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Political Finance, Democratic Transparency, and the Constitution: Can Free and Fair Elections Exist Without Full Disclosure of the Sources and Uses of Political Money in India?

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ABSTRACT

Money is indispensable to electoral democracy and yet capable of converting private wealth into disproportionate public power. This paper asks whether anonymous or insufficiently transparent political funding can be reconciled with the constitutional requirements of free and fair elections, democratic accountability, and the citizen's right to know in India. Through a primarily doctrinal method, it maps the statutory and constitutional architecture of Indian political finance, traces four decades of Supreme Court jurisprudence on the voter's right to information, and analyses the 2024 Constitution Bench decision in Association for Democratic Reforms v. Union of India, which struck down the Electoral Bonds Scheme. The paper locates the right to transparency within Article 19(1)(a), the equality guarantee of Article 14, the basic-structure protection of free and fair elections, and the principle of democratic accountability, and argues that these anchors operate as a layered constitutional defence against opacity. It then assesses whether citizens can in practice trace political money from donor to influence, concluding that the existing disclosure regime remains porous at every stage. Drawing comparative lessons from the United States, the United Kingdom, Germany, and Canada, the paper proposes a sequenced programme of reform, including real-time disclosure, beneficial-ownership transparency, an independent regulator, and constitutional anchoring of the disclosure duty. It concludes that transparency, not anonymity, is the default the Constitution requires, and that full disclosure is a condition of the legitimacy of Indian electoral democracy.

Keywords: Political finance, Electoral bonds, Right to information, Free and fair elections, Constitutional transparency, Article 19(1)(a), Democratic accountability, Campaign finance reform.

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I. INTRODUCTION

Money is indispensable to electoral democracy and is simultaneously its most persistent solvent. Parties require resources to organise, communicate, and contest; yet the same resources, if channelled opaquely, can convert private wealth into disproportionate public power and displace the equality of citizens that universal franchise presupposes.¹ The United States Supreme Court observed long ago that the communication of political ideas in a mass society ordinarily requires the expenditure of money, so that the regulation of political finance inevitably implicates expression.² The constitutional difficulty is therefore not that money participates in politics, but the terms on which it does so, and above all whether the electorate may know who funds those who seek to govern it.

In India the question has acquired unusual salience. The Supreme Court has repeatedly affirmed that the voter's right to information is a facet of the freedom of speech and expression,³ and in 2024 a Constitution Bench struck down the Electoral Bonds Scheme, an instrument expressly designed to permit anonymous corporate and individual donations, as incompatible with that right.⁴ The decision reframed political-finance transparency from a matter of administrative housekeeping into a question of fundamental rights under Article 19(1)(a).⁵

Transparency occupies a distinctive place in this account. In a representative democracy the legitimacy of governmental power derives from the informed consent of the governed, and consent is informed only where citizens can perceive the interests and incentives operating upon those who exercise power on their behalf. Disclosure of political finance is therefore not an end in itself but an instrument of self-government: it permits the electorate to discount partisan claims by reference to their financial provenance, to detect the alignment between policy and patronage, and to impose electoral consequences upon those who serve concentrated private interests rather than the public. Where money is the medium through which private preference is translated into public outcome, the capacity to follow that money is the capacity to hold power to account. Opacity inverts the relationship between citizen and representative, requiring the governed to consent to a politics whose financial architecture is deliberately withheld from them. The relationship between money and electoral power is thus not merely an economic fact

¹ On the centrality of money to electoral competition in India generally, see *COSTS OF DEMOCRACY: POLITICAL FINANCE IN INDIA* (Devesh Kapur & Milan Vaishnav eds., 2018).

² *Buckley v. Valeo*, 424 U.S. 1, 19 (1976) (observing that virtually every means of communicating ideas in modern society requires the expenditure of money).

³ *Union of India v. Ass'n for Democratic Reforms*, (2002) 5 SCC 294 (India).

⁴ *Ass'n for Democratic Reforms v. Union of India*, (2024) 5 SCC 1, 2024 INSC 113 (India) [hereinafter *Electoral Bonds*].

⁵ INDIA CONST. art. 19, cl. (1), sub-cl. (a).

about campaigns; it is a constitutional concern about the conditions under which self-government remains genuine.

This paper pursues a single research question: whether anonymous or insufficiently transparent political funding is compatible with the constitutional requirements of free and fair elections, democratic accountability, and the citizen's right to know. Its objectives are to map the statutory and constitutional architecture of Indian political finance, to analyse the 2024 judgment and its implications, to assess whether citizens can in practice trace political money from donor to influence, to draw comparative lessons, and to propose reforms. The scope is confined to the constitutional dimension of disclosure; it does not attempt an empirical audit of party accounts, nor does it evaluate any particular party, the analysis being directed at institutions, statutes, and doctrine rather than at political actors.

A. Research methodology

This study is primarily doctrinal. It identifies, interprets, and systematises the relevant constitutional provisions, statutes, subordinate legislation, and judicial decisions, and reasons from them to a coherent account of the governing law.⁶ Constitutional analysis is deployed to locate the right to transparency within Articles 19(1)(a) and 14 and within the basic-structure guarantee of free and fair elections. Statutory interpretation is used to examine the Representation of the People Act 1951, the Income-tax Act 1961, the Companies Act 2013, and the Finance Act 2017. Case-law analysis traces the evolution of the right to know across four decades of Supreme Court jurisprudence. Comparative legal analysis examines four constitutional democracies to identify transferable regulatory designs, with attention to differences of constitutional text and political culture that condition transplantation. Finally, policy evaluation assesses the adequacy of existing disclosure mechanisms against the normative benchmark that the Constitution supplies. The method is critical and analytical rather than descriptive: each institution and instrument is evaluated against constitutional first principles, and reform proposals are tested for legal basis, feasibility, and foreseeable objection.

