

**JUDICIAL SCRUTINY OF POLITICAL FINANCE: EVALUATING THE
SUPREME COURT'S REASONING IN-ASSOCIATION FOR
DEMOCRATIC REFORMS v. UNION OF INDIA**

Akanksha*

ABSTRACT

Association for Democratic Reforms v. Union of India, is a significant judgment in the arena of electoral transparency. This case commentary discusses the importance of transparency in elections, reinforced by other landmark cases. The central issue before the hon'ble court was the constitutionality of Electoral Bond Scheme 2018.

The case involves two parties the petitioner, Association for Democratic Reforms is a civil society body working on electoral reforms, alleged that the scheme enables unlimited and anonymous corporate donations, violating the voter's rights under Article 19(1)(a) and provisions of the Right to Information Act 2005. On the other hand, the respondents -Union of India, defended the scheme, claiming it intended to reduce black money and encourage political donations through various banking channels providing sufficient funds for their political campaigns.

The hon'ble Supreme Court held transparency in political funding is the essence for democratic integrity. Therefore, the commentary explores two main themes: first "Electoral Integrity" and second "Electoral Democracy" both of which are highlighted by this case.

Keywords: *Right to information, electoral integrity, free expression, political funding and electoral transparency.*

1. INTRODUCTION TO THE CASE

In *Association for Democratic Reforms v. Union of India and others*¹ in this landmark case petitioners instituted proceedings under Article 32 of the Indian constitution challenging the constitutional validity of the Electoral Bonds Scheme, questioning the transparency of political funding in India. The petitioners, is a civil society for democratic reforms, questioned the legality and constitutional validity of the amendments introduced by the Finance Act 2017, and subsequent laws like key provisions of Companies Act 2013 and Income Tax Act 1961, and Representation of People Act 1951 and the Reserve Bank of India Act 1934

* B.A. LL.B (Hons.), University Institute of Legal Studies, Panjab University, Chandigarh.

¹ Writ Petition (C) NO. 880 OF 2017 & Ors.

enabling the Electoral Bonds Scheme 2018. They argued that the scheme undermined the canons of free and fair elections by allowing central government to give empower several banks, instead of the Reserve bank of India, to issue electoral bonds which eventually lead to mammoth of anonymous donations to political parties, as per earlier statutory provisions Section 239A of Companies (Amendment) Act 1960 required political parties and individuals or bodies for to disclose the details of contributions made for political purpose but amendment in the Finance Act brought major changes that reduced transparency in political funding. Both ECI² and RBI³ raised objections in 2017 regarding the same that it would make political funding opaque via unlimited and anonymous corporate donations, the RBI stated that even with “Know Your Customer”⁴, the real and the final recipient would remain hidden. This secrecy could encourage money laundering.

So, in the light of the very contention lies legal tussle between petitioners and respondent is transparency vs. anonymity raising fundamental questions on the balance between clean elections and donor confidentiality. So, the two main concerns of this case are donor privacy and electoral transparency. A breakdown of the case will provide an insight into this scenario/ application of the two rules in legal landscape. the analysis is as follows-

1.1 Facts of the Case

In the present matter, multiple writ petitions were filed before the hon’ble Supreme Court. The petitions challenging the Electoral Bonds Scheme 2018 and related amendments introduced through Finance Act 2017. These amendments affected four key statutes: Representation of People Act 1951; Companies Act 2013; Income Tax Act 1961; Foreign Contribution (Regulation) Act 2010. By the virtue of these amendment political parties were allowed to receive unlimited and anonymous donation through electoral bonds and accept contributions from foreign companies after modification to the FCRA.⁵ The petitioners argued that the scheme violated not only article 19(1)(a), as voter are being unaware of the source from where political parties are getting their political funding. But also contented that it gave an edge to the ruling party as only the government had exclusive access to information about the donors.

The respondents, on the other hand, defended the scheme, asserting that it promotes transparency in politics by mandating donations through various banking

² Election Commission of India.

³ Reserve Bank of India.

⁴ For short, “KYC”.

