
CORPORATE DONATIONS AND POLITICAL FUNDING: TRANSPARENCY GAPS AFTER THE ELECTORAL BONDS JUDGMENT

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ABSTRACT

This study critically investigates the transparency gaps in corporate donations and political funding following the landmark 2024 Supreme Court judgment striking down the Electoral Bonds Scheme in India. Employing a doctrinal legal research methodology, the paper examines the constitutional imperatives underlying electoral finance, the regulatory framework governing corporate contributions under the Companies Act, 2013, and the legislative amendments challenged in court. It systematically analyzes the Court's jurisprudential reasoning centered on the fundamental right to information under Article 19(1)(a) and the principle of free and fair elections as intrinsic to the Constitution's basic structure. Despite judicial repudiation of the anonymity granted to corporate donors under the scheme, the paper identifies persistent structural lacunae and regulatory ambiguities that continue to obstruct effective disclosure of political funding sources. The analysis draws on post-judgment policy developments, judicial directions, and empirical data, elucidating how the interplay between corporate governance norms and political finance mechanisms sustains opaque funding channels. The study concludes by proposing legislative and judicial reforms aimed at fortifying democratic integrity through enhanced transparency and accountability in political funding, emphasizing the necessity of balancing donor privacy with the electorate's right to scrutinize influence in electoral democracy.

Keywords: Transparency gaps, Electoral finance, political funding, donor privacy, electoral democracy.

1. Introduction

The Electoral Bond Scheme, introduced in 2018 through the Finance Act 2017, represented a significant departure from India's existing political finance regulatory framework. Former Union Finance Minister Arun Jaitley, when presenting the 2017-18 Union Budget, articulated the scheme's primary objective as addressing a critical gap in India's democratic infrastructure. He stated that "the country has not been able to evolve a transparent method of funding political parties, which is vital to the system of free and fair elections" and proposed the Electoral Bonds Scheme to "cleanse the system" of political funding. The government's stated rationale was that electoral bonds would enhance transparency by channeling all donations through legitimate banking channels while simultaneously protecting donor privacy through anonymity.¹

The regulation of corporate political contributions in India predates the Electoral Bonds Scheme by several decades, reflecting an evolving legislative understanding of the relationship between corporate funding and democratic integrity. The Companies (Amendment) Act 1960 first introduced Section 293A into the Companies Act 1956, establishing that companies could not contribute to any political party or for any political purpose amounts exceeding twenty-five thousand rupees in a financial year or five percent of average net profits during the three immediately preceding financial years, whichever is greater. Crucially, the 1960 Amendment mandated that companies disclose the amount contributed in a financial year in their profit and loss accounts, providing particulars of the total amount contributed and the name of the party, individual or entity to which such contribution was made. Companies defaulting in compliance with the disclosure requirement faced punishable consequences, including fines extendable to rupees five thousand.²

The legislative approach underwent significant alteration through the Companies (Amendment) Act 1969, which introduced a complete ban on corporate contributions to political parties and for political purposes. Companies acting in contravention of this prohibition faced fines extendable to five thousand rupees, while every officer in default faced imprisonment extendable to three years, in addition to fine.³

This restrictive regime was substantially liberalized by the Companies (Amendment) Act 1985.

¹ Ass'n for Democratic Reforms v. Union of India, (2024) 6 SCC 1 (India); Finance Act, 2017, No. 7, Acts of Parliament, 2017, §§ 2, 11, 133–137 (India).

² The Companies (Amendment) Act, 1960, § 293A (India); The Companies Act, 1956, § 293A (India).

³ The Companies (Amendment) Act, 1969, § 293A (India).

The 1985 Amendment permitted contributions to political parties and for political purposes to resume, but with enhanced conditionality. The provision stipulated that Government companies and companies in existence for less than three financial years were barred from contributing. For other companies, contributions were permissible subject to a newly introduced proviso prescribing that aggregate contributions in any financial year could not exceed five percent of average net profits determined in accordance with statutory provisions, during the three preceding financial years. A significant procedural requirement mandated that contributions could only be made when authorized by a Board resolution, and such resolution was deemed to be justification in law for both the making and acceptance of the contribution. The explanation accompanying the Amendment expanded the definition of "political purpose" to include donations made to persons engaged in activities constituting public support for political parties, as well as direct or indirect expenditure on advertisements or publications benefiting political parties. The penal provisions were simultaneously intensified, with the fine becoming extendable to three times the amount contributed, and officers in default facing imprisonment extendable to three years alongside fine liability.⁴

2. Consolidation under the Companies Act 2013

The Companies Act 2013 substantively incorporated the provisions of the amended Section 293A of the 1956 Act into Section 182. This consolidated provision enabled companies to contribute any amount directly or indirectly to any political party, but maintained the prohibition on Government companies and companies existing for less than three financial years. The provision contained two critical provisos: first, the aggregate of contributions in any financial year could not exceed seven and a half percent of average net profits during the three immediately preceding financial years; second, contributions could only be made upon Board resolution authorization, which served as justification in law for the contribution. Sub-section (3) of Section 182 mandated that every company disclose in its profit and loss account any amount contributed to any political party during the financial year, with specific particulars of the total amount contributed and the name of the political party receiving the contribution. This framework represented what may be characterized as a "regulated permissiveness" approach allowing corporate political participation while maintaining safeguards through quantitative

⁴ The Companies (Amendment) Act, 1985, § 293A (India).

caps, qualitative restrictions on eligible contributors, and transparent disclosure mechanisms.⁵

3. Parallel Income Tax Framework and Voluntary Contribution Reporting

Contemporaneously, the tax framework governing political parties developed complementary disclosure mechanisms. The Taxation Laws (Amendment) Act 1978 included Section 13A in the Income Tax Act, exempting income of political parties through financial contributions and investments from income tax. However, this exemption was conditioned upon strict compliance requirements: political parties were required to maintain books of account and documents enabling proper income deduction by Assessing Officers; maintain records of voluntary contributions exceeding twenty thousand rupees along with donor name and address; and subject their accounts to audit by an accountant. By the Election and Other Related Laws (Amendment) Act 2003, Sections 80GGB and 80GGC were inserted, making contributions to political parties tax-deductible, with the stated objective of incentivizing contributions through cheque and banking channels rather than cash.⁶ The Representation of the People Act was simultaneously amended to introduce Section 29C, requiring each political party to declare details of contributions exceeding twenty thousand rupees received in each financial year. The treasurer or authorized representative had to submit such reports to the Election Commission before the income tax return filing deadline, and failure to submit entailed loss of tax relief eligibility. This architecture reflected legislative commitment to what may be termed "transparent accountability" maintaining systems where political funding flows could be tracked, verified, and publicly scrutinized.

