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JUDGMENT OF THE SUPREME COURT IN THE ELECTORAL BONDS CASE

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Abstract

On February 15, 2024, a unanimous five-judge Constitution Bench of the Supreme Court of India in *Association for Democratic Reforms v. Union of India* invalidated the Electoral Bond Scheme, 2018, along with corresponding amendments introduced via the Finance Act, 2017 to the Representