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ELECTORAL BONDS JUDGMENT: A STEP TOWARDS TRANSPARENCY OR AN INCOMPLETE REFORM?

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Abstract

The Supreme Court of India's 2024 judgment on the Electoral Bonds Scheme marks a significant step toward electoral transparency by striking down anonymous political donations and unlimited corporate funding. The Court held that voters have a fundamental right to information under Article 19(1)(a), thus reinforcing the principle of free and fair elections. However, the judgment leaves crucial questions unanswered, such as the fate of previously issued electoral bonds, the absence of real-time disclosure mechanisms, and potential loopholes allowing high-net-worth individuals to make unlimited donations. While the ruling strengthens democratic accountability, it stops short of recommending clear implementation measures. The absence of independent oversight and provisions against foreign-influenced donations also raises concerns. This paper critically examines the judgment's impact, its limitations, and the way forward for a more robust electoral finance system in India.

Keywords: Electoral Bonds; Political Funding; Transparency in Elections; Right to Information; Corporate Donations; Policy Reforms

I. Context in Brief

Political financing has been a contentious issue in democracies worldwide, particularly regarding transparency, fairness, and undue corporate influence on governance. In India, the Electoral Bonds Scheme (2018) was introduced to regulate political funding while allowing donors to contribute anonymously through banking channels. The Government argued that this would curb black money in elections and protect donor privacy.¹ However, critics contended that the scheme encouraged opaque political financing, disproportionately benefited the ruling

¹ Navmi Krishna, 'The Hindu Explains: What Is an Electoral Bond and How Do We Get One?' *The Hindu* (2018) <<https://www.thehindu.com/news/national/the-hindu-explains-what-is-an-electoral-bond-and-how-do-we-get-one/article22367124.ece>> accessed 5 February 2024.

party, and undermined free and fair elections.

In *Association for Democratic Reforms & Anr. v. Union of India & Ors.* (2024 INSC 113), the constitutional validity of the Electoral Bonds Scheme was challenged. It was argued that the scheme violated the right to information of the citizens under Article 19(1)(a) of the Constitution of India (“Constitution”), enabled unlimited corporate donations, and skewed electoral competition in favour of financially dominant parties.

On February 15, 2024, the Supreme Court of India (“Supreme Court”) delivered a landmark judgment striking down key provisions of the Electoral Bonds Scheme. The ruling has been regarded as significant for Indian democracy, aimed at enhancing electoral transparency. However, it has also left some critical issues unresolved that need to be scrutinised. The following sections shed light on the issues identified by the Court, the reasoning employed behind the pronouncement, the persistent concerns, and the potential solutions to the problems.

II. Key Issues Examined in the Judgment

The judgment addressed two major constitutional questions: First, whether unlimited corporate funding, enabled by the amendment to Section 182(1) of the Companies Act, 2013, violates free and fair elections and the right to equality under Article 14. Second, whether the non-disclosure of political contributions through electoral bonds, permitted under amendments to the Representation of the People Act, 1951, the Companies Act, 2013 and the Income-tax Act, 1961 violates the right to information under Article 19(1)(a).

III. Judicial Pronouncement and Reasoning

(a) Right to Information and Electoral Transparency

The Court reaffirmed that voters have a fundamental right to know the funding sources of political parties under Article 19(1)(a). The amendments to the Representation of the People Act, 1951 Income-tax Act, 1961 and the Companies Act, 2013—which exempted political parties from disclosing donations received through electoral bonds—were found unconstitutional. The rationale behind this stance was that secrecy surrounding the donations violated the fundamental right of voters to make an informed choice.

The judgment holds that information about political funding is crucial for an informed

electorate, and in this way, reinforces democratic transparency. This aligns with previous decisions in *PUCL v. Union of India* (2003)² and *ADR v. Union of India* (2002)³, where the Court accentuated the voters' right to information. However, the Court did not mandate real-time disclosure of donations. This leaves a potential loophole for political parties to delay revealing their funding sources. Also, the ruling does not clearly specify enforcement mechanisms.

