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# TRANSPARENCY VS ANONYMITY: A CRITICAL ANALYSIS OF THE ELECTORAL BONDS SCHEME JUDGMENT (2024)

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Shivam Tiwari, Law Center 2, Faculty of Law, Delhi University

## ABSTRACT

Political funding is one of the most important aspects of a democratic system because it directly affects elections, governance, and public policy. In India, the problem of opaque political funding and the use of black money has been a major concern for decades. To address this issue, the Government of India introduced the Electoral Bonds Scheme in 2018 through the Finance Act, 2017<sup>1</sup>. The scheme aimed to formalise political donations by encouraging contributions through banking channels instead of cash transactions.

However, the scheme introduced a controversial feature of donor anonymity, which meant that the identity of donors was not disclosed to the public. While the government argued that this would protect donors from political retaliation and reduce black money, critics pointed out that it undermined transparency and accountability in the democratic process. The lack of public disclosure prevented voters from knowing who was funding political parties, thereby limiting their ability to make informed choices.

The issue was challenged before the Supreme Court of India, which in 2024 declared the Electoral Bonds Scheme unconstitutional in *Association for Democratic Reforms v. Union of India*<sup>2</sup>. The Court held that the scheme violated the fundamental right to information under Article 19(1)(a) of the Constitution.

This paper critically examines the Electoral Bonds Scheme, the constitutional issues involved, and the Supreme Court's judgment. It argues that transparency is essential for a healthy democracy and that anonymity in political funding cannot be justified when it compromises citizens' right to know.

**Keywords:** Electoral Bonds, Political Funding, Transparency, Anonymity, Democracy, Right to Information

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<sup>1</sup> Finance Act, No. 7 of 2017, §§ 135, 182 (India)

<sup>2</sup> *Ass'n for Democratic Reforms v. Union of India*, Writ Petition (Civil) No. 880 of 2017 (India 2024).

## INTRODUCTION

Democracy is based on the idea that citizens should have the power to choose their representatives through free and fair elections. However, this choice can only be meaningful if voters have access to relevant information. One of the most important types of information in a democracy is related to political funding, as it reveals the financial interests behind political parties. In India, political funding has traditionally been characterised by a lack of transparency. A large portion of political donations has been made in cash, making it difficult to track the origin of funds. This has led to the growth of black money in elections<sup>3</sup> and has raised concerns about corruption and undue influence. Over time, various reforms were introduced to improve transparency, but these efforts were not entirely successful.

The Electoral Bonds Scheme was introduced as a major reform to address these issues. The scheme allowed individuals and corporations to purchase bonds from the State Bank of India<sup>4</sup> and donate them to political parties. Since the transactions were made through banking channels, they were considered more transparent than cash donations.

However, the scheme also ensured that the identity of donors remained confidential. This created a situation where the government and banks could access information about donations, but the public could not. This lack of transparency raised serious concerns about democratic accountability. The controversy surrounding the scheme eventually led to its challenge before the Supreme Court. The Court's judgment in 2024 marked a significant development in Indian constitutional law by emphasising the importance of transparency in political funding.

## RESEARCH METHODOLOGY

This research paper adopts a doctrinal, analytical, and comparative methodology. The doctrinal approach involves the study of primary legal sources, including the Constitution of India, statutory provisions such as the Finance Act, 2017, and the Representation of the People Act, 1951, as well as relevant judicial decisions of the Supreme Court. The analytical approach focuses on examining the reasoning adopted by the Court and evaluating its implications for constitutional law and democratic governance.

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<sup>3</sup> *People's Union for Civil Liberties v. Union of India*, (2003) 4 SCC 399 (India).

<sup>4</sup> State Bank of India, Electoral Bonds Scheme Guidelines (2018).

In addition, the research incorporates a comparative perspective by examining political funding frameworks in other democratic jurisdictions, including the United Kingdom, the United States, and the European Union. This comparative analysis helps in identifying global best practices and assessing the adequacy of India's regulatory framework.

The study relies on secondary sources such as reports of the Election Commission of India, Reserve Bank of India, Law Commission reports, academic articles, and policy papers. By integrating doctrinal analysis with comparative insights, the research aims to provide a comprehensive understanding of the issues surrounding political funding and electoral transparency.

## **REVIEW OF LITERATURE**

The issue of political funding has been widely examined in legal scholarship, policy debates, and institutional reports, particularly in the context of transparency, accountability, and democratic integrity. A substantial body of literature has critically analysed the challenges associated with opaque funding mechanisms and has consistently emphasised the need for greater disclosure in political finance.