II. THE EVOLUTION OF POLITICAL-FINANCE REGULATION IN INDIA

Historically, the regulation of corporate money in Indian politics has oscillated between prohibition and permission. Company donations, initially permitted, were prohibited in 1969 amid concern that corporate funding distorted democratic competition and engendered dependence, and were reintroduced in 1985, subject to ceilings and disclosure of the recipient

⁶ On the doctrinal method employed here, see Terry Hutchinson & Nigel Duncan, *Defining and Describing What We Do: Doctrinal Legal Research*, 17 DEAKIN L. REV. 83 (2012).

party, through Section 293A of the Companies Act 1956. This was a compromise between recognising parties' legitimate need for resources and containing corporate influence over public power.⁷ The fiscal architecture developed in parallel, with the conditional tax exemption for party income and deductions for political contributions progressively elaborated, and a significant tranche of reform in 2003 introducing the contribution-report and tax-benefit regime that, in modified form, still governs. This trajectory reveals a legislature repeatedly attempting, and as often retreating from, the containment of corporate and undisclosed money, a pattern that frames the constitutional contest over electoral bonds.

Indian political-finance law has developed through accretion rather than design, producing a layered and frequently inconsistent regime. The Representation of the People Act 1951 supplies its statutory spine. Sections 29B and 29C permit parties to accept contributions and require them to report contributions above a threshold,⁸ while Section 77 caps and requires the account of a candidate's election expenses.⁹ The expenditure ceiling was substantially hollowed by legislative reaction to *Kanwar Lal Gupta v. Amar Nath Chawla*, in which the Court held that expenditure incurred by a party or supporters for a candidate counted towards the candidate's ceiling;¹⁰ Parliament promptly inserted Explanation 1 to Section 77(1) to exclude such expenditure, and although the provision was later recast, the episode illustrates a recurring pattern in which judicial transparency gains are diluted by statute.¹¹

Fiscal law forms a second layer. Section 13A of the Income-tax Act 1961 exempts the income of political parties subject to conditions of record-keeping and audit,¹² and Sections 80GGB and 80GGC grant deductions for political contributions by companies and other persons, thereby routing party finance through the tax system.¹³ Corporate donations are now governed by Section 182 of the Companies Act 2013, the successor to the 1956 provision discussed above. The Election Commission, exercising its powers under Article 324, has supplemented these

⁷ The Companies Act, 2013, No. 18 of 2013, § 182, Acts of Parliament, 2013 (India). Corporate donations were prohibited by the Companies (Amendment) Act, 1969, following concerns voiced by the Committee on Prevention of Corruption (1964) (the Santhanam Committee), and were reintroduced, subject to ceilings and disclosure, by § 293A of the Companies Act, 1956, No. 1 of 1956, as substituted with effect from 1985.

⁸ The Representation of the People Act, 1951, No. 43 of 1951, §§ 29B-29C, Acts of Parliament, 1951 (India) [hereinafter RPA].

⁹ *Id.* § 77 (limiting and requiring the account of election expenses of candidates).

¹⁰ *Kanwar Lal Gupta v. Amar Nath Chawla*, (1975) 3 SCC 646 (India) (holding party and supporter expenditure on behalf of a candidate attributable to the candidate's ceiling).

¹¹ Explanation 1 to RPA § 77(1), inserted by the Election Laws (Amendment) Act, 1975, No. 58 of 1975, legislatively displaced *Kanwar Lal Gupta*; it was subsequently recast by the Election and Other Related Laws (Amendment) Act, 2003, No. 46 of 2003.

¹² The Income-tax Act, 1961, No. 43 of 1961, § 13A, Acts of Parliament, 1961 (India) (conditional exemption of political party income).

¹³ *Id.* §§ 80GGB, 80GGC (deductions for contributions to political parties by companies and other persons respectively).

statutes with transparency guidelines requiring parties to report contributions and maintain audited accounts.¹⁴ The result is a regime in which the obligations of candidates, parties, companies, and trusts are governed by distinct statutes with divergent thresholds, definitions, and enforcement mechanisms, leaving interstitial spaces through which funds can flow undisclosed.

Two more recent instruments sought to reconcile transparency with donor confidentiality, with opposite emphases. Electoral trusts, recognised under Section 13B of the Income-tax Act and the Electoral Trusts Scheme 2013, aggregate corporate donations and are obliged to disclose their distributions, thereby preserving a measure of traceability.¹⁵ The Electoral Bonds Scheme 2018, by contrast, introduced a bearer instrument purchasable from a designated bank and donatable to a party without public disclosure of the donor, enabled by a cluster of amendments effected through the Finance Act 2017.¹⁶ Successive Law Commission and committee reports had by then identified opacity and weak enforcement as the central infirmities of the system,¹⁷ setting the stage for the constitutional confrontation analysed below.

