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## THE LEGAL CONTROVERSY SURROUNDING ELECTORAL BONDS IN INDIA: A CONSTITUTIONAL DILEMMA

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### ABSTRACT

The introduction of Electoral Bonds in India has sparked a significant constitutional debate, particularly concerning their impact on transparency and fairness in political funding. This paper critically examines the unconstitutional nature of Electoral Bonds, focusing on the landmark Supreme Court ruling that declared them unconstitutional. The Court's decision was grounded in concerns over the opacity they introduce into the electoral process, undermining the right to information and violating principles of free and fair elections. The paper also explores the widespread opposition to Electoral Bonds, highlighting concerns raised by civil society, opposition parties, and legal experts who argue that these bonds facilitate unchecked corporate influence and foster corruption. The Supreme Court's rationale for striking down the scheme is analysed in detail, including its emphasis on the constitutional mandate for transparency in political financing.

Furthermore, the paper delves into the immediate and long-term impacts of the ruling, considering the broader implications for India's democratic processes and electoral integrity. The aftermath of the verdict, including potential legislative and policy changes, is also discussed. This analysis aims to contribute to the ongoing discourse on electoral reforms and the need for a more transparent and accountable political funding mechanism in India.

**KEYWORDS:** Electoral Bonds, Supreme Court, Transparency, Political Funding, Constitutional Law

### INTRODUCTION

The funding of political campaigns in India has historically been questionable due to the lack of transparency and accountability around parties and candidates. In 2017, the Modi administration proposed the introduction of electoral bonds as an attempt to clean up election funds by increasing transparency and decreasing cash transactions. The scheme, which allowed anonymous contributions to political parties through State Bank of India branches, was initially defended as a solution to cash equivalents. Still, opposition parties, transparency campaigners, and constitutional experts argued that it legitimised corporations making unlimited payments without disclosing their identities. The anonymity of donors has been criticised for violating citizens' basic right

to be informed about political party financial foundations. The Representation of the People Act required declarations for donations exceeding 20,000 rupees, and electoral bonds were viewed as a step in the wrong direction, eliminating limits on contributions and watering down transparency. By March 2018, the bond program began accepting subscribers, with the governing BJP controlling over 95% of the total. Large firms purchased most of the bonds offered in 2019-20, totalling Rs 5000 crore.<sup>247</sup> As the general elections approach, the inspection of electoral bonds has become more intense, with opposition parties arguing that the plan benefits the governing party while harming their fundraising efforts. The Supreme Court ruled the

<sup>247</sup> Sharik, M. D. "Electoral Bonds: A Critical Study." Issue 2 Indian JL & Legal Rsch. 4 (2022): 1.

plan unlawful and arbitrary, a significant victory for transparency. The full effect of the scheme depends on the disclosure of bond transactions to determine who gave what amount of money to which party. The public must be aware of contributors interested in shaping policies and governance to ensure free and fair elections.<sup>248</sup>

### **SUPREME COURT RULING DECLARING BONDS UNCONSTITUTIONAL**

The Supreme Court of India has declared the Electoral Bond Scheme unconstitutional and unlawful, stating that it significantly hindered openness in political fundraising and violated the basic right of people to access information. The scheme allowed political parties to receive money from anonymous donors, which was facilitated by the 2017 revisions to the Finance Act and the Representation of the People's Act. The administration aimed to increase transparency and reduce illegal money used to finance elections. The Bharatiya Janata Party (BJP) received 95% of the approximately Rs 16,000 crores given via electoral bonds between 2018 and early 2022.<sup>249</sup>

In 2017, a number of public interest litigations (PILs) were submitted, each of which challenged the constitutional legitimacy of the system. The petitioners included non-governmental organisations (NGOs) who are working on election changes, such as the Association for Democratic Changes, as well as political parties that are in opposition. According to Article 19(1)(a) of the Constitution, the suits alleged that the removal of disclosure requirements for political contributions violated the people's right to know. Under the provisions of Article 19(1)(a), the basic right to freedom of speech and expression is protected. According to the Supreme Court's interpretation, this includes the right to information about public issues and candidates in order to guarantee that voters are able to make informed

decisions. According to the petitioners, this right was being infringed since bonds were being used to conceal the names of political donors and the quantities of money they contributed.<sup>250</sup>