On 2 January 2018, the Ministry of Finance notified the Electoral Bond Scheme 2018 in exercise of powers granted under Section 31(3) of the Reserve Bank of India Act, as amended by the Finance Act 2017. An Electoral Bond, as defined by the Scheme, constitutes a bond issued in the nature of a promissory note functioning as a bearer banking instrument that carries no indication of the purchaser's identity. The Scheme established detailed operational parameters: bonds could be purchased by Indian citizens or entities incorporated or established in India, including individuals, Hindu undivided families, companies, firms, associations, and artificial juridical persons. Eligibility to encash bonds was restricted to political parties

⁵ The Companies Act, 2013, § 182 (India); The Companies (Amendment) Act, 1985, § 293A (India).

⁶ The Income Tax Act, 1961, § 13A (as amended by The Taxation Laws (Amendment) Act, 1978) (India); The Election and Other Related Laws (Amendment) Act, 2003, §§ 80GGB, 80GGC (India); The Representation of the People Act, 1951, § 29C (as amended by The Election and Other Related Laws (Amendment) Act, 2003) (India).

registered under Section 29A of the Representation of the People Act and having secured not less than one percent of votes polled in the last general election to the House of the People or State Legislative Assembly. The State Bank of India was notified as the sole authorized bank for issuance and encashment. Bonds were issued in denominations of Rs. 1, 000, 10, 000, 1, 00, 000, 10, 00, 000, and 1, 00, 00, 000, valid for fifteen days from issuance, with non-encashed bonds being deposited into the Prime Minister's Relief Fund. Purchases were facilitated through demand draft, cheque, Electronic Clearing System, or direct bank account debit, with Know Your Customer (KYC) requirements applied as per Reserve Bank of India instructions. Crucially, the information furnished by purchasers was designated as confidential, disclosable only upon court order or criminal case registration by law enforcement agencies. The scheme stipulated quarterly availability in January, April, July, and October (ten days each), with additional thirty-day windows during general election years, bearing no interest and incurring no transaction charges.⁷

4. Legislative Amendments Accompanying Electoral Bonds Scheme

The Finance Act 2017, concurrent with the Electoral Bond Scheme introduction, made three transformative amendments to the regulatory framework for corporate political funding. First, the first proviso to Section 182(1) of the Companies Act 2013, which prescribed the seven-and-a-half percent cap on corporate donations, was wholly omitted, permitting unlimited corporate contributions. Second, Section 182(3) was amended to require disclosure only of the total amount contributed to political parties in a financial year, excluding the earlier mandatory disclosure of particulars of amounts contributed to each political party. Third, Sub-section 3A was introduced requiring companies to contribute only through cheque, bank draft, electronic clearing system, or "any instrument issued pursuant to any scheme notified under any law for the time being in force." This last proviso became the constitutional hook enabling electoral bond contributions.⁸

The Finance Act simultaneously amended Section 29C of the Representation of the People Act by introducing a proviso exempting political parties from disclosing contributions received through electoral bonds. Additionally, Section 13A of the Income Tax Act was amended to

⁷ Ministry of Finance, Electoral Bond Scheme, 2018, S.O. 29(E) (Notified on Jan. 2, 2018) (India); The Reserve Bank of India Act, 1934, § 31(3) (as amended by Finance Act, 2017) (India); The Representation of the People Act, 1951, § 29A (India).

⁸ Finance Act, 2017, No. 7, Acts of Parliament, 2017, §§ 133–137 (India); The Companies Act, 2013, § 182(1) (first proviso omitted by Finance Act, 2017) (India); Id. § 182(3) (amended by Finance Act, 2017).

exempt political parties from maintaining records of contributions received via electoral bonds, while simultaneously prescribing that donations exceeding two thousand rupees must be received only through cheque, bank draft, electronic clearing system, or electoral bonds.⁹

4. Institutional Objections from Reserve Bank of India

Prior to legislative enactment, the Reserve Bank of India raised substantive objections to the Electoral Bond Scheme proposal. On 2 January 2017, the RBI wrote to the Ministry of Finance expressing concerns on three principal grounds. First, the Amendment would enable multiple non-sovereign entities (scheduled commercial banks) to issue bearer instruments, a function traditionally reserved to the central bank. The RBI cautioned that electoral bonds, if issued in sizable quantities, could undermine public faith in banknotes issued by the Central Bank. Second, while Know Your Customer requirements would identify initial purchasers, the identities of intervening persons or entities in potential transfer chains would remain unknown, thereby breaching principles under the Prevention of Money Laundering Act 2002. Third, the RBI contended that the stated objectives could be accomplished through existing cheque, demand draft, and electronic payment systems, rendering electoral bonds as a novel instrument unnecessary.¹⁰

In response dated 30 January 2017, the Finance Ministry characterized the RBI's understanding as incomplete, arguing that electoral bonds' "core purpose" was to maintain donor anonymity while ensuring contributions originated from tax-paid money, and that the time-limit for redemption adequately addressed currency concerns. By 4 August 2017, the Deputy Governor of RBI proposed incorporating safeguards: maximum tenure of fifteen days, purchase in specified multiples, requirement of KYC-compliant bank accounts, depositing into designated political party accounts, limiting sale periods to twice yearly for seven days each, and restricting issuance to RBI Mumbai. However, a draft circulated for RBI comment authorized notified scheduled commercial banks for issuance, prompting RBI objection dated 14 September 2017 that commercial bank issuance would adversely impact "public perception about the Scheme, as also the credibility of India's financial system." The RBI particularly flagged risks of shell company misuse for money laundering and recommended electronic form

⁹ The Representation of the People Act, 1951, § 29C (as amended by Finance Act, 2017) (India); The Income Tax Act, 1961, § 13A(b) (as amended by Finance Act, 2017) (India).