III. CONSTITUTIONAL FOUNDATIONS OF POLITICAL TRANSPARENCY

A. Article 19(1)(a) and the voter's right to know

The foundational proposition is that the freedom of speech and expression under Article 19(1) (a) embraces a right to receive information necessary for the meaningful exercise of the franchise.¹⁸ In *Union of India v. Association for Democratic Reforms*, the Court held that voters are entitled to know the educational, financial, and criminal antecedents of candidates, because an uninformed vote is a diminished vote.¹⁹ When Parliament attempted to neutralise that ruling, the Court in *PUCL v. Union of India* struck down the diluting amendment, establishing that the right to know is not a mere statutory concession but a constitutional entitlement beyond ordinary legislative erasure.²⁰ These holdings build upon the earlier recognition, in *State of U.P. v. Raj Narain*, that in a government of responsibility the people have a right to know the public acts

¹⁴ Election Commission of India, Transparency Guidelines (Aug. 29, 2014) (issued under art. 324 of the Constitution).

¹⁵ Income-tax Act, *supra* note 12, § 13B (exemption for voluntary contributions received by an electoral trust); Electoral Trusts Scheme, 2013, and rule 17CA of the Income-tax Rules, 1962.

¹⁶ Electoral Bond Scheme, 2018, Gazette of India, Notification No. S.O. 29(E) (Jan. 2, 2018), framed pursuant to the Finance Act, 2017, No. 7 of 2017 (India).

¹⁷ Law Comm'n of India, Rep. No. 255, Electoral Reforms, ch. 2 (2015) [hereinafter Law Comm'n Rep. No. 255].

¹⁸ INDIA CONST. art. 19(1)(a).

¹⁹ *Union of India v. Ass'n for Democratic Reforms*, *supra* note 3, ¶¶ 46-48 (recognising the voter's right to know the antecedents of candidates as part of art. 19(1)(a)).

²⁰ *People's Union for Civil Liberties (PUCL) v. Union of India*, (2003) 4 SCC 399 (India) (striking down § 33B of the RPA, which sought to dilute the disclosure norms laid down in *Ass'n for Democratic Reforms*).

of their representatives.²¹ The logical extension, that voters are entitled to know who funds the parties competing for their allegiance, follows directly: the identity of a party's financiers is at least as material to an informed choice as the antecedents of an individual candidate.

The strength of this extension lies in the nature of the informational interest. The antecedents of a candidate disclose who seeks office; the sources of a party's funds disclose to whom that office may be obligated. In an era of party-centred rather than candidate-centred competition, the latter is frequently the more consequential datum, because policy is made by parties and governments rather than by individual legislators acting alone. An electorate that knows a candidate's assets but not the patrons of the candidate's party possesses information that is precise about the periphery and silent about the centre. The right to know, if it is to serve its constitutional function of enabling a meaningful vote, cannot be confined to the former while excluding the latter, for the asymmetry would render the right formally intact yet substantively hollow.

B. Article 14 and democratic equality

Transparency also engages the equality guarantee of Article 14.²² Political equality is not exhausted by the formal parity of one person, one vote; it extends to the conditions under which electoral competition occurs. A regime that permits unlimited and undisclosed funding tilts the field toward parties able to attract concentrated private capital, and converts the equal citizen into an unequal participant in the formation of political power. In the 2024 judgment, the concurring opinion held the post-2017 permission of unlimited corporate funding to be manifestly arbitrary, reasoning that a company's capacity to influence the political process through money is qualitatively different from an individual's, and that the removal of the profitability cap severed contributions from any rational relationship to a company's legitimate interests.²³ Arbitrariness of this order is the classic vice that Article 14 forbids.

The equality argument must, however, be stated with care, for it is not the proposition that all participants must wield identical resources, which no democracy achieves or attempts. It is rather that the State may not design its laws so as to magnify the influence of concentrated wealth while concealing its operation. A regulatory framework that permits unlimited and anonymous giving does precisely this: it privileges those whose interests can be advanced by large, untraceable contributions and disadvantages both the ordinary citizen, whose only currency is the vote, and the smaller party, which lacks access to such capital. The constitutional

²¹ *State of U.P. v. Raj Narain*, (1975) 4 SCC 428, ¶ 74 (India) (Mathew, J.) (locating a right to know in the people of a democracy).

²² INDIA CONST. art. 14.

²³ *Electoral Bonds*, *supra* note 4 (Khanna, J., concurring) (holding the unlimited corporate funding permitted by the amended § 182 manifestly arbitrary).

objection is therefore not to inequality of means as such, but to a State-constructed architecture that entrenches and obscures it, converting a difference in economic resources into a difference in political voice without the justification that Article 14 demands.

C. Free and fair elections as basic structure

The doctrine of basic structure, established in *Kesavananda Bharati v. State of Kerala*,²⁴ supplies the deepest layer of protection. In *Indira Nehru Gandhi v. Raj Narain*, the Court recognised free and fair elections as part of that inviolable core,²⁵ a proposition reaffirmed in *Kihoto Hollohan v. Zachillhu*.²⁶ If the fairness of elections is constitutionally entrenched, then conditions that systematically distort electoral competition, such as pervasive opacity that prevents the electorate from evaluating the influences operating upon parties, threaten a basic feature. The argument is not that every regulatory imperfection imperils the basic structure, but that a funding architecture engineered to defeat disclosure altogether strikes at the informational precondition of fairness itself.

D. Democratic accountability and constitutional morality

Finally, transparency is an incident of democratic accountability and of the constitutional morality the Court has invoked to demand probity in public life.²⁷ Accountability presupposes knowledge: an electorate cannot hold representatives to account for the interests they serve if the sources of their support are concealed. The 2024 judgment situated political-finance transparency within this larger commitment, treating the curtailment of information as a harm to the democratic process rather than a private inconvenience to be balanced away.²⁸ Taken together, these four constitutional anchors, the right to know, equality, basic structure, and accountability, establish that transparency is not merely desirable policy but a constitutional value with doctrinal teeth.

