



## **CASE COMMENT: ASSOCIATION FOR DEMOCRATIC REFORMS V. UNION OF INDIA: RESTORING TRANSPARENCY IN ELECTORAL DEMOCRACY**

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### **INTRODUCTION**

The foundation of any functional democracy rests upon informed electoral choices made by its citizens. One of the most critical aspects enabling such informed decision-making is transparency in political funding, the ability of voters to know who funds the political parties seeking their mandate. The Indian Constitution guarantees the Right to Freedom of Speech and Expression under Article 19(1)(a), which encompasses not merely the right to speak but also the right to receive information necessary for meaningful political participation.<sup>1</sup> A close examination of Article 19(1)(a) reveals that this fundamental right extends beyond individual expression to include the voter's right to information about matters affecting electoral choices. However, like all fundamental rights, this too is subject to reasonable restrictions as enumerated in Article 19(2), which permits limitations in the interests of the sovereignty and integrity of India, security of the State, friendly relations with foreign States, public order, decency, morality, contempt of court, defamation, or incitement to an offence.<sup>2</sup> The case of Association for Democratic Reforms v. Union of India (2024) stands as a watershed moment in Indian constitutional jurisprudence, as it struck down the Electoral Bonds Scheme that had created unprecedented opacity in political financing. This landmark judgment not only protected the voters' fundamental right to information but also reaffirmed the judiciary's role as the guardian of constitutional values against legislative overreach, even when cloaked in the garb of electoral reform.

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<sup>1</sup> Constitution of India 1950, art 19(1)(a)

<sup>2</sup> Constitution of India 1950, art 19(2)

## **HISTORICAL BACKGROUND OF THE CASE**

On January 2, 2018, the Union Government notified the Electoral Bonds Scheme through the Ministry of Finance, presenting it as a pioneering reform to cleanse the political funding system of black money. The scheme was introduced through the Finance Act, 2017, which amended several crucial statutes, including the Representation of the People Act, 1951, the Income Tax Act, 1961, and the Companies Act, 2013.<sup>3</sup>

The Electoral Bonds functioned as bearer instruments akin to promissory notes that could be purchased from designated branches of the State Bank of India and donated to registered political parties. The defining characteristic of these bonds was complete anonymity: unlike cheques or electronic transfers that leave a paper trail, electoral bonds contained no information about either the donor or the recipient. The scheme permitted unlimited corporate donations, removing the earlier cap of 7.5% of a company's average net profits over three years.

Within months of the scheme's notification, civil society organisations, including the Association for Democratic Reforms (ADR), Common Cause, and the Communist Party of India (Marxist), filed writ petitions before the Supreme Court challenging the constitutional validity of the Electoral Bonds Scheme. The petitioners argued that the scheme's anonymity provisions violated the voters' fundamental right to information under Article 19(1)(a), created conditions for quid pro quo corruption, and permitted unchecked corporate influence over electoral politics.

The Election Commission of India, in a letter dated May 26, 2017, notably written before the scheme's implementation, had warned the government about the scheme's adverse impact on transparency in political funding. Despite these concerns, the government proceeded with implementation, defending the scheme as necessary to curb black money and protect donor privacy from political harassment.

## **JUDGEMENT AND RATIONALE GIVEN BY THE COURT**

On February 15, 2024, a five-judge Constitution Bench comprising Chief Justice D.Y. Chandrachud, Justice Sanjiv Khanna, Justice B.R. Gavai, Justice J.B. Pardiwala, and Justice Manoj Misra delivered a unanimous verdict striking down the Electoral Bonds Scheme as

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<sup>3</sup> Finance Act 2017

unconstitutional. The Court declared the scheme and its enabling legislative amendments to be violative of Article 19(1)(a) of the Constitution.<sup>4</sup>

The Court issued the following critical directions:

- The State Bank of India was ordered to immediately cease issuing electoral bonds.
- SBI was directed to submit complete details of all electoral bonds purchased from April 12, 2019, onwards to the Election Commission of India, including the date of purchase, name of purchaser, and denomination.
- SBI was required to provide details of political parties that received contributions through electoral bonds, including dates and denominations.
- The Election Commission was directed to publish all this information on its official website by March 13, 2024.
- Electoral bonds still within their 15-day validity period but not yet encashed were to be returned to purchasers for refund.

### **REASONS GIVEN BY THE HON'BLE APEX COURT FOR THE CONCLUSION DRAWN**

**Violation of Article 19(1)(a): Right to Information of Voters:** The Court held that information about funding to a political party is essential for a voter to exercise their freedom to vote effectively. The right to information under Article 19(1)(a) extends beyond mere freedom of expression to encompass the right to receive information necessary for informed electoral participation.<sup>5</sup> The anonymity provisions of the Electoral Bonds Scheme effectively denied voters access to critical information about who was financing political parties, thereby impairing their ability to make informed electoral choices.