¹⁰ The Reserve Bank of India Act, 1934, § 31 (India); The Prevention of Money Laundering Act, 2002 (India); Ass'n for Democratic Reforms v. Union of India, *supra* note 1.

issuance to minimize such risks.¹¹

When the Scheme was placed before the RBI Committee of the Central Board, serious reservations were conveyed in a 27 September 2017 letter. The Committee catalogued four specific concerns: issuance of bearer bonds constitutes a monopolistic central authority function preserved by Section 31 of RBI Act; issuance in physical form risks money laundering since scrip transfer consideration would be paid in cash leaving no transaction trail; electoral bonds could facilitate forgery and cross-border counterfeiting while offering vehicles for "aggregator" abuse; and the scheme might not only facilitate but be perceived (albeit wrongly) as enabling money laundering.¹²

The Election Commission of India, the constitutionally-mandated custodian of electoral integrity, communicated its own reservations through a 26 May 2017 letter to the Ministry of Law and Justice. The ECI articulated that amendments to the Income Tax Act, Representation of the People Act, and Companies Act would produce "serious impact on transparency of political finance/funding of political parties." Specifically regarding the RPA Amendment exempting electoral bond donations from reporting under Section 29C contribution reports, the ECI characterized this as "a retrograde step as far as transparency of donations is concerned." The ECI noted that without electoral bond disclosure in contribution reports, it becomes impossible to ascertain whether political parties have violated Section 29B of the RPA, which prohibits donations from Government Companies and foreign sources.¹³

Regarding the Companies Act amendment deleting the requirement to disclose party-wise contributions, the ECI recommended that companies be required to declare such particulars in profit and loss accounts to maintain political finance transparency. The ECI additionally expressed apprehension about deletion of the first proviso (the 7.5% cap), recommending its reintroduction on two grounds: unlimited corporate funding would increase black money utilization for political contributions through shell companies, and capped corporate funding historically ensured only profitable companies with proven track records could contribute, thereby imposing a natural quality filter on corporate donors.¹⁴

¹¹ Finance Act, 2017, *supra* note 22; The Reserve Bank of India Act, 1934, *supra* note 24.

¹² The Reserve Bank of India Act, 1934, § 31 (India); The Prevention of Money Laundering Act, 2002 (India).

¹³ The Representation of the People Act, 1951, § 29B (India); *Id.* § 29C.

¹⁴ The Companies Act, 2013, § 182(1) (first proviso) (India); *Id.* § 182(3).

5. Constitutional Challenge and the 2024 Supreme Court Judgment

The petitioners, Association for Democratic Reforms, Common Cause, and the Communist Party of India (Marxist), instituted proceedings under Article 32 of the Constitution challenging the constitutional validity of the Electoral Bond Scheme and the accompanying legislative amendments. The petitions identified two central constitutional questions: whether unlimited corporate funding to political parties under amended Section 182(1) of the Companies Act infringes the principle of free and fair elections and violates Article 14 of the Constitution; and whether non-disclosure of information on voluntary contributions under the Electoral Bond Scheme and amendments to Section 29C of the RPA, Section 182(3) of the Companies Act, and Section 13A(b) of the Income Tax Act violate the right to information of citizens under Article 19(1)(a).¹⁵

The petitioners contended that the Electoral Bonds Scheme and statutory amendments violated Article 19(1)(a)¹⁶ through their mandate for non-disclosure of electoral funding information, thereby defeating the earlier express purpose of introducing disclosure provisions in the RPA and Companies Act. They argued that the fundamental right to information, recognized as an essential component of freedom of speech and expression, extends to information about financial contributions to political parties, as the Constitution through the Tenth Schedule acknowledges that political parties exercise decisive control over government formation and legislative voting. The petitioners submitted that non-disclosure of political contributions promotes corruption and facilitates quid pro quo arrangements, with empirical data allegedly indicating that more than ninety-four percent of electoral bonds were unaccounted for in terms of traceability to legitimate funding sources.

The Supreme Court's landmark judgment, delivered by Chief Justice Dr. Dhananjaya Y. Chandrachud on 15 February 2024, established that the electoral bonds scheme and impugned provisions violate Article 19(1)(a)¹⁷ of the Constitution "to the extent that they infringe upon

¹⁵ India Const. art. 32; India Const. art. 19, cl. 1(a); India Const. art. 14; The Companies Act, 2013, § 182(1) (India); The Representation of the People Act, 1951, § 29C (India); The Income Tax Act, 1961, § 13A(b) (India).

¹⁶ The Companies Act, 2013, § 182(1) (first proviso omitted by Finance Act, 2017) (India); Id. § 182(3) (amended by Finance Act, 2017); Id. § 182(3A) (inserted by Finance Act, 2017); The Representation of the People Act, 1951, § 29C (as amended by Finance Act, 2017) (India); The Income Tax Act, 1961, § 13A(b) (as amended by Finance Act, 2017) (India).

¹⁷ India Const. art. 32; India Const. art. 19, cl. 1(a); India Const. art. 14; The Companies Act, 2013, § 182(1) (India); The Representation of the People Act, 1951, § 29C (India); The Income Tax Act, 1961, § 13A(b) (India).

the right to information of the voter by anonymising contribution through electoral bonds." The Court traced the jurisprudential foundations of the right to information through precedent, particularly the Supreme Court decisions in *Association for Democratic Reforms v. Union of India* and *People's Union for Civil Liberties v. Union of India*¹⁸, which had established that informed voters form the bedrock of democracy. The Court held that the public has a fundamental right to know about candidates' antecedents and, by extension, about the sources and magnitudes of political funding, as this information necessarily influences voting choices.