The administration questioned allegations that electoral bonds would enhance transparency by routing contributions via banking channels rather than illegitimate cash. The anonymity of donors was suggested as a compromise between openness and privacy, aiming to discourage people and organisations from giving to political parties. The Supreme Court initially heard the case in 2021, but due to significant issues with individuals' rights, the appeal was referred to a larger constitutional bench in April 2022. Hearings began in October 2022, and a unanimous decision was reached that the program was unlawful.<sup>251</sup> The court concluded that the right to information may only be restricted for compelling grounds, such as public order or national security. The stipulation for anonymity in political contributions fails to adhere to reasonable constraints, and the state cannot elevate privacy concerns over transparency, therefore infringing upon a basic democratic right. The electoral bond scheme failed to meet its objectives since anonymous donations did not diminish the prevalence of illicit funds. The removal of limits on corporate donations has further moved power to the interests of large corporations. This historic ruling represents a win for voters' rights, openness, and accountability, emphasising the need for transparency in removing questionable interests from political funding.

### **ELECTORAL BONDS AND HOW THEY OPERATE**

#### **Bonds Allowed Anonymous Political Donations**

Electoral bonds in India have been controversial due to their ability to allow anonymous contributions to political parties. These bonds

<sup>248</sup> George, A. Shaji. "The Unconstitutional Nature of Electoral Bonds in India: Impacts on Political Transparency and the Democratic Process." PURIP 2, no. 1 (2024): 150-164.

<sup>249</sup> Prakash, Bhaswat. "Interpreting the Illicit Nexus of Ruling Party in form of "Electoral Bond Scheme": After it being declared as "Unconstitutional" by Apex Court." Available at SSRN 4816678 (2024).

<sup>250</sup> Rathee, Himangshu. "Electoral Bonds Scheme & Election Finance: A Systematic Process to Imbalance the Electoral Level Playing Field." A Landmark on the Indian Constitution 224 (2023).

<sup>251</sup> Kumar, Dinesh. "The Supreme Court's Verdict on Electoral Bonds: Proposing a New Framework for Political Funding in India." Available at SSRN 4764454 (2024).

were bearer documents, with no buyer or payee's name printed on the certificates. They could be purchased at State Bank of India branches, and the recipient would give the bond to their chosen political party, which would then cash it within fifteen days. The amount of the gift would be brought to the party's account by SBI, and the party would deposit the bond into their account.

The use of electoral bonds facilitated substantial anonymous donations, including contributions from corporations and international entities, without requiring donor identification. This led to "legalised money laundering" by activists, who referred to it as "legalised money laundering."<sup>252</sup> The government defended anonymity, claiming that public disclosure would convince funders to refrain from donating to political campaigns. Critics argue that the citizen's right to know where substantial financing for political parties comes from is more important than privacy. Anonymity has led to the absence of transparency in political funding and the undermining of fair elections. Democracy is distorted when political parties receive money from unknown sources, as seen in corporate bonds, which allows the governing party to engage in cronyism with large corporations.

Experts argue that electoral bonds have enabled parties to receive anonymous money from foreign sources, obscuring foreign influence in domestic politics. The removal of caps and transparency increased the level of anonymity, with the governing BJP receiving almost 95%<sup>253</sup> of all contributions for electoral bonds. India had open reporting standards for party fundraising before bonds, but the idea of anonymity degraded transparency, leading to genuine investigations by courts and civic society.

### Donors Bought Bonds from SBI Branches

The SBI became the sole banking entity responsible for the issuance and selling of electoral bonds to contributors following the implementation of the electoral bond program. The bank established designated offices throughout India, with 29 branches initially located in large cities. Over time, the list expanded to include hundreds more branches nationwide. The SBI provided a range of bond denominations, from Rs 1,000 to Rs 1 crore, in increments of Rs 1,000, Rs 10,000, Rs 1 lakh, Rs 10 lakh, and Rs 1 crore. To acquire a bond, buyers provided the bank with basic KYC data, such as their name, address, and PAN number.<sup>254</sup> The bank did not disclose the identities of individuals who purchased electoral bonds to any other party, including the general public, the Election Commission, or any other body. The buyer contributed to the SBI account, either in cash or electronic transfer, and designated the political party they wanted to support. Within fifteen days of the bonds' issue, the parties were required to deposit the bonds into their respective accounts or face redistribution.

