
ELECTORAL BONDS AND THE RIGHT TO KNOW: JUDICIAL SCRUTINY OF POLITICAL FUNDING IN INDIA

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ABSTRACT

This paper introduced by the Government of India in 2017 and its constitutional implications on transparency in political funding. Designed as an instrument to curb black money and formalize donations through banking channels, the scheme, however, enabled anonymous contributions to political parties, raising concerns over opacity and corporate influence in electoral processes. Anchored in the constitutional guarantee of the Right to Know under Article 19(1)(a), this study explores judicial scrutiny of the scheme, Supreme Court judgment of February 2024, which struck down electoral bonds as unconstitutional. The judgment reaffirmed that transparency in political financing is central to democratic accountability and free and fair elections. Through an analysis of statutory amendments, judicial precedents, and comparative international practices, this paper proposes systematic changes in political funding laws to ensure a balance between donor privacy and citizens' right to information. The findings highlight the need for an institutionalized framework for election financing, greater disclosure norms, and active oversight by constitutional bodies to safeguard the integrity of India's democratic process.

Keywords: Electoral Bonds, Political Funding, Right to Know, Article 19(1)(a), Judicial Scrutiny, Supreme Court of India, Electoral Transparency, Constitutional Law, Corporate Donations, Election Commission of India

Introduction

Transparency in political funding forms the bedrock of a healthy democracy, ensuring that citizens remain informed participants in the electoral process. In India, the introduction of the electoral bond scheme proposed in 2017 Union Budget and notified on 2 January 2018.¹ marked a significant shift in the financing of political parties, intended to formalize and regulate donations while curbing the influence of black money. ¹However, the scheme simultaneously raised complex constitutional and democratic questions. By allowing anonymous donations and shielding the identity of contributors, the scheme has faced backlash for undermining the citizen's fundamental "right to know," a principle deeply rooted in Article 19(1)(a) of the Indian Constitution. ²

Judicial scrutiny of this issue has highlighted the tension between two competing values: the need for donor privacy and the imperative of electoral transparency. The Supreme Court in *Union of India v Association for Democratic Reforms*³ and later in *People's Union for Civil Liberties v Union of India*⁴ recognized the "right to know" as intrinsic to the freedom of speech and expression guaranteed under Article 19(1)(a). Critics argue that anonymity in political funding disproportionately benefits ruling parties, distorts the level playing field, and creates opportunities for quid pro quo arrangements, thereby eroding public trust in the democratic process.

The constitutional challenge to the Electoral Bonds Scheme culminated in the Supreme Court's recent judgment in *Association for Democratic Reforms v Union of India*, where the scheme was struck down as unconstitutional for violating the citizens' right to information regarding political funding.⁵ This decision reaffirmed the principle that transparency in political finance is integral to maintaining the fairness and integrity of elections.

Against this backdrop, this research paper examines the judicial responses to electoral bonds, the constitutional principles underpinning the right to know, and the broader implications of political funding reforms for Indian democracy.

¹ Ministry of Finance, 'Electoral Bond Scheme, 2018' (Notification No. S.O. 29(E), 2 January 2018).

² Constitution of India 1950, art 19(1)(a).

³ *Union of India v Association for Democratic Reforms* (2002) 5 SCC 294.

⁴ *People's Union for Civil Liberties v Union of India* (2003) 4 SCC 399.

