

ASSOCIATION OF DEMOCRATIC REFORMS & ANR. V. UNION OF INDIA & ORS. (2024) – A CASE NOTE

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ABSTRACT

This case note adopts a doctrinal research methodology, analysing judicial reasoning and constitutional implications of the Supreme Court's ruling on electoral bonds. The Supreme Court's 2024 verdict striking down the Electoral Bonds Scheme marks a significant moment for Indian democracy. This scheme had permitted political parties to receive large, anonymous donations, making it impossible for ordinary citizens to know who was financing their leaders. In its judgment, the Court affirmed that transparency is a fundamental right of voters because one cannot make an informed decision without knowing who holds sway behind the scenes? By emphasising openness and accountability, the Court shed light on how secrecy in political funding can corrode the very principles of free and fair elections. It noted that the unchecked rise in corporate contributions had created an uneven political field, weakening equal participation. The government had argued that anonymity protected donor privacy and curbed black money. However, the Court firmly rejected this view, stating that opacity conceals both legitimate and illicit funds, thereby enabling corruption than preventing it. While the ruling dismantles a flawed system, and it urges lawmakers to devise a fair framework that balances transparency with donor privacy. In essence, this landmark decision restores power to where it rightly belongs: in the hands of a well-informed electorate.

Keywords: Electoral bonds, Transparency, Accountability, Political Funding, Privacy.

1. INTRODUCTION

The Supreme Court's ruling in *Association of Democratic Reforms & Anr. v. Union of India & Ors.*¹, popularly known as **the Electoral Bond Case**, delivered on February 15, 2024, represents one of the most consequential judgments in the constitutional history of India. It was delivered by a constitutional bench of 5

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¹ (2024) 2 SCR 420; 2024 INSC 113.

judges in which the decision was made to strike down the controversial Electoral Bond Scheme of 2018 as unconstitutional. It primarily focuses on enhancing transparency in political funding and safeguarding voters' right to information under **Article 19(1)(a)**. This landmark judgment represents a significant step toward curbing corruption within India's electoral system and it also emphasised the importance of free and fair elections.

The Electoral Bond Scheme, **introduced in 2018**, permitted anonymous donations to political parties through bonds issued by the State Bank of India, with no details of the donor being accessible to the public. The electoral bond is defined as a bearer banking instrument which does not carry the name of the buyer². The law mandates the authorized bank to not disclose the information furnished by the buyer except when demanded by a competent court or upon the registration of a criminal case by law enforcement agencies³. Even political parties themselves were not required to maintain comprehensive records of the contributions they received through these bonds.

The petitioners contended that the scheme violated **Article 19(1)(a)**⁴ by infringing the electorate's right to information and **Article 14**⁵ right to equality of the Constitution, as it fostered non-transparency in political funding and enabled electoral corruption on a massive scale, whereas Respondents contended their actions were a measure to maintain the privacy of donors and to curb the issue of black money in elections.

This case also highlights the everlasting tension between transparency and privacy, between collective democratic integrity and individual donor autonomy, and between parliamentary sovereignty in regulating elections and the judiciary's role in preserving the basic structure of the constitution.

Thus, the case note which follows will not only highlight the factual and legal outlines of the widely argued controversy but will also present a detailed examination of the arguments advanced by the parties, the Court's reasoning including both the majority and concurring opinions and offers a critical analysis of the judgment's constitutional and democratic implications.

2. FACTS OF THE CASE

In 2018, the Union Government introduced the Electoral Bonds Scheme through the **Finance Act, 2017**, effecting three pivotal amendments to **the Representation**

² Electoral Bond Scheme, Clause 2(a).

³ Electoral Bond Scheme, Clause 7(4).

⁴ The Constitution of India.

⁵ The Constitution of India.

of the People Act, 1951 (RoPA), the Income Tax Act, 1961, and the Companies Act, 2013. These amendments led to the creation of a new financial tool, i.e., the Electoral Bond, issued exclusively by the State Bank of India. These changes ensured that purchasers, whether individuals or corporations, could obtain such bonds (**amounts ranging from ₹10,000 to ₹1,00,00,000**) and transfer them to political parties, in which no information regarding the identity of donors participating in electoral bond transactions would be disclosed to the public and political parties could also encash them without revealing the donor's identity.

Two specific controversial and widely argued features of the scheme were:

First, the anonymity of the donors, which made the public incapable of exercising their right to information regarding the political contributions to any particular political party. Under the scheme, donors could purchase bonds from the **State Bank of India (SBI)** and transfer them to political parties anonymously, thereby concealing the source of substantial political contributions.

Second, the deregulation of corporate contributions, which removed the former ceiling of **7.5⁶%** of net profits and permitted even loss-making companies to donate unrestricted sums.

It also contributed to the rise in the number of shell companies.