It is worth identifying the relationship among these anchors, since they operate at different levels of constitutional protection. The right to know under Article 19(1)(a) and the equality guarantee under Article 14 are enforceable fundamental rights that ground concrete claims and remedies. The basic-structure protection of free and fair elections operates as a limit on the

²⁴ *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225 (India).

²⁵ *Indira Nehru Gandhi v. Raj Narain*, 1975 Supp SCC 1, ¶¶ 252-255 (India) (recognising free and fair elections as part of the basic structure).

²⁶ *Kihoto Hollohan v. Zachillhu*, 1992 Supp (2) SCC 651 (India) (reaffirming democracy and free and fair elections as basic features).

²⁷ *Manoj Narula v. Union of India*, (2014) 9 SCC 1, ¶¶ 75-77 (India) (elaborating constitutional morality and good governance).

²⁸ *Electoral Bonds*, *supra* note 4 (holding that informational privacy of political affiliation must yield, in the design adopted, to the purpose of curbing electoral corruption only through proportionate means).

amending and, by extension, the legislative power, conditioning the validity of measures that would entrench opacity. Constitutional morality and democratic accountability function as interpretive principles that inform the construction of the first three. The cumulative effect is a layered defence in which a transparency-defeating measure must survive scrutiny not at one point but at several, and in which the failure to satisfy any one of them is sufficient to condemn it. This layering explains why the analysis that follows treats the Electoral Bonds Scheme not as offending a single provision but as straining the constitutional fabric at multiple, mutually reinforcing points.

IV. ELECTORAL BONDS AND THE CONSTITUTIONAL DEBATE

The Electoral Bonds Scheme was introduced through a constellation of amendments in the Finance Act 2017, several of them enacted as a money bill.²⁹ Section 31 of the Reserve Bank of India Act was amended to authorise the bonds;³⁰ Section 182 of the Companies Act was amended to remove the 7.5% profitability cap on corporate donations and to dispense with disclosure of the recipient party;³¹ Section 29C of the Representation of the People Act was amended to exempt bond contributions from the contribution report;³² and Section 13A of the Income-tax Act was amended to relieve parties of the duty to record such contributions.³³ The combined effect was a legally sanctioned channel for anonymous, unlimited funding.

The Government defended the scheme on two grounds: that it would curb the use of unaccounted cash by routing donations through banking channels, and that donor confidentiality would protect contributors from retribution.³⁴ The transparency objection was that the scheme achieved the opposite of its stated anti-corruption aim, since it removed from public view precisely the information needed to detect quid pro quo arrangements, while the issuing bank and, through it, the executive could potentially ascertain donor identities, producing selective rather than genuine confidentiality.

²⁹ The Finance Act, 2017, No. 7 of 2017, §§ 11, 135, 137, 154-155, Acts of Parliament, 2017 (India) (amending, respectively, the Income-tax Act, the RBI Act, the RPA, and the Companies Act).

³⁰ The Reserve Bank of India Act, 1934, No. 2 of 1934, § 31, as amended by the Finance Act, 2017 (permitting issuance of electoral bonds).

³¹ Companies Act, *supra* note 7, § 182, as amended by the Finance Act, 2017 (omitting the 7.5% cap on contributions computed on average net profits, and dispensing with disclosure of the name of the party to which a contribution was made).

³² RPA, *supra* note 8, § 29C, as amended by the Finance Act, 2017 (exempting contributions received through electoral bonds from the contribution report).

³³ Income-tax Act, *supra* note 12, § 13A, as amended by the Finance Act, 2017 (relieving parties of the duty to maintain a record of contributions received through electoral bonds).

³⁴ The Government's stated objectives, curbing the use of unaccounted cash and protecting donor confidentiality, are recorded and analysed in *Electoral Bonds*, *supra* note 4.

The constitutional contest was framed as a conflict between the donor's informational privacy and the voter's right to know. The Court approached it through the proportionality standard articulated in *K.S. Puttaswamy v. Union of India*,³⁵ asking whether the restriction on the right to know pursued a legitimate aim by the least restrictive means and in due balance.³⁶ It accepted that donor privacy is a legitimate interest but held that the scheme's near-total anonymity was neither necessary nor proportionate: the objective of curbing cash could be served by less restrictive measures, and the asserted privacy interest could not justify extinguishing the electorate's informational right across the board.³⁷ The Court accordingly struck down the scheme and the enabling amendments, and directed the State Bank of India to disclose particulars of bonds purchased and redeemed to the Election Commission.³⁸

The broader significance of the decision lies less in its disposition than in its method. By subjecting a political-finance instrument to structured proportionality and by treating the right to know as the primary right against which donor privacy must be justified, the Court established that opacity bears the burden of constitutional justification, reversing the implicit presumption on which the scheme rested. It also signalled that the money-bill route and executive design choices in this domain are not immune from substantive review. The judgment thus furnishes the doctrinal foundation on which a positive regime of transparency can be constructed.

Two features of the scheme's design deserve particular emphasis, because they expose the gap between its stated and operative logic. First, the confidentiality the scheme conferred was asymmetric: the donation was opaque to the public and to rival parties, yet the instrument passed through a State-owned bank capable of recording the purchaser's identity, so that the executive of the day occupied a uniquely privileged informational position. A confidentiality that shields the donor from the electorate while remaining penetrable by the government does not protect the donor from pressure; it relocates the risk of pressure from the public square to the executive, creating precisely the conditions for quiet influence that transparency is meant to prevent. Second, the removal of the contribution ceiling, the abolition of the requirement to disclose the recipient party, and the relief from record-keeping were not incidental features but the structural core of the scheme, each independently reducing the information available to the voter. The

³⁵ *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 (India) (recognising informational privacy as a fundamental right and articulating the proportionality test).