The Election Commission of India (ECI)<sup>5</sup>, as the constitutional body responsible for overseeing elections, has repeatedly expressed concerns regarding the lack of transparency in political funding. In its various reports and affidavits, the ECI has highlighted that anonymous donations undermine the fairness of elections by preventing voters from accessing essential information about the financial backing of political parties. It has been argued that transparency is not merely a regulatory requirement but a democratic necessity, as it enables citizens to make informed choices and hold political actors accountable.

Similarly, the Reserve Bank of India (RBI)<sup>6</sup> has raised significant objections to the Electoral Bonds Scheme, particularly regarding the use of bearer instruments. The RBI cautioned that such instruments could be susceptible to misuse, including money laundering and the circulation of illicit funds. It also pointed out that the scheme deviated from established financial norms by introducing a system where large financial transactions could occur without

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<sup>5</sup> Election Commission of India, Affidavit (2019).

<sup>6</sup> Reserve Bank of India, Statement (2017).

adequate public disclosure.

Academic scholars have also contributed extensively to the debate on political funding. Many have argued that the removal of caps on corporate donations, coupled with the absence of disclosure requirements, has increased the risk of corporate influence over political decision-making. Scholars such as Umakanth Varottil<sup>7</sup> have emphasised that corporate political contributions, when not subject to transparency, can lead to policy capture, where government decisions are influenced by private interests rather than public welfare. This raises serious concerns about the integrity of democratic governance.

In addition, comparative literature on political finance highlights that most established democracies prioritise transparency and disclosure as key principles. For instance, in the United Kingdom, political parties are required to disclose donations above a specified threshold, and such information is made publicly available. Similarly, the European Union has adopted stringent regulations to ensure accountability in political funding. These frameworks reflect a global consensus that transparency is essential for maintaining public trust in democratic institutions.

Furthermore, civil society organisations such as the Association for Democratic Reforms (ADR) and Common Cause have played a crucial role in highlighting the shortcomings of the Electoral Bonds Scheme. Their research and advocacy efforts have demonstrated how anonymity in political funding can lead to an imbalance of power, favouring larger political parties and well-funded entities. They have argued that the scheme not only undermines transparency but also weakens democratic participation by limiting access to information.

Overall, the literature reveals a strong consensus that while reforms in political funding are necessary to address issues such as black money and corruption, such reforms must not come at the cost of transparency. The Electoral Bonds Scheme, by prioritising anonymity over disclosure, has been widely criticised as inconsistent with democratic principles. This body of literature provides a critical foundation for understanding the constitutional and policy issues examined in this research paper.

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<sup>7</sup> Umakanth Varottil, 18 J. Corp. L. Stud. 1 (2018).

## METHOD

This research paper adopts a structured methodological framework combining doctrinal, analytical, comparative, and case study approaches to examine the issues surrounding political funding and the Electoral Bonds Scheme. The use of multiple methods ensures a balanced and comprehensive understanding of both legal principles and practical implications.

The primary method used in this study is the doctrinal method, which involves the analysis of legal texts, statutes, and judicial decisions. Key sources include the Constitution of India, particularly Articles 19(1)(a) and 14, along with statutory provisions such as the Finance Act, 2017 and the Representation of the People Act, 1951. Relevant Supreme Court judgments have been examined to understand the evolution of legal principles relating to transparency and the right to information. This method helps in evaluating the constitutional validity of the Electoral Bonds Scheme.

In addition, an analytical approach has been used to critically assess the reasoning of the Supreme Court in the 2024 judgment. This involves examining the arguments of both the government and the petitioners, as well as the Court's interpretation of constitutional provisions. The analytical method allows for a deeper understanding of the implications of the judgment on democratic governance and accountability.

The study also incorporates a comparative method by examining political funding frameworks in other democratic jurisdictions such as the United Kingdom, the United States, and the European Union. This comparison helps in identifying global best practices and highlights the differences between India's approach and international standards, particularly in relation to transparency and disclosure.

Furthermore, a case study method has been applied, focusing specifically on the Electoral Bonds Scheme and the Supreme Court's decision in *Association for Democratic Reforms v. Union of India*. This enables a detailed examination of the scheme's structure, its practical challenges, and its constitutional implications.

The research is primarily based on secondary sources, including reports of the Election Commission of India, Reserve Bank of India, academic writings, and policy documents. A qualitative approach has been followed, focusing on interpretation and critical evaluation rather

than numerical analysis.