Chief Justice Chandrachud articulated that the right to information is intrinsic to freedom of speech and expression, and that this right extends beyond candidates to encompass political parties themselves. The Court emphasized that political parties occupy a central position in India's constitutional democracy, recognized explicitly in the Tenth Schedule (the anti-defection provisions), and therefore the sources and amounts of their funding constitute information essential for informed democratic choice. The Court rejected the argument that information asymmetry could be justified on grounds of donor privacy, holding instead that while informational privacy is a fundamental right (including privacy regarding political affiliation), this does not extend to complete anonymity in political funding contexts where public interest in transparency outweighs claimed privacy interests.¹⁹

A second dimension of the Court's reasoning addressed the constitutional permissibility of unlimited corporate contributions under the amended Section 182. The Court found that the amendment removing the 7.5% cap on corporate donations constitutes manifest arbitrariness violating Article 14 of the Constitution. The Court's analysis proceeded through structured proportionality scrutiny, applying what Justice Sanjiv Khanna's concurrence termed the "double proportionality standard" developed in *K.S. Puttuswamy v. Union of India* (the privacy judgment) and subsequent decisions. Under this standard, an infringement of fundamental rights must satisfy: (1) the objective pursued is legitimate and within constitutional authority; (2) the restriction is rationally related to the objective; (3) the restriction is necessary and there exist no less restrictive alternatives; and (4) the restriction satisfies a balancing test between competing rights and public interest.²⁰

¹⁸ *Ass'n for Democratic Reforms v. Union of India*, (2002) 5 SCC 294 (India); *People's Union for Civil Liberties v. Union of India*, (2003) 4 SCC 399 (India).

¹⁹ *Ass'n for Democratic Reforms v. Union of India*, (2024) 6 SCC 1 (India); India Const. art. 19, cl. 1(a); India Const. sched. X (anti-defection provisions).

²⁰ *K.S. Puttaswamy v. Union of India*, supra note 11; India Const. art. 14; *Ass'n for Democratic Reforms v.*

The Court drew critical distinctions between individual and corporate donations. The Court observed that corporations are artificial juridical entities fundamentally different from natural persons, with profit-maximizing motives rather than civic participation as their primary objective. Corporate contributions to political parties are characterized as "purely business transactions" made with the explicit intent of securing reciprocal benefits in return, whether through favorable legislation, regulatory relief, or government contracts. The Court emphasized that a company's ability to influence the electoral process through political contributions substantially exceeds that of an individual, particularly when such contributions face no quantitative restraint. This asymmetry was deemed constitutionally impermissible under Article 14's guarantee of equality.²¹

The Court additionally noted that the amendment failed to maintain meaningful distinctions between loss-making and profit-making companies. Prior law implicitly filtered corporate donors by permitting only profitable companies with demonstrated three-year existence and positive average net profits to contribute. The amended provision, by removing the cap, implicitly permitted loss-making entities to contribute unlimited amounts through artificial valuation mechanisms, thereby creating potential for shell company misuse and money laundering concerns explicitly flagged by the RBI and ECI but disregarded by the legislature.²²

6. Judicial Directions for Implementation

The Supreme Court issued specific directions for implementation of the judgment. The Court directed that issuance of fresh electoral bonds cease immediately, with the State Bank of India prohibited from further issuance. Critically, the Court directed the SBI to disclose all details of electoral bonds purchased and encashed since the interim order of 12 April 2019 to the Election Commission of India. The ECI was directed to publish this information on its official website within one week of receipt. Regarding pre-April 2019 bonds (issued prior to the interim order when anonymity protections remained operative), the Court maintained the sealed-cover confidentiality ordered in 2019, recognizing that disclosing identities of pre-2019 donors would represent retroactive violation of assurances given when the scheme remained constitutionally valid. Electoral bonds within their validity period but not yet encashed were ordered to be

Union of India, *supra* note 1.

²¹ K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1 (India); Ass'n for Democratic Reforms v. Union of India, *supra* note 1; India Const. art. 14; The Companies Act, 2013, § 182(1) (as amended by Finance Act, 2017) (India).

²² *Id.*; The Prevention of Money Laundering Act, 2002 (India); The Companies Act, 2013, § 182(1) (India).

returned to purchasers with full refund by SBI.²³

The judgment further reinstated the pre-2017 regulatory framework for corporate political contributions. The 7.5% cap on corporate donations, mandated by the first proviso to Section 182(1), stands reinstated. The requirement for companies to disclose the specific amount contributed and the name of political parties receiving such contributions in profit and loss accounts stands reinstated. These reinstated requirements apply to all contributions made prior to the judgment, including those made through electoral bonds, with companies required to disclose such information in profit and loss accounts prepared for financial year 2023-24 and thereafter.²⁴

7. Transparency Gaps and Post-Judgment Challenges to Implementation

Despite the Supreme Court's unambiguous directions mandating disclosure of all electoral bond transaction details, implementation encountered significant complications. When the Election Commission of India received data from the State Bank of India in March 2024, the Court identified material gaps in the information provided. The SBI had submitted data without certain alphanumeric identifiers and transaction details that the Court deemed essential for meaningful public scrutiny. In follow-up proceedings, Chief Justice Chandrachud emphasized that the Court's directive for "all details" encompassed "every conceivable detail with the SBI, " not selective or partial information. The Court clarified that the interim order of April 2019 had merged with the final judgment, thereby requiring complete disclosure of all post-April 2019 bonds, and that the SBI bore the burden of demonstrating full disclosure rather than petitioners or the Court having to extract missing details.

Senior Advocate Harish Salve, representing SBI, initially argued that the April 2019 interim order contemplated disclosure only of bonds issued after 2019, but the Court definitively rejected this interpretation. Nevertheless, the episode highlighted implementation challenges: financial institutions accustomed to treating donor information as confidential faced novel disclosure obligations; the technical infrastructure for rapid, comprehensive data extraction required enhancement; and uncertainty regarding what constitutes "all details" required judicial clarification. The SBI Chairman was ultimately directed to file an affidavit confirming full and non-selective disclosure by specified deadlines, with the Court intimating that incomplete

²³ Ass'n for Democratic Reforms v. Union of India, *supra* note 1.