³⁶ *Electoral Bonds*, *supra* note 4 (applying the proportionality standard and holding that the scheme failed the necessity and balancing prongs).

³⁷ *Electoral Bonds*, *supra* note 4 (rejecting the asserted donor-privacy justification as overbroad and disproportionate to the informational interest of the voter).

³⁸ *Electoral Bonds*, *supra* note 4 (directing the State Bank of India to cease issuance and to disclose particulars of bonds purchased and redeemed to the Election Commission of India).

Court's direction requiring retrospective disclosure of bond data was therefore not a procedural coda but a vindication of the principle that information unlawfully withheld must, so far as possible, be restored to the public to whom it belongs.

V. FOLLOWING THE MONEY: MAPPING POLITICAL FINANCE IN INDIA

Whether citizens can in fact trace political money from donor to influence depends on the granularity of disclosure at each node of the system, and here the Indian regime remains porous even after the fall of electoral bonds. Corporate donations channelled directly under Section 182 are disclosed only as an aggregate annual figure rather than donor-by-donor and party-by-party, limiting traceability;³⁹ data disclosed following the 2024 judgment indicated that bond purchases had been heavily concentrated in the highest denomination, consistent with corporate rather than small-individual giving.⁴⁰

Individual donations below the reporting threshold escape itemised disclosure: parties must report only contributions exceeding ₹20,000,⁴¹ and although anonymous cash donations were capped at ₹2,000 per donor in 2017, the absence of an aggregate ceiling on such cash means that large sums can be disaggregated into sub-threshold tranches.⁴² Electoral trusts offer comparatively better traceability, since they must disclose their distributions, but they account for only a portion of total flows. Campaign financing is further obscured by the treatment of third-party and party expenditure, much of which falls outside the candidate's account by operation of the statutory explanation,⁴³ and by the persistence of cash expenditure that no disclosure mechanism reliably captures.

The opacity is compounded at the level of party finances taken as a whole. Because itemised disclosure is triggered only above the contribution threshold, a substantial portion of declared party income has historically been attributable to sources below that threshold or otherwise unspecified, a pattern repeatedly noted in official and civil-society analyses of party accounts. The aggregation of many sub-threshold contributions, the routing of funds through intermediaries, and the treatment of certain receipts as non-reportable together mean that the

³⁹ Companies Act, *supra* note 7, § 182(3) (post-2017) (requiring disclosure only of the aggregate amount contributed in a financial year).

⁴⁰ Data on bonds issued and redeemed, disclosed by the State Bank of India and published by the Election Commission of India pursuant to *Electoral Bonds*, *supra* note 4 (Mar. 2024), indicated a heavy concentration in the highest (₹1 crore) denomination.

⁴¹ RPA, *supra* note 8, § 29C (requiring contribution reports only in respect of contributions in excess of ₹20,000, subject to the electoral-bond exemption since struck down).

⁴² Income-tax Act, *supra* note 12, § 13A, first proviso, as amended by the Finance Act, 2017 (capping anonymous cash donations at ₹2,000 per donor).

⁴³ RPA, *supra* note 8, § 77, Explanation 1 (excluding certain third-party and party expenditure from a candidate's account); see Law Comm'n Rep. No. 255, *supra* note 17.

published accounts of a party may be simultaneously accurate and uninformative: accurate as a statement of totals, uninformative as to provenance. Campaign financing presents an analogous problem from the expenditure side: the candidate's statutory account captures only a defined and often narrow slice of the resources actually deployed on a candidate's behalf, while party and sympathiser spending, much of it in kind, escapes attribution. Third-party expenditure, that is, spending by entities formally independent of any party or candidate, remains largely unregulated, leaving a channel through which influence can be exercised at one remove from the disclosure obligations that bind the principals.

The cumulative result is a system in which disclosure is partial at every stage: aggregate where it should be itemised, thresholded where it should be comprehensive, and silent on the cash economy that funds much actual campaigning. Successive official reviews have reached the same conclusion.⁴⁴ The honest answer to the question whether a citizen can trace the flow of political money from donor to influence is therefore negative: the existing mechanisms permit the reconstruction of fragments, not of the whole. This evidentiary opacity is not a peripheral defect but the central constitutional problem, for the right to know is meaningful only to the extent that the information disclosed is sufficient to support an informed inference about whose interests a party may be expected to serve.

VI. CORPORATE INFLUENCE, REGULATORY CAPTURE, AND DEMOCRATIC RISKS

The constitutional anxiety about corporate funding is not abstract. Where the State is a dominant purchaser, licensor, and regulator, the firms that depend on government contracts, licences, and public procurement have a structural incentive to invest in political access, and undisclosed funding lowers the cost and raises the deniability of such investment. The pre-2017 cap on corporate contributions, pegged to a proportion of average net profits,⁴⁵ reflected a legislative judgment that a company's political giving should bear some relation to its legitimate commercial scale; its removal, combined with anonymity, dissolved that constraint and created, as the 2024 judgment observed, a heightened risk that loss-making entities and shell companies could be used as conduits for funds whose ultimate source and purpose were untraceable.⁴⁶

⁴⁴ Law Comm'n Rep. No. 255, *supra* note 17, ¶¶ 2.30-2.43 (documenting gaps in disclosure and enforcement).