⁵ *Supra* note 3

Constitutional and Legal Framework on Political Funding

Electoral Bonds Scheme

The Electoral Bonds Scheme was introduced by the Government of India in the Union Budget of 2017–18, with the objective of reforming political funding and bringing about transparency in donations made to political parties.⁶ The scheme enables anonymous donations on 2 January 2018 under the Finance Act, 2017, amending key legislations such as the Representation of the People Act, 1951, the Income Tax Act, 1961, and the Companies Act, 2013.⁷

Electoral Bonds are bearer instruments, similar to promissory notes, which do not carry the name of the donor.⁸ Any citizen of India or a company incorporated in India is eligible to purchase electoral bonds from the State Bank of India (SBI) in denominations ranging from ₹1,000 to ₹1 crore.⁹ These bonds can be donated to political parties registered under Section 29A of the Representation of the People Act, 1951 and securing at least 1% of the votes polled in the most recent general or state elections.¹⁰

The political party can then encash these bonds through its verified bank account within a specified period of 15 days.¹¹ Notably, the scheme provides complete anonymity to the donor, as neither the party nor the public can ascertain the identity of the contributor.¹²

The government justified the scheme as a step towards curbing black money in elections and ensuring donations are made through banking channels.¹³ However, it has been widely criticized for reducing transparency in political funding, as only the government (through SBI) retains access to donor information, while citizens and oversight bodies are excluded from this knowledge.¹⁴ This has raised serious questions about its compatibility with the fundamental

⁶ Ministry of Finance, Union Budget Speech 2017-18, Government of India.

⁷ The Finance Act, 2017, No. 7 of 2017.

⁸ Electoral Bond Scheme, Notification No. 20, Ministry of Finance, Department of Economic Affairs, 2 January 2018.

⁹ Ibid

¹⁰ Representation of the People Act, 1951, Section 29A.

¹¹ Electoral Bond Scheme, 2018, Clause 14.

¹² Election Commission of India, Written Submissions before the Supreme Court in Electoral Bonds Case, 2019.

¹³ Ministry of Finance, Press Release on Electoral Bonds Scheme, 2018.

¹⁴ Reserve Bank of India, Internal Note on Electoral Bonds, 2017; Election Commission of India, Letter to Ministry of Law, 26 May 2017.

right to information under Article 19(1)(a) of the Constitution.¹⁵

Judicial Scrutiny of Electoral Bonds

Judicial scrutiny of electoral bonds refers to the constitutional review undertaken by the Indian judiciary, particularly the Supreme Court, to determine whether the Electoral Bond Scheme, 2018, introduced through the Finance Act, 2017, aligns with democratic principles of transparency, accountability, and equality. The scheme permitted anonymous donations to political parties, thereby raising questions regarding citizens' right to know under Article 19(1)(a) of the Constitution and the principle of equality under Article 14. The Supreme Court has consistently recognized the right to information about political candidates and parties as a facet of the freedom of speech and expression, most notably in *Association for Democratic Reforms v. Union of India* (2002)¹⁶ and *People's Union for Civil Liberties v. Union of India* (2003)¹⁷.

Considering these precedents, the challenge to electoral bonds was primarily centred on whether the scheme promoted opacity in political funding and thereby undermining citizens participatory rights in a democracy. Ultimately, in *Centre for Public Interest Litigation v. Union of India* (2018), the Supreme Court struck down the scheme, holding it unconstitutional for creating an "information asymmetry" that privileged donor anonymity over the electorate's right to know¹⁸. Judicial scrutiny in this context, therefore, reaffirmed the judiciary's role as a constitutional guardian, ensuring that state actions in electoral financing do not compromise democratic accountability.

Supreme Court judgments on electoral transparency, starting with *State of U.P. v. Raj Narain*

This landmark case established that the right to know is embedded within the guarantee of freedom of speech and expression under Article 19(1)(a) of the Constitution. The Court held that in a democracy, people are the masters, and they have a right to know about the acts of their government, including the background of candidates contesting elections. Justice Mathew famously observed that "the people of this country have a right to know every public act,

¹⁵ Supra note 3, 4

¹⁶ Supra note 3

¹⁷ Supra note 4

¹⁸ *Centre for Public Interest Litigation v. Union of India*, W.P. (C) No. 880 of 2017, Judgment dated 15 February 2024.