(b) Unlimited Corporate Donations and Article 14

The Finance Act, 2017 removed the cap on corporate donations, which allowed unlimited contributions from companies, including loss-making and foreign-influenced corporations.⁴ The Court struck down the removal of the cap, holding that unlimited corporate donations violate the principle of free and fair elections under Article 14. The reasoning given was that the law enabled a system where wealthy corporations could exert a disproportionate influence on the electoral process and thus create an unequal playing field.

This is a significant ruling that curtails corporate dominance in politics, and thus, prevents scenarios where businesses can exert undue influence on policies in exchange for political funding. Yet, the judgment does not address how existing donations made under the Electoral Bonds Scheme will be treated or whether political parties need to refund money received through now-invalidated bonds.

(c) Balance Between Privacy of Donors and Voters' Right to Information

The Government argued that donors' privacy is essential to prevent retaliation from political rivals. The Court, however, ruled that the right to information outweighs donor anonymity, as political funding is a matter of public interest.

This is a progressive stance that recognizes political donations as public acts rather than private transactions. While the Court rightly struck down donor anonymity, it did not prescribe a robust disclosure mechanism. This created the possibility of delayed or incomplete disclosures.

IV. Identification and Analysis of Unresolved Concerns

Although the judgment has several positive outcomes, several concerns remain. One of the most pressing questions pertains to the fate of previously issued electoral bonds. Before the

² (2003) 4 SCC 399.

³ (2002) 5 SCC 294.

⁴ Finance Act, 2017.

ruling, over ₹16,000 crores had already been funnelled into political parties through this mechanism, with a disproportionate share benefiting ruling parties at both the Centre and State levels.⁵ The judgment does not clarify whether these past donations must be disclosed, refunded, or allowed to remain undisclosed, leaving room for potential financial imbalances in upcoming elections. If political parties are permitted to retain these funds without public scrutiny, the core objective of transparency remains unfulfilled. On the other hand, if disclosure is mandated, it raises concerns over donor privacy and legal challenges from contributors who made donations under previous confidentiality assurances.

Another critical gap in the ruling is the absence of a clear disclosure and enforcement mechanism. While the Court emphasised the right to information of voters, it did not specify how and when political parties must disclose donations. Without a real-time reporting system, there is a risk that political parties may delay disclosures until after elections, limiting their impact. Moreover, the Election Commission of India, which plays a crucial role in monitoring political funding, lacks the legal authority to impose penalties or take direct action against non-compliant parties. Without an empowered oversight body, the enforcement of transparency measures remains a challenge, and the judgment's effectiveness could be undermined.

The ruling also fails to regulate high-net-worth individual donations, despite addressing corporate funding. While corporate donations are now subject to stricter scrutiny, wealthy individuals can still contribute unlimited amounts to political parties. This opens the door for a different form of undue political influence, where billionaires and politically connected individuals could directly fund parties in exchange for policy favours. Additionally, loopholes allow such individuals to route funds through electoral trusts, NGOs, and third-party entities, making it difficult to trace the original source of funding. Without clear donation limits or enhanced scrutiny of individual contributions, the risk of policy capture by the ultra-wealthy remains high.

Foreign influence in Indian elections is another area that the judgment does not fully address. While the Foreign Contribution (Regulation) Act (FCRA), 2010 places restrictions on direct foreign funding,⁶ foreign-controlled Indian subsidiaries and businesses with significant

⁵ Business Today Desk, 'Electoral Bonds Worth Rs 16,000 Cr Sold since Its Inception; BJP Gets the Lion's Share' *Business Today* (2024) <<https://www.businesstoday.in/india/story/electoral-bonds-worth-rs-16000-cr-sold-since-its-inception-bjp-gets-the-lions-share-417640-2024-02-15>> accessed 16 February 2024.

