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Funding Democracy or Undermining It? The Electoral Bonds Verdict and the Future of Transparent Political Financing

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ABSTRACT

The Electoral Bonds Scheme, 2018 was introduced by the Union Government as a mechanism through which individuals and companies could make anonymous financial contributions to registered political parties using interest-free bearer instruments issued by the State Bank of India. On 15 February 2024 a five-judge Constitution Bench of the Supreme Court of India held unanimously that the Scheme was unconstitutional, on the ground that it violated the right to information implicit in Article 19(1)(a) of the Constitution. The Scheme, created through the Finance Act, 2017, secured the anonymity of the donor through instruments that were bearer in character. The Court found that it abridged the right of voters to know the sources of political finance, and that it did so selectively, undermining a structural precondition of free and fair elections. This paper examines the doctrine on which the verdict rests, the constitutional design of the regulation of political finance in India, and the implications of the decision for electoral democracy. It traces the history of campaign finance law in India, analyses the reasoning on informational rights and on quid pro quo corruption, and examines the proportionality test the Court applied. It places the Indian experience in comparative context by reference to the United States, Germany and South Africa. It concludes that the verdict is a significant doctrinal advance, but that its long-term effectiveness in securing democratic integrity will depend on the legislative response, on the quality of the disclosure regime that replaces the Scheme, and on the institutional capacity of the bodies charged with securing genuine openness in political financing.

Keywords: *Electoral Bonds Scheme, Political finance, Right to information, Article 19(1)(a), Electoral democracy, Proportionality, Comparative constitutional law*

I. INTRODUCTION

The manner in which democratic societies fund their political processes has long been contested between competing constitutional ideals: freedom of political speech, equality of civic status,

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the structural integrity of the vote and freedom of choice. Those tensions came to a head in India with the Electoral Bonds Scheme, 2018, which was presented as a transparency-enhancing reform but which, in substance, entrenched anonymous funding. The challenge to the Scheme was decided unanimously by the Supreme Court in *Association for Democratic Reforms v. Union of India*,[1] but the questions the judgment leaves unanswered about the architecture of democratic accountability remain important.

Constitutional democracy in India rests on universal adult franchise and on the guarantee of free and fair elections. Undisclosed political funding has long been identified by the Election Commission of India as a structural threat to the integrity of the electoral process. The Scheme was a response to the criticism that cash donations to political parties were a source of unaccounted money, and the Government maintained that by channelling donations through the banking system the Scheme would bring political finance into the formal economy. Critics observed that the Scheme preserved anonymity so far as the public and rival political parties were concerned, while permitting selective disclosure to the State, an arrangement which they said was capable of inviting quid pro quo arrangements between the party in power and corporate benefactors.

This article proceeds in five further parts. The first places the Scheme in the broader history of the regulation of political finance in India. The second explains the constitutional question and the reasoning of the Supreme Court. The third sets the judgment against comparative jurisprudence on political finance. The fourth considers the consequences of the verdict for future reform in India, and the last concludes.

II. The historical evolution of political finance regulation in India

A. The pre-reform landscape

The Representation of the People Act, 1951 is the principal statute governing elections in India. Section 77 requires a candidate to keep an account of election expenditure, and the Election Commission prescribes a ceiling on candidate expenditure.[2] The Act did not, however, require the disclosure of receipts at the level of the party, and that gap allowed undisclosed political funds to grow. Companies were permitted to donate to political parties under the Companies

[1] *Association for Democratic Reforms v. Union of India*, (2024) 5 S.C.C. 1 (India); 2024 INSC 113 (Feb. 15, 2024).
[2] The Representation of the People Act, 1951, § 77, No. 43, Acts of Parliament, 1951 (India).