The Court rejected the narrow interpretation that voters' right to information is limited only to information already in the State's possession. Instead, it recognised that transparency in political funding is intrinsically linked to the integrity of the electoral process itself. By anonymising contributions, the scheme prevented voters from identifying potential conflicts of interest, quid pro quo arrangements, and corporate influence on policy-making.

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<sup>4</sup> Association for Democratic Reforms v. Union of India, Writ Petition (C) No. 880 of 2017

<sup>5</sup> Constitution of India 1950, art 19(1)(a)

**Application of the Proportionality Test:** The Court subjected the Electoral Bonds Scheme to rigorous scrutiny using the proportionality test established in *Modern Dental College & Research Centre v. State of Madhya Pradesh* (2016)<sup>6</sup> and refined in *K.S. Puttaswamy v. Union of India* (2017).<sup>7</sup>

This test requires any restriction on fundamental rights to satisfy four conditions:

**Legitimate Goal:** The restriction must serve a constitutionally permissible objective.

**Rational Connection:** The measure must be rationally connected to achieving that goal.

**Necessity/Least Restrictive Means:** The measure must be the least restrictive method available to achieve the goal.

**Proportionate Impact:** The restriction must not have a disproportionate impact on the right-holder.

**Legitimate Goal Analysis:** The government advanced two primary justifications for the scheme: curbing black money in political funding and protecting donor privacy from political harassment. The Court found that curbing black money, while important, could not be traced to any of the grounds enumerated in Article 19(2). The Court adopted a narrow interpretation of "public order" and concluded that the objective of curbing black money did not fall within legitimate grounds for restricting fundamental rights under Article 19(2).

**Rational Connection Analysis:** Even accepting donor privacy as a legitimate goal, the Court found that the Electoral Bond Scheme disproportionately restricted the right of a voter to know the source of funding of a political party. The scheme's complete anonymity provision had no rational connection with ensuring an informed electorate. While it may have protected donor privacy, it simultaneously obliterated the voter's right to information without any attempt at balance.

**Least Restrictive Means Analysis:** The Court noted that alternative mechanisms existed that could have achieved the stated objectives while imposing fewer restrictions on fundamental rights. The existing Electoral Trusts Scheme, for instance, provided transparency while channelling donations through legitimate banking channels. The government failed to

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<sup>6</sup> *Modern Dental College & Research Centre v. State of M.P.*, (2011) 15 SCC 560

<sup>7</sup> *K.S. Puttaswamy (Aadhar-5J.) v. Union of India*, (2018) 1 SCC 809

demonstrate why complete anonymity was the only or least restrictive method to curb black money or protect donor privacy.

**The Double Proportionality Standard:** In a significant doctrinal development, the Court applied the "double proportionality" standard to balance two competing fundamental rights: the voter's right to information under Article 19(1)(a) and the donor's right to informational privacy of political affiliation under Article 21. This standard, borrowed from the House of Lords judgment in *Campbell v. MGN Limited*, requires that when two fundamental rights conflict, the impugned measure must satisfy the proportionality test for both rights individually.<sup>8</sup>

The Court articulated the double proportionality test as follows:

- Determine whether the Constitution creates a hierarchy between the conflicting rights.
- If no hierarchy exists, assess whether the measure is a suitable means for furthering both rights and is the least restrictive method to realise both rights.
- Appropriately balanced to avoid disproportionate impact on either right

Applying this test, the Court found that while the Electoral Bonds Scheme may have furthered donor privacy, it completely failed to further and indeed actively undermined the voters' right to information. The scheme tilted the balance entirely in favour of donor privacy while abrogating the voter's informational interests. This failure at the very first prong of double proportionality rendered the scheme unconstitutional.

**Unlimited Corporate Donations and Article 14:** The Court also examined the amendments to Section 182 of the Companies Act, 2013, which removed all quantitative restrictions on corporate donations to political parties.<sup>9</sup> Previously, companies could donate only up to 7.5% of their average net profits over three years. The removal of this cap, combined with anonymity, created conditions for disproportionate corporate influence over electoral politics.

The Court held that these amendments violated Article 14 (Right to Equality) by creating electoral inequality. Corporations and wealthy individuals could now wield disproportionate influence over political parties through massive anonymous donations, thereby distorting the level playing field necessary for free and fair elections. The principle of political equality (one

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<sup>8</sup> *Campbell v. MGN Limited*, [2004] UKHL 22

<sup>9</sup> Companies Act 2013, s 182

person, one vote) was undermined when corporate entities could purchase disproportionate influence through unlimited secret funding.