From March 2018 to October 2022, SBI branches offered election bonds to donors with a total value of over Rs 16,000 crores.<sup>255</sup> However, the bank did not provide information about who purchased how many bonds and for which organisations. This has raised concerns about money laundering and the rationale behind SBI's use as a vehicle for facilitating anonymous political contributions. The SBI justified its position by referencing the rule of law and stating that it was only carrying out obligations in accordance with a lawfully established plan.

### Bonds Funnelled Donations to Political Parties

A new way for anonymous contributions to reach political parties discreetly is via the electoral bond system. A donor might "funnel"

<sup>252</sup> Kumar, Ravinder. "Understanding Electoral Bonds in India: Transparency or Ambiguity?" *Excellencia: IMDJE (2994-9521)* 2, no. 7 (2024): 444-453.

<sup>253</sup> Kumar, Ashutosh. "The Role of Money in India's Elections: How Effective Is the Political Finance Regime?" *Millennial Asia* (2024).

<sup>254</sup> Venkatramani, R. "First Dr. KC Ramamurthy Endowment Lecture on Constitutional Governance & Public Policy from an Indian Perspective." *CMR Univ. J. Contemp. Legal Aff.* 5 (2023): 7.

<sup>255</sup> Ananda, D. "Electoral bonds: a peril to democracy and transparent elections in India." *Journal of Liberty and International Affairs* 9, no. 1 (2023): 89-100.

the bond they bought from SBI to any political party on the voter registration list. Within fifteen days of receiving the bond certificate, the obligee was required to deposit it into their official bank account. After the party's account is credited with the contribution amount, the bank will get the encashed bond. This established an untraceable pathway for contributions to go straight into party coffers. Political parties used to be required to disclose the identities of contributors and the amounts donated via electoral trusts in order to accept corporate contributions in accordance with RBI regulations. By doing away with these rules, electoral bonds made it possible to channel a limitless amount of money secretly. According to reports that examined bond contributions, the plan was mostly beneficial to the governing Bharatiya Janata Party. The Bharatiya Janata Party (BJP) received about 75% of the anonymous bond money, or over 12,000 crores, out of a total of 16,000 crores contributed between 2018 and 22. Claiming that bonds were a conduit for anonymous "bribes" to the BJP, the Congress earned a meagre Rs 800 crore or 5%.<sup>256</sup> The administration said that the political parties in power were unfairly enriched and that democratic accountability was undermined due to the direct anonymous transfer of funds from unknown sources, including international corporations.

## OPPOSITION TO ELECTORAL BONDS

### No Limits on Corporate Donations

Critics have out that the electoral bonds model enabled corporations to donate to political parties without limits, which led to unchecked corporate spending. Sceptics contend that corporations may be using their anonymity to fund endless donations, which might undermine democratic accountability. Protesters pointed out that corporations contributed a disproportionately large amount to political parties and candidates (almost 95% of the Rs 16,000 crores) that were bought in the election

bonds market between 2018 and 2022.<sup>257</sup> These things caused many to worry that there was a systemic problem with corruption and that political parties were using big business to influence policy. Transparency advocates said that doing away with restrictions and disclosure rules was a twofold distortion, while government officials said that limiting contributions would force corporations to use underground methods to reinvest their money. Similar restrictions on corporate donations are still adhered to by the majority of major democracies, including the United States, the United Kingdom, and Germany. On the other hand, anonymity-fueled limitless corporate influence became possible once India removed restrictions. Despite the fact that the Election Commission had previously described electoral bonds as having "adverse transparency implications," the administration still went ahead and implemented the program without consulting anybody.

### Concerns Over Lack of Transparency

Electoral bonds in India have been criticised for reducing transparency in political finance, as they allowed anonymous donations without disclosure of donor information. This contradicts the transparency requirements set by the Reserve Bank of India (RBI) to clean up electoral finance. Between 2018 and 2022, over 16,000 crore rupees were contributed via electoral bonds, but there was no transparency about donor information.<sup>258</sup> Critics argue that reducing transparency would make it easier for unlawful funds to be contributed to political parties through electoral bonds, and even performers from other countries can give anonymously. The investigation on electoral bonds by a Parliamentary Standing Committee found that transparency in campaign finance is a hallmark of all modern democracies. However, electoral bonds allowed infinite anonymous payments to be sent directly to political party accounts via a

<sup>256</sup> Jain, Reema. "Electoral Bonds: A Key-Hold Analysis." Issue 2 Int'l J.L. Mgmt. & Human. 4 (2021): 419.

