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# **ASSOCIATION FOR DEMOCRATIC REFORMS AND ANOTHER V. UNION OF INDIA AND OTHERS**

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## **1. Introduction**

Every democratic system must be founded on the appropriate use of electoral aid. Transparent government aid becomes even more important in the Republic of India, where elections are a major democratic exercise worldwide. In the past, electoral investment has been defrauded by insufficient transparency, corruption, and untraceable money. Over the past interval, the legal system has played a key role in promoting transparency in political resources, stressing the need for facts (RTI) as a basic requirement under point 19(1)(a) of the Indian constitution.<sup>1</sup>

The establishment of the Electoral Bond Scheme (EBS) in 2018, which was introduced through the Finance Act, 2017, aimed at carrying out several of these transactions. It has been designed to increase political investment by taking part in the management system, reducing the reliance on cash contributions and reducing the risk of untraceable funds used in political campaigns. However, the system has greatly been affected by allowing anonymity of contributions, compromise openness, and, perhaps, opportunities to organize quarrels.

In the present case, Association for Democratic Reforms and Another v Union of India and Others<sup>2</sup>. The Supreme Court of India was charged with examining the constitutionality of the EBS. The main concerns, such as the breach of the basic conditions for information, the arbitrariness of the scheme, and its influence on election democracy, are at stake.

The assessment investigates the setting, the correct argument, the verdict, and the broad consequences of the case. Furthermore, it provides a crucial assessment of its strengths and weaknesses in a global situation.

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<sup>1</sup> Article 19- Protection of certain rights regarding freedom of speech, etc.— (1) All citizens shall have the right—  
(a) to freedom of speech and expression

<sup>2</sup> (2024) 3 S.C.R. 417

## 2. Historical Context of Electoral Funding in India

2.1. Evolution of Political Funding Laws in India: Governance of Political Funding in India has been going on for a very long time, together with several legislations and forum interventions. The essential milestones include.

1. Representation of The People Act, 1951 (RPA): It is necessary to disclose contributions higher than a certain limit and control campaign expenditures by campaign operatives<sup>3</sup>.
2. Income Tax Act, 1961: Political parties were exempted from paying revenue tax on voluntary contributions as long as they kept records of their contributions<sup>4</sup>.
3. Companies Act, 2013: Limited Corporate contributions to 7.5 % of the average net profit of a company for the last three fiscal years<sup>5</sup>.
4. Finance Act, 2017: Introduced the Electoral Bond Scheme, abolished the maximum corporate contribution limit, and different procedures for unwrapping company contributions<sup>6</sup>.

2.2. Judicial Precedents on Electoral Transparency:

In *Union of India v. Association for Democratic Reforms*<sup>7</sup>, a landmark case. The Supreme Court of India has ensured that voters have the opportunity to become acquainted with the background of the Candidate contesting elections. The Court interpreted Article 19(1)(a) broadly Affirming that the Right to Information is an essential Facet of Free Speech and Expression.

*People's Union for Civil Liberties (PUCL) v. Union of India*<sup>8</sup>, The Court underlined the importance of Transparency during election procedures to ensure society's confidence in a democratic system.

2.3. Introduction of the Electoral Bond Scheme (2018): The Electoral Bond Scheme aims at –

1. Reducing the influence of Black money on election financing.
2. Facilitating immaculate and clear political contributions through banking entities.
3. Maintaining the identity of donors to avoid civic retaliation.

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<sup>3</sup> Section 29C of the Act

<sup>4</sup> Section-80GGC of the Act

<sup>5</sup> Section- Section-182 of the Act

<sup>6</sup> <https://egazette.gov.in/WriteReadData/2017/175141.pdf>. Last Accessed on 24.02.2024

<sup>7</sup> (2002) 3 CIVLJ 296

<sup>8</sup> AIR 2003 SUPREME COURT 2363

However, the scheme differs markedly from world-leading practices in that it allows donors to remain completely anonymous, primarily due to concerns about possible misuse of funds.

