ASSOCIATION FOR DEMOCRATIC REFORM VS UNION OF INDIA

Avika Rai*

INTRODUCTION: BACKGROUND

India's electoral financing system has long been a subject of debate and concern. Political parties require substantial funds to contest elections, and the sources of such funding remained largely opaque for decades. Before 2018, political donations were partially regulated under the Representation of the People Act, 1951, and the Income Tax Act, requiring parties to disclose donors contributing above a certain threshold. However, large volumes of cash donations untraceable and unaccountable continued to flow into the party, the Union government introduced the Electoral Bonds Scheme in January 2018 through the Finance Act, 2017. Under this scheme, any Indian citizen or company could purchase bonds from the State Bank of India and donate them to a political party of their choice. The receiving party could then encash these bonds. The identity of the donor was not disclosed to the public or the Election Commission, though the SBI retained the information. The government argued this would curb black money by routing donations through formal banking channels while simultaneously protecting donor identity from potential political victimisation.

However, civil society organisations and opposition parties raised serious objections. They argued that the anonymity was asymmetric; the ruling party in power could always obtain donor information through the SBI, giving it a significant political advantage. Furthermore, data later revealed a striking correlation between government regulatory actions against companies and subsequent large bond purchases by those companies, raising fears of institutionalised quid pro quo. The Association for Democratic Reform, an NGO working on electoral transparency, along with the Communist Party of India, filed petitions challenging the scheme's constitutional validity. The matter was eventually referred to a five-judge

*BCOM LLB, FIRST YEAR, LLOYD SCHOOL OF LAW, GREATER NOIDA.

Constitution Bench of the Supreme Court of India, leading to the landmark judgment delivered in February 2024.

WHY IS IT IMPORTANT?

This case holds immense significance for Indian democracy on multiple levels.

First, it directly concerns electoral integrity. Free and fair elections are the cornerstone of a constitutional democracy, and the sources of political funding have a direct bearing on how governance decisions are made. When corporations anonymously fund political parties in exchange for policy favours, the democratic process is hollowed out from within.

Second, it raises fundamental questions about the right to information under Article 19(1)(a) of the Constitution. An informed voter must know not just what a party promises, but who finances it. Hidden donations distort the voter's ability to make a genuinely free and informed choice.

Third, the case challenges the balance of power between the State and citizens. The government, as the operator of the scheme through SBI, had access to donor data that ordinary citizens did not, creating a structural advantage for the party in power.

Finally, the judgment has significant implications for corporate governance and accountability, since unlimited corporate donations were permitted under the scheme following amendments to the Companies Act, 2013, removing the earlier cap of 7.5% of average net profits.

OBJECTIVE

This article seeks to critically examine the Supreme Court's judgment in *Association for Democratic Reform v Union of India* (2024). Specifically, it aims to:

- Analyse the constitutional grounds on which the Electoral Bonds Scheme was challenged and ultimately struck down.
- Examine the Court's interpretation of the right to information as a component of freedom of speech and expression.
- Evaluate the proportionality analysis applied by the Court in balancing donor privacy against voters' right to know.

- Assess the directions issued by the Court to the SBI and Election Commission regarding disclosure of bond data.
- Reflect on the broader implications of the judgment for electoral reform in India.
- Scope of Discussion

The discussion in this article is confined to the constitutional and legal dimensions of the Electoral Bonds Scheme as adjudicated by the Supreme Court. It does not venture into a detailed political analysis of which parties benefited from the scheme or the subsequent disclosures made by the Election Commission, except where legally relevant.

The article focuses on the period from the scheme's introduction in 2018 to the Supreme Court's final verdict in February 2024. It draws primarily from the judgment, the petitioners' arguments, the Union's defence, and relevant constitutional provisions, including Articles 19(1)(a), 14, and 21. Comparative references to electoral funding laws in other democracies may be briefly noted where they illuminate the Court's reasoning.