<sup>257</sup> Biju, Nikhil, and Soyansu Shreyan Das. "Bondage of the Electorate and Electoral Bonds." Part 2 Indian J. Integrated Rsch. L. 2 (2022): 1.

<sup>258</sup> Shaikh, Abdul Ahad. "Electoral Bonds: An Unconstitutional Path for Democracy." *Jus Corpus* L.J 4 (2023): 141.

public sector bank, leading to the introduction of unaccounted-for funds into the democratic system. The removal of transparency criteria and the introduction of unaccounted-for funds further exacerbated the issue.

### Violation of Right to Information

The Supreme Court of India has raised concerns about the constitutionality of electoral bonds, asserting that they infringe upon Article 19(1)(a) of the Constitution, which guarantees the fundamental right to information. The opacity surrounding the funding of political parties through these bonds is viewed as an unconstitutional violation of the public's right to be informed about the influences and interests behind their elected leaders and policy decisions. The repeal of disclosure rules has diminished accountability, leading to a massive knowledge gap around essential parts of the democratic process, referred to as state-sponsored corruption. The openness of political money is crucial for free and fair elections worldwide, as without knowledge about the sources of cash, funding quantities, and interests involved, organisations can exert excessive and unlawful influence. The Supreme Court has affirmed the importance of openness in elections as a fundamental component of the right to vote meaningfully and freedom of speech. Critics argue that electoral bonds do not satisfy the conditions necessary to justify halting such an important flow of information.

### SUPREME COURT RULING AND RATIONALE: ASSOCIATION FOR DEMOCRATIC REFORMS V UNION OF INDIA<sup>259</sup>

#### Bonds Violated RTI

The Supreme Court, in a landmark ruling, held that electoral bonds infringed on a citizen's fundamental right to access crucial information under the Indian Constitution. By facilitating unrestricted anonymous donations to political parties, these bonds deprived voters of key details necessary for making informed decisions during elections. The Court

emphasised that the right to information, as protected under Article 19(1)(a), can only be restricted on specific grounds such as national security, public order, or the integrity of the nation. However, the secrecy surrounding political contributions did not meet the criteria for such restrictions.

The bench ruled that openness in political funding is vital to maintaining the integrity of elections. Without transparency regarding who is financing political parties and what interests these donors represent, the fairness of elections is compromised. The anonymity provided by electoral bonds conceals significant details about the forces influencing policy and governance. By siding with the petitioners challenging these bonds, the Court asserted that eliminating transparency and imposing no limits on political contributions undermines democratic principles. The judgment pointed out that most advanced parliamentary democracies enforce transparency in political funding to prevent misuse and corruption.

The Court also highlighted that opaque funding systems breed corruption and distort public policy, leading to decisions driven by financial backers rather than the public good. In such a scenario, policies could be influenced by political quid pro quo between ruling parties and large donors. By masking the identity of contributors, the system shields these improper influences from scrutiny.

While the government defended the bonds on the grounds of protecting donor privacy, the Court ruled that the public's right to transparent electoral processes takes precedence. Political parties and their candidates who seek public office voluntarily enter the arena of public accountability. Therefore, the electorate has the right to know the financial backing behind those vying for power. By deeming electoral bonds unconstitutional, the Court reinstated transparency in political donations. It also mandated that all bond-related transactions be disclosed to the Election Commission for public oversight, thereby striking down

<sup>259</sup> 2024 INSC 113

anonymity as an undue violation of the public's right to know. This verdict has been widely praised by experts for upholding the importance of informed voting in a democratic system, ensuring that the financial powers behind political parties are revealed.

### **Failed to Curb Black Money as Claimed**

The Supreme Court invalidated electoral bonds due to their failure to achieve the declared objectives of eradicating black money and enhancing transparency in political fundraising. This was a fundamental principle behind the Supreme Court's rationale for invalidating electoral bonds. By mandating that contributions be made via official banking channels, the administration had said that electoral bonds would both broaden the scope of the formal economy and reduce the amount of illegal cash that was used in elections. The court, however, could not find any evidence to support the claim that the system had resulted in true openness or a reduction in shadowy money. The report observed that electoral bonds, in reality, made it possible for illegal funds to be transferred to political parties via a new channel. In order to encourage opacity rather than openness, electoral bonds were removed from the equation. This was accomplished by eliminating the necessity for transparent reporting of contributions, as well as reducing limitations on donations.