²⁴ The Companies Act, 2013, § 182(1) (first proviso reinstated) (India); *Id.* § 182(3) (reinstated).

compliance could trigger contempt proceedings.²⁵²⁶

A critical transparency gap that the Electoral Bonds judgment did not fully address concerns the continued permissibility of cash political donations outside the electoral bond framework. Despite the Finance Act 2017's purported objective of channeling all donations through banking instruments, the legislative scheme maintained exceptions enabling cash contributions. While Section 182(3) of the Companies Act requires banking-channel contributions for donations exceeding a specified amount (two thousand rupees as amended), this threshold is sufficiently modest that many corporate actors could remain below it through fragmented cash donations. Furthermore, the statutory framework permits individual donations to exceed two thousand rupees through banking channels but maintains statutory frameworks permitting smaller contributions through cash, which can be practically aggregated through multiple individual donors to circumvent disclosure thresholds.²⁷

The Income Tax Act framework similarly contemplates cash donations below filing thresholds escaping reporting requirements. While voluntary contributions exceeding twenty thousand rupees trigger disclosure obligations under Section 29C of the Representation of the People Act, smaller contributions particularly when fragmented across multiple contributors evade detection. The Supreme Court's judgment, focused on electoral bonds' anonymity provisions, did not systematically address these residual cash-donation channels. Political parties maintaining that cash donations are permissible under common law or statutory silence could continue receiving such contributions despite heightened disclosure requirements for electronic transactions.²⁸

This asymmetry creates perverse incentives: donors seeking anonymity might deliberately fractionate contributions into cash transfers below disclosure thresholds rather than utilizing disclosed banking channels. The judgment's reinstatement of the 7.5% cap on corporate donations and party-wise disclosure requirements addresses only those contributions that political parties and companies actually report. The regulatory architecture remains vulnerable to under-reporting through cash channels, particularly given the evidentiary difficulties

²⁵ Ass'n for Democratic Reforms v. Union of India, *supra* note 1.

²⁶ Ass'n for Democratic Reforms v. Union of India, *supra* note 1 (post-judgment compliance proceedings, Mar. 2024).

²⁷ The Companies Act, 2013, § 182(3) (India); The Representation of the People Act, 1951, § 29C (India); Finance Act, 2017, *supra* note 22.

²⁸ The Companies Act, 2013, § 182(3) (India); The Representation of the People Act, 1951, § 29C (India); The Income Tax Act, 1961, § 13A (India).

inherent in proving cash donation non-disclosure.²⁹

Notwithstanding the judgment's restoration of the 7.5% cap on corporate donations, sophisticated actors can circumvent these restrictions through structuring mechanisms. The statutory definition of "company" under the Companies Act encompasses a broad range of corporate entities, including those established specifically for political donation purposes. An economically cohesive corporate group could theoretically establish multiple subsidiary entities, each satisfying the three-year existence and separate legal personality requirements, and each capable of donating up to 7.5% of its average net profits independently. While consolidated group financial statements might reflect the economic reality of common ownership, statutory disclosure requirements operate at the individual entity level, not consolidated group level. This creates legal ambiguity regarding whether regulators can or should aggregate subsidiary donations for purposes of evaluating cap compliance.

Moreover, the definition of "average net profits" for calculating the 7.5% cap presents interpretive challenges that could facilitate circumvention. Highly profitable companies could frontload profits into loss-making subsidiaries through inter-company transfers structured to minimize average net profit calculations in subsidiary balance sheets, thereby paradoxically making cap calculation technically compliant while economically representing large aggregate corporate family donations. The Supreme Court's judgment did not comprehensively address these structuring possibilities, potentially leaving regulatory gaps.³⁰

The RBI's earlier warnings regarding shell company misuse for political funding through electoral bonds, while addressing that specific instrument, remain applicable to the broader corporate contribution regime. A shell company could be established with minimal operational activity, capitalized with funds from a dominant beneficial owner, and utilized as a donation vehicle to bypass individual contribution limits. While income tax reporting and Companies Act disclosure requirements theoretically provide audit trails, enforcement mechanisms depend upon ECI vigilance and company law authorities' attention to beneficial ownership verification resources that may be constrained in practice.³¹

A structural transparency gap relates to differential access to political funding information

²⁹ The Companies Act, 2013, § 182(1) (first proviso) (India); Ass'n for Democratic Reforms v. Union of India, *supra* note 1.

³⁰ The Companies Act, 2013, § 182(1) (India); Ass'n for Democratic Reforms v. Union of India, *supra* note 1.

³¹ The Prevention of Money Laundering Act, 2002 (India); The Companies Act, 2013, § 182 (India).

between informed stakeholders and ordinary voters. While the Supreme Court directed the ECI to publish electoral bond transaction data, thereby creating technical availability of information, practical accessibility remains asymmetric. The raw data released by the ECI comprises alphanumeric identifiers corresponding to purchasers and recipients. Translating these identifiers into economically meaningful intelligence requires: (1) cross-referencing with banking records; (2) corporate records searches; (3) beneficial ownership verification through regulatory databases; and (4) analysis capability to identify patterns suggesting coordinated funding or corporate concentration. Civil society organizations like the Association for Democratic Reforms, Common Cause, and academic institutions possess research capacity to undertake such analysis, but ordinary voters and small political parties typically lack such investigative resources.

Consequently, while information is nominally "public," its practical utility depends upon sophisticated analysis. A voter uninformed about data access channels and analytical tools may remain unaware of corporate funding patterns affecting electoral outcomes. This information asymmetry particularly disadvantages smaller political parties competing against well-funded actors, as well as voters in less-educated or less-digitally-literate constituencies. The judgment's transparency mandate presumed rational voter utilization of disclosed information, but behavioral economics and information theory suggest that mere technical disclosure without accompanying synthesis, interpretation, and dissemination mechanisms may incompletely satisfy the right to information's democratic function.

Furthermore, the disclosure framework contains temporal asymmetries. Pre-April 2019 electoral bonds, issued during the period when the scheme was operative and donors possessed anonymity assurances, remain subject to sealed-cover confidentiality. This creates a historical information gap: the largest portion of electoral bond activity (from January 2018 through April 2019) remains obscured from public view. Political actors who received substantial funding during this period retain informational advantages compared to post-judgment entrants, as their donor networks need not be disclosed to competitors or voters. This temporal opacity may perpetuate structural advantages for incumbents and well-established political forces.³²

³² Ass'n for Democratic Reforms v. Union of India, *supra* note 1; Ministry of Finance, Electoral Bond Scheme, 2018, *supra* note 6.