Act, 1956 subject to a ceiling of five per cent of average net profits, and any such donation required the approval of the board and had to be disclosed in the profit and loss account.[3]

Sustained advocacy by the Election Commission, successive reports of the Law Commission and the work of civil society organisations drove a growing debate on the reform of electoral funding through the 1990s and the 2000s. The Law Commission in its 255th Report proposed wider disclosure standards, ceilings on political expenditure and a measure of state funding of elections.[4]

B. The Electoral Bonds Scheme, 2018

The Scheme was brought into being through consequential amendments to the Reserve Bank of India Act, 1934, the Representation of the People Act, 1951, the Income-tax Act, 1961 and the Companies Act, 2013, all effected by the Finance Act, 2017, which was passed as a Money Bill.[5] Electoral bonds were bearer instruments issued by the State Bank of India in specified denominations, purchasable by any citizen or body incorporated in India, and redeemable only by a registered political party that had secured at least one per cent of the votes polled at the preceding general election or election to a Legislative Assembly.

The most consequential feature of the design was its asymmetric structure of information. The identity of the purchaser was known to the issuing bank, the State Bank of India, and through it was capable of being known to the Union Government. The receiving political party, by contrast, was given no record connecting a bond to a donor, and the disclosure requirements of the Representation of the People Act were expressly dispensed with in relation to donor identity. The Government maintained that the arrangement protected donors from political reprisal; its opponents said that it allowed the government of the day to know who its corporate benefactors were while the electorate did not.

Between March 2018 and January 2024 electoral bonds worth approximately 16,518 crore rupees were purchased and redeemed,[6] with a disproportionately large share accruing to the party in power at the national level. The patterns later revealed under the directions of the Supreme Court gave rise to concern about a nexus between regulatory decisions and the purchase of bonds by the corporate entities affected by them.

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[3] The Companies Act, 1956, § 293A, No. 1, Acts of Parliament, 1956 (India) (repealed 2013).

[4] LAW COMM'N OF INDIA, *Electoral Reforms*, Report No. 255, at 84-97 (2015).

[5] The Finance Act, 2017, No. 7, Acts of Parliament, 2017 (India); *see* INDIA CONST. art. 110 (defining a Money Bill).

[6] STATE BANK OF INDIA, *Data on Electoral Bonds*, submitted to the Election Commission of India pursuant to *Association for Democratic Reforms v. Union of India*, (2024) 5 S.C.C. 1 (India) (Mar. 21, 2024).

III. How the Scheme worked

The Scheme was introduced through the Finance Act, 2017, which amended the Reserve Bank of India Act, 1934 to permit the Central Government to notify a class of bearer instruments for political donations.[7] It was formally notified on 2 January 2018 and thereafter governed every stage of the transaction, from purchase to redemption.[8]

A. The transactional process

The Scheme operated as a closed chain of five steps in which the identity of the donor was visible only to the issuing bank at the point of sale.

1. The donor purchases an electoral bond from an authorised branch of the State Bank of India, subject to know-your-customer verification, in denominations from one thousand rupees to one crore rupees.
2. The donor delivers the bond to a registered and eligible political party. The instrument is a bearer instrument and carries no name.
3. The political party deposits the bond in its designated account, verified by the Election Commission.
4. The State Bank of India verifies the bond and processes it for redemption within the prescribed validity window of fifteen days.
5. The State Bank of India transfers the equivalent funds to the account of the political party.

At every step after the first the instrument travelled without identifying information attached to it. The bond disclosed neither the name of the donor to the party nor, to any external observer, the fact that a particular donation had occurred at all. Confidentiality was built into the design of the instrument, and was displaced only where a competent court or a registered criminal investigation compelled the bank to reveal it.[9]

B. The crucial question of who knew

The constitutional vulnerability of the Scheme lay not in the mechanics of the transaction alone but in the asymmetry of knowledge those mechanics produced. Four categories of actor stood

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[7] The Finance Act, 2017, § 135, No. 7, Acts of Parliament, 2017 (India) (inserting sub-section (3) in The Reserve Bank of India Act, 1934, § 31, to authorise the Central Government to permit a scheduled bank to issue electoral bonds).

[8] Ministry of Finance, Notification No. S.O. 29(E), Electoral Bond Scheme, 2018, Gazette of India, pt. II, § 3(ii) (Jan. 2, 2018) (India).