#### 2.4. Criticisms of the Electoral Bond Scheme:

1. Large corporate donations were permitted without revealing the identities of the donors.
2. The possibility of undisclosed policy favours in return for financial contributions existed due to the anonymity of donors.
3. The scheme did not have sufficient measures in place to prevent misuse.

The constitutional discussion in the *ADR v. Union of India (2024)* case is grounded in the historical and legal background of electoral funding reforms.

### **3. Facts of the Case**

3.1. Petitioners: Association for Democratic Reforms (ADR): ADR, an NGO known for its advocacy for electoral changes, submitted a petition to challenge the electoral bond scheme because:

1. The scheme infringed on voters' right to information as stated in Article 19(1)(a).
2. It violates the principle of free and fair elections set out in Article 324 of the Constitution.
3. It facilitated a quid pro quo agreement and increased the power of corporate dominion in policymaking.

The ADR case indicates externally that the scheme favoured a public party disproportionately, given their control over the State Bank of India (SBI), the sole authority empowered to issue the bonds in question and supervise the electoral bonds.

3.2. Respondent: Union of India: The Union of India defended the scheme by stating that:

1. Electoral Bonds replaced unregulated cash donations with traceable banking instruments.
2. Anonymity was crucial to protect political donors from backlash or intimidation.
3. SBI's supervision and documentation provided adequate measures to prevent misuse.

### 3.3. Key Provisions of the Electoral Bond Scheme:

1. Electoral bonds could only be purchased through SBI.
2. They came in denominations ranging from ₹1,000 to ₹1 Crore.
3. Both individuals and corporations were allowed to buy bonds.
4. Public parties receiving contributions through electoral bonds were not necessary to reveal donors' identities.

In the present situation, the main dispute arises from the chasm between donors' secrecy and voters' willingness to be clear.

## 4. Legal Questions Posed by the Court:

The Supreme Court raised the following constitutional queries:

- **Breach of Right to Information:** Does the Electoral Bond Scheme infringe on the right of voters to Information, which is an important element under Article 19(1)(a)?
- **Evident Arbitrariness:** Is the scheme arbitrary and in violation of Article 14
- **Justification for Restrictions under Article 19(2):** Can maintaining donor anonymity be considered a reasonable restriction under Article 19(2)
- **Impact on Electoral Democracy:** Does the scheme, as described in Article 324, jeopardize the morality of free and fair elections?

These queries formed the legal foundation for the Court's discussions.

## 5. Points Presented by the Petitioner

### 5.1. Assertion of Right to Information:

The applicant claims that voters have a Fundamental right to know the identity of individuals and entities funding the political parties. They referred to the case of India v. ADR 2002, where the Supreme Court underlined the need for transparency in the electoral process.

### 5.2. Manifest Arbitrariness: The petitioners claimed that the scheme was arbitrary because it:

1. Lacked safeguards to prevent misuse,
2. Did not ensure accountability
3. Disproportionately favoured ruling parties.

### 5.3. Undermining Electoral Democracy:

Relative confidence in democratic operations is reduced by undisclosed

contributions. Anonymity fosters excessive corporate influence and distorts election results.

#### 5.4. International Norms:

In order to avoid the capture of directives and corruption, the petitioner provides a list of the best practices in the world where clarity in government financing is given priority.

## 6. Arguments Presented by the Respondent

In support of the constitutionality of the Electoral Bond Scheme (EBS), the Union of India provides a multi-sided argument based on policy objectives, legal reasoning, and pragmatic considerations in support of the benefits of the scheme.

#### 6.1. Reduction of Black Money in Politics:

The main objective of the administration when implementing the electoral Bond Scheme was, to eliminate the question of unaccounted cash support, which has been a longstanding problem in Indian elections. The scheme ensures that electoral bonds are compulsory to be bought through the State Bank of India and must be subject to KYC (Know Your Customer) Compliance, ensuring that:

1. Donor identity documents were recorded at the bank level, reducing the influx of illegal funds.
2. Public contributions were made using an evident fiscal method, thereby reducing the reliance on cash exchanges.

It was stressed that the system allowed funds to be diverted beyond the depository level even though the identity of the supporters was not disclosed to the public.