FACTS OF THE CASE

Petitioners:

- Association for Democratic Reform (ADR) is a prominent non-governmental organisation established in 1999, working towards electoral transparency and political accountability in India. ADR has been consistently engaged in public interest litigation concerning electoral reforms.
- Communist Party of India (Marxist) [CPI(M)] is a recognised national political party, which challenged the scheme on grounds of unequal political competition and constitutional violations.
- Several other intervenors and petitioners, including individual citizens and civil society organisations, joined the proceedings subsequently.

Respondents:

- Union of India represented by the Attorney General, defending the Electoral Bonds Scheme as a legitimate policy measure to curb black money in electoral financing.
- State Bank of India (SBI), the sole authorised entity for issuing and encashing electoral bonds, later became a party to the compliance directions.

- Election Commission of India (ECI) was impleaded as a respondent, though it had earlier expressed reservations about the scheme in internal communications to the government.
- The seeds of the dispute were sown when the government introduced sweeping amendments through the Finance Act, 2017, which was passed as a Money Bill, a classification itself later questioned.
- The Reserve Bank of India Act, 1934, permits the issuance of electoral bonds.
- The Representation of the People Act, 1951, removed the obligation of political parties to disclose donations received through electoral bonds.
- The Income Tax Act, 1961, grants tax exemptions to both donors and recipient parties.
- The Companies Act, 2013, removed the earlier ceiling that restricted corporate political donations to 7.5% of average net profits over three years, thereby permitting unlimited corporate donations.

Shortly after the scheme was notified, the Association for Democratic Reform filed a writ petition before the Supreme Court of India under Article 32 of the Constitution, challenging the scheme's constitutional validity. The petition primarily argued that the scheme violated citizens' fundamental right to information regarding political funding, which is essential for meaningful electoral participation.

2019 Election Commission's Reservations Surfaced: It emerged through RTI responses and subsequent proceedings that the Election Commission of India had itself written to the Ministry of Law and Justice in 2017, expressing serious reservations about the amendments, warning that they would take India "backwards" in terms of transparency. This internal dissent significantly strengthened the petitioners' case.

2019 Interim Relief Refused: Before the 2019 General Elections, ADR sought an interim stay on the scheme. The Supreme Court declined to grant a stay but directed all political parties to submit details of bonds received in sealed covers to the Election Commission. This was a partial procedural safeguard, not a substantive ruling on validity.

2019–2023 Repeated Hearing Deferrals: The matter was listed and adjourned multiple times over four years. During this period, successive rounds of electoral bond sales continued, with thousands of crores worth of bonds being purchased and encashed. Civil society groups and the petitioners repeatedly urged the Court to expedite the hearing, given the ongoing elections across various states.

October 2023 Reference to Constitution Bench: Recognising the significant constitutional questions involved, the Supreme Court referred the matter to a five-judge Constitution Bench. The Bench was headed by Chief Justice D.Y. Chandrachud and comprised Justices Sanjiv Khanna, B.R. Gavai, J.B. Pardiwala, and Manoj Misra.

October–November 2023 Constitution Bench Hearings: The Constitution Bench conducted extensive oral hearings over several days in October and November 2023. Senior advocates appearing for the petitioners included Kapil Sibal and Shadan Farasat, while the Union of India was represented by Attorney General R. Venkataramani

ISSUES BEFORE THE COURT

1. Whether the Electoral Bonds Scheme, 2018, **violated Article 19(1)(a)** of the Constitution of India, which guarantees freedom of speech and expression, including the right to information, specifically the voter's right to know the sources of political funding.

2. Whether the amendments made through the Finance Act, 2017, removing disclosure obligations under the Representation of the People Act, 1951, the Companies Act, 2013, and the Income Tax Act, 1961, were constitutionally valid.

3. Whether the removal of the cap on corporate donations under the Companies Act, 2013, permitting unlimited corporate funding of political parties, was arbitrary and a violation of Article 14 of the Constitution.

4. Whether the scheme enabled quid pro quo arrangements between corporate donors and ruling political parties, thereby corrupting the democratic process.

5. Whether the Finance Act, 2017, was validly passed as a Money Bill under Article 110 of the Constitution, bypassing the Rajya Sabha.