[9] Electoral Bond Scheme, 2018, cl. 7(4) (India) (obliging the authorised bank to disclose donor information only on the demand of a competent court or upon the registration of a criminal case by a law enforcement agency).

in materially different positions in relation to the identity of the donor, and that distinction became the central axis of the challenge before the Supreme Court.

- The issuing bank had full knowledge. As the sole authorised institution, the State Bank of India recorded the identity of the purchaser at the point of sale and could match it to the unique alphanumeric code of the bond, although that code was not visible to the recipient party.
- The recipient political party had partial or conditional knowledge. The bond did not disclose the name of the donor to the party. In practice a party could often infer the identity of a donor, or be told of it outside the instrument, since bonds were typically handed over directly and encashed through a single verified account.
- The Government and investigative agencies had selective knowledge. The State Bank of India is a public sector bank, and donor data could be reached through law enforcement channels, orders of court or the records of the bank, creating an asymmetry in which the establishment of the day held a structural advantage in identifying donors that opposition parties did not have.
- The general public had no knowledge. Before the judgment of 2024 there was no statutory mechanism requiring publication of the link between donor and party. Voters could see aggregate figures in the contribution reports of parties but could not trace any individual bond to its purchaser or to its recipient.

The asymmetry was not incidental. The clauses of the Scheme themselves permitted disclosure of donor identity to law enforcement authorities upon the registration of a criminal case or the direction of a competent court, which meant that the State, through agencies it controlled, retained a channel of access denied to the ordinary voter.

In *Association for Democratic Reforms v. Union of India* the Supreme Court held that this structural opacity violated the right of the voter to information implicit in the freedom of speech and expression guaranteed by the Constitution, and struck down the Scheme as unconstitutional and manifestly arbitrary.[10]

C. The post-judgment disclosure framework

To remedy the opacity it had identified, the Court issued consequential directions converting a scheme built on anonymity into one of retrospective and compelled transparency. It directed the State Bank of India to furnish to the Election Commission of India the particulars of every bond

[10] *Association for Democratic Reforms v. Union of India*, 2024 INSC 113 (India) (Feb. 15, 2024).

purchased since 12 April 2019, including the name of the purchaser, the date of purchase and the denomination of the bond.[11] It further directed disclosure of the corresponding redemption data, showing which party had encashed which bond and when, and required the Commission to publish the consolidated information on its website within one week of receipt.

The disclosure page of the Election Commission now hosts the dataset of purchases and redemptions as submitted by the State Bank of India, together with the material received from the Registry of the Supreme Court, making it possible for researchers and citizens to cross-reference the lists of donors and recipients, although the bond-level link between a particular donor and a particular transaction was never itself decoded.[12]

D. Analytical significance

The question of who knew matters analytically because it reframes the constitutional defect in the Scheme from a question of policy design into one of structural asymmetry of information. A regime in which the State and the banking channel it controls possess more knowledge of political funding than the electorate inverts the relationship of accountability that the freedom of speech and expression exists to protect. It is the voter, and not the State, who is meant to be the ultimate recipient of the information necessary for democratic choice.[13]

That reasoning builds on the earlier recognition by the Court that the right of the voter to information is an integral facet of the freedom of speech and expression, and extends it from the disclosure of candidate antecedents to the funding architecture of political parties themselves.[14] Commentary since the judgment has framed the ruling in similar terms, as restoring the informational balance between voter and State that the Scheme had inverted.[15]

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[11] *Id.* ¶ 218 (directing the State Bank of India to submit to the Election Commission of India the particulars of every electoral bond purchased since April 12, 2019, including the date of purchase, the name of the purchaser and the denomination of the bond).

[12] ELECTION COMM'N OF INDIA, *Political Parties and Election Symbols: Contribution Reports and Electoral Bonds*.

[13] INDIA CONST. art. 19, cl. (1)(a).

[14] *Union of India v. Association for Democratic Reforms*, (2002) 5 S.C.C. 294 (India) (holding that the right to information under Article 19(1)(a) extends to information about candidates contesting elections).