⁴⁵ The pre-2017 first proviso to Companies Act § 182(1) capped aggregate political contributions at 7.5% of average net profits over the preceding three financial years.

⁴⁶ *Electoral Bonds*, *supra* note 4 (Khanna, J.) (noting the risk that loss-making and shell companies could be used as conduits once the profitability cap was removed).

The mechanism of concern is regulatory capture: the gradual reorientation of policy, licensing, and enforcement toward the interests of concentrated donors rather than the public. Empirical scholarship on Indian political finance has documented the close relationship between sectors dependent on State discretion, notably real estate and infrastructure, and political contribution, and has theorised the resulting exchange of finance for favourable treatment.⁴⁷ The Court has elsewhere cautioned that the integrity of the democratic process can be compromised where public power and private inducement intersect.⁴⁸ The constitutional point is that excessive and hidden financial influence does not merely raise the spectre of individual corruption; it risks a systemic distortion of representation in which policy is responsive to donors rather than to voters. A democracy whose policy outputs track the preferences of undisclosed financiers departs, in substance if not in form, from the equality and accountability the Constitution guarantees. Transparency is the minimum condition under which this risk can be detected, debated, and disciplined by the electorate.

The channels through which influence may be sought are concrete. The award of government contracts, the grant of licences and clearances, and the conduct of public procurement all involve the exercise of discretion by officials and ministers, and each creates an opportunity for the reciprocation of financial support through favourable treatment. Policy itself, including the design of regulation, the setting of tariffs, the allocation of natural resources, and the calibration of enforcement, is likewise susceptible to capture where those who fund political competition expect a return. The concern is not confined to the crude case of an explicit bargain, which the criminal law already addresses, but extends to the subtler and more pervasive phenomenon of anticipatory responsiveness, in which policy gravitates toward the preferences of significant funders without any identifiable corrupt transaction. It is precisely because such influence operates without a traceable quid pro quo that disclosure matters: where the exchange leaves no documentary trail, the identity of the funder is often the only signal available to the public, and its concealment removes the last means by which such responsiveness might be detected and contested. A constitutional democracy can accommodate the participation of organised interests in politics; what it cannot accommodate, consistently with equality and accountability, is their participation in the dark.

⁴⁷ Devesh Kapur & Milan Vaishnav, *Quid Pro Quo: Builders, Politicians, and Election Finance in India* (Ctr. for Global Dev., Working Paper No. 276, 2011).

⁴⁸ *S. Subramaniam Balaji v. Govt. of T.N.*, (2013) 9 SCC 659 (India) (discussing the relationship between public funds, electoral promises, and the integrity of the process).

VII. COMPARATIVE CONSTITUTIONAL PERSPECTIVES

A. United States

The American model privileges expenditure as protected speech while permitting disclosure and contribution limits. *Buckley v. Valeo* upheld contribution limits and disclosure requirements but struck down independent-expenditure limits, treating expenditure as core political speech.⁴⁹ *Citizens United v. FEC* extended expenditure protection to corporations and unions, yet, significantly for the present argument, upheld disclosure and disclaimer requirements by an eight-to-one majority, on the rationale that transparency enables citizens to evaluate the messages they receive.⁵⁰ *McCutcheon v. FEC* later invalidated aggregate contribution limits.⁵¹ The statutory framework rests on the Federal Election Campaign Act and the Bipartisan Campaign Reform Act, enforced by the Federal Election Commission.⁵² The transferable lesson is the durability of disclosure: even a jurisprudence highly protective of money-as-speech treats transparency as constitutionally legitimate and informationally indispensable.

B. United Kingdom

The United Kingdom relies on transparency and source-control rather than caps on the size of donations. The Political Parties, Elections and Referendums Act 2000 establishes a 'permissible donor' regime, under which parties may accept donations above a modest threshold only from registered electors and UK-based entities, and creates the Electoral Commission as an independent regulator.⁵³ Donations above statutory reporting thresholds must be reported and are published, and parties must verify the permissibility of donors before acceptance.⁵⁴ The British experience demonstrates that an independent regulator coupled with mandatory, published reporting can deliver meaningful traceability without resort to anonymity, though the absence of donation caps leaves open the distinct problem of disproportionate large gifts.

C. Germany

Germany offers the strongest constitutional integration of transparency. Article 21 of the Basic Law itself obliges political parties to account publicly for the sources and use of their funds and

⁴⁹ *Buckley*, *supra* note 2, at 60-68 (upholding disclosure requirements and contribution limits while striking expenditure limits).

⁵⁰ *Citizens United v. FEC*, 558 U.S. 310 (2010) (protecting independent corporate expenditures under the First Amendment while upholding disclosure and disclaimer requirements 8-1).

⁵¹ *McCutcheon v. FEC*, 572 U.S. 185 (2014) (invalidating aggregate contribution limits).

⁵² Federal Election Campaign Act of 1971, Pub. L. No. 92-225, 86 Stat. 3 (codified as amended at 52 U.S.C. §§ 30101-30146); Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81.

⁵³ Political Parties, Elections and Referendums Act 2000, c. 41 (UK) [hereinafter PPERA] (establishing the permissible-donor regime and the Electoral Commission).