## **REJECTION OF THE GOVERNMENT'S DEFENCES**

The Court systematically dismantled the government's defences:

**On Black Money:** The Court found no evidence that the scheme effectively curbed black money. In fact, the anonymity provisions potentially facilitated money laundering by providing a legitimate avenue for routing questionable funds through political donations.

**On Donor Harassment:** While acknowledging that donor harassment is a legitimate concern, the Court noted that less restrictive measures were available. The existing system of partial disclosure for donations above ₹20,000 had not resulted in widespread harassment. Moreover, the scheme's complete anonymity went far beyond what was necessary to protect donors from potential retaliation.

**On Information Asymmetry:** The Court rejected the argument that since political parties would know donor identities (even if the public didn't), transparency was maintained. This argument ignored the fact that the right to information belongs to voters, not political parties. Furthermore, the government's access to donor information through the State Bank of India created dangerous possibilities for misuse—the ruling party could potentially know who funded opposition parties, creating opportunities for coercion.

## **CRITICAL ANALYSIS OF THE JUDGEMENT**

**A Triumph for Electoral Transparency:** This judgment represents a decisive victory for democratic transparency and accountability. By striking down the Electoral Bonds Scheme, the Court reaffirmed that democracy cannot function in darkness. Voters have an inalienable right to know who seeks to influence their representatives through financial contributions. The judgment recognises that in a representative democracy, sovereignty resides in the people, and this sovereignty can only be meaningfully exercised when citizens possess adequate information about electoral processes.

The decision restores the principle that sunlight is the best disinfectant in political affairs. When political funding is transparent, citizens can identify potential conflicts of interest, corporate

capture of policy-making, and quid pro quo arrangements. This transparency is essential not merely as a procedural safeguard but as a substantive component of democratic governance.

**Doctrinal Innovation: Double Proportionality:** The Court's adoption and application of the double proportionality standard marks a significant evolution in Indian constitutional jurisprudence. Previously, when fundamental rights conflicted, courts often resorted to ad hoc balancing or declared one right superior based on "public interest" considerations. The double proportionality standard provides a more structured, principled approach to resolving rights conflicts.

However, this doctrinal innovation is not without concerns. By requiring that a measure must further both conflicting rights simultaneously, the standard may set an impossibly high bar for legislative action. In many cases, any attempt to protect one right will necessarily restrict the other to some degree. The test's requirement that the measure be "suitable" for furthering both rights may expect omniscience from lawmakers - the ability to design schemes that perfectly balance competing interests without any trade-offs.

Nevertheless, in the context of this case, the double proportionality standard was appropriately applied because the Electoral Bonds Scheme made no genuine attempt to balance the competing rights. It completely sacrificed transparency for anonymity without any intermediate safeguards.

**Exposing Legislative Failures:** The judgment starkly exposes the inadequacy of the legislative process that produced the Electoral Bonds Scheme. Despite explicit warnings from the Election Commission of India about transparency concerns, despite the scheme's passage as a Money Bill to avoid Rajya Sabha scrutiny, and despite the absence of any parliamentary committee examination, the government rushed the scheme into implementation.

The Court's analysis reveals that the stated objectives of the scheme—curbing black money and protecting donor privacy—were never seriously examined against alternative, less restrictive mechanisms. The existing Electoral Trusts Scheme already provides a means of channelling donations through banking systems while maintaining transparency. The government offered no credible explanation for why complete anonymity was necessary rather than, for instance, delayed disclosure or partial anonymity.

This judgment serves as a reminder that legislative majorities do not confer unlimited power. Constitutional democracy requires that even well-intentioned reforms must respect fundamental rights and satisfy proportionality requirements.

**The Problem of Corporate Influence:** The judgment addresses but does not fully resolve the deeper problem of corporate influence in electoral politics. By striking down unlimited corporate donations combined with anonymity, the Court has closed one particularly egregious channel for corporate capture. However, the broader question of whether corporations should be permitted to make political donations at all remains open.

Corporations, as artificial legal entities, do not vote. Their participation in electoral funding creates inherent tensions with democratic principles of political equality. When corporations make massive donations, they acquire influence disproportionate to their democratic standing. The judgment recognises this concern but stops short of prohibiting corporate donations entirely - a step that some democracies have taken.

**Implementation Challenges and Systemic Issues:** The Court's directions requiring disclosure of past electoral bonds transactions ensure that the scheme's legacy of opacity will be partially remedied. The publication of donor and recipient information has revealed the extent of corporate donations and raised important questions about potential quid pro quo arrangements.

However, this case also highlights systemic implementation challenges. The government's initial resistance to disclosure, the State Bank of India's delays in providing complete information, and the need for contempt proceedings to enforce compliance demonstrate the gap between judicial pronouncements and ground-level implementation. The judgment's effectiveness depends not merely on its doctrinal soundness but on the political will to respect constitutional boundaries.