[15] ASS'N FOR DEMOCRATIC REFORMS, *Free and Fair Elections After Electoral Bonds* (Mar. 30, 2024), https://adrindia.org/content/free-and-fair-elections-after-electoral-bonds.

IV. The constitutional challenge in Association for Democratic Reforms v. Union of India

A. Grounds of challenge

The petitioners advanced several constitutional objections to the Scheme. They argued first that it violated the right to information under Article 19(1)(a),[16] building on *People's Union for Civil Liberties v. Union of India*, in which the Supreme Court had recognised the constitutional right of voters to know the antecedents of candidates and, by extension, the sources of political funding.[17] They argued secondly that the removal of the ceiling on corporate donations to political parties, and the removal of the requirement that companies disclose such contributions in their profit and loss accounts, was inconsistent with the constitutional guarantee of free and fair elections. They argued thirdly that the introduction of these amendments as a Money Bill was constitutionally impermissible, because that classification circumvented the role of the Rajya Sabha.

B. The analysis of the Supreme Court

Writing for the Constitution Bench, the Chief Justice analysed the challenge through the prism of proportionality, applying the methodology set out in *Justice K.S. Puttaswamy (Retd.) v. Union of India*.[18] The Court held that meaningful electoral participation presupposes access to information about who finances political competition, and that the right of the voter to know is a necessary element of the freedom of speech and expression under Article 19(1)(a).[19]

The Court accepted that the interest of the State in curbing unaccounted money in politics, and in protecting donors from reprisal, was a legitimate aim capable of supporting a restriction on disclosure. Applying the tests of necessity and proportionality, however, it found that the Scheme was not the least restrictive means of achieving those purposes. It observed that the combination of complete opacity towards the public with selective visibility to the State, through a bank under the control of the State, produced a structural asymmetry of information capable of facilitating a quid pro quo relationship between the party in power and corporate interests. Less restrictive alternatives, such as disclosure to an independent body or a structured escrow arrangement, would have served the objective of curbing unaccounted money without displacing the right of the voter to know.

[16] India Const. art. 19, cl. (1)(a).
[17] *People's Union for Civil Liberties v. Union of India*, (2003) 4 S.C.C. 399 (India).
[18] *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 S.C.C. 1 (India).
[19] India Const. art. 19, cl. (1)(a).

The Court further held that the removal of the requirement to disclose political contributions in company accounts, and the abolition of the ceiling on corporate donations, went beyond what the stated objectives required and carried a structural risk of corporate capture of the political process. It declared the relevant amendments unconstitutional and directed the State Bank of India to furnish complete particulars of the purchase and redemption of bonds to the Election Commission of India for publication.

C. The Money Bill question

The Court did not decide whether the amendments were validly passed as a Money Bill within the meaning of Article 110. That question was not pressed by the petitioners, because the scope of Article 110 is pending before a Bench of seven judges, and the petitioners preferred that the substantive challenge be heard rather than await the outcome of that reference.[20] Justice Sanjiv Khanna, in a separate concurring opinion, agreed that the Scheme was unconstitutional but reached that conclusion by a different route, holding that the Scheme failed the proportionality standard at an earlier stage of the analysis.[21] The Money Bill question accordingly remains open, and it raises significant concerns about the procedural integrity of the legislative process and about the constitutional limits of Article 110.

V. COMPARATIVE APPROACHES TO POLITICAL FINANCE TRANSPARENCY

A. The United States

American campaign finance jurisprudence offers instructive parallels, although it arises in a structurally different constitutional setting. In *Buckley v. Valeo* the Supreme Court of the United States upheld limits on contributions and requirements of disclosure as constitutional, while holding limits on expenditure to be an impermissible restriction on speech under the First Amendment.[22] In *Citizens United v. Federal Election Commission* the Court extended First Amendment protection to independent corporate political expenditure, a decision widely criticised for opening the way to undisclosed money in American politics.[23] Analytically, the Indian decision sits closer to the *Buckley* tradition than to *Citizens United*: the Supreme Court of India treated disclosure as serving both the anti-corruption norm and the informational interest of the voter, without thereby prohibiting political speech.