#### 6.2. Safeguarding Donor Confidentiality:

As a mandatory reason to continue donor anonymity, the administration mentions the threat of political persecution. Benefactors faced harassment, retaliation, or otherwise financial repercussions if their political contributions were made public in a politically divided atmosphere. Anonymity is an essential safety measure for individuals and organizations to support public bodies without fear of retaliation. To justify the guarantee, the Authority mentioned instances of targeted harassment of promoters during previous election campaigns.

#### 6.3. Oversight by the State Bank of India and Regulatory Mechanisms:

The sole responsibility for publishing and delivering electoral bonds was conferred

upon the pronouncement of the financial institution of the Republic of India, SBI. The Government claimed that the current centralized framework ensures robust supervision and accountability since:

1. SBI meticulously recorded each transaction involving bond purchases.
2. Governing bodies, such as the Enforcement Directorate and the Tax Departments, could continue to have access to such files in cases of suspected misappropriation.

#### 6.4. Proportionality and Reasonability:

According to the respondent, the Electoral Bond Scheme complies with the Principle of Proportionality established in the *Modern Dental College and Research Centre v. State of Madhya Pradesh (2016)*<sup>9</sup>. That a restriction on necessary immunities should be considered justifiable, providing:

1. It serves a legitimate purpose.
2. To that end, the procedures that we are familiar with are necessary.
3. There is to be a proper balance between the restriction and the objective pursued.

The Union believed that the system adequately balances transparency and donor confidentiality, while furthermore actively pursuing the legitimate goal of minimizing illicit funds in politics.

#### 6.5. Worldwide Comparisons:

The government mentioned approaches to donor anonymity in certain global areas, such as the USA and Canada, where comparable Privacy Provisions exist in exact scenarios. Essentially, the Union relied on the argument that the Electoral Bond Scheme was a rational, proportionate, and simple solution to deal with the problem of illicit funds in Indian elections.

## 7. Key Findings and Findings of the Court

In its analysis, the Supreme Court of India closely examined the conflicted arguments concerning transparency versus anonymity, the appropriate way of separating donors, and the essential principles of fair and free elections. The Court has made many significant observations.

- 7.1. Right to Information under Article 19(1)(a): It was affirmed by the Court, with reference to previous cases like *Union of India v. ADR (2002)* and *PUCL v. Union*

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<sup>9</sup>(2016) 7 SCC 353

of India (2003). It was emphasized that the disclosure of political funding sources is essential for public trust in the electoral process.

1. Voters have a fundamental right to be informed about political funding sources, which directly impacts public trust in elections.
2. Transparency in political funding is not just a preference but a constitutional requirement to ensure fair and free elections.

7.2. Doctrine of Manifest Arbitrariness: The Court referenced the principle of manifest arbitrariness from *Shayara Bano v. Union of India*<sup>10</sup> (2017) and determined that:

1. The anonymity provision in the Electoral Bond Scheme lacked sufficient safeguards against misuse, opacity, and potential corruption.
2. The scheme did not find a proper balance between transparency and donor confidentiality, thus violating Article 14 of the Constitution.

7.3. By applying the proportionality doctrine: The Court concluded that,

1. While the goal of curbing black money was valid, the method of donor anonymity was excessive and unreasonable.
2. There were alternative measures that could achieve the same aim without compromising voters' right to information.

7.4. In terms of regulatory oversight by SBI:

1. The Court observed that although the State Bank of India was responsible for oversight, its role was limited to maintaining records and did not ensure real-time public accountability.
2. The absence of disclosure mechanisms made the regulatory measures insufficient.

7.5. Influences on Electoral Democracy:

1. The Court underlined the importance of overseeing free and fair elections as a key aspect of the Charter.
2. There should be no excessive corporate influence in elections, as this can distort policy rankings and weaken democratic obligations.

In Conclusion, the Court of Justice held that donors were subject to excessive secrecy as compared with voter transparency, violating Articles 14, 19(1)(a) and 324 of the Constitution.