Over seventy-five per cent of the sixteen thousand crores of rupees that were contributed via electoral bonds were given to the party that was in power at the time.<sup>260</sup> This concentration of contributions was not indicative of a decline in illegal fundraising; rather, it suggested a lack of openness and accountability. It has been observed by specialists that electoral bonds may have just consisted of a transfer of illicit funds from cash to banking channels. It is still possible to create shell firms to carry out anonymous bond purchases with illegal cash and then contribute

those bonds to political parties. As a result of a lack of transparency, bonds actually legitimised unlawful contributions, which was the opposite of what they were intended to do. As a result of the removal of restrictions on political donations, electoral bonds introduced a floodgate of opportunities for money laundering via the use of a valid instrument. It has been brought to the attention of the Association for Democratic Reforms that opaque bonds prove to be more detrimental than monetary contributions. It is at least true that the latter left some paper trace.

The United States Supreme Court came to the conclusion that electoral bonds, in practice, undercut transparency, impeded regulatory control on contributions, and encouraged a culture of lacking responsibility. Because of this, assertions that black money might be reduced via banking systems became a hollow reason. In the process of upholding the right to information, the Court observed that transparency rules are measures that are considered worldwide to be effective in preventing illegal financing in politics. According to the government's assertions, bonds did not succeed in cleaning up political money since they allowed contributors to remain anonymous. This strong finding that electoral bonds do not make a real impact on black money in elections is important, according to experts at the relevant institution. This reaffirms the Court's belief that opacity is a breeding ground for illegality, while openness makes it possible to make oversights.<sup>261</sup>

### **Prioritised Donor Privacy Over Transparency**

The Supreme Court has ruled that the electoral bonds scheme unfairly prioritises the privacy of donors over the need for transparency in political funding. By treating donor anonymity as crucial to protecting privacy, the scheme undermines citizens' right to be informed about the sources of election-related finances. The

<sup>260</sup> Shaikh, Abdul Ahad. "Electoral Bonds: An Unconstitutional Path for Democracy." *Jus Corpus LJ* 4 (2023): 141.

<sup>261</sup> Mehrotra, Abhinav, and Amit Upadhyay. "Electoral Bonds: What the SC judgment means and how political funding is regulated in western democracies." *ABP Live* (2024).



government had argued that shielding donor identities was necessary to prevent possible retaliation against individuals or organisations that financially support political parties. However, the Court found this broad anonymity approach excessive and not appropriately balanced with transparency. The Court noted that under existing laws, donations exceeding Rs 2000 are already required to be disclosed to the Election Commission. The electoral bonds scheme, by contrast, eliminated this transparency requirement rather than carving out specific exceptions for certain donors. The Court emphasised that the public's right to access information can only be limited in very specific cases, such as to protect public order or prevent incitement, which donor privacy does not justify. Thus, donor anonymity under the scheme did not qualify as a reasonable restriction on the public's right to information.<sup>262</sup>

Experts emphasise that the Court has made it clear that privacy cannot be used as a blanket excuse to withhold information of public interest, particularly in situations involving potential conflicts of interest like political financing. In a democratic society, transparency is the guiding principle. The Court also pointed out that by running for office, political parties and candidates willingly accept public scrutiny. The sources of their financial backing are critical for public awareness, allowing voters to determine whether these funds come from legitimate, above-board sources before making electoral decisions.

By invalidating the electoral bond system, the Court rejected the idea that shielding political funding information in the name of privacy could be justified. It highlighted that voters have a right to understand whether significant contributions from donors could lead to a favourable treatment or undue influence on political decisions. Legal scholars have praised the ruling for affirming that transparency in matters like election financing is crucial in a

democracy. It promotes honesty, fosters accountability, and helps prevent conflicts of interest from arising.<sup>263</sup>

## IMPACTS AND AFTERMATH OF THE RULING

### Disclosure of Donor Details Ordered

The Supreme Court's ruling on electoral bonds mandated the government to disclose information on all donors and contributions associated with the contentious bonds. The Court noted that ensuring openness in political financing is crucial for free and equitable elections. Consequently, it mandated the immediate public disclosure of all information pertaining to electoral bond transactions.

According to the order, the State Bank of India, which issued the bearer bonds, must provide comprehensive information to the Election Commission within four weeks. This details the purchasers, quantities of bonds acquired, dates of purchase, and denominations involved. Furthermore, SBI is required to disclose which political parties later redeemed the bonds and received the corresponding contribution sums in their accounts. Although parties are not now legally mandated, the Court said that all parties must voluntarily disclose the amounts collected via bond contributions.