everything that is done in a public way.” This case laid the foundation for the principle that transparency is indispensable to free and fair elections¹⁹ and *PUCL v. Union of India* (2003), which recognized the Right to Know as fundamental to democracy. In this case, the Court expanded the principle by holding that voters have the fundamental right to know the criminal antecedents, educational qualifications, and financial background of candidates. It declared that the right to information about candidates flows directly from Article 19(1)(a). The judgment struck down provisions of the Representation of the People Act, 1951, that restricted disclosure, and directed the Election Commission to ensure mandatory affidavits by candidates. Thus, the Court shifted electoral transparency from being only about governmental acts to being a precondition for informed electoral choice.²⁰ It then examines the *Association for Democratic Reforms (ADR) v. Union of India* (2024), the Court extended its scrutiny to the opaque system of electoral bonds. Striking down the scheme, the Court reaffirmed that political funding cannot remain beyond public scrutiny, as undisclosed corporate and individual contributions violate citizens’ right to information about political parties that contest and govern. The judgment declared that electoral bonds distort the level playing field, encourage quid pro quo, and undermining transparency in political finance, thereby Article 324 gives powers to the Election Commission, but **free and fair elections are part of the basic structure**, not expressly in Article 324. Phrase carefully. case in outlining the Court’s reasoning, orders, and its emphasis on the incompatibility of donor anonymity with citizens’ constitutional rights.²¹

Comparative Study of Political Funding Models

1. Concept of Political Funding

Political funding refers to the financial resources collected and spent by political parties and candidates to contest elections, run campaigns, and sustain organizational activities. It includes public funding (state subsidies, free airtime, tax exemptions) and private funding (individual donations, corporate contributions, membership fees, and new mechanisms such as electoral bonds). Political finance is not only about money but also about its regulation, transparency,

¹⁹ *State of U.P. v. Raj Narain*, AIR 1975 SC 865

²⁰ *People’s Union for Civil Liberties (PUCL) v. Union of India*, (2003) 4 SCC 399.

²¹ *Association for Democratic Reforms (ADR) v. Union of India*, (2024) SCC Online SC 149 (Electoral Bonds Judgment).

and accountability to ensure free and fair elections in line with constitutional values.²²

2. Significance of Comparative Study

A comparative approach is necessary to:

Identify best practices from global experiences.

Understand the link between funding models, corruption, and electoral integrity. Evaluate compatibility of funding models with democratic ideals such as equality, transparency, and the citizens' right to know.²³

3. Global Models of Political Funding

Different countries adopt distinct funding models:

United States: A predominantly private funding model with strict disclosure requirements. Corporate donations are regulated, while Political Action Committees (PACs) and Super PACs play a significant role. Judicial pronouncements like *Citizens United v. FEC* (2010) expanded the scope of corporate spending in elections, raising concerns of disproportionate influence.²⁴

Germany: A state funding model where political parties receive direct subsidies from the state, combined with transparency obligations. This ensures stability and reduces dependence on private donors.²⁵

United Kingdom: A hybrid system involving limited public funding and strict donation caps. The UK emphasizes transparency and regulates third-party expenditures to curb the influence of big money.²⁶

Scandinavian Countries: These nations prioritize full state funding coupled with strong

²² D. Rajasekhar & M. Devendra Babu, Political Funding and Electoral Reforms in India, *Economic and Political Weekly*, Vol. 36, No. 35 (2001), pp. 3389–3393.

²³ International IDEA, Political Finance Database, (2023), available at: <https://www.idea.int/data-tools/data/political-finance-database>.

²⁴ *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010).

²⁵ Ewing, K. D. & Issacharoff, S., *Party Funding and Campaign Financing in International Perspective* (Hart Publishing, 2006).

²⁶ V. B. Singh, "Regulation of Political Finance and Electoral Reforms in India," *Indian Journal of Public*

disclosure norms, creating a level playing field and minimizing private influence.²⁷

4. Indian Context of Political Funding

India has experimented with various models:

Earlier, parties relied heavily on cash donations, often unaccounted for.