The petitioners **Association for Democratic Reforms (ADR), Common Cause, and the Communist Party of India (Marxist)** challenged the scheme, contending that it institutionalised “**non-transparency in political funding**” and facilitated electoral corruption on a “**huge scale**” under the veil of fiscal reform. Critics also argued that it institutionalised the opacity in electoral funding, which amounts to disrupting the system of free and fair elections in Indian democratic society.

On the other hand, the Union Government defended the amendments on the ground of economic policy, arguing that the scheme was designed to safeguard the donor's right to privacy and to curb the black money. It further submitted that the judiciary could not hear this case, due to the “**pre-eminence and primary role of the Legislature and the Executive in matters concerning economic policy.**”

3. ISSUES BEFORE THE COURT

The court faced a number of issues, of which the following were fundamental:

1. Whether the Electoral Bonds Scheme violates the right to information and freedom of expression under Article 19(1)(a) of the Indian constitution.

⁶ Companies Act, 2013 (18 of 2013), S.182(1) (as amended by the Finance Act, 2017).

2. Whether the unreasonable power of corporate entities in political donations in relation to individual citizens infringes their right to equality and non-arbitrariness under Article 14 of the Constitution.
3. Whether the claim of donor's anonymity can legitimately be justified as a facet of the right to privacy and necessary to fulfil the objective of curbing black money.

4. ARGUMENTS OF THE PARTIES

4.1 PETITIONERS (ADR and others)

- **Violation of right to information:** Citizens cannot exercise their right to vote in an informed and transparent manner without knowing who is financing or contributing the major amount of money to any particular political party. This scheme created information asymmetry, i.e., lack of equality or equivalence between political parties and voters.
- **Violation of right to equality:** This scheme not only gave an advantage to corporate entities but also posed a risk of violation of the right to equality of the citizens in the matter of equal participation in democratic elections.
- **Fostering corruption:** Passing such amendments through a money bill was unconstitutional as well as a major contributor to fostering electoral corruption.
- **Corporate influence:** Removing the donation cap disproportionately will not only increase the influence of corporate donors but also pose a threat to electoral competition by favouring the ruling parties that are able to attract large donations.

4.2 RESPONDENTS (Union of India)

- **Curbing Black Money:** The government argued that electoral bonds issued through this scheme were channelled donations into formal banking routes, i.e., through State Bank of India which will reduce the increase of cash-based black money in elections. The primary goal of the government to introduce this scheme was to curb the issue of black money that caused hindrance to the development of the nation.
- **Donor's Privacy:** The major benefit of donating anonymously was that it protects donor's privacy. This was the second major contention proposed by the government to justify the provision of anonymity as this would also prevent victimisation by rival parties.

- **Legislative Competence:** The amendments done by the government were within parliament's competence and it was defended as valid under **Article 110**⁷, that talks about Money Bill.
- **Donor details with SBI:** The government argued that although the public couldn't see the donor details but all the data was reserved with SBI as **KYC (Know Your Customer)** details were necessary to buy any electoral bond.

5. COURT'S REASONING AND DECISION

5.1 MAJORITY OPINION

The constitutional bench, in a unanimous verdict, invalidated the electoral bond scheme as unconstitutional. **Chief Justice D.Y. Chandrachud**, writing for the court located the right to information about electoral funding within the matrix of **Article 19(1)(a)**. In **Union of India V. Association for Democratic Reforms ("ADR")**⁸, the court traced the right of voters to have information about the antecedents, including the criminal past of candidates contesting elections, to Article 19(1)(a) of the constitution. He reiterated that in a democracy premised on free choice, citizens cannot meaningfully exercise their franchise if the financial arteries nourishing political parties are concealed from scrutiny.

The court applied the proportionality test to give judgment in this case, first articulated in *Modern Dental College & Research Centre V. State of Madhya Pradesh*⁹ and later refined in *Puttaswamy V. Union of India*¹⁰. The court said that even if the goal stated by the government of reducing black money in politics was legitimate then framing the electoral bonds scheme was not the right path because the way it worked was deeply flawed.

Moreover, the secrecy about donor's identities was not the correct reasoning given by the government as it did not actually stop illegal money from entering politics instead it simply concealed both clean and questionable donations behind the wall of anonymity. It said that the **"Constitution does not turn a blind eye merely because of the possibilities of misuse."** The Court held that **"the purpose of curbing black money is not traceable to any of the grounds in Article 19(2),"** which lists reasonable restrictions to **Article 19**.

⁷ The Constitution of India.

⁸ (2002) 5 SCC 294.

⁹ (2016) 4 SCC 346.

¹⁰ (2017) 10 SCC 1.

The judges further said the government could have achieved the same goal through other alternative methods which also renders the scheme as not the only option to achieve the said goal.

The court made it clear that the freedom of speech and expression also includes people's right to know about the financial backing of candidate and political parties because without this information the voters cannot make informed choices at the ballot box. It further added that anonymous donations strip away this right and, in turn, weakens the very foundation of democracy.

By removing limits on how much companies could donate, the scheme gave far greater influence to businesses than individual citizens. This will also create an imbalance in political equality which violates **Article 14** because corporations will always be at an advantage than ordinary voters, which will result in inequality.