6. Whether donor anonymity under the scheme was a proportionate restriction on the right to information, justifiable on grounds of protecting donors from political victimisation

ARGUMENTS OF THE PARTIES

Petitioners' Arguments –

Violation of the Right to Information (Article 19(1)(a)): The petitioners argued that the right to information is an integral component of freedom of speech and expression. An informed electorate is the foundation of a functioning democracy. Voters cannot make a genuinely free electoral choice without knowing who finances political parties, as funding sources directly influence policy decisions. The scheme, by cloaking donations in anonymity, fundamentally undermined this right.

Structural Asymmetry and Ruling Party Advantage: The petitioners highlighted a critical flaw: while donor identity was hidden from the public and the Election Commission, the State Bank of India, a government-controlled institution, maintained complete records. This meant the party in power could potentially access donor information through governmental channels, creating an inherent structural advantage that tilted the political playing field unfairly.

Unlimited Corporate Donations Threat to Democracy: By removing the 7.5% profit cap on corporate donations under the Companies Act, 2013, the scheme opened the floodgates for unlimited corporate money in elections. The petitioners argued this transformed political parties into instruments of corporate interest, fundamentally altering the character of representative democracy. Corporations, unlike citizens, do not have voting rights, and their unlimited financial participation distorts democratic outcomes.

Correlation Between Regulatory Actions and Bond Purchases: The petitioners pointed to empirical data suggesting a disturbing pattern: several companies that received favourable government contracts, regulatory clearances, or were under investigation by enforcement agencies made large electoral bond purchases shortly before or after such events. This strongly indicated institutionalised corruption and quid pro quo arrangements.

Invalidity of Money Bill Classification: The Finance Act, 2017, through which the scheme was introduced, was passed as a Money Bill, thereby bypassing the Rajya Sabha entirely. The petitioners argued that amendments to the Companies Act and the Representation of the People Act, which have nothing to do with taxation or government expenditure, could not legitimately be classified as a Money Bill. This procedural shortcut was itself unconstitutional.

Disproportionate Restriction: Even if donor privacy were a legitimate aim, the scheme's blanket anonymity was a disproportionate means of achieving it. Less restrictive alternatives, such as disclosing donor identities above a certain threshold, were available and had existed previously. The total suppression of information was not the least restrictive option.

Respondent's Arguments (Union of India) –

Curbing Black Money Legitimate State Objective: The Union of India defended the scheme as a bona fide policy measure aimed at eliminating black money from electoral financing. By routing donations through formal banking channels, the scheme ensured that all political funding was traceable within the banking system, even if not publicly disclosed. This represented a significant improvement over the earlier system of largely cash-based, completely untraceable donations.

Protection of Donors from Political Victimisation: The government argued that public disclosure of donor identities would expose individuals and companies to harassment, retribution, and political vendetta by parties they did not support. Anonymity was therefore a necessary protection that encouraged legitimate donors to contribute through formal channels rather than resorting to cash donations.

Policy Decision Judicial Restraint: The Union contended that electoral financing was a matter of legislative and executive policy. Courts should exercise restraint in interfering with policy decisions made by a democratically elected government, particularly in complex socio-economic matters where the legislature is better positioned to weigh competing considerations.

Right to Information is Not Absolute: The government argued that even if Article 19(1)(a) encompasses a right to information, this right is not absolute and can be restricted on reasonable grounds. Donor privacy constituted a reasonable restriction, and the scheme struck a reasonable balance between transparency and protection of individual donors.

Partial Transparency Still Maintained: The government pointed out that SBI maintained complete records of all bond transactions, meaning the information was not permanently destroyed. It was merely withheld from public disclosure, not eliminated. This, the Union argued, preserved a measure of accountability within the system.

JUDGMENT OF THE COURT

Decision –

The Supreme Court, by a **unanimous verdict,** struck down the Electoral Bonds Scheme, 2018, as **unconstitutional.** The Court declared:

The Electoral Bonds Scheme and the amendments to the Representation of the People Act, Companies Act, and Income Tax Act, insofar as they removed disclosure requirements, were void. SBI was directed to immediately cease issuing electoral bonds. SBI was ordered to submit complete data of all bonds purchased and encashed, including donor names and recipient parties, to the Election Commission of India. The Election Commission was directed to publish this information on its official website. Bonds purchased but not yet encashed were to be returned or deposited into the Prime Minister's Relief Fund.