The Representation of the People Act, 1951 introduced basic disclosure norms, but loopholes persisted. The introduction of Electoral Trusts (2013) sought to improve transparency but had limited success. The Electoral Bonds Scheme (2017), however, enabled anonymous donations through banking channels. While it sought to curb black money, it was criticized for eroding transparency and favouring ruling parties.²⁸

Comparative studies are particularly important in the Indian context, where political funding has evolved from traditional donations and black money-driven contributions to instruments like electoral bonds. Juxtaposing this with models such as state funding in Germany, strict disclosure regimes in the United States, or hybrid public-private systems in the UK provides valuable insights into the strengths and weaknesses of each approach and their compatibility with constitutional values of transparency and free and fair elections.

This chapter explores political funding regulations in countries like the United States, United Kingdom, and Germany, which have robust disclosure norms, independent oversight mechanisms, and caps on donations. Lessons from these jurisdictions provide a comparative lens for evaluating India's electoral finance laws and identifying possible reforms.

²⁷ Nassmacher, Karl-Heinz, *The Funding of Party Competition: Political Finance in 25 Democracies* (Nomos, 2009).

²⁸ Association for Democratic Reforms (ADR), *Analysis of Electoral Bonds and Political Funding in India*, (2024).

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Electoral Trusts	Electoral Bonds
The electoral trusts route is transparent on contributors and beneficiaries when there is only one beneficiary and one contributor of a particular trust. However, if there are multiple contributors and recipients of donations, it cannot be specified which company is funding which party.	Electoral bonds, on the other hand, are exempt from disclosure requirements. Parties inform the Election Commission of the aggregate donations received through EBs, but give no details of the donors.
Data from nine financial years (2013-14 to 2021-22) show that a total Rs 2,269 crore was routed to parties through the ETs.	During the period 2017-18 and 2021-22, political parties got a total Rs 9,208 crore through EBs.

Post-publication conduct: Authors may need to respond to feedback, corrections, or retraction requests even after publication.²⁹

Constitutional and Legal Framework on Political Funding

* Constitutional Provisions Governing Elections

The Constitution of India provides the foundation for regulating elections and political funding. Article 324 vests the power of superintendence, direction, and control of elections in the Election Commission of India (ECI), ensuring free and fair elections.³⁰ Additionally, Articles 327 and 328 empower Parliament and State Legislatures to make laws regarding elections, including provisions on political funding.³¹

* Right to Know as a Fundamental Right under Article 19(1)(a)

The Right to Know has been judicially evolved as part of the freedom of speech and expression under Article 19(1)(a) of the Constitution. The Supreme Court in *State of U.P. v. Raj Narain* held that the right to know is derived from freedom of speech, which includes the right of

²⁹ Ibid

³⁰ INDIA CONST. art. 324.

³¹ INDIA CONST. arts. 327–28.

citizens to be informed about public affairs.³² Later, in *PUCL v. Union of India*, the Court reaffirmed that voters have a constitutional right to know the background of electoral candidates, including their criminal, financial, and educational details.³³ This interpretation directly connects the right to information about political funding with the democratic rights of citizens.

***Representation of the People Act, 1951**

The Representation of the People Act, 1951 (RPA) governs the conduct of elections, including provisions related to election expenses and political funding. Section 29B of the RPA permits political parties to accept contributions from individuals and companies, while Section 29C requires disclosure of donations above ₹20,000.³⁴ However, the introduction of electoral bonds diluted these disclosure norms, as anonymous donations through bonds are exempted from reporting under Section 29C.

Finance Act, 2017 and Related Amendments

The Finance Act, 2017, enacted as a Money Bill, introduced the Electoral Bond Scheme. It amended several statutes to facilitate anonymous corporate donations:

Representation of the People Act, 1951: Exempted political parties from reporting donations received through electoral bonds.³⁵

Income Tax Act, 1961: Allowed donors to claim tax deductions for contributions made via electoral bonds.³⁶

Reserve Bank of India Act, 1934: Authorized the issuance of electoral bonds exclusively through the State Bank of India.³⁷

This legislative framework institutionalized anonymity in political funding, raising concerns of transparency and accountability.