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<sup>10</sup>AIR 2017 SC 4609

## 8. Decision and Rationale of the Court

After a thorough examination, the Supreme Court of India issued a new rule of Law, Declaring key provisions of the Electoral Bond Scheme to be Unconstitutional.

### 8.1. Principal Decisions:

1. The provision of anonymity under the Electoral Bond Scheme has been ruled out in light of Article 19(1) (a) (right to Information).
2. The scheme was assessed as being blatantly arbitrary and thus illegal, under Article 14.
3. The government was instructed to establish stringent transparency measures in electoral funding.
4. The State Bank of India (SBI) was directed at disseminating the details of the previous election bond transactions to society.

### 8.2. The rationale of the Court:

1. **Transparency over Anonymity:** In a democracy, voter access to information is of paramount importance compared to donor Anonymity about government contributions.
2. **No Absolute Privacy:** Gifts to the Political Party, unlike personal transactions, have public implications and cannot maintain complete privacy.
3. **Free and Fair Elections:** The Court reiterates the fact that opaque political contributions undercut electoral democracy and reduce the courage of the people in the institutions.

This decision sets a precedent emphasizing the principle that transparency is essential in electoral democracy.

## 9. Comparison with International Standards

When examining the Electoral Bond Scheme (EBS), the Supreme Court looked closely at procedures concerning government financing, donor anonymity, and transparency about international practices. This review is intended to identify how the EBS aligned or diverged from them.

- 9.1. United States of America: The Federal Election Campaign Act (FECA)<sup>11</sup> and the Federal Election Commission (FEC) regulate political contributions in the United States very strictly.

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<sup>11</sup><https://www.govinfo.gov/content/pkg/COMPS-985/pdf/COMPS-985.pdf>. Accessed on 22.11.2024

1. Disclosure standards shall remain in place for contributions exceeding a specified limit, revealing information on donors, extent, and recipients.
2. While some super PACs (Political Action Committees) allow anonymous sponsors, they monitor and deal with criticism in detail.
3. Law of the United States, in order to avoid excessive scrutiny while safeguarding the confidentiality of smaller donors, the Regulation stresses the disclosure of large support.

Nevertheless, a key observation is that there are several failures in Super PAC funding in, the U.S. Compared to India's election bond scheme, the system maintains a higher degree of transparency in public contributions.

9.2. United Kingdom: The Political Parties, Elections, and Referendums Act of 2000<sup>12</sup>, enforced by the Electoral Commission, oversees public financing in the UK.

1. Visibility Guidelines: Parties shall disclose contributions exceeding £7,500 for overseas campaigns and £1,500 for domestic campaigns.
2. Corporate contributions: The companies must show that the contributions have been approved by shareholders and published in their annual financial reports.
3. Oversight Independence: The Electoral Commission possesses strong auditing powers to ensure compliance.

The main point of view is that the UK uses a highly transparent system, monitored rigorously on both a personal and corporate level, ensuring no significant opacity.

9.3. Germany: The country strictly regulates the transparency of government financing through the use of The Public Parties Act (Parteiengesetz)<sup>13</sup>.

1. All contributions exceeding the amount of 10,000 Euros must be published together with donor information.
2. Anonymous donations greater than 500 Euros are prohibited.

9.4. The comparative study underlines three essential lessons for India:

1. Ordering Transparency above anonymity: Most established Democracies prioritize public disclosure of significant political contributions.
2. A robust oversight mechanism: Such as the FEC of the United States and the Electoral Commission of the UK play an important role in ensuring compliance.

<sup>12</sup><https://www.legislation.gov.uk/ukpga/2000/41/contents>. Accessed on 22.11.2024

<sup>13</sup>[https://www.bmi.bund.de/SharedDocs/downloads/DE/gesetzestexte/Parteiengesetz\\_PartG\\_engl\\_042009.pdf?\\_blob=publicationFile&v=2](https://www.bmi.bund.de/SharedDocs/downloads/DE/gesetzestexte/Parteiengesetz_PartG_engl_042009.pdf?_blob=publicationFile&v=2). Accessed on 22.11.2024

3. State Funding as an Alternative: Community investment as an option can reduce dependence on opaque intimate donations.  
India's electoral Bond Scheme failed to align with these international best practices, especially under donor anonymity and supervisory mechanisms.