This departure from anonymity is a significant victory for openness. The initiative facilitated political contributions exceeding Rs 16,000 crores without disclosing donor identities or amounts.<sup>264</sup> This opacity will be revealed by a systematic disclosure of the entities that covertly financed each political party till now. The Court affirmed the citizen's entitlement to essential information about the funding of parties seeking political power. It observed that anonymous fundraising contradicts democratic values and may facilitate quid pro quo arrangements between parties and their substantial contributors.

<sup>262</sup> Prakash, Bhaswat. "Interpreting the Illicit Nexus of Ruling Party in form of "Electoral Bond Scheme": After it being declared as "Unconstitutional" by Apex Court." *Available at SSRN 4816678* (2024).

<sup>263</sup> *ibid*

<sup>264</sup> Yadav, Ramesh, and Kiran Yadav. "THE ELECTORAL BOND JUDGEMENT-A CRITICAL ANALYSIS: Recent Judgement on Electoral Bond." *Motherhood International Journal of Research & Innovation* 1, no. 01 (2024): 46-49.

Mandating transparency will reveal questionable funds transmitted via electoral bonds. Previously, any company, even illicit sources or foreign corporations, could anonymously contribute limitless amounts to political parties via bonds acquired at SBI offices. Legal experts have praised the verdict for emphasising openness and upholding voters' basic right to knowledge about election financing. This ensures transparency in democracy by facilitating the examination of financial impacts on candidates pursuing public office.

### Pre-bond Donation Rules Back in Effect

The Supreme Court ruling nullifying electoral bonds has reinstated the legislative framework regulating political party financing that was in place before the contentious bonds were issued in 2017. Experts say that this signifies a substantial regression in the standards of openness and accountability that were undermined by electoral ties. Regulations requiring the disclosure of contributions above Rs 20,000 have been reinstated.<sup>265</sup>

Prior to the introduction of electoral bonds, the Representation of People's Act mandated that political parties disclose donor identities and contribution amounts over Rs 20,000 to the Election Commission annually. This included the names, addresses, and PAN information of contributors. The company's legislation also limited corporate contributions to 7.5% of the average net income over the preceding three years. This restricted unrestricted financial contributions by registered corporations to political parties or candidates.

Electoral bonds nullified both of these regulations. Eliminating contribution limitations and transparency about contributors facilitated unfettered anonymous fundraising, perhaps from foreign and illicit sources. The Supreme Court determined that the anonymity of electoral bonds infringed upon citizens' right to

know and did not rectify political finance, as asserted. Consequently, it invalidated the revisions to the RPA and Companies Act designed to enable the bonds.

The pre-2017 status quo on openness in party fundraising has been restored. Activists have described it as a significant enhancement to India's electoral transparency system, which was compromised under the guise of electoral bond changes. Political parties are once again mandated to disclose the identities of all contributors and the corresponding sums to the Election Commission for donations over Rs 20,000. This will facilitate the public examination of the financial interests behind the parties. The 7.5% cap on corporate contributions is reinstated. This equalises the situation to some extent, contrasting the biased anonymous fundraising favouring the ruling party seen during the electoral bonds period from 2018 to 2022.<sup>266</sup>

### Implications for Ruling Party Funding and Upcoming Elections

The Supreme Court's order prohibiting electoral bonds is anticipated to substantially affect the financing of the governing Bharatiya Janata Party (BJP) in the lead-up to the 2024 general elections. Since 2018, around Rs 16,000 crores have been funded via electoral bonds, with the BJP receiving more than 60% or Rs 10,000 crores. The removal of anonymity from bonds has raised worries inside the party over potential reluctance from corporate contributors. Major corporations, especially state-owned behemoths that contributed substantially to the BJP via bonds, may have their information disclosed.

This may adversely impact the BJP's financing sources before significant state and national elections. The party is developing alternate strategies to generate funding without the anonymity afforded by bonds. Consideration is

<sup>265</sup> Patel, Shashank. "Unveiling the Privacy Dilemma: Unpacking the Supreme Court's Electoral Bonds Judgment & its Retroactive Ramifications for Donors." *Available at SSRN 4742040* (2024).