⁵ The Foreign Contribution and (Regulation) Act 2010 (Act 42 of 2010).

channels, minimized political victimization, they also plead that it curbs the use of black money. The central issue before the court was whether the right to know 'who finances whom' fell within purview of the Right to information and is it justifying donor privacy. Multiple petitions were filed between 2017 and 2022 by Association for Democratic Reforms, and others in view of these arguments. To resolve these competing claims, the Supreme Court applied a proportionality test⁶, This principle involves 4 stages: first, step one is determining whether curbing black money a valid ground under article 19(2); step two is assessing the suitability of the measure; step three whether measure is necessary; and lastly, was balancing the restriction against that right is being limited.

1.2 Important sections involved

The essence or we can say the crux of this case revolves around not only one or two but several legislative provisions those are: - Primarily it concerns Article 19 and Article 14 of the Indian Constitution, Section 31 of The Reserve Bank of India Act, 1934, Section 13 A of The Income Tax Act 1961 and Sections 29A and 29C of The Representation of People Act 1951 and Section 182 of The Companies Act 2013. These provisions collectively emphasize need of transparency in electoral funding. In the light of the above facts a legal tussle arose between the petitioner and the respondents.

1.3 Main issue of the matter

The crux of the matter revolves around 'Electoral bonds and concern about their transparency'. This case holds the main query that does keeping donor identity confidential is violative of Article 19 or can the goal of curbing black money as pleaded by respondents come under permissible restrictions of Article 19(2). And by abolishing the cap on corporate donations and ending the need to disclose their identity while donating is protected under Article 14 i.e. the right to equality. Ergo, the main issue can be summarized as ELECTORAL BONDS VS EELECTORAL TRANSPARENCY.

1.4 Timeline of the Case

In 2017, petitioners challenged the constitutionality of the Electoral Bond Scheme 2018 by filling writ petition, arguing that it violated the right to information of voters; and in April 2019 the Supreme Court, through an interim order⁷, ordered all parties to provide the Election Commission of India with a sealed cover containing

⁶ See Aharon Barak, Proportionality: Constitutional Rights and their Limitations 45 (Cambridge University Press 2012).

⁷ *Association for Democratic Reforms v. Union of India*, Order dated 12 April 2019, Supreme Court of India.

information about donations made through electoral bonds. In 2023, final hearing begins main issue framed that whether the scheme is violative of Article 14, 19 and 21 of the Indian Constitution. In 2024, the Supreme Court struck down the Electoral Bond Scheme 2018 as unconstitutional.

2. RESEARCH METHODOLOGY

This commentary uses a non-empirical, analytical method based on case law, statutes, and secondary sources. It draws on two journals to assess the constitutional impact of the Electoral Bonds Scheme on electoral transparency.

To examine the bureaucratic, political, and practical factors shaping the implementation of the Electoral Bonds Scheme.- Subhash Chandra Garg's journal offers an insider perspective on account of its design and execution. The article outlines key policy debates and regulatory concerns, helping to situate the legal issues within their practical setting. These insights make it a useful source for analysing how governance choices shaped electoral transparency.⁸

•To analyse how the Electoral Bonds Scheme impacts transparency and electoral fairness.- Rakesh Kumar's journal argues that the 2017 Electoral Finance Bonds Scheme undermines transparency in India's electoral funding by preserving donor anonymity. His analysis supports the Court's view that unchecked anonymity enabled disproportionate corporate influence over democratic processes.⁹

3. ARGUMENTS ADVANCED BY PARTIES

3.1 Claims made by the Petitioners

The Petitioner's contented that right to information is an integral part of fundamental rights under Article 19 of the Constitution. They argued that voters must have access to information regarding the sources of funding of political parties so that they can make informed choices in election.

Furthermore, the petitioners challenged the amendments made to the Section 29C of the Representation of People Act 1951 in which earlier disclosure of donations above prescribed limit but was amended through Electoral Bonds Scheme 2018, effectively removing this requirement. And, amendments made to

⁸ Garg, Subhash Chandra. "Rolling out the Electoral Bonds Scheme." Supreme Court Observer, 2 Sep. 2025, <https://www.scobserver.in/journal/rolling-out-the-electoral-bonds-scheme-subhash-chandra-garg-book-excerpt/>.

⁹ Rakesh Kumar, "A Study on the Electoral Bonds in the Indian Electoral System" (2024) SSRN Research Paper No. 4880923, *available at*: <https://ssrn.com/abstract=4880923>.

Section 182 of the Companies Act 2013 which previously restricted that only companies could donate up to 7.5% of their average net profits over the last three years.¹⁰ The amendment removed this cap and allowed that even loss-making companies can donate unlimitedly in electoral funding.