8.Regulatory Fragmentation and Enforcement Challenges

The post-judgment regulatory architecture involves multiple overlapping authorities with incomplete coordinating mechanisms. The Election Commission of India possesses constitutional authority over electoral processes and political party registration but limited investigative capacity regarding corporate beneficial ownership. The Ministry of Corporate Affairs administers Companies Act compliance and maintains the Registrar of Companies database, but has traditionally focused upon corporate governance rather than political finance monitoring. The Income Tax Department implements tax law provisions regarding political donations, but operates through assessment processes that lag considerably behind real-time political funding. The Reserve Bank of India supervises scheduled banks implementing banking regulations for political donations, but lacks statutory mandate to proactively investigate political funding patterns.

This fragmentation creates coordination deficits. Information regarding suspicious political donations known to the Income Tax Department (perhaps through tax assessment of corporate donors or unusual cash transactions) may not be systematically communicated to the ECI. Corporate structural arrangements identified as shell companies by the Registrar of Companies may not be immediately flagged for political funding scrutiny. Banking transactions showing unusual political donation patterns known to the RBI may not trigger ECI investigation absent specific complaint.

The judgment's reinstatement of the 7.5% cap and party-wise disclosure requirements places primary enforcement responsibility upon the ECI to monitor companies' profit and loss account disclosures, examine whether reported contributions exceed the statutory cap, and verify that donations conform to eligibility requirements (e.g., that Government companies have not contributed). However, the ECI's capacity to undertake real-time monitoring of companies' financial disclosures, filed with the Ministry of Corporate Affairs rather than the ECI, depends upon information-sharing protocols. The judgment itself did not establish mechanisms for systematic information exchange between the MCA and ECI. Consequently, violations might persist undetected until retrospective audits, if undertaken at all.³³

Another transparency dimension concerns internal corporate governance regarding political

³³ The Companies Act, 2013, § 182 (India); The Representation of the People Act, 1951, § 29B (India); The Income Tax Act, 1961, § 13A (India); Ass'n for Democratic Reforms v. Union of India, *supra* note 1.

contributions. While Section 182 requires Board resolution authorization for political donations, and post-judgment disclosure requirements mandate profit and loss account reporting, these provisions address political party and regulatory transparency but not shareholder transparency within contributing corporations. Minority shareholders, particularly in closely-held or promoter-dominated companies, may lack practical access to detailed information regarding political contributions before Board authorization, contribution amounts to specific parties, or rationales underlying specific contribution decisions.

The reinstatement of party-wise disclosure in profit and loss accounts addresses public transparency but occurs *ex post* and in consolidated form. A shareholder might discover from published accounts that substantial corporate resources were directed to political parties, but may lack disclosure of which specific parties received contributions, in what amounts, and pursuant to what business rationale. The absence of *ex ante* shareholder consultation or *ex post* detailed disclosure creates accountability gaps enabling controlling shareholders or promoter groups to direct corporate resources toward favored political parties without meaningful shareholder oversight.

This becomes particularly significant in light of research indicating that corporate political contributions are frequently business transactions motivated by anticipated *quid pro quo* benefits, tax relief, regulatory forbearance, or favorable legislative outcomes, rather than genuine civic participation. A minority shareholder lacking transparency regarding such contributions cannot evaluate whether management is maximizing shareholder value or directing corporate resources toward political interests misaligned with shareholder benefit. The regulatory framework, focused upon political finance transparency rather than corporate governance accountability, leaves these intra-corporate transparency gaps substantially unaddressed.³⁴

9. The Money Laundering Paradox

The Supreme Court's judgment invalidates the Electoral Bonds Scheme partly on the ground that anonymity prevents effective money laundering detection. However, the reinstatement of the pre-2017 framework does not comprehensively address underlying money laundering vulnerabilities in political funding. Political parties continue to receive voluntary contributions

³⁴ The Companies Act, 2013, § 182 (India).

from persons and entities whose beneficial ownership may be obscured through complex corporate structures. While bank-channel donations theoretically generate transaction trails, those trails remain useful for money laundering detection only if properly analyzed and correlated with beneficial ownership information.

The RBI's earlier concerns, that bearer bonds facilitate transfers between multiple intermediaries leaving no trace, are specific to electoral bonds, but broader vulnerability to money laundering through legitimate political funding channels persists. A shell company with nominee directors and opaque beneficial ownership can legally contribute to political parties if it satisfies formal requirements (three-year existence, positive profits, Board authorization). The transaction trail shows movement from the shell company's bank account to the political party's bank account, but tracing ultimate beneficial ownership back through shell company layers requires investigative capacity that regulatory authorities may not systematically exercise.

The Prevention of Money Laundering Act 2002, administered by the Financial Intelligence Unit, requires banks and other financial entities to file Suspicious Transaction Reports (STRs) for transactions showing money laundering indicators. However, political donations through apparently legitimate channels meeting statutory requirements may not trigger STR filing, as financial institutions lack definitive indicators distinguishing legitimate political funding from layered money laundering flows. Consequently, while the Electoral Bonds judgment addresses that specific instrument's anonymity, the judgment does not systematically strengthen money laundering detection in the residual political funding framework.³⁵

The Supreme Court's judgment recognizes that unlimited corporate political contributions facilitate quid pro quo arrangements, implicit agreements between donors and political actors to secure reciprocal policy benefits. The Court's analysis emphasizes that corporate contributions are "purely business transactions" motivated by anticipated reciprocal gain rather than civic participation. However, the judgment's remedies, reinstating the 7.5% cap and requiring party-wise disclosure, address transparency of the donation itself rather than the quid pro quo arrangement underlying it.