³² Supra note 19

³³ Supra note 20

³⁴ Representation of the People Act, No. 43 of 1951, 29B–29C, INDIA CODE (1951).

³⁵ Finance Act, No. 7 of 2017, 137, INDIA CODE (2017).

³⁶ Id at 11

³⁷ Id at 135

Companies Act, 2013 Amendments

Prior to 2017, Section 182 of the Companies Act, 2013 capped corporate donations at 7.5% of average net profits of the preceding three years and required disclosure of such donations in financial statements. The Finance Act, 2017 removed both the cap and disclosure requirement.³⁸ This enabled even loss-making or shell companies to make unlimited, undisclosed donations to political parties, thereby increasing the risk of corporate influence and money laundering.

Role of the Election Commission of India

The Election Commission of India (ECI), under Article 324, plays a central role in regulating political funding and ensuring a level playing field in elections. The ECI has consistently advocated for greater transparency in funding, recommending:

Mandatory disclosure of all donations, regardless of amount. Ban on anonymous contributions. State funding of elections to reduce corporate influence. In 2017, the ECI filed an affidavit before the Supreme Court opposing electoral bonds, stating that their anonymity would have a “serious impact on transparency in political finance” and would open doors for foreign corporate influence.³⁹ Despite these warnings, the scheme was implemented until it was struck down by the Supreme Court in 2024.

Comparative Study of Political Funding Models

The regulation of political finance remains a critical challenge across democracies, with each jurisdiction adopting varied approaches to balance transparency, donor privacy, and the need for free and fair elections. A comparative study of funding models in the United States, the United Kingdom, Germany, and Scandinavian countries offers valuable insights into possible pathways for reform in India.

United States: PACs, Super PACs, and Disclosure Laws

The U.S. political funding system is characterized by extensive private donations regulated

³⁸ Supra note at 13

³⁹ Affidavit of the Election Commission of India, Association for Democratic Reforms v. Union of India, Writ Petition (Civ.) No. 880 of 2017 India.

under the **Federal Election Campaign Act (FECA), 1971**, and subsequent amendments.⁴⁰ Political Action Committees (PACs) and, more recently, Super PACs dominate the funding landscape. PACs are allowed to collect limited contributions from individuals and donate directly to candidates, whereas Super PACs, created after the landmark *Citizens United v. Federal Election Commission* (2010) ruling, can raise and spend unlimited funds independently of candidates, provided they do not coordinate directly with campaigns.⁴¹

While *Citizens United* expanded the scope of corporate free speech by allowing unlimited independent political expenditures, it also intensified concerns about disproportionate influence of corporations and wealthy individuals.⁴² However, the U.S. maintains relatively strong **disclosure norms**. The Federal Election Commission (FEC) mandates public reporting of contributions and expenditures, creating transparency despite the dominance of private finance.⁴³ The model illustrates both the risks of excessive privatization of political funding and the benefits of mandatory disclosure in empowering voters with financial information.

United Kingdom: Donation Caps and Transparency Rules

The U.K. follows a mixed model that emphasizes both **donation regulation** and **spending limits**. The **Political Parties, Elections and Referendums Act, 2000 (PPERA)** is the primary legislation governing party finance.⁴⁴ It imposes restrictions on foreign donations and requires political parties to disclose donations above £500, while reporting to the Electoral Commission for public scrutiny.⁴⁵

A unique feature of the U.K. system is the **spending limits imposed during election campaigns**, which curb the undue influence of money.⁴⁶ While there are no absolute caps on donations by individuals or corporations, transparency and rigorous auditing of party accounts act as safeguards. The U.K. thus reflects a model that seeks to **balance donor freedom with accountability**, emphasizing the principle that voters must know who finances political

⁴⁰ Federal Election Campaign Act, 52 U.S.C. §30101 (1971)

⁴¹ Supra note 24

⁴² Richard Briffault, "Super PACs and Democracy," *Minnesota Law Review* 96 (2012): 1644.