Reasoning –

Right to Information as a Fundamental Right: The Court firmly held that the right to information about political funding flows directly from Article 19(1)(a). Political financing is not a private matter; it has direct consequences for governance, policymaking, and the exercise of public power. Voters have a constitutionally protected interest in knowing the financial relationships between political parties and their donors.

Failure of Proportionality Test: Applying the proportionality standard, the Court held that even if donor privacy were a legitimate aim, blanket anonymity was not a proportionate means. The government had failed to demonstrate that less restrictive alternatives, such as threshold-based disclosure, would be insufficient to protect donors. The scheme sacrificed transparency entirely for the sake of privacy, which was impermissible.

Unlimited Corporate Donations Violation of Article 14: The Court held that permitting unlimited corporate donations without any ceiling was manifestly arbitrary. Unlike individual citizens whose political contributions reflect genuine civic participation, corporations are profit-driven entities. Allowing them to make unlimited donations introduces a systemic risk of quid pro quo, the exchange of money for policy favours, which strikes at the heart of free and fair elections.

Asymmetric Anonymity Structurally Flawed: The Court was particularly critical of the asymmetric nature of anonymity under the scheme. The ruling party's potential access to donor data through SBI created an unequal playing field. True anonymity, the Court noted, would require that no party, including the government, have access to donor information. The scheme provided selective anonymity that favoured the party in power, making it constitutionally untenable.

Black Money Justification Not Convincing: The Court acknowledged the legitimate goal of curbing black money but found the means disproportionate and inadequate. The scheme did not actually eliminate anonymous donations below ₹20,000 through other channels. The government's claim of achieving transparency was therefore only partially true and did not justify the sweeping removal of disclosure obligations.

IMPORTANT OBSERVATIONS BY THE JUDGES

Chief Justice D.Y. Chandrachud made several notable observations: *"Political funding is not merely a private transaction*; *it is a matter of significant public interest because it has a direct bearing on the governance of the country. "*The Court observed that information about political funding enables voters to assess potential conflicts of interest between a party's donors and its governance decisions, a critical input for democratic choice. The Court noted that the right to vote would be rendered meaningless if the voter lacked information about the financial influences shaping the political party seeking their vote. On corporate donations, the Court observed that corporations do not possess the same political rights as citizens, and their unlimited financial participation in elections creates a structural risk of regulatory capture.

Justice Sanjiv Khanna, in his concurring opinion, emphasised: The principle that transparency is the lifeblood of democracy and any mechanism that systematically conceals the financial relationships between money and political power is constitutionally suspect. He further noted that the classification of the Finance Act, 2017, as a Money Bill, bypassing the Rajya Sabha, raised serious constitutional concerns, though the majority did not definitively rule on this issue.

CRITICAL ANALYSIS

Robust Constitutional Reasoning: The judgment's most significant strength lies in its expansive yet principled interpretation of Article 19(1)(a). By recognising that the right to information extends to political financing, the Court deepened the constitutional understanding of what informed democratic participation truly requires. This is a meaningful doctrinal contribution that will endure beyond this particular case.

Proportionality as a Rigorous Standard: The Court's application of the proportionality test, requiring that restrictions on fundamental rights be necessary, suitable, and the least restrictive option available, demonstrates constitutional maturity. The judgment correctly identifies that the government failed at every stage of this test, making the scheme indefensible regardless of its stated objectives.

Addressing Structural Corruption: By focusing on the systemic risk of quid pro quo rather than requiring proof of specific corrupt transactions, the Court demonstrated sophisticated constitutional thinking. It recognised that structural incentives for corruption are themselves constitutionally impermissible, even before individual corrupt acts are proven. This preventive constitutional logic is both sound and necessary.