⁶ Foreign Contribution (Regulation) Act, 2010.

overseas ownership can still donate to political parties. This creates a backdoor for foreign entities to exert influence over Indian elections by channelling funds through Indian corporate structures. The absence of strict restrictions on such contributions raises national security concerns, as external players could attempt to shape domestic policies through financial leverage over political parties. Strengthening regulations to prevent indirect foreign funding and ensuring greater scrutiny over cross-border financial flows is essential to safeguard India's electoral integrity.

The judgment also does not specify penalties for non-compliance, leaving a regulatory vacuum. If political parties fail to disclose donations, there is no clarity on the punitive measures they would face. Given that past electoral finance laws have suffered from weak enforcement, there is a risk that political parties may continue to operate with minimal transparency, undermining the very purpose of the judgment. Additionally, without legal backing, the Election Commission of India remains powerless to conduct thorough investigations or impose financial penalties. The Supreme Court's ruling, while strong on principles, lacks the necessary enforcement framework to ensure full compliance with transparency norms.

Finally, the judgment does not propose alternative funding mechanisms for political parties, raising concerns about the future of election financing. With corporate funding now restricted, political parties—especially smaller and regional ones—may struggle to raise sufficient funds for election campaigns. This could lead to a resurgence of black money in political financing, as parties may turn to undeclared cash donations to meet their financial needs. To prevent such a scenario, public financing of elections should be explored, where government funds are allocated to parties based on their vote share or electoral performance. Additionally, crowdfunding models with strict transparency guidelines could be encouraged to reduce reliance on big donors while ensuring that ordinary citizens can contribute to political parties in a fair and transparent manner.

V. Recommended Policy Reforms

While the Supreme Court's decision is a major step towards electoral transparency, the absence of clear implementation guidelines and loopholes in political financing necessitate further reforms. The following measures should be taken to strengthen India's electoral finance framework.

The Election Commission of India should mandate real-time disclosure of all political donations, including the identity of donors and the amount contributed. Political parties should publish audited financial statements annually, ensuring transparency in fund utilisation. An independent regulatory body should be established to monitor political donations, audit party finances, and investigate violations. The Right to Information (RTI) Act, 2005 should be extended to political parties to enhance public scrutiny. A cap on corporate donations should be reintroduced to prevent undue influence of businesses on government policy. Stricter norms for high-net-worth individuals donating large sums should be implemented to maintain fairness in electoral competition. The Supreme Court did not clarify whether political parties must disclose or return previously received electoral bonds. The government should ensure transparent disclosure of all past transactions. A one-time disclosure mandate should be enforced for all parties to declare funds received through electoral bonds before the ruling. The Foreign Contribution (Regulation) Act (FCRA), 2010 should be strengthened to prevent foreign-influenced Indian companies from donating anonymously. Clear checks on foreign-controlled entities contributing through Indian subsidiaries must be enforced. To reduce reliance on private donations, a state-funded election model can be explored, where political parties receive public funding based on their vote share and spending limits are strictly enforced to ensure equal competition. A centralised digital portal should be developed where all political donations are registered, tracked, and disclosed in real-time. Blockchain technology can be used to create a tamper-proof system for political funding records.

VI. Conclusion

The Electoral Bonds Judgment is undeniably a landmark ruling that upholds the fundamental principles of electoral transparency, democratic accountability, and voters' right to information. By striking down anonymous corporate donations and unlimited political funding, the Supreme Court has reaffirmed the necessity of a level playing field in elections and the need to curb undue influence of money in politics. However, despite its significant progress in reducing opacity in political financing, the ruling leaves several critical questions unanswered, raising concerns about its long-term effectiveness. The lack of clarity on past donations, enforcement mechanisms, disclosure timelines, and foreign funding loopholes could weaken the intended impact of this decision. Unless further policy interventions and legislative reforms are implemented, political parties may still find alternative methods to sidestep the principles of transparency and accountability, thereby preserving existing financial inequities in electoral competition.