<sup>266</sup> George, A. Shaji. "The Unconstitutional Nature of Electoral Bonds in India: Impacts on Political Transparency and the Democratic Process." *Partners Universal Innovative Research Publication 2*, no. 1 (2024): 150-164.

being given to soliciting smaller individual contributions. The BJP may also advocate for alternative methods of political financing, such as electoral trusts that preserve a certain level of donor anonymity. Overall, financing is expected to be affected as corporate sponsors withdraw from contributing directly to the governing party's finances without a veil of secrecy.- The judgement reinstates financing from conventional individual contributors for national parties such as the Congress. With anonymity removed, those who previously hesitated to donate publicly using electoral bonds may resume transparent contributions up to Rs 20,000.<sup>267</sup>

Nonetheless, the broader financial ramifications are more detrimental for the ruling BJP, which benefited disproportionately from anonymous bond financing. The potential reduction of its accounts may affect the party's strategy for future election expenditures. Certain observers contend that the effect may be less severe due to the pre-existing patronage networks between major corporations and the governing party. Corporations engaged in policy influence may discover methods to continue financing while preserving an appearance of compliance. However, electoral bonds provided unmatched magnitude and obscurity. Their prohibition will certainly compel those parties reliant on substantial donor backing to reevaluate their political finance practices. This may influence electoral dynamics when financial limitations are implemented.

#### COMPARISONS TO POLITICAL DONATION RULES IN OTHER DEMOCRACIES

The controversy surrounding electoral bonds in India has sparked global discussions on the regulation of political funding in democratic nations. Countries such as the United States, the United Kingdom, Canada, and Germany are often referenced in these debates. Unlike India's system, most democracies require transparent

disclosure of political donations beyond a certain threshold to promote accountability. For example, in the United States, campaign donations over \$200 must be reported to the Federal Election Commission, with details about the donors, regardless of whether they wish to stay anonymous. Similarly, the United Kingdom imposes strict rules, capping individual donations between £500 and £2,500 depending on the organisation, and prohibits foreign donations. Any contribution exceeding £500 to political parties, either locally or nationally, must be reported to the Electoral Commission.<sup>268</sup>

In Canada, only individuals who are citizens or permanent residents are allowed to donate to political parties. Contributions from corporations, labour unions, or foreign sources are strictly banned. Each person can give up to \$1,600 per year to a political party, and any donation exceeding \$200 must be reported publicly. Meanwhile, in France, individuals can donate up to €7,500 per year to political parties, while companies can contribute up to €15,000. Contributions over €150 must be made public. Strict rules prohibit donations from foreign organisations and anonymous donors, and violations of these regulations can lead to criminal penalties.<sup>269</sup>

In Germany, an individual may not contribute more than one million euros annually to all organisations combined at any one instance. The annual value for firms must not exceed €1.5 million. Donations over fifty thousand euros must be publicly disclosed and are subject to scrutiny. Anonymous cash donations are restricted to a maximum of €500.<sup>270</sup>

Unlike these democracies, India's electoral bonds scheme permitted total anonymity for users, enabling unlimited political donations from entities based outside of India. The Supreme Court concluded that this did not

<sup>267</sup> Kalra, Kartik. "Conflicting Rights, Definitive Standards? On the Indian Supreme Court's "Double Proportionality" Experiment in the Electoral Bonds Case." *JuWissBlog* (2024).

<sup>268</sup> Kashyap, Anushka, and Gurupal Singh Gill. "Electoral Bond Scheme: The Legitimate Opacity in Political Funding." *Law Essentials J.* 1 (2020): 79.

<sup>269</sup> Padmanabhan, Dr Abhishek Sharma. "Electoral Bonds Scheme, 2018–A Death Kneel for Democratic Principles of Transparency and Public Disclosure of Political Funding's in India." *Elections, Democracy and Constitutional Morality in India, October* (2022).

<sup>270</sup> *ibid*

comply with global transparency norms. This decision re-establishes India's affiliation with other democracies.

Nonetheless, suitable limitations may still be essential to reduce harassment of actual individual donors while also ensuring transparency for all substantial gifts. To develop democratic accountability, the comparisons highlight the need for a balanced regulatory framework and the maintenance of transparency.

