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**CASE COMMENT ON ASSOCIATION FOR DEMOCRATIC
REFORMS V UNION OF INDIA**

- Muskan Gangwar¹

Case Name- Association for Democratic Reforms v Union of India²

Bench – D.Y. Chandrachud CJI, Sanjiv Khanna J, B.R. Gavai J, J.B Pardiwala J, Manoj Misra J.

Petitioner: Association for Democratic Reforms; Common Cause; Communist Party of India (Marxist)

Respondent: Union of India; Election Commission

Introduction:

The proposal of the Electoral Bonds Scheme by Former Union Finance Minister Arun Jaitley during the 2017-18 Union Budget presentation aimed to reform the funding mechanism for political parties in India. This scheme was perceived as pivotal for enhancing transparency and fairness in elections, introducing a novel approach to political funding through bearer instruments known as electoral bonds. However, its introduction faced legal challenges and raised concerns about its impact on transparency and accountability in political financing.

The enactment of the Finance Act and subsequent amendments to various legislations, such as the Foreign Contribution Regulation Act and the Representation of the People Act provided the legal foundation for implementing the Electoral Bonds Scheme. These amendments, notably allowing foreign companies to donate to political parties and exempting political parties from disclosing contributions received through electoral bonds, significantly altered the landscape of political funding in India.

Challenges to the Amendments:

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² 2024 INSC 113.

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Non-governmental organizations and political parties, including the Association for Democratic Reforms, Common Cause, and the Communist Party of India (Marxist), challenged the constitutionality of the Finance Acts and the Electoral Bonds Scheme in the Supreme Court. Their primary argument was that the Finance Acts were improperly passed as money bills, thus avoiding thorough scrutiny. Additionally, concerns were raised about the potential for the scheme to foster non-transparency and electoral corruption on a significant scale.

“An Analysis of the Operational Framework and Characteristics of the Electoral Bonds Scheme in 2018”

Implementing the Electoral Bonds Scheme in January 2018 established a framework where designated branches of the State Bank of India were authorized to issue electoral bonds in various denominations. These bonds, available for purchase during specific periods, ensured donor anonymity while mandating Know Your Customer (KYC) details to be recorded by the bank. Eligible political parties were required to encash the bonds within a specified timeframe, failing which the funds would be redirected to the Prime Minister’s Relief Fund.

Election Commission of India’s Response:

The Election Commission of India expressed reservations about the Electoral Bonds Scheme in a March 2019 affidavit, citing concerns about its adverse impact on transparency in political finance. It highlighted the potential for unchecked foreign funding to influence Indian policies and emphasized the need for stringent regulations to safeguard the integrity of the electoral process.

The Union Government’s Rejoinder:

In response to the Election Commission’s concerns, the Union government defended the Electoral Bonds Scheme as a pioneering effort towards electoral reform to improve transparency and accountability in political funding. It emphasized the prevalence of unregulated cash donations leading to the inflow of black money into political financing. With its stringent regulations and reliance on a single authorized bank, it asserted that the scheme mitigated these risks while ensuring accountability through KYC compliance.

Issues

1. Is the Electoral Bond Scheme Constitutional?

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2. Does The Electoral Bond Scheme violate voters' right to information?
3. Can the Scheme allow anonymity to protect donors' right to privacy?
4. Does the electoral bond scheme threaten the democratic process and free and fair elections?

Verdict

On February 15th, the Supreme Court of India delivered a landmark judgment in the case of Association for Democratic Reforms v. Union of India, marking a significant development for the democratic principles upheld by the nation. The unanimous verdict, authored by Chief Justice DY Chandrachud and concurred by three other justices, alongside an opinion penned by Justice Sanjiv Khanna, underscored the fundamental importance of voters' right to political equality, anchored in the bedrock of informed decision-making during elections. The case challenged the constitutional validity of amendments introduced by the Finance Act of 2017, affecting several statutes, including the Representation of the People Act of 1951, the Income Tax Act of 1961, and the Companies Act³. These amendments ushered in the Electoral Bond Scheme, which fundamentally altered the landscape of financial contributions to political parties.

Under the Electoral Bond Scheme, individuals and artificial juridical persons, including corporations, could purchase bonds issued by the State Bank of India during designated periods throughout the year. Similar to promissory notes, these bonds were available in denominations ranging from Rs. 1,000 to Rs. 1 crore, allowing buyers to donate them to their chosen political party, with the party authorized to redeem the bonds as required. A notable aspect of the scheme was the lack of obligation on recipients to disclose these contributions, ensuring the anonymity of donors and maintaining confidentiality regarding the details of their financial support.