## **MAIN DISCUSSION**

### **1. Historical Background of Political Funding in India**

Political funding in India has always been deeply intertwined with issues of transparency, corruption, and electoral fairness. In the early decades after independence, political parties primarily relied on voluntary contributions from individuals, small businesses, and community groups. These contributions were relatively modest, and elections were less resource-intensive compared to present times. However, as the political landscape evolved and electoral competition intensified, the cost of elections increased significantly.

With the rise in campaign expenditure, political parties began to depend on larger donations, often from corporate entities and wealthy individuals. A substantial portion of these donations was made in cash, which made it extremely difficult to trace the origin of the funds. This lack of traceability gave rise to the widespread use of black money in elections. Over time, this practice became normalised, leading to a parallel system of unaccounted political financing.

Various committees and commissions, including the Law Commission of India<sup>8</sup>, have highlighted the dangers of opaque political funding. They have emphasised that the use of unaccounted money not only undermines electoral integrity but also distorts policy-making processes. Political parties that receive large, undisclosed donations may feel obligated to their donors, leading to a conflict between public interest and private gain.

Despite several reform efforts, including the introduction of disclosure requirements and limits on cash donations, the problem of transparency remained unresolved. The Electoral Bonds Scheme was introduced in this context as a purported solution, but instead of strengthening transparency, it introduced a new form of opacity.

### **2. Electoral Bonds Scheme: Features, Mechanism, and Practical Concerns**

The Electoral Bonds Scheme was designed as a financial instrument that could be purchased by individuals or entities from designated branches of the State Bank of India. These bonds

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<sup>8</sup> Law Commission of India, 255th Report (2015).

could then be donated to eligible political parties, which could encash them within a specified time period. The scheme required donors to comply with Know Your Customer (KYC) norms, ensuring that their identity was recorded by the bank.

This selective transparency created a serious imbalance. It allowed those in power to access sensitive financial information while keeping citizens in the dark. This asymmetry raised concerns about the misuse of information and the potential for political retaliation. Moreover, the removal of caps on corporate donations meant that companies could contribute unlimited amounts to political parties without disclosure. This significantly increased the risk of corporate capture of political processes.

Another critical issue was the lack of accountability. Since the identity of donors was not disclosed, it became impossible to establish any direct link between political contributions and policy decisions. This made it difficult to detect instances of quid pro quo arrangements, where policies are influenced in exchange for financial support.

### **3. Constitutional Issues Involved**

#### **a. Right to Information under Article 19(1)(a)<sup>9</sup>**

The right to information is an essential component of the freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution. The Supreme Court has consistently held that this right includes the ability of citizens to access information that is necessary for meaningful participation in democracy.

In the context of elections, this principle has been interpreted to include the right to know the background of candidates, including their criminal records, financial status, and educational qualifications. Extending this logic, the Court in the Electoral Bonds case recognised that voters also have the right to know the sources of political funding.

The denial of such information creates an information deficit that undermines the democratic process. When voters are unaware of the financial interests behind political parties, they are unable to fully evaluate the motivations and priorities of those parties. This limits their ability

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<sup>9</sup> *Union of India v. ADR*, (2002) 5 SCC 294 (India).

to make informed choices and weakens democratic accountability.

### **b. Free and Fair Elections as Basic Structure**

The concept of free and fair elections is considered part of the basic structure of the Constitution. This means that it cannot be compromised by legislative or executive actions. Transparency in political funding is a critical element of free and fair elections, as it ensures that electoral competition is not distorted by hidden financial influences.

The Electoral Bonds Scheme, by introducing anonymity, created conditions where financial power could operate without scrutiny. This undermined the level playing field required for fair elections. Larger parties with access to significant financial resources gained a disproportionate advantage over smaller parties, thereby affecting the fairness of the electoral process.

### **c. Equality under Article 14**

Article 14 guarantees equality before the law and equal protection of laws. The Electoral Bonds Scheme raised concerns under this provision by creating unequal conditions for political competition. The removal of limits on corporate donations allowed large corporations to exert significant influence over political parties, thereby skewing the political landscape in favor of well-funded entities.

This inequality not only affects political parties but also impacts voters, as it reduces the diversity of choices available to them.

## **4. Supreme Court Judgment and Its Reasoning**

The Supreme Court, in its 2024 judgment, struck down the Electoral Bonds Scheme as unconstitutional. The Court held that the scheme violated the fundamental right to information by preventing citizens from accessing information about political funding.

The Court emphasised that transparency is essential for maintaining the integrity of the democratic process. It rejected the government's argument that donor anonymity was necessary to protect against political retaliation, stating that such concerns could be addressed through less restrictive means.