⁴³ Federal Election Commission, "Campaign Finance Disclosure Database," FEC.gov

⁴⁴ Political Parties, Elections and Referendums Act, 2000 (U.K.), c. 41.

⁴⁵ Electoral Commission (U.K.), "Donations and Loans to Political Parties."

⁴⁶ Justin Fisher, *Party Finance and Political Marketing in the United Kingdom* (Routledge, 2014), 88–91

actors.⁴⁷

Germany: State Funding and Transparency

Germany adopts a **state-centered funding model**, recognizing political parties as essential constitutional actors under Article 21 of the Basic Law.⁴⁸ Parties receive substantial public funding proportional to the votes they secure in federal and state elections.⁴⁹ This system is complemented by limited private donations, which are permitted but subject to strict disclosure requirements. Contributions above €10,000 must be reported, and donations exceeding €50,000 must be disclosed immediately.⁵⁰

The German model reduces the dependence of parties on private or corporate finance, thereby minimizing risks of policy capture. At the same time, it ensures accountability by mandating annual publication of party accounts audited by the Federal Audit Office.⁵¹ Critics argue that heavy reliance on state funding may lead to bureaucratic inefficiency and weaken party linkages with civil society, yet it offers stability and fairness by levelling the electoral playing field.⁵²

Scandinavian Countries: Near-Total State Funding

Scandinavian democracies such as Sweden, Norway, and Denmark have moved towards **predominantly state-funded electoral systems**, where public subsidies constitute the bulk of party revenues.¹⁴ Private donations are allowed but play a minimal role, and in some cases, anonymous donations are prohibited altogether.¹⁵

The rationale for this model is rooted in the Nordic emphasis on egalitarianism and political equality. Public funding ensures that competition between parties is based primarily on ideas and policies rather than financial muscle. Transparency laws also require disclosure of party finances, with Norway mandating annual public reports of all donations.¹⁶

⁴⁷ Pippa Norris, *Electoral Engineering: Voting Rules and Political Behavior* (Cambridge University Press, 2004), 212.

⁴⁸ Basic Law for the Federal Republic of Germany, Art. 21.

⁴⁹ Karl-Heinz Nassmacher, "Political Finance in Germany," in *Funding of Political Parties and Election Campaigns* (International IDEA, 2014), 119.

⁵⁰ Political Parties Act, 1967 (Germany)

⁵¹ Bundesrechnungshof (Federal Audit Office), "Reports on Party Financing."

⁵² Ingrid Van Biezen, "State Intervention in Party Politics: The Public Funding and Regulation of Political Parties," *European Review* 16, no. 3 (2008): 337.

While the Scandinavian model significantly curbs corporate influence, some scholars note potential risks of over-dependence on state resources, which may reduce grassroots mobilization.¹⁷ Nevertheless, the system is often hailed as the most egalitarian funding structure, as it guarantees a **level playing field** and promotes public trust in democratic institutions.

Lessons for India

The comparative models reveal that **no single system is flawless**; each strikes a different balance between transparency, equity, and political freedom. The U.S. emphasizes free speech but suffers from corporate domination, the U.K. relies on transparency and spending limits, Germany provides strong state support while retaining private finance under regulation, and Scandinavia opts for near-total public funding to reduce private influence.

For India, which faces challenges of opacity and corporate capture in political finance, the most relevant lesson lies in combining **Germany's model of public funding and transparency** with **the U.K.'s stringent disclosure rules and spending limits**. Such a hybrid system could enhance electoral integrity, safeguard voter rights, and prevent the concentration of financial power in the hands of a few political actors.