Furthermore, the amendments nullified critical safeguards previously in place. Formerly, companies were restricted to donating a maximum of 7.5% of their net profits over the preceding three years. They had to have been operational for at least three years before making donations. The Electoral Bond Scheme abolished these restrictions, opening avenues for potential misuse by establishing shell companies solely for funneling money into political activities, thereby enabling virtually unlimited corporate funding.

³The Companies Act, 2013.

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In its deliberations, the Court delineated two primary issues for consideration. Firstly, it scrutinized whether preserving anonymity regarding political contributors and the magnitude of their contributions would contravene the right to information. Secondly, it assessed whether the absence of limits on corporate funding would undermine the principles of free and fair elections, thereby infringing upon the right to equality.

Right to information

In addressing the first question about preserving the right to information, the Supreme Court affirmed the foundational principle that in a democracy, voters must possess access to comprehensive information. This right is imperative for voters to exercise their franchise judiciously and express themselves freely, as enshrined under Article 19(1)(a) of the Constitution. Recognizing the significance of transparency in the electoral process, the Court emphasized its prior acknowledgment that candidates must divulge all pertinent information. Chief Justice Chandrachud extended this principle to encompass political parties, highlighting their integral role within India's Westminster system of governance.

Contrary to assertions made by the Union government, the Court refuted the notion that contributors' identities remained unknown even to the beneficiaries. The judgment elucidated scenarios wherein a contributor could physically transfer an electoral bond to a party's representative, who could present the instrument for encashment. However, the Court deliberated on whether circumstances existed warranting legitimate constraints on the electorate's right to information.

The State purportedly advanced two objectives in support of the scheme: (a) mitigating the influence of black money in political funding and (b) safeguarding the privacy of donors. The first objective, however, did not align with any of the permissible restrictions delineated in Article 19(2) of the Constitution, which enumerates grounds for limiting the right to freedom of expression. Furthermore, even if the objective of curbing black money was legitimate, the Court considered the scheme disproportionate. This conclusion stemmed from an already established measure aimed at controlling illicit funds, namely the limitation on contributions to political parties in cash to less than Rs. 2,000, with any amount exceeding this threshold mandated to be made solely through banking channels.

The objective of the Scheme

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Regarding the second objective, the Constitution guarantees individuals a right to privacy concerning their political affiliations. Consequently, the pertinent inquiry pertained to balancing this right with the electorate's entitlement to unfettered access to information.

In addressing this issue, the Court invoked the doctrine of "double proportionality," drawing upon precedent established in the House of Lords judgment in *Campbell v. MGM Limited*⁴. In this case, a newspaper had disclosed personal details about a supermodel grappling with drug addiction, including her therapy sessions with a self-help group, private meetings she had attended, and photographs capturing her leaving one such group meeting on the street.

In assessing this matter, the Court adopted a rule of proportionality. The government bore the burden of demonstrating that any restriction on this right was justified in pursuing a legitimate objective. Moreover, the chosen measure must constitute an appropriate means of achieving the stated purpose, ensuring it remains the least restrictive option available. Additionally, the Court emphasized the necessity for the measure to balance safeguarding individuals' rights and achieving its goals.

The House of Lords deliberated on the intricate balance between Campbell's right to privacy, as safeguarded under Article 8 of the European Convention of Human Rights, and the press's right to freedom of expression enshrined in Article 10. Baroness Hale, a majority member advocating for the model, outlined a three-step process under the double proportionality rule. This entailed, firstly, an analysis of the comparative significance of the rights asserted; secondly, an examination of the respective justifications for any infringement of these rights; and thirdly, an independent application of the proportionality standard to both rights.

Chief Justice Chandrachud observed that this approach necessitated adaptation in the Indian context. Notably, since the precedent set in *Modern Dental College & Research Centre v. State of Madhya Pradesh* (2016) 4 SCC 346, Indian courts have employed a four-step proportionality test. In this framework, the final stage encompasses evaluating the cost of interfering with the right and its proportionality to fulfilling the perceived objective of the law. Chief Justice Chandrachud emphasized that during this stage, the Court analyzes the relative importance of considerations, justifications for rights' infringement, and whether the effect of infringing one right is proportionate to achieving the intended goal.

⁴[2004] UKHL 22.

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In assessing whether the Electoral Bond Scheme adhered to this test, the Court was tasked with determining whether the means employed were “suitable, necessary, and proportionate” to safeguard both the fundamental rights at stake—the electorate’s right to complete information and donors’ rights to informational privacy. The Court concluded that the law failed to reconcile the competing interests.