The judgment also highlighted the importance of accountability in political funding. By

ensuring that citizens have access to information about donations, the Court sought to strengthen democratic oversight and prevent the misuse of financial power.

## **5. Comparative Perspective**

In most established democracies, transparency in political funding is considered essential. For example, in the United Kingdom, political parties are required to disclose donations above a certain threshold. Similarly, in the European Union, strict regulations ensure that political funding is transparent and accountable.

Even in the United States, where campaign finance laws are more complex, there are mechanisms for disclosure, although certain loopholes exist. Compared to these systems, the Electoral Bonds Scheme represented a step backwards in terms of transparency.

## **6. Deep Critical Analysis**

The Electoral Bonds Scheme can be seen as a case of “formal transparency with substantive opacity.” While it created a formal structure for political donations, it failed to ensure substantive transparency. This contradiction lies at the heart of the scheme’s constitutional invalidity.

The scheme also reflects a broader tension between privacy and transparency in democratic governance. While donor privacy is an important consideration, it cannot override the public’s right to know about matters that affect governance. In the context of political funding, transparency must take precedence, as it directly impacts democratic accountability.

## **SUGGESTIONS**

- **Comprehensive Disclosure Framework**

A robust disclosure mechanism should be introduced that mandates the publication of all political donations above a minimal threshold. This information should include the identity of the donor, the amount contributed, and the date of the transaction. Public access to this data should be ensured through an online platform.

- **Real-Time Transparency System**

Instead of delayed disclosures, a real-time reporting system should be implemented. This

would allow citizens, journalists, and watchdog organisations to monitor political funding as it happens, thereby increasing accountability.

- Reintroduction of Corporate Donation Caps

Unlimited corporate donations pose a serious threat to democratic equality. Caps on corporate contributions should be reinstated to prevent excessive influence by large business entities.

- Independent Regulatory Authority

An independent body should be established to regulate political funding. This authority should function autonomously and have the power to audit political parties, investigate irregularities, and impose penalties.

- Strengthening the Election Commission

The Election Commission should be granted greater powers to oversee political funding. It should have the authority to enforce transparency norms and ensure compliance by political parties.

- Use of Technology for Transparency

Digital platforms should be used to maintain and publish records of political donations. Blockchain technology can also be explored to create tamper-proof records.

- Strict Penalties for Violations

Strong penalties should be imposed for non-compliance with transparency requirements. This would act as a deterrent against violations.

- Public Awareness and Civic Education

Citizens should be educated about the importance of transparency in political funding. Awareness campaigns can help in creating demand for accountability.

- Whistleblower Protection Mechanisms

Individuals who expose irregularities in political funding should be provided with legal

protection. This would encourage greater transparency.

- Periodic Audits of Political Parties

Regular audits should be conducted to ensure compliance with financial regulations. Audit reports should be made publicly available.

- Limiting Anonymous Donations Strictly

If anonymity is allowed at all, it should be restricted to very small contributions below a minimal threshold.

- Integration with Anti-Corruption Laws

Political funding regulations should be aligned with anti-corruption laws to ensure a comprehensive approach.

## **CONCLUSION**

The debate between transparency and anonymity in political funding is not merely a legal issue; it is a fundamental question about the nature of democracy itself. A democratic system thrives on openness, accountability, and public participation. When financial influences operate in secrecy, they undermine these core principles and weaken the foundation of democratic governance.

The Electoral Bonds Scheme, despite its stated objective of reducing black money, failed to uphold these principles. By prioritising donor anonymity over public transparency, it created a system where financial power could operate without scrutiny. This not only increased the risk of corruption but also eroded public trust in political institutions.

The Supreme Court's 2024 judgment represents a significant step toward restoring democratic integrity. By recognising the right to information in the context of political funding, the Court has reinforced the idea that transparency is essential for meaningful participation in democracy. The judgment also serves as a reminder that constitutional values must guide policy decisions, even in complex areas such as political financing.

However, the striking down of the Electoral Bonds Scheme is only the beginning. The

challenge now lies in designing a new framework that effectively balances competing interests while ensuring transparency and accountability. Such a framework must address the legitimate concerns of donor privacy without compromising the public's right to know.

In the long run, the success of any political funding system depends on its ability to build trust. Citizens must have confidence that political decisions are made in the public interest and not influenced by hidden financial interests. Achieving this requires a commitment to transparency, strong regulatory mechanisms, and active public participation.

Ultimately, democracy is not just about elections; it is about accountability, fairness, and trust. Ensuring transparency in political funding is a crucial step toward strengthening these values and safeguarding the future of democratic governance in India.