Analysis and Impact of the Supreme Court Judgment on Electoral Bonds

1. Analysis of the Judgment

The Supreme Court in *Association for Democratic Reforms v. Union of India* (2024) struck down the **Electoral Bond Scheme, 2018**, and the enabling provisions of the **Finance Act, 2017**, as unconstitutional.⁵³ The Court held that the scheme violated the citizens' fundamental "**right to know**" under Article 19(1)(a), as it created a regime of absolute donor anonymity and shielded the financial sources of political parties from public scrutiny.⁵⁴

The Court emphasized three critical aspects:

- **Transparency in Political Funding:** The judgment reaffirmed that voters cannot exercise an informed electoral choice without knowing the sources of funding of

⁵³ Supra note 7

⁵⁴ Ibid, 110–118.

political parties.⁵⁵ By cloaking donations in secrecy, the Electoral Bond Scheme was held to be antithetical to free and fair elections.

- **Corporate Influence and Unequal Participation:** The Court criticized the removal of caps on corporate donations through amendments to the Companies Act, 2013, observing that it disproportionately amplified the influence of corporations over ordinary citizens in the electoral process.⁵⁶
- **Judicial Scrutiny of Legislative Amendments:** The Court struck down amendments to the Representation of the People Act, 1951, the Income Tax Act, 1961, and the Companies Act, 2013, introduced through a Money Bill mechanism, noting that such changes undermining constitutional values of electoral transparency.⁵⁷

This analysis shows that the Court moved beyond procedural scrutiny to directly address the substantive democratic harm caused by the scheme.

2. Impact of the Judgment

The decision has had far-reaching implications for electoral democracy in India:

- **Restoration of Voters' Right to Know:** By invalidating donor anonymity, the judgment restored the primacy of the electorate's right to access information about political financing. This reaffirmed earlier precedents like *State of U.P. v. Raj Narayan* and *PUCI v. Union of India*.⁵⁸
- **Reinforcement of Electoral Integrity:** The ruling is a strong message against corporate capture of politics, as it struck down provisions that permitted unlimited and opaque corporate contributions.⁵⁹ It underscored that free and fair elections require not just procedural fairness, but also financial transparency.
- **Judicial Check on Legislative Overreach:** By invalidating amendments passed under the guise of a Money Bill, the Court reinforced its role as a constitutional guardian,

⁵⁵ Ibid, 120-125

⁵⁶ Ibid, 128-133

⁵⁷ Ibid, 134-140

⁵⁸ Supra note 17

⁵⁹ Supra note 9

preventing the legislature from bypassing democratic safeguards.⁶⁰

- **Policy Reorientation:** The judgment compels the government to revisit political funding laws and consider alternate mechanisms that balance donor privacy with transparency, possibly moving towards state funding of elections or stricter disclosure norms.⁶¹
- **Global Significance:** Internationally, the judgment situates India within a broader democratic discourse that prioritizes transparency in political finance, aligning with practices in countries like the U.S. and the U.K., where disclosure norms are stringent.⁶²

This chapter evaluates the legal, political, and social implications of the 2024 judgment striking down electoral bonds. It discusses its effect on political parties, donor behaviour, and voter awareness. The role of the judiciary as a constitutional guardian is highlighted, along with the case's contribution to strengthening democratic institutions and policy discourse around transparency.

Challenges in Implementing Electoral Funding Reforms

Electoral funding reforms, though aimed at enhancing transparency and accountability in the political process, face several challenges that hinder their effective implementation.

1. Resistance from Political Parties

Political parties, being the primary stakeholders in the electoral process, often resist reforms that may limit their access to anonymous and substantial funding. Reforms such as disclosure of donors and caps on contributions are frequently perceived as restrictive, thereby inviting reluctance from political actors to implement or comply with them. The Election Commission of India (ECI) has repeatedly highlighted that political parties have been unwilling to embrace transparency measures in their funding mechanisms, given their dependence on large, often opaque, contributions.⁶³

⁶⁰ Supra note 7

⁶¹ Law Commission of India, *Report No. 255: Electoral Reforms* (2015).