It noted that the Representation of the People Act (RPA) previously mandated disclosure of contributions exceeding Rs. 20,000 from any individual, thereby effectively preserving privacy rights for donors contributing amounts below this threshold. However, the potential for more significant contributions to involve quid pro quo arrangements rendered the existing provision inadequate. Consequently, Chief Justice Chandrachud’s ruling underscored that the alternative previously available under the RPA effectively balanced the objective of ensuring disclosure from informed voters while adequately safeguarding their privacy regarding political affiliation.

Applying the doctrine of double proportionality in the case at hand posed no significant challenge. The prevailing imbalance heavily favored donor anonymity at the expense of the electorate’s right to transparency regarding political party funding. Nonetheless, future scenarios may arise where the doctrine’s application becomes more nuanced, particularly in instances where conflicts emerge between the right to religious freedom and individual rights to personal liberty, akin to the circumstances witnessed in *Campbell v. MGM*. Similarly, clashes between the media’s freedom of expression and individual rights to privacy and dignity may necessitate the doctrine’s utilization in narrower contexts.

The Electoral Bond Scheme’s endorsement of unrestricted corporate funding of political parties raised evident concerns. By nullifying the scheme on this basis, the Court upheld a principle of manifest arbitrariness. Evaluating plenary legislation against this principle, the Court asserted the need to scrutinize whether the statute exhibited traits of capriciousness, irrationality, or lacked adequate determining principles or if it imposed measures that were excessive and disproportionate.

The Court identified two common categories of cases that typically fall within these parameters. Firstly, there are instances where legislation fails to establish classifications to address varying degrees of harm—secondly, there are cases where the legislative purposes diverge from fundamental constitutional values. Chief Justice Chandrachud discerned the

law's failure to establish crucial classifications to avoid harm in the context of electoral bonds.

For instance, by permitting contributions from loss-making corporations to political parties, the law overlooked the substantial likelihood of such donations entailing a quid pro quo. Furthermore, the law neglected to differentiate between contributions made by individuals and those made by corporations. Contributions from the latter invariably assume the form of business transactions, while those from the former may signify expressions of political affiliation.

On February 15, 2024, the Court delivered a unanimous verdict, striking down the Union's 2018 Electoral Bonds (EB) Scheme. The Bench determined that the Scheme infringed upon the voters' right to information as guaranteed under Article 19(1)(a) of the Constitution. Additionally, the Court issued a directive to cease the sale of electoral bonds immediately. It further mandated that the State Bank of India (SBI) furnish comprehensive details regarding the Electoral Bonds acquired from April 12, 2019, to the Election Commission of India (ECI). These details encompassed information regarding the purchasers of the bonds as well as the recipient political parties. Moreover, the Court instructed the ECI to promptly publish the information provided by SBI on its official website within one week of receiving the data, specifically by March 13, 2024.

Conclusion

The Supreme Court's decision to strike down the Union's 2018 Electoral Bonds Scheme on February 15, 2024, marks a significant development in India's electoral financing realm. This unanimous verdict, delivered by the Bench, notably highlighted the violation of the voters' right to information as enshrined in Article 19(1)(a) of the Constitution. The Court's determination of this breach underscores the pivotal role of transparency and disclosure in fostering a robust democratic process.

Moreover, the Court's directive to immediately halt the sale of electoral bonds underscores its commitment to addressing concerns surrounding the integrity of the electoral system. By mandating the State Bank of India (SBI) to furnish detailed information regarding the Electoral Bonds acquired from April 12, 2019, to the Election Commission of India (ECI), the Court aims to enhance accountability and transparency in political funding. This directive

encompasses comprehensive data regarding the purchasers of the bonds and the recipient political parties, thereby shedding light on the flow of funds within the political landscape.

Furthermore, the Court's instruction for the ECI to expeditiously publish the information provided by SBI on its official website within one week of receiving the data underscores its emphasis on timely and accessible dissemination of electoral finance-related information. By facilitating public access to this crucial data, the Court seeks to empower citizens with the necessary information to make informed electoral choices, reinforcing the democratic principles of accountability and transparency.

In essence, the Supreme Court's decision to strike down the Union's 2018 Electoral Bonds (EB) Scheme and its accompanying directives reflect a commendable effort to uphold the fundamental tenets of democracy. By prioritizing the voters' right to information and advocating for greater transparency in electoral financing, the Court's verdict serves as a significant milestone in safeguarding the integrity of the electoral process in India.