⁵⁴ PPERA, *supra* note 53, pts. III-IV; Electoral Commission, *Which donations and loans do you need to report?* (reporting thresholds for registered parties).

for their assets, elevating disclosure to a constitutional duty rather than a statutory option.⁵⁵ The Political Parties Act implements this through annual public accounts and itemised disclosure of donations above defined thresholds, with the largest donations subject to prompt publication together with the donor's identity.⁵⁶ The Federal Constitutional Court has developed a sophisticated jurisprudence of state party financing, including relative and absolute ceilings designed to prevent parties from becoming dependent on the State while preserving their societal rootedness.⁵⁷ The German model's central lesson for India is textual: a constitutional anchoring of the disclosure duty insulates it from the legislative dilution that has repeatedly undermined Indian reform.

D. Canada

Canada exemplifies the egalitarian model. The Canada Elections Act regulates contributions and spending,⁵⁸ and the Federal Accountability Act 2006 banned contributions by corporations, trade unions, and associations to federal political entities altogether, building on the earlier reforms of 2003 and confining political giving to individuals subject to a modest annual limit.⁵⁹ In *Harper v. Canada (Attorney General)*, the Supreme Court of Canada upheld limits on third-party election advertising, endorsing an egalitarian conception of electoral fairness in which the State may restrain the disproportionate influence of wealth to protect the equality of citizens' participation.⁶⁰ Canada thus shows that robust contribution bans and spending limits can survive constitutional challenge where the governing conception of free elections is egalitarian rather than libertarian, a conception closer to the Indian Court's own emphasis on equality and fairness. Across the four systems, three best practices recur and are pertinent to India: an independent, adequately empowered regulator (the United Kingdom and Germany); mandatory itemised and timely disclosure of donor identity (Germany above all); and a constitutional or quasi-constitutional anchoring of the disclosure duty that resists legislative erosion (Germany). The American experience confirms that disclosure is compatible even with strong speech protection,

⁵⁵ GRUNDGESETZ [GG] [Basic Law] art. 21(1), sentence 4 (Ger.) (requiring political parties to account publicly for the sources and use of their funds and for their assets).

⁵⁶ Gesetz über die politischen Parteien [Parteiengesetz] [PartG] [Political Parties Act] §§ 23-25 (Ger.) (annual public accounting; itemised disclosure of donations above the statutory threshold).

⁵⁷ Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] Apr. 9, 1992, 85 Entscheidungen des Bundesverfassungsgerichts [BVerfGE] 264 (Ger.) (Party Financing II) (developing the constitutional limits of state party financing, including the relative and absolute ceilings).

⁵⁸ Canada Elections Act, S.C. 2000, c. 9 (Can.).

⁵⁹ Federal Accountability Act, S.C. 2006, c. 9 (Can.) (banning contributions by corporations, trade unions and associations to federal political entities); cf. An Act to amend the Canada Elections Act and the Income Tax Act (Political Financing), S.C. 2003, c. 19 (Can.) (Bill C-24).

⁶⁰ *Harper v. Canada (Att'y Gen.)*, [2004] 1 S.C.R. 827, 2004 SCC 33 (Can.) (upholding third-party election advertising limits on an egalitarian rationale).

while the Canadian experience confirms that contribution restrictions are compatible with an egalitarian constitutional vision. None of these models can be transplanted wholesale, but each isolates a design feature that the Indian regime presently lacks.

The four systems also differ instructively in their enforcement architecture, which is often the decisive variable separating formal from effective transparency. The United Kingdom and Germany vest oversight in dedicated bodies, the Electoral Commission and, for accounting, the President of the Bundestag, operating at arm's length from the contesting parties, with powers to require, examine, and publish accounts and to sanction default. Canada combines statutory contribution bans with an established electoral administrator and clear offences for circumvention. The United States relies on a specialised commission whose enforcement record has at times been constrained by its composition, illustrating that an independent regulator is necessary but not sufficient: independence must be matched by capacity and by insulation from partisan deadlock. For India, whose Election Commission enjoys constitutional status but whose political-finance enforcement powers are diffuse and largely dependent on self-reporting, the comparative lesson is that disclosure obligations are only as strong as the institution charged with compelling and verifying them.

VIII. CONSTITUTIONAL AND LEGISLATIVE REFORM PROPOSALS

The reforms proposed below proceed from the constitutional premise established in the preceding parts: that transparency is the default and opacity bears the burden of justification. Each is assessed for legal basis, constitutional justification, feasibility, and foreseeable criticism.

First, real-time donation disclosure. Contributions above a low threshold should be reported and published promptly through a digital portal rather than in delayed annual returns. The legal basis lies in amending the contribution-report architecture of the Representation of the People Act,⁶¹ and the constitutional justification is the immediacy of the voter's informational interest, which a year-end return defeats. It is feasible given existing digital infrastructure; the principal criticism, that small donors may face exposure, can be met by a sensible threshold below which itemisation is not required.

Second, an independent political-finance regulator, or a substantially strengthened and statutorily insulated unit within the Election Commission. The legal basis is Article 324 read

⁶¹ RPA, *supra* note 8, §§ 29C-29D (the existing contribution-report architecture amenable to a lower threshold and real-time filing).

with enabling legislation,⁶² and the justification is that effective enforcement requires institutional independence and investigative capacity. The criticism that this duplicates existing functions is answered by the documented inadequacy of current enforcement.⁶³

Third, beneficial-ownership disclosure. Corporate and trust donations should disclose the natural persons who ultimately control the donor, closing the shell-company conduit identified by the Court. The natural statutory locus is Section 182 of the Companies Act,⁶⁴ and the justification is that disclosure of a nominal corporate donor without its beneficial owner is disclosure in form only. Feasibility is supported by existing beneficial-ownership frameworks in company and anti-money-laundering law; the criticism of compliance burden is modest against the constitutional stake.