## 10. Impact of the Judgment

The decision of the Supreme Court in the case of Association for Democratic Reforms v. Union of India (2024) is set to have significant impacts on electoral funding, political accountability, and the integrity of democracy in India.

### 10.1 In terms of the Political Funding Landscape:

1. There is now a requirement for political parties to reveal the identities of major donors, leading to increased transparency.
2. The ruling prevents large anonymous donations, thereby reducing the potential for corrupt practices.
3. Smaller political parties are less likely to be overshadowed by the financial power of larger ruling parties, creating a more level playing field.

### 10.2. Regarding corporate donations:

1. The judgment is expected to discourage excessive corporate influence on decision-making processes.
2. Companies will need to seek approval from shareholders and face public scrutiny before making substantial contributions.

### 10.3. About strengthening democratic norms:

1. Transparency in political funding can help restore public trust and enhance voter confidence in the electoral system.
2. Political parties will be subject to greater scrutiny concerning their financial activities.

### Regarding institutional oversight:

1. Agencies such as the Election Commission of India (ECI) and the State Bank of India (SBI) will take more proactive steps to enforce transparency regulations.
2. There may be new rules introduced for real-time disclosure of political donations.

### 10.4. Long-term Reforms:

1. The decision could pave the way for extensive changes in electoral funding, including possible discussions on government funding for elections.

2. Amendments to the Representation of the People Act (RPA) and other relevant laws may be introduced to ensure transparency becomes standard practice.

## **11. Critical Analysis of the Judgment:**

The Supreme Court's ruling is widely seen as a win for transparency and democratic elections, but it also raises some important questions for further consideration.

### 11.1. Strengths of the Judgment:

1. The Court's affirmation of Fundamental Rights, particularly Article 19(1)(a), highlights the importance of the right to information in political processes.
2. Emphasis on public accountability and finding a balance between donor privacy and voter transparency are also laudable aspects of the ruling.

### 11.2. Weaknesses of the Judgment:

1. While the Court struck down certain parts of the existing scheme, it did not provide clear guidelines for future reforms or suggest alternative frameworks for electoral financing.
2. Enforcing transparency requirements may prove to be a challenge for the Election Commission of India (ECI), and the potential of state funding as an alternative to private donations was not adequately addressed.

### 11.3. Challenges in Implementation:

1. Resistance from major political parties that benefit from undisclosed donations could hinder the implementation of transparency reforms.
2. Regulatory bodies like the ECI and SBI will need to strengthen their institutional capacity and independence to effectively enforce the Court's decision.

### 11.4. Wider Implications for Democracy:

1. A standard for the interpretation in favour of transparency over arbitrary state action.
2. Moreover, in cases where the executive branch exceeds its powers, it reinforces the obligation of the legal system to defend democratic standards.

## **12. Recommendations for Electoral Funding Reform:**

1. Compulsory real-time disclosure of political contributions exceeding a certain threshold should be made on top of society channels immediately.

2. To avoid undue influence on policy-making, a restriction on corporate contributions should be reinstated.
3. The enrichment of the Oversight Authority of the Election Commission of India (ECI) entitles the Commission to additional independence and resources for oversight.
4. Enforce State Funding to reduce reliance on private contributions.
5. Community Accessibility of Information ensures that voter information on government contributions can be easily accessible on a centralised electronic platform.

### 13. Conclusion

The case of the Association for Democratic Reforms and Another v. Union of India and Others, marks a crucial moment in India's democratic evolution. The Supreme Court confirms its commitment to fundamental ethics and voter consent by invalidating a part of the Electoral Bond Scheme, which impedes clarity.

While the ruling is a significant step forward, its success will ultimately depend on its effective functioning, institutional autonomy, and political will. India needs to move forward with reforms of electoral finance in line with international best practices, promoting openness, trustworthiness, and fairness in government financing.

The judgement stands as a notification of the judicial system's responsibility for the protection of democracy, reminding citizens and political institutions alike that transparency is not just a Constitutional imperative.