Additionally, they argued due to Section 13A of Income Tax Act 1961 political parties were not required to maintain donor records for those who gave in the form of electoral bonds.¹¹ Since donors are in seclusion ruling parties can channel huge funds from favored corporates.

Petitioners in their defense they cited the landmark judgement of Supreme Court -*Union of India v. Association for Democratic Reforms*¹² this judgment clearly depicts the foundation of right to know in the electoral contexts.

In pursuance of the alleged infringement of petitioners sought certain reliefs-

1. Declaration of Electoral Bond Scheme 2018 as unconstitutional and void.
2. Invalidating the amendments made by Finance Act 2017, Income Tax Act 1961 and Companies Act 2013.
3. Directions to be Issued to SBI to stop issuing bonds immediately and election commission to ensure transparency and authenticity in elections.

3.2 Claims made by the Respondents

The Respondents had objections to the Supreme Court decision. The respondents remain firm on the ground that there is no alleged infringement. And that there is no face of violation of Right to information and Article 19 of the voters. They contended it as judicial overreach as electoral funding is matter of parliament not of judiciary. Furthermore, the respondents claim that hon'ble Supreme Court prioritized only right to information and transparency, while undermining the main object of scheme that was to curb black money in donations.

Furthermore, they argued relying on 'manifest disagreement'¹³ principle they said companies are collective entities and hence their donations form part of collective participation in democracy. Lastly, the respondents contended that by striking down the Electoral Bonds Scheme 2018 it adversely impacted the equal treatment of political parties because party with at least 1% of vote share can also fund them.¹⁴

¹⁰ The Companies Act 2013 (ACT 18 of 2013), s. 182 (unamended proviso).

¹¹ The Income Tax Act 1961 (ACT 43 of 1961), s. 13A(b) (amended proviso).

¹² (2002) 5 SCC 294.

¹³ *State of Rajasthan v. Union of India*, (1977) 3 SCC 592.

¹⁴ Electoral Bond Scheme, Paragraph 3(3) of the scheme.

4. DECISION AND FINDINGS OF THE SUPREME COURT

4.1 Issues framed by the bench

The bench framed following issues based on the facts and arguments advanced that were called to be addressed to determine the alleged claims of the petitioner the issues were

1. Whether amendments made by the Finance Act 2017 (as Money bill)¹⁵ were constitutionally valid.
2. Whether the anonymity of donors under the scheme is a reasonable restriction under Article 19(2).
3. Whether the scheme and amendments are manifestly arbitrary under Article 14.
4. Whether the Electoral Bond Scheme violates the fundamental right to information of citizens under Article 19(1)(a).

Taking in considerations the arguments made by both the parties, the hon'ble Supreme Court considered the question of validity of Electoral Bonds Scheme 2018 on several grounds. And as a final decision court declared Electoral Bond Scheme as unconstitutional thereby null and void. Thus, concluding that citizens have a right to know the sources of political funding as part of their freedom of speech and expression under Article 19(1)(a)¹⁶ on donor anonymity: The court concluded that the veil of secrecy created by the scheme unjustifiably limits the public's right to "who finances whom". And the removal of limits on donation by corporates was struck down, since it allowed mammoth of funding and even from loss making and foreign controlled companies which can distort the electoral process and undermine the political equality. Furthermore, the amendments made by The Finance Act 2017 did not satisfy the requirements of Article 110.¹⁷

The bench in order to address the contention of parties adopted application of two main tests- 1. The test of proportionality¹⁸ 2. Doctrine of manifest arbitrariness¹⁹. however, the two tests were not directly addressed.

¹⁵ *Rojer Mathew v. South Indian Bank Ltd.*, (2020) 6 SCC 1.

¹⁶ The Constitution of India, art. 19(1)(a).

¹⁷ The Finance Act 2017 (Act 7 of 2017) was introduced and passed as a money bill by the parliament under article 110 of the constitution.

¹⁸ *Modern Dental College and Research Centre v. State of Madhya Pradesh*, (2016) 7 SCC 353.

¹⁹ Election commission of India, Letter No. 56/PPEMS/Transparency/2017 dated 26 May 2016
See also case, *Shayara Bano v. Union of India*, (2017) 9 SCC 1.