### THE IMPORTANCE OF ELECTORAL PROCEDURES THAT ARE FAIR AND TRANSPARENT POLITICIANS

In order to ensure that elections are conducted in a manner that is both free and fair, the Supreme Court's historic decision to invalidate electoral bonds has brought to light the vital need for openness and accountability in political fundraising. With the decision to prohibit anonymity for contributors, the Supreme Court of India has defended the basic right of citizens to access information in order to improve India's electoral democracy. The significance of this finding lies in the fact that elections are the fuel that keeps democratic regimes functioning. It is the degree to which people have trust in the election procedures and the fairness of those processes that determines the quality of democracy and government. The public's faith in political institutions may be eroded over time if opaque political finance is allowed to continue unchecked.<sup>271</sup>

It is a breeding ground for corruption, conflicts of interest, and policy distortions that are detrimental to the welfare of the general public when the boundaries of power may be determined by large-scale money flows that occur behind closed doors. Every member of the public has the right to be informed about the financial foundation upon which political parties and politicians run for office in order to acquire control over the legislative and administrative processes. In order to guarantee

that individuals are able to scrutinise whether or not parties support policies that large contributors favour after they have been elected, electoral money must be transparent. This kind of examination encourages accountability and protects against bargains that are made in exchange for something of value between political elites and the financial sponsors of those elites. Because of this, transparency becomes an essential component of democratic processes that are free, fair, and ethical.<sup>272</sup>

The Supreme Court of India has decisively reinstated crucial transparency requirements in India's election finance system by demanding the publication of donor information for electoral bonds and all significant donations. The right of citizens to access information and the capacity to evaluate the forces that are attempting to influence political power are both protected by this. In addition, the instance of electoral bonds demonstrates that opacity in the name of changes might potentially be more detrimental than maintaining the status quo. However, bonds ended up facilitating dark money on a massive scale while simultaneously undermining openness. The concept behind bonds was to increase the cleanliness of finance. In light of this, it is clear that election changes should not water down democratic ideals but rather enhance them. In conclusion, the Supreme Court's decision to strike down electoral bonds is a praiseworthy decision that would strengthen the integrity and fairness of India's electoral democracy. A non-negotiable need for democratic processes that are free, ethical, and responsible is that there be complete openness in the financing of political campaigns.

### CONCLUSION: A NEED FOR POLICIES THAT STRIKE A BALANCE REGARDING POLITICAL DONATIONS

The electoral bonds case has brought to light the significance of developing a legal system that is both balanced and responsive to the

<sup>271</sup> Grimes, Marcia. "Procedural fairness and political trust." In Handbook on political trust, pp. 256-269. Edward Elgar Publishing, 2017.

<sup>272</sup> Thompson, Dennis F. Just elections: Creating a fair electoral process in the United States. (University of Chicago Press, 2002).

needs of political fundraising in India. Despite the fact that the Supreme Court has, very appropriately, placed a high priority on openness as a basic principle, it is still necessary to have balanced regulations in order to keep the game fair and to avoid harassment of real contributors. Due to the fact that elections need finance, this delicate balancing act is very necessary. At the same time, there should be control of election money in order to avoid conflicts of interest and undue influence by those involved. Therefore, it is necessary to have reasonable constraints and openness without going beyond what is legal.

The Supreme Court, for example, ruled that the anonymity of electoral bonds be repealed since it infringed on the freedom of voters to receive information. However, unrestricted disclosure standards have the potential to prevent legitimate, modest contributors from providing financial assistance to political parties that they favour. As a result, the barrier of Rs 20,000 that is stipulated in election legislation, below which donor information does not need to be published, serves a purpose that is just. Although it is appropriate to prohibit opacity for big contributions, it may be necessary to provide security for smaller individual contributors against the possibility of harassment from political opponents. A similar argument may be made for increasing the ceiling on corporate contributions to anywhere between 10 and 15 per cent of earnings, even if the Supreme Court has reinstated the 7.5% restriction that was previously in place. Through the implementation of a greater restriction, genuine money that is in line with the interests of corporations may be obtained without opening the floodgates to excessive influence.

These sophisticated guidelines differentiate between the necessity for openness in large donor contributions, which may bias policy, and the process of creating a larger base via smaller donations from people, professionals, and businesses. In general, the most important thing is to strike a balance between freedom, openness, and justice in political fundraising.

The historic decision on electoral bonds shifted the focus back towards transparency, which is necessary in order to protect the integrity of the democratic process better. From this point forward, policy frameworks are required to maintain this with complementing actions that are balanced. In conclusion, the ruling regarding electoral bonds brought to light the fact that regulations regarding election finance need to strike a careful balance between democratic responsibility, fair constraints, and openness. In spite of the fact that the Supreme Court has often emphasised the need to provide voters with transparency, it is essential to have well-balanced restrictions in order to keep democratic procedures free and fair.