary benefits, such as free airtime on state-run media, access to public venues, and tax exemptions on donations.

○ **Transparency in Donations with Full Disclosure:** This means that the source and amount of donations would be publicly available in real-time through a centralized Election Commission platform. All donations must be done through bank transfers or cheques to ensure accountability and traceability, eliminating cash donations.

○ **Capping Political Donations:** Set a maximum contribution limit per year for individuals and corporations to any political party. Implement strict penalties for exceeding these limits, with enhanced monitoring mechanisms to track donations. Cap anonymous donations at Rs. 20 crores or 20% of total funding (Law Commission recommendation).

○ **Digital Platforms for Crowdsourced Political Donations:** A digital platform for small donations from the general public, promoted via party websites or mobile apps. Anonymous donations allowed only below a certain threshold (e.g., ₹10,000). Real-time disclosure of donors for larger amounts, ensuring transparency.

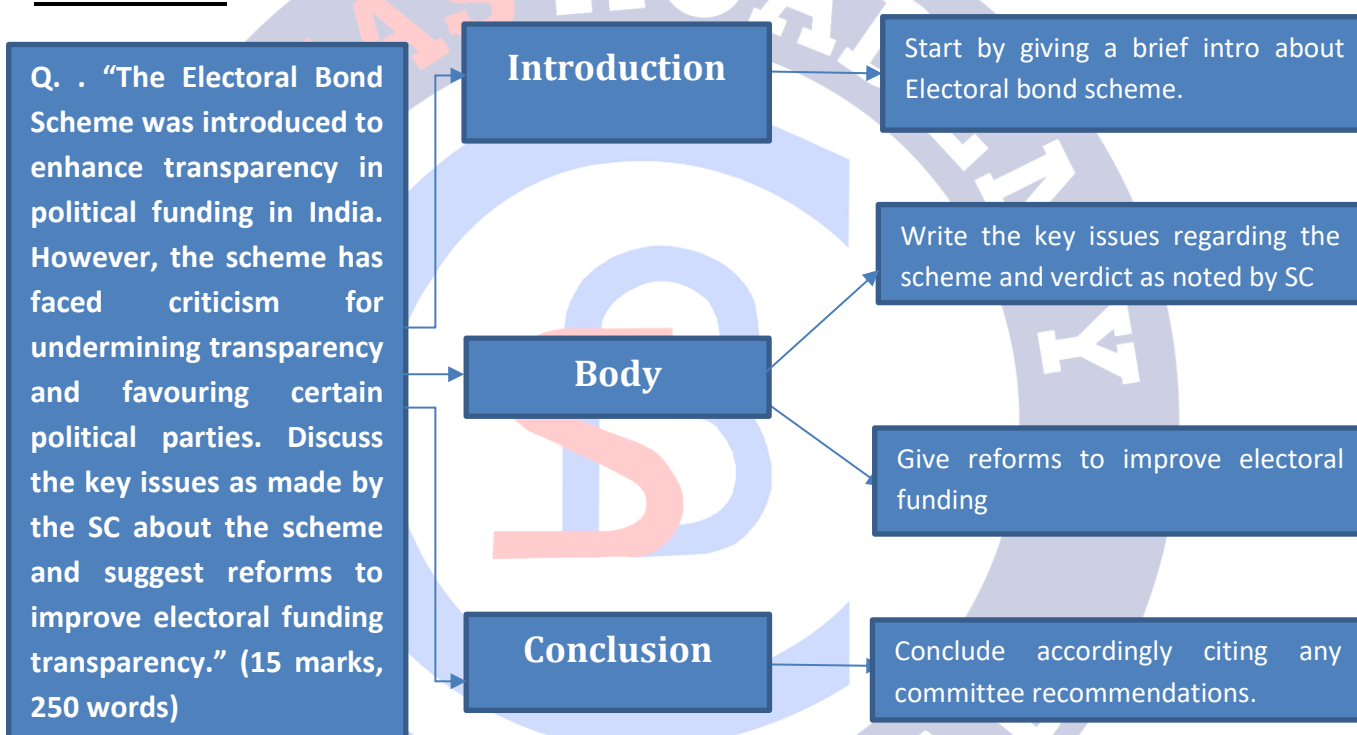
○ **Corporate Social Responsibility (CSR) for Electoral Funding:** Corporate donations to political parties can be integrated into the Corporate Social Responsibility (CSR) framework, where companies contribute to political funding as part of their CSR obligations. This would include strict disclosure requirements and public accountability.

○ **Public Disclosure of Campaign Expenditures:** In addition to focusing on donations, political parties should be required to disclose their campaign expenditures in detail, providing transparency in how they use the funds received.