In the support of above two tests the judgement has cited plethora of cases dealing with similar issue. the judgment focused on the common nature of the word 'Transparency' basically 'electoral transparency'.

Furthermore, the bench shed light on the right to information of voters, thereby demanding transparency in elections. And the court also noted that while privacy of donors can be an appropriate concern, it cannot outweigh public interest in ensuring transparency of money. The bench highlighted that donor anonymity, when combined with unlimited contributions, raises the risk of *quid pro quo* arrangements, eroding public trust in democratic institutions. Finally, court directed election commission of India to make information publicly available.

5. ANALYSIS OF THE JUDGEMENT

The Supreme Court in the current matter adopted a clear and definitive stance. Referring to the previous trends of the judiciary in the matters of similar nature, the court has arrived at a conclusion While assessing the alleged infringement of the voter's right to information to know financial contributions made to political parties falls within ambit of article 19(1)(a) of the constitution.

The bench examined the Electoral Bonds Scheme2018 and associated statutory amendments made through the lens of constitutional principles. It found that the framework created a regime of secrecy that shielded crucial information from public scrutiny. Crucially, the court underscored that citizen's right to information outweighs the privacy of donors in matters where funding patterns can shape governance. The ruling recognized that seclusion in political contributions invites the possibility of *quid pro quo* arrangements and compromises the integrity of elections, which form part of the basic structure doctrine of the constitution.²⁰

The ruling marks a significant step towards ensuring electoral transparency and strengthens the democratic process by aligning funding practices with constitutional morality.

6.THE CONUNDRUM OF ELECTORAL TRANSPARENCY AND THE PROPORTIONALITY TEST

In this case presented the court with a clash between two important constitutional values: the voter's right to know about political funding and the donor's claim to privacy. The main challenge was determined whether the Electoral Bonds Scheme2018 and the amendments made to Finance Act2017, could withstand

²⁰ *Kesavananda Bharti v. State of Kerala*, (1973) 4 SCC 225.

scrutiny under article 19(1)(a) and the reasonable restrictions permitted by article (19)(2) of The Constitution.

To adjudicate this, the Supreme Court employed the test of proportionality as laid down in *Modern Dental College v. State of Madhya Pradesh*²¹ and reaffirmed in *K.S. Puttaswamy v. Union of India*²². This test required court to examine – whether the measure serves as a constitutionally valid purpose. Whether the means adopted are reasonably connected to achieving the aim. Whether a less intrusive alternative could accomplish the same objective. Whether the restriction’s impact is disproportionate to the benefit achieved.

In doing so court relied heavily on earlier jurisprudence, particularly *Union of India v. Association for Democratic Reforms*²³ which first recognized that voters have a fundamental right to know the background of candidates, extending this principle to political funding. *People’s Union for Civil Liberties v. Union of India*²⁴ where the court emphasized free and fair elections are those in which the candidates and their agent don’t use unfair means and malpractices, *K. S. Puttaswamy v. Union of India*²⁵ – affirming privacy as a fundamental right, but clarifying that privacy can be curtailed if the state action satisfies the test of proportionality.

After balancing these competing rights, the court concluded that transparency is the need of the hour and should be brought in elections.

7. CONCLUSION

The judgment in *Association for Democratic Reforms v. Union of India* reaffirms transparency in the electoral system. By striking down the electoral bond scheme, the Supreme Court stressed that political funding must remain open to public scrutiny, as voter awareness is vital for a functioning democracy. It reinforces the link between the right to information and informed electoral choice.

The Court’s use of the proportionality test shows a modern approach to balancing privacy, state interests, and accountability. The ruling also highlights deeper flaws in India’s political finance structure and the need for comprehensive reforms ensuring clarity, fairness, and transparency.

²¹ (2016) 7 SCC 353 at para 62.

²² (2017) 10 SCC1 at para 325.

²³ Supra note 10 at 6.

²⁴ (2013) 10 SCC 1.

²⁵ (2017) 10 SCC 1.

From the *author's standpoint*, the verdict restores public confidence but must trigger wider reforms. Removing one mechanism of secrecy alone cannot ensure equality or neutrality in political finance; lasting change requires legislative clarity, institutional vigilance, and a renewed commitment to democratic ethics. The decision meaningfully contributes to *contemporary jurisprudence* and reminds that democratic health depends on openness, accountability, and informed citizens.