## COMPARISON WITH SHREYA SINGHAL: JUDICIAL CONSISTENCY

Like *Shreya Singhal v. Union of India*,<sup>10</sup> this judgment demonstrates the Supreme Court's willingness to strike down legislative provisions that impose vague, arbitrary, or excessive restrictions on fundamental rights. Both cases involved the Court protecting constitutional

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<sup>10</sup> *Shreya Singhal v. Union of India*, (2015) 5 SCC 1



rights against executive and legislative overreach cloaked in ostensibly legitimate objectives—cyber security in Shreya Singhal, electoral reform in this case.

Both judgments also reveal the importance of proportionality analysis. Just as Section 66A of the IT Act failed to satisfy proportionality requirements despite claims about cyber threats, the Electoral Bonds Scheme failed proportionality despite claims about black money. The Court's consistent application of proportionality standards demonstrates its commitment to principled constitutional adjudication rather than outcome-driven reasoning.

### **THE LIMITS OF JUDICIAL ACTIVISM**

While this judgment appropriately exercises judicial review, it also illustrates the limitations of court-driven reform. The Court can strike down unconstitutional schemes, but it cannot design comprehensive electoral funding reforms. That responsibility remains with the legislature and the Election Commission.

The judgment leaves open critical questions: What should replace the Electoral Bonds Scheme? How can legitimate concerns about donor privacy be addressed while maintaining transparency? What quantitative limits, if any, should apply to corporate and individual donations? These questions require legislative deliberation, expert consultation, and democratic debate—not judicial fiat.

As the Shreya Singhal judgment demonstrated in the context of Section 66A, judicial declarations are only as effective as their enforcement. The continued misuse of Section 66A by police authorities, years after it was struck down, serves as a cautionary tale. Similarly, this judgment's practical impact depends on political parties, the Election Commission, and citizens actively demanding transparency in future funding mechanisms.

### **CONCLUSION**

The Association for Democratic Reforms v. Union of India judgment stands as a defining moment in the evolution of Indian electoral democracy. By unanimously striking down the Electoral Bonds Scheme, the Supreme Court has reaffirmed that transparency is not merely a procedural nicety but a constitutional imperative for democratic governance. The judgment recognises that the right to information is not subsidiary to other rights but fundamental to the very functioning of representative democracy.

The Court's application of the double proportionality standard represents a significant doctrinal advancement, providing a structured framework for resolving conflicts between fundamental rights. While this standard may require refinement as it is applied in future cases, its use in this judgment appropriately recognised that the Electoral Bonds Scheme made no genuine attempt to balance competing rights—it simply sacrificed transparency at the altar of complete anonymity.

The judgment also serves as a powerful check on legislative overreach. Despite the government's claims of electoral reform, despite the scheme's passage through parliamentary processes, the Court held firm to constitutional principles. The judgment demonstrates that constitutional rights cannot be bargained away, even for ostensibly laudable objectives like curbing black money. When the State seeks to restrict fundamental rights, it must demonstrate that its chosen method is proportionate, necessary, and the least restrictive alternative available.

However, the judgment also highlights the limits of judicial intervention. While courts can invalidate unconstitutional schemes, they cannot design comprehensive electoral reforms. That task requires legislative wisdom, stakeholder consultation, and political will. The judgment creates space for such reforms by establishing clear constitutional boundaries: any electoral funding mechanism must respect voters' right to information, maintain political equality, and employ the least restrictive means to achieve legitimate objectives.

The aftermath of this judgment will determine its ultimate impact. The publication of electoral bonds data has already revealed troubling patterns of corporate donations concentrated among a few political parties. Whether this transparency leads to genuine electoral reforms or merely shifts opacity to other channels remains to be seen. The judgment's success depends not merely on its legal soundness but on sustained civic engagement, media scrutiny, and political commitment to democratic values.

Ultimately, the Association for Democratic Reforms case reminds us that democracy is not a self-sustaining system. It requires constant vigilance by an informed citizenry, institutional integrity maintained by independent bodies like the Election Commission and judiciary, responsible legislative action guided by constitutional principles, and genuine transparency in the exercise of political power. The judgment reaffirms these values and challenges all stakeholders—government, political parties, civil society, and citizens—to recommit to democratic transparency.

As India navigates the complexities of modern electoral politics, this judgment will serve as a touchstone for future debates about political funding, transparency, and accountability. It establishes that in the tension between governmental convenience and constitutional rights, the Constitution must prevail. Democracy, after all, is not merely about conducting elections—it is about ensuring that those elections reflect informed choices by sovereign citizens. This judgment restores that foundational principle to its rightful place at the heart of Indian constitutional democracy.