- **National Electoral Fund:** Where donors contribute anonymously and funds are allocated based on the parties' vote share
- **Venkatachaliah Committee Report, 2002:** To strengthen auditing of party accounts
- **Brazil and Chile banned corporate funding of elections following corruption scandals**

PRACTICE QUESTION:

Q. “The Electoral Bond Scheme was introduced to enhance transparency in political funding in India. However, the scheme has faced criticism for undermining transparency and favouring certain political parties. Discuss the key issues as made by the SC about the scheme and suggest reforms to improve electoral funding transparency.” (15 marks, 250 words)

APPROACH:**MODEL ANSWER:**

The **Electoral Bond Scheme**, introduced in 2018, aims to address the problem of black money in electoral funding by allowing individuals and corporations to donate to political parties through a banking system while maintaining donor anonymity. While the scheme was intended to improve transparency, it has faced significant criticism regarding its potential to increase corporate influence and its lack of public disclosure, raising concerns about its effectiveness in ensuring fair elections.

KEY ISSUES ASSOCIATED WITH THE ELECTORAL BOND SCHEME:

1. **Lack of Transparency:** One of the fundamental criticisms of the Electoral Bond Scheme is its **anonymity**. While donations are made through the **State Bank of India (SBI)**, the **public and Election Commission** are not informed of the identity of the donors. This lack of transparency undermines the very objective of the scheme, as it allows large corporations or individuals to make substantial donations without public scrutiny.

2. **Corporate Influence:** The removal of the cap on corporate donations and the anonymity provided by electoral bonds allow **corporations to donate unlimited amounts** to political parties. This has raised concerns about **policy capture**, where political parties may favour corporate interests over public welfare, thereby undermining democratic principles
3. **Favouring Ruling Parties:** There is a widespread perception that the scheme benefits **ruling parties**, as donors may prefer to contribute to parties in power to secure favourable treatment or avoid regulatory challenges. This can create an **unequal playing field** in elections, where opposition parties are disadvantaged in terms of access to funding
4. **Undermining Right to Information:** The **Supreme Court** recently highlighted that the scheme violates the **Right to Information (Article 19(1)(a))**, as voters are denied access to information about the sources of political funding. The lack of transparency in electoral funding deprives voters of the knowledge needed to make informed electoral choices
5. **Unlimited Political Contributions by Companies:** The scheme allows **unlimited political contributions by corporations**, which may distort the electoral process. Companies can exert undue influence over political parties by making large contributions, expecting favorable policies in return. This concentration of power in the hands of a few large corporations can undermine the **principles of equality and fairness** in democracy
6. **Foreign Influence:** The anonymity of donors, combined with the possibility of routing funds through **Indian subsidiaries of foreign companies**, raises concerns about **foreign influence** in Indian elections. This could pose a threat to **national sovereignty**, as foreign entities may attempt to sway election outcomes through financial means.

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REFORMS TO IMPROVE TRANSPARENCY IN ELECTORAL FUNDING:

1. **Full Disclosure of Donations: Mandatory disclosure** of all political donations above a certain threshold (e.g., ₹10,000 or ₹1 lakh) should be required. This would ensure that the public and the Election Commission are aware of who is funding political parties, promoting accountability.
 - **Real-time public disclosure** through an Election Commission-managed platform would allow voters to make informed choices based on the funding sources of political parties
2. **Reinstating the Cap on Corporate Donations:** The cap on corporate donations, which was removed in 2018, should be reinstated to **limit the influence** of large corporations on political parties. A cap of **7.5% of a company's average net profits** over the last three years could be reintroduced to prevent **excessive corporate control** over the political process.
3. **Digital Crowdsourcing Platforms for Political Donations:** Political parties should be encouraged to adopt **digital platforms** for raising small contributions from the general public. This would promote a **broader base of donors** and reduce reliance on corporate funding. Real-time disclosure of large donations would ensure **transparency and accountability**
4. **State Funding of Elections:** Implementing **state funding** of elections, as recommended by the **Indrajeet Gupta Committee**, would reduce the dependence of political parties on corporate donations. **Direct state funding** could be provided based on criteria such as vote share or the number of seats, while **indirect support** (e.g., free airtime, access to public venues) could also be provided to ensure **fair access** to resources.
5. **Strengthening the Role of the Election Commission:** The **Election Commission of India** should be given greater authority to **monitor and audit political funding**. A **national electoral fund** could be created, where donations are collected anonymously, and the funds are allocated to political parties based on vote share. This would help maintain **donor privacy** while ensuring that funding is **distributed equitably**.
6. **Corporate Social Responsibility (CSR) for Electoral Funding:** Integrating corporate donations to political parties into the **Corporate Social Responsibility (CSR)** framework could enhance transparency. Companies should be required to disclose these donations as part of their CSR activities, and strict **public disclosure requirements** should be imposed to prevent undue corporate influence

To safeguard the **integrity of India's democratic process**, reforms such as **mandatory disclosure of donations, capping corporate contributions, and state funding of elections** are crucial as recommended by Indrajeet Gupta committee recommendations. By strengthening **oversight mechanisms** and promoting **public accountability**, India can move toward a more transparent and equitable political funding system that protects the values of democracy.