Fourth, comprehensive campaign-expenditure accounting that captures party and third-party spending, not merely the candidate's narrow account, thereby reversing the effect of the statutory explanation that excludes much real expenditure.⁶⁵ Fifth, stronger auditing, comprising mandatory independent audit of party accounts to a prescribed standard, with publication, grounded in the conditions already attached to the tax exemption under Section 13A. Sixth, enhanced Election Commission oversight, including the power to impose graduated sanctions for non-compliance, consistent with the Commission's constitutional mandate.

Seventh, a calibrated public-funding element. Partial state funding, in kind or matched to small-donor contributions, was examined by the Indrajit Gupta Committee and remains a means of reducing dependence on concentrated private capital;⁶⁶ the German jurisprudence supplies a tested model of ceilings that prevent over-dependence on the State.⁶⁷ The criticism that public funding burdens the exchequer and may entrench incumbents is real and counsels careful design, including eligibility tied to demonstrated electoral support and strict ceilings, rather than rejection. Eighth, digital transparency portals consolidating all disclosures in machine-readable form, so that the right to know is practically, not merely formally, exercisable. Ninth, graded criminal and civil penalties for deliberate concealment or circumvention, since a disclosure duty without sanction is precatory. Tenth, and most ambitiously, a constitutional framework for

⁶² INDIA CONST. art. 324 (vesting in the Election Commission the superintendence, direction and control of elections), read with art. 19(1)(a); see *Electoral Bonds*, *supra* note 4.

⁶³ Law Comm'n Rep. No. 255, *supra* note 17, ¶¶ 2.30-2.43 (recommending enhanced disclosure and contribution caps).

⁶⁴ Companies Act, *supra* note 7, § 182 (the natural statutory locus for a beneficial-ownership disclosure obligation).

⁶⁵ RPA, *supra* note 8, § 77, Explanation 1; see Law Comm'n Rep. No. 255, *supra* note 17 (on the exclusion of party and third-party expenditure from the candidate's account).

⁶⁶ Comm. on State Funding of Elections, Report (1998) (India) (the Indrajit Gupta Committee) (examining partial state funding in kind); see also Comm. on Electoral Reforms, Report (1990) (the Dinesh Goswami Committee).

⁶⁷ BVerfG, *supra* note 57 (developing ceilings designed to prevent parties' over-dependence on the State).

political-finance transparency, whether by amendment on the German model or by authoritative judicial articulation, that anchors the disclosure duty beyond the reach of ordinary legislative dilution,⁶⁸ the recurrent pattern that has defeated earlier reform. The principal criticism, that constitutionalisation reduces flexibility, is outweighed by the demonstrated fragility of statutory transparency in this field.

These proposals are complementary rather than alternative, and their sequencing matters to their feasibility. Real-time disclosure, beneficial-ownership transparency, and comprehensive expenditure accounting are achievable by ordinary amendment and build upon existing statutory architecture; they should be the immediate priority, since each directly enlarges the information available to the voter and none requires a constitutional change. The strengthening of enforcement, whether through an independent regulator or a fortified unit within the Election Commission, is the indispensable institutional complement, for disclosure rules unaccompanied by verification and sanction tend toward formalism. Public funding and constitutional entrenchment are the more contested and longer-horizon measures, the former because it implicates fiscal and incumbency concerns that demand careful design, the latter because constitutional amendment is appropriately difficult. A unifying objection to the whole programme is that heightened disclosure may chill legitimate participation and expose donors to reprisal. The objection is real but answerable: a calibrated threshold protects the small donor, while the larger contributor who seeks to influence the exercise of public power cannot reasonably claim a right to do so anonymously, for the very magnitude of the contribution is what makes its disclosure a matter of public concern. The constitutional balance, in other words, is struck not by choosing between privacy and transparency in the abstract, but by graduating the disclosure obligation to the scale of the potential influence.

IX. CONCLUSION

The question with which this paper began, whether free and fair elections can truly exist where the sources and uses of political money remain hidden from the electorate, admits, on the doctrinal analysis advanced here, of a reasoned negative answer. Free and fair elections are part of the basic structure; the right to know is a facet of Article 19(1)(a); equality of political participation is protected by Article 14; and accountability presupposes information. A funding regime engineered to defeat disclosure is therefore not a neutral administrative choice but a derogation from constitutional commitments, as the Supreme Court recognised in striking down the Electoral Bonds Scheme.⁶⁹

⁶⁸ Nat'l Comm'n to Review the Working of the Constitution, Report, ¶¶ 4.31-4.34 (2002) (India).

⁶⁹ *Electoral Bonds*, *supra* note 4.

This is not to claim that perfect transparency is attainable or that every regulatory shortfall is unconstitutional. The argument is narrower and firmer: anonymity as a design principle is incompatible with the Constitution, because it withholds from citizens the very information their right to know exists to secure, and because it exposes the electoral process to capture by undisclosed interests in a manner that erodes both equality and accountability. The comparative experience confirms that meaningful disclosure is achievable without abandoning legitimate privacy or chilling participation, and that its durability is greatest where it is constitutionally anchored.

The constitutional position this paper takes is accordingly that transparency, not anonymity, is the default that the Constitution requires, and that the sources and uses of political money must be disclosed to a degree sufficient to permit the electorate to trace influence and to hold power to account.⁷⁰ Elections conducted in the dark may satisfy the formal criteria of universal franchise and periodic contest, but they cannot be fully free and fair in the substantive sense the Constitution intends. To that extent, full disclosure is not an optional refinement of Indian democracy but a condition of its constitutional legitimacy.

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