[20] *Association for Democratic Reforms v. Union of India*, (2024) 5 S.C.C. 1 (India). The scope of Article 110 is pending before a Bench of seven judges, and the Money Bill challenge was accordingly not pressed before the Constitution Bench.
[21] *Id.* (Khanna, J., concurring).
[22] *Buckley v. Valeo*, 424 U.S. 1, 66-68 (1976).
[23] *Citizens United v. Federal Election Commission*, 558 U.S. 310, 365-66 (2010).

B. Germany

German constitutional law, founded on Article 21 of the Basic Law, which recognises political parties as constitutionally protected entities,[24] establishes a dual system combining partial public financing of parties with compulsory disclosure of donations above a threshold. The Federal Constitutional Court has repeatedly held that transparency in party financing is a requirement of the democratic principle itself.[25] That tradition resonates with the structural account of transparency that the Supreme Court of India read into the Constitution.

C. South Africa

Following the decision of the Constitutional Court in *My Vote Counts NPC v. Minister of Justice and Correctional Services*, which held that the right to vote encompasses a right to know the identity of significant private funders of political parties,[26] the Political Party Funding Act, 2018 was enacted. It requires disclosure of private contributions above a specified threshold and channels larger donations through a Multi-Party Democracy Fund administered by the Electoral Commission.[27] The South African model, calibrated to balance the protection of donors against public accountability through a structured disclosure regime, exemplifies the kind of alternative mechanism the Indian Court had in mind when it found that the Scheme failed the proportionality test.

VI. IMPLICATIONS FOR THE FUTURE OF POLITICAL FINANCE REFORM IN INDIA

A. The doctrinal legacy

The decision establishes, as a matter of precedent, that the right of voters to know about political funding is a facet of the fundamental right under Article 19(1)(a).[28] That doctrinal anchoring matters, because any future law touching political finance must now satisfy the proportionality test, and a regime of complete donor anonymity will not survive constitutional scrutiny. The decision also affirms the constitutional duty of the Election Commission to conduct free and fair elections, and places on the legislature a corresponding duty to design disclosure regimes that are meaningful in substance and not merely in form.

[24] Grundgesetz [GG] [Basic Law], art. 21 (Ger.).
[25] Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] July 9, 1992, 85 Entscheidungen des Bundesverfassungsgerichts [BVerfGE] 264 (Ger.) (Party Financing Case).
[26] *My Vote Counts NPC v. Minister of Justice and Correctional Services*, 2018 (5) SA 380 (CC) ¶ 60 (S. Afr.).
[27] Political Party Funding Act 6 of 2018, § 6 (S. Afr.).
[28] INDIA CONST. art. 19, cl. (1)(a).

B. The reform agenda

The decision does not resolve the underlying policy problem. With the abolition of the Scheme the regulatory environment reverts to the position before 2017, which was characterised not only by an absence of disclosure but by undisclosed cash donations and opaque electoral trusts. Substantive reform would require at least three things: a mandatory regime of disclosure for all contributions above a reasonable threshold, made to an independent electoral finance body rather than to the Election Commission alone; the strengthening of party finance accounts through audit by the Comptroller and Auditor General; and serious consideration of the long-standing proposals of the Law Commission on the partial state funding of elections.

C. Institutional capacity and enforcement

A disclosure regime is only as effective as the capacity of the oversight institutions to collect, verify and publish financial disclosures in a form that an ordinary voter can actually understand. The Election Commission of India has pressed for greater transparency but has never possessed the investigative tools needed to audit the accounts of political parties effectively. The publication of bond data under the directions of the Court has been carried out through the Commission, which illustrates how far doctrinal reform depends upon institutional design.