The court also took issue with the way the scheme was passed. The government avoided critical examination in the Rajya Sabha by classifying the amendments as a money bill. As a result, it undermined the principle of bicameralism and reduced parliamentary checks and balances.

5.2 CONCURRING OPINION

Justice Khanna was also part of unanimously striking down the electoral bond scheme, but the reasoning given by him was different. He wrote in his concurring opinion that motivations grounded in reprisal, political vendetta, or retaliatory intent **"cannot by any stretch be treated as a legitimate aim."** He held that such considerations represent a fundamental perversion of the law and cannot be invoked as justification under any constitutional framework. The scheme, he maintained, demonstrably failed to satisfy the tripartite proportionality test of **suitability, necessity, and balancing**. In his words, **"Transparency and not secrecy is the cure and antidote,"** a clear repudiation of the scheme's underlying opacity.

He proceeded to delineate the multiple respects in which the purported objectives of the scheme were internally incoherent. Notably, he observed that political entities retain the institutional capacity to invoke investigatory powers to compel disclosure of information related to electoral bonds. This, in his view, rendered the scheme's foundational premise of donor anonymity inherently contradictory: **"Thus, the entire objective of the scheme is contradictory and inconsistent."** Moreover, he argued that the concealment of donor identities bore **no rational nexus** with the stated objective of curbing illicit financial flows, thereby undermining its constitutional defensibility.

Turning to the question of privacy, Justice Khanna drew a clear distinction between individual and corporate entitlements under constitutional law. He posited that the expectation of privacy on the part of juridical persons particularly public limited companies, is inherently constrained, given their accountability to shareholders and regulatory oversight. As he clarified, **“the claim of privacy by a corporate or a company, especially a public limited company would be on very limited grounds,”** and that **“at most, individuals within the company could claim the right to privacy, not the company itself.”**

In conclusion, Justice Khanna articulated a principled defence of the electorate’s right to information, characterising it as foundational to the democratic process. He asserted, with particular force, that **“The voters’ right to know and access to information is far too important in a democratic set-up so as to curtail and deny ‘essential’ information on the pretext of privacy and the desire to check the flow of unaccounted for money to the political parties.”**

6. RELIEF GRANTED

The Court struck down the scheme and its supporting legal amendments. It issued two writs:

- Certiorari to invalidate the unconstitutional provisions.
- Mandamus to direct the State Bank of India to release full details of electoral bond transactions since 2019.
- It ordered the State Bank of India to furnish details of all electoral bonds purchased since 2019 to the Election Commission of India.
- The ECI was directed to publish the data on its website, thereby putting into operation judicially mandated transparency.

7. CRITICAL ANALYSIS

This judgment stands out for several important reasons, especially in how it strengthens democracy. At its core, it reminds us that voting isn’t just a ritual; it’s about making informed choices. Democracy, the Court suggests, isn’t just about holding elections but about ensuring those elections are meaningful.

What makes this decision even more remarkable is that for the first time, the Supreme Court took a hard look at and struck down a government-backed system of political funding. That’s a big deal. Courts usually avoid stepping into such politically sensitive territory, leaving it to Parliament. But here, the Court stepped up.

By putting an end to unlimited corporate donations, the Court also acknowledged a very real danger: that money could end up speaking louder than the people. It sent a clear message that democracy should not be for sale.

The Court also pushed back against the government's use of the Money Bill route, a move often used to dodge parliamentary debate. In doing so, the judgment reaffirmed that the executive branch cannot simply bypass democratic checks and balances just because it is more convenient.

Still, the ruling is not perfect. While it dismantled a flawed system, the Court did not offer a clear path forward. Without a better legal framework in place, political funding could still find its way through hidden or unregulated channels.

There is also a tricky trade-off between transparency and privacy. On the one hand, making donations public gives voters valuable information. On the other hand, it could scare off genuine donors who worry about backlash or being targeted for their political beliefs.

In short, this judgment is a bold step for democratic accountability, but it also leaves some tough questions unanswered.

8. CONCLUSION

The Electoral Bonds judgment is a milestone in India's democratic story. It reminds us that the courts are not just arbiters of law, but also guardians of the principles that keep democracy alive. By striking down unconstitutional provisions through certiorari and compelling disclosure through mandamus, the Supreme Court showed that it is willing to step in when the health of democracy is at stake.

Yet, the decision does not solve everything. It leaves us with pressing questions: what would a fair and transparent system of political funding actually look like? And more importantly, will Parliament take the initiative to design one, or will these concerns be pushed aside until the next controversy arises?

What is clear, however, is that the judgment puts the voter back at the centre of the democratic process. It strengthens the idea that citizens have the right to know who is funding those who seek to govern them. But the real challenge begins now: whether India can build a model of political financing that is not only transparent but also practical and resilient. Only then will the spirit of democracy that the Court has upheld truly take root.