⁶² International IDEA, *Funding of Political Parties and Election Campaigns: A Handbook on Political Finance* (2014).

⁶³ Election Commission of India, *Proposals on Electoral Reforms* (2015), Ministry of Law and Justice

2. Balancing Donor Privacy and Transparency

A key challenge lies in balancing the donor's right to privacy with the electorate's right to know. While reforms emphasize the importance of disclosure for curbing corruption and ensuring accountability, concerns are raised that compulsory disclosure could expose donors to political or economic retaliation.⁶⁴ Striking this balance remains difficult, especially when anonymity is justified as a safeguard for legitimate political participation but simultaneously undermining transparency.

3. Administrative and Logistical Hurdles

Implementing reforms also requires robust administrative mechanisms. Ensuring accurate reporting, verification of donations, auditing of political parties' accounts, and monitoring of compliance involves significant bureaucratic and financial resources.⁶⁵ Moreover, institutions like the ECI and the Reserve Bank of India (RBI) have expressed concerns about the lack of infrastructure and legal authority to enforce comprehensive checks on political financing.⁶⁶ These hurdles often delay or weaken the enforcement of reforms.

4. Judicial and Legislative Inconsistencies

Another challenge arises from inconsistencies between judicial pronouncements and legislative amendments. For instance, while the Supreme Court has repeatedly upheld the voters' "right to know" under Article 19(1)(a),⁶⁷ legislative changes such as amendments to the Representation of the People Act, 1951, and the Companies Act, 2013, through the Finance Act, 2017, diluted disclosure requirements. These reforms removed the cap on corporate donations, eliminated the requirement for companies to disclose the names of political parties to which they contribute, and allowed unlimited donations by foreign-owned companies registered in India.⁶⁸ This inconsistency complicates the enforcement of electoral reforms, as it undermines the principle of transparency while simultaneously raising questions regarding the constitutional validity of such amendments when weighed against the fundamental right to

⁶⁴ Law Commission of India, *Report No. 255: Electoral Reforms* (2015), at 69.

⁶⁵ M.P. Singh & Rekha Saxena, *Indian Politics: Constitutional Foundations and Institutional Functioning* (PHI Learning, 2011).

⁶⁶ Reserve Bank of India, *Correspondence with Ministry of Finance on Electoral Bond Scheme* (2017).

⁶⁷ *Supra* note 17

⁶⁸ Finance Act, 2017, No. 7 of 2017; see also *Association for Democratic Reforms v. Union of India*, (2024) SCC Online SC 172.

know.

Conclusion

February 15, 2024, marks a historic day in India's democracy as the Supreme Court delivered a landmark verdict striking down the Electoral Bonds Scheme. Upholding democracy as the Constitution's basic structure, the Court found the scheme unconstitutional in a unanimous decision, addressing every challenge raised. This decision requires the government to cease issuing electoral bonds immediately and disclose all relevant information to the Election Commission of India. The chapter also suggests areas for further research, particularly in developing sustainable and inclusive political finance models for India. The debate over the Electoral Bonds Scheme illustrates the tension between state-led reforms aimed at curbing black money and the constitutional guarantee of citizens' right to know. While the government defended the scheme as a step towards transparency in political funding, its structural design in fact entrenched opacity, favoured ruling parties, and facilitated unchecked corporate influence. The Supreme Court's 2024 judgment restored democratic accountability by striking down the scheme, affirming that electoral transparency is integral to Article 19(1)(a). This judicial intervention not only reaffirmed the principle laid down in earlier cases like *Raj Narayan* and *PUCL*, but also established that political funding must be subject to public scrutiny to safeguard free and fair elections.