Specifically, mandated disclosure that "Company X contributed Rs. 50 lakhs to Party Y"

³⁵ The Prevention of Money Laundering Act, 2002 (India); Ass'n for Democratic Reforms v. Union of India, *supra* note 1.

informs voters that a financial relationship exists, but does not directly reveal the implicit bargain (e.g., "funding in exchange for tax relief on Company X's disputed assessment"). The quid pro quo dynamic operates through informal channels, back-channel communications, personnel rotations between political parties and corporate leadership, or regulatory forbearance decisions made through discretionary administrative action rather than formal legislation.

Voters armed with disclosure data that Company X funded Party Y can infer quid pro quo risk and potentially discount Party Y's political messaging or policy positions as influenced by corporate interest. However, this inference depends upon voters' capacity to maintain complex mental maps of corporate political funding patterns and then utilize this information during voting decisions. Behavioral economics suggests that such sophisticated utilization of disclosed information is unlikely for large voter populations, particularly those voting on multiple candidates and issues simultaneously.

The judgment's transparency framework thus operates as what might be termed "information-enabling anti-corruption," making corruption possible to detect through aggregated data analysis, but not directly preventing quid pro quo arrangements or eliminating voter vulnerability to corporate-influenced political messaging. Truly preventing quid pro quo arrangements would require substantive limits on corporate contributions (as contemplated by several democracies) or proactive regulatory investigation of apparent corporate-political party relationships, neither of which the judgment mandates.

Another structural gap concerns differential incentives for political parties to accurately report received contributions. The Supreme Court directed that contributed amounts and donor identities be disclosed, but enforcement mechanisms rely primarily upon parties' good-faith reporting supplemented by external auditing. A political party receiving cash contributions below reporting thresholds faces minimal incentive to voluntarily disclose such amounts if legal obligation remains ambiguous. Even where reporting obligations are clear, political parties operating in resource-constrained circumstances or lacking sophisticated financial management infrastructure might inadvertently omit contributions from disclosure, not through deliberate concealment but through administrative oversight.

Furthermore, the disclosure regime contemplates individual contribution reporting, but the statutory framework involves contributions to political parties as institutionalized entities. A

political party receiving contributions through multiple arms (the central organization, state units, local units) must aggregate and report these in consolidated form. However, decentralized party structures might lack information systems enabling real-time aggregation, particularly in parties with weak organizational capacity. This creates practical gaps between legal disclosure obligations and actual party reporting capacity.

The Election Commission, responsible for monitoring political party compliance with disclosure requirements, possesses investigative authority to audit reported contributions and cross-verify against regulatory records maintained by the Income Tax Department, the Ministry of Corporate Affairs, and banking institutions. However, the ECI's capacity to undertake systematic audits of all political parties' contribution claims depends upon budgetary allocation and investigative resources. During high-pressure election periods, the ECI's personnel and resources are substantially allocated toward election conduct and administration rather than retrospective contribution verification.

Consequently, while the judgment mandates disclosure, the practical implementation involves political parties' voluntary compliance, external verification capacity constrained by resource limitations, and consequent opportunities for under-reporting without detection. The judgment does not establish specific penalties for political party non-compliance with disclosure obligations, nor does it mandate that political parties obtaining tax exemptions lose such exemptions upon failure to adequately disclose contributions, thus eliminating a powerful incentive mechanism for compliance.

A significant gap in the transparency regime concerns foreign political funding. Section 29B of the Representation of the People Act prohibits Indian political parties from accepting contributions from foreign sources or government companies. However, the statutory ban operates on an ex post facto basis, parties are prohibited from accepting such contributions, but the regulatory framework depends upon contribution sources voluntarily complying with the prohibition. Sophisticated actors seeking to channel foreign funds into Indian politics can establish intermediate entities, shell companies incorporated in India with ostensibly domestic ownership, that then contribute to political parties within formal statutory compliance (the contribution originates from an Indian company satisfying Section 182 requirements).

Detecting such arrangements requires beneficial ownership verification, tracing ultimate ownership through corporate structures to identify foreign beneficial owners. However, India's

corporate ownership disclosure regime, governed through the Ministry of Corporate Affairs' filings and Registrar of Companies databases, does not maintain comprehensive beneficial ownership registries comparable to some jurisdictions' beneficial ownership transparency requirements. Corporate ownership can be obscured through layered shareholding structures, nominee directorships, and opaque trust arrangements.

The Electoral Bonds judgment, by requiring disclosure of electoral bond purchasers' identities, theoretically enhanced detection of foreign funding by enabling comparison of purchaser identities against foreign national records. However, with the Scheme now invalidated, detection mechanisms for foreign funding channeled through corporate entities again depend upon beneficial ownership investigation and cross-agency information-sharing between ECI, Ministry of External Affairs (which monitors foreign nationals), and corporate regulators. The judgment itself did not establish proactive mechanisms for detecting foreign funding through corporate intermediaries.³⁶

10. Recommendations for Enhanced Transparency Architecture

To address transparency gaps identified in the post-judgment regime, strengthened coordination mechanisms between regulatory authorities are essential. The Election Commission of India should establish formal information-sharing protocols with the Ministry of Corporate Affairs, the Income Tax Department, and the Reserve Bank of India. Specifically, the ECI should receive quarterly notifications identifying all political contributions reported to the Income Tax Department (through Section 13A compliance, 80GGB/80GGC deductions, and assessment information), all corporate political donations reported in companies' profit and loss accounts, and all banking transactions flagged by scheduled banks as unusual political funding patterns.

Additionally, the ECI should establish a dedicated unit focused upon beneficial ownership verification, enabling investigation of whether political contributors satisfy legal requirements (e.g., that Government companies have not contributed, that foreign nationals have not directly contributed). This unit should receive cooperation from the Registrar of Companies in verifying corporate ownership structures and from the Ministry of External Affairs in identifying foreign national status of individual donors. Proactive information-sharing, rather than reactive

³⁶ The Representation of the People Act, 1951, § 29B (India); The Companies Act, 2013, § 182 (India); Ass'n for Democratic Reforms v. Union of India, *supra* note 1.

complaint-based investigation, would enable systematic detection of non-compliance patterns.