Unanimity and Institutional Credibility: A unanimous five-judge Constitution Bench verdict carries exceptional institutional weight. It sends an unambiguous message about the constitutional limits of electoral financing arrangements and forecloses easy political circumvention through minor modifications.

Delayed Justice: Perhaps the most serious criticism of the entire proceeding is the inordinate delay. The scheme was introduced in 2018 and challenged almost immediately. The Supreme Court took nearly six years to deliver its verdict. During this period, electoral bonds worth thousands of crores were sold and encashed, fundamentally shaping the outcomes of multiple general and state elections. Justice delayed in electoral matters is particularly consequential because elections, once held, cannot be undone.

Silence on the Money Bill Question: The Court conspicuously refrained from conclusively deciding whether the Finance Act, 2017, was validly passed as a Money Bill. This is a significant omission. If the amendments were introduced through a constitutionally invalid procedure, bypassing the Rajya Sabha, the entire legislative foundation of the scheme was flawed ab initio. Leaving this question unanswered allows the government to reintroduce similar measures through the same procedural shortcut in the future.

No Remedy for Past Elections: The judgment operates prospectively. It strikes down the scheme and orders disclosure, but provides no remedy for the distortion already caused to past elections by years of anonymous corporate funding. The constitutional harm suffered by voters who cast their ballots in ignorance of these financial flows remains unremedied.

Absence of Electoral Reform Directions: While the Court struck down the existing scheme, it did not issue directions for a replacement framework. India's electoral financing system remains in a regulatory vacuum. The Court could have directed the legislature to enact a new, transparent financing mechanism within a specified time frame, as it has done in other public interest matters. The absence of such directions leaves room for the status quo, including cash donations below ₹20,000, to continue unchecked.

Corporate Political Participation Deeper Question Unresolved: The Court held that unlimited corporate donations were unconstitutional, but did not categorically rule on whether corporations can make political donations at all. The deeper philosophical question of whether entities that are not citizens and do not vote should be permitted to financially participate in democratic processes was left unaddressed.

The judgment carries implications well beyond electoral bonds. It signals that financial opacity in the political process will not survive constitutional scrutiny. It reinforces the principle that instruments of the State, such as SBI, cannot be used as tools that structurally advantage the ruling party. It also reaffirms that legislative creativity in bypassing constitutional safeguards, whether through Money Bill classification or indirect anonymity arrangements, will be examined rigorously by the Court. For civil society and electoral reform advocates, the judgment is a significant but incomplete victory. Transparency has been restored regarding past bond transactions, but the structural challenges of electoral financing in India, such as cash donations, shell companies, and foreign funding concerns, remain largely unaddressed by either the legislature or the judiciary.

CONCLUSION

The Supreme Court's judgment in *Association for Democratic Reform v. Union of India* (2024) is a landmark contribution to India's constitutional jurisprudence on democracy, transparency, and fundamental rights. By unanimously striking down the Electoral Bonds Scheme, the Court reaffirmed that electoral financing is not a private matter shielded from public scrutiny; it is a question of democratic accountability at its most fundamental level.

The judgment correctly identifies that a voter's right to choose is meaningless without the right to know, and that structural arrangements enabling anonymous corporate funding of political parties pose an existential threat to the integrity of representative governance. The Court's application of proportionality analysis and its recognition of asymmetric anonymity as constitutionally impermissible reflect sophisticated constitutional reasoning.

However, the judgment is not without its limitations. The six-year delay, the silence on the Money Bill question, the absence of remedial directions for a replacement framework, and the failure to address the deeper question of corporate political participation represent missed opportunities. The harm to democratic integrity caused by years of undisclosed funding cannot be undone by disclosure alone.

Ultimately, this case serves as a reminder that constitutional democracies require constant vigilance not merely against overt authoritarianism, but against subtle institutional arrangements that quietly tilt the balance of power away from citizens and toward concentrated financial interests. The Supreme Court, though belatedly, has reasserted the primacy of the informed citizen in India's democracy. The task of building a genuinely transparent and equitable electoral financing system, however, remains unfinished and rests as much with the legislature and civil society as with the judiciary.

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