D. Post-verdict compliance and subsequent litigation

On 11 March 2024 the Court dismissed an application by the State Bank of India seeking an extension of time until 30 June 2024 to furnish the bond data, holding that the Bank's own submissions showed the information to be readily retrievable, and directed disclosure to the Election Commission within twenty-four hours, with publication on the website of the Commission by 15 March 2024.[29] The Bank complied, and the published data confirmed that instruments worth approximately 16,518 crore rupees had been purchased and redeemed since the Scheme became operative, with several of the largest purchasers subject to concurrent or antecedent proceedings before central regulatory and enforcement agencies. That pattern lent empirical weight to the concern of the Court that the structural opacity of the Scheme was capable of facilitating a coercive or transactional relationship between the establishment of the day and corporate donors, without establishing that any individual transaction was in fact improper.

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[29] *Association for Democratic Reforms v. Union of India*, Misc. Application (Mar. 11, 2024) (India) (order dismissing the application of the State Bank of India for extension of time); *see also Electoral Bonds Hearing: Supreme Court Dismisses SBI's Plea Seeking Extension, Directs It to Disclose Details on March 12*, DECCAN HERALD (Mar. 11, 2024).

The aftermath of the judgment nonetheless illustrates the limits of adjudicative remedy. Petitions seeking retrospective confiscation of bond proceeds and a court-monitored investigation into individual transactions were dismissed on the ground that the petitioners possessed alternative remedies under ordinary criminal procedure, the Court declining to convert a proceeding in constitutional review into a mechanism for individualised fact-finding.[30] Review petitions challenging both the principal judgment and that order were subsequently rejected for want of any error apparent on the face of the record.[31] The cumulative effect is that judicial intervention exhausted itself at the level of invalidating the offending legal architecture, while questions of individual culpability, of restitution and of forward-looking design were left to the political branches and to ordinary law enforcement. That division of institutional labour is consistent with the focus of the proportionality framework on the validity of the measure rather than on the adjudication of particular transactions.

VII. Conclusion

The electoral bonds judgment is more than a technical correction to a flawed statute. It is a landmark in the constitutional jurisprudence of Indian democracy, and it speaks directly to the citizen standing in a queue outside a polling booth, uncertain whether her vote can compete with money she will never see. By reading a right to know about political financing into the freedom of speech and expression, the Supreme Court did more than strike down a scheme. It named something that had been missing: the insistence that the judgment of the voter is not a private ritual performed in the dark but a public act that depends on knowing who is funding the choices placed before her. Transparency, on that account, is not a bureaucratic nicety layered onto democracy from outside; it is one of the conditions that makes democracy recognisable as democracy. The proportionality framework the Court adopted gives that insight a workable shape, offering future courts and legislatures a structured way of asking not merely whether a disclosure regime looks reasonable on paper, but whether it is genuinely the least restrictive means of achieving a legitimate aim without leaving voters in ignorance of who is seeking the ear of their government.

The judgment should at the same time be read for what it is: a floor beneath which the law of political finance cannot fall, and not a ceiling describing what that law should aspire to become. The floor stops the worst abuse, an anonymity that ran in one direction only, shielding donors

[30] *Association for Democratic Reforms v. Union of India*, Misc. Application (Aug. 2, 2024) (India) (dismissing the plea to confiscate approximately 16,518 crore rupees in electoral bond proceeds).
[31] *Association for Democratic Reforms v. Union of India*, Review Petition (Sept. 25, 2024) (India) (order dismissing the review petitions for want of error apparent on the face of the record under Order XLVII, Rule 1, Supreme Court Rules, 2013).

from the public while surrendering their identities to whoever held power. A ceiling would have to answer harder questions that the Court rightly left untouched: how much a party should be permitted to spend, who should police that spending, and whether the State itself should bear part of the cost of elections so that private money matters less to the outcome. Those are political choices and not merely legal ones, and other democracies have made them imperfectly, sometimes learning only from their own mistakes. Their record, in the public funding model of Germany, in the hard-fought disclosure litigation of South Africa and in the long and unfinished argument over money and speech in the United States, gives Parliament more to work with than existed when the Scheme was conceived in 2017. What is ultimately at stake is not an abstract question of institutional design but something closer to trust: whether the person who takes the trouble to vote can believe that her choice still counts against the weight of money she cannot see. That, more than any doctrine, is what this judgment protects, and what the response of Parliament will now either honour or squander.

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