India should establish a comprehensive beneficial ownership registry for political donors, comparable to requirements in several other democracies. Specifically, companies making political donations above specified thresholds should be required to file beneficial ownership declarations with the Registrar of Companies identifying ultimate beneficial owners (defined as natural persons with 25% or greater beneficial ownership or control). Similarly, trusts and partnerships contributing to political parties should file beneficial ownership information with the ECI directly.

Such registry would require legislative amendment to the Companies Act 2013 and potentially the Income Tax Act. However, the transparency benefit would substantially enhance the capacity to detect shell companies, nominee directorships, and layered ownership structures used to circumvent corporate donation limits. When combined with the ECI's information-sharing protocols, beneficial ownership disclosure would enable systematic verification that reported political contributors are actual legally constituted entities rather than intermediaries obscuring ultimate beneficial owners.³⁷

The current framework requires companies to disclose political contributions in annual profit and loss accounts, creating substantial temporal lag between donation occurrence and public disclosure (often 4-6 months post-donation). The Supreme Court's judgment and underlying democratic principle of informed voters would be substantially advanced by real-time or near-real-time disclosure mechanisms. The ECI should establish a digital platform, accessible through its website and mobile applications, wherein political parties, companies, and individual donors can upload contribution information contemporaneously or within specified short periods (e.g., 10 days) of contribution.

Such platform should enable cross-referencing of contributions reported by donors against contributions claimed as received by political parties, enabling automatic detection of discrepancies. Real-time disclosure would reduce temporal asymmetries enabling political actors to maintain information advantages regarding funding flows. It would also enable citizen monitoring through crowdsourced fact-checking and civil society analysis during active electoral periods when information is most electorally salient.

³⁷ The Companies Act, 2013, § 182 (India); The Income Tax Act, 1961, §§ 13A, 80GGB, 80GGC (India).

Technical implementation challenges include platform security, authentication protocols ensuring accurate reporting, and accessibility features enabling use by all political parties regardless of technical sophistication. However, such platforms are now technically feasible and have been implemented in several other electoral democracies. India's democratic architecture would benefit from similar innovation.

The post-judgment framework reinstates Section 182 requiring corporate political contribution disclosure, but specifies no enhanced penalties for disclosure violations specific to political funding. Corporate entities violating disclosure obligations face only general Companies Act penalties applicable to all financial disclosure violations. The legislative framework should establish enhanced penalties specific to political contribution non-disclosure, and should condition tax benefits for political donations (under Sections 80GGB and 80GGC) upon complete and accurate disclosure compliance.

Specifically, companies or individuals failing to accurately disclose political contributions within specified timelines should be ineligible for tax deductions on subsequent contributions for a defined period. Political parties accepting contributions from donors who have failed to disclose such contributions to tax authorities should be disqualified from tax exemptions for that contribution year. These provisions would create powerful incentive structures encouraging voluntary compliance without requiring resource-intensive government enforcement.³⁸

While information disclosure is necessary for democratic transparency, it is insufficient without complementary voter education. The ECI should establish civic literacy programs, integrated into school civics curricula and publicly available through digital platforms, explaining political funding disclosure mechanisms, how to access published contribution data, and how to analyze funding patterns for electoral decision-making. Civil society organizations should receive support for undertaking data analysis and synthesis, translating raw political funding disclosures into accessible visualizations and reports.

Additionally, media literacy initiatives should emphasize critical consumption of political messaging, with particular attention to recognizing potential corporate influence patterns observable through contribution data. Such initiatives address the information asymmetry

³⁸ The Companies Act, 2013, § 182 (India); The Income Tax Act, 1961, §§ 80GGB, 80GGC (India).

identified above, wherein sophisticated stakeholders can analyze funding patterns while ordinary voters may lack such capacity. Voter access programs democratize information utilization, advancing the substantive right to information beyond technical disclosure.

11. Conclusion

The Electoral Bonds judgment represents a watershed moment in Indian electoral finance jurisprudence, reaffirming that transparency regarding political funding flows is constitutionally mandated by Article 19(1)(a)'s right to information and that unlimited corporate contributions constitute manifest arbitrariness violating Article 14. The judgment's remedies, invalidating the Scheme, reinstating contribution caps and disclosure requirements, and directing post-April 2019 disclosure, represent substantial victories for electoral transparency and democratic principle.

However, the post-judgment landscape reveals persistent structural vulnerabilities that the judgment's immediate remedies do not comprehensively address. Cash donation channels remain partially unregulated; shell companies and complex corporate structures enable circumvention of donor limits; information asymmetries persist regarding access to disclosed data and capacity to utilize such information for electoral decision-making; regulatory fragmentation creates coordination deficits in enforcement; and temporal asymmetries regarding pre-April 2019 confidentiality maintain information gaps regarding historical funding flows.

These gaps do not render the judgment's achievements hollow. Rather, they identify necessary subsequent reforms to realize the judgment's underlying democratic principle, that voters possess a fundamental right to know who funds political parties, in what amounts, with what frequencies, and through what mechanisms, and that this knowledge is essential for informed electoral choice and accountability of political actors to electoral democracy rather than to concentrated corporate interests.³⁹

The recommendations articulated above, establishing regulatory coordination protocols, implementing beneficial ownership registries, deploying real-time disclosure platforms, enhancing compliance incentives through targeted penalties, and supporting voter civic literacy

³⁹ India Const. art. 19, cl. 1(a); India Const. art. 14; Ass'n for Democratic Reforms v. Union of India, supra note 1.

represent practical mechanisms to operationalize the judgment's transparency mandate within India's existing constitutional and institutional framework. Implementation would require legislative amendments, regulatory agency coordination, and budgetary resource allocation. Yet the electoral democracy's health and the Constitution's commitment to equal citizenship through informed voting justify such investments.

India's electoral finance architecture remains incomplete. The Electoral Bonds judgment illuminated deficiencies and articulated constitutional principles mandating transparency. The judicial correction of the Scheme itself was necessary but insufficient. Comprehensive reform addressing the identified transparency gaps remains an urgent priority for democratic consolidation and the realization of the judgment's underlying vision of elections determined by voters' informed choices rather than by opaque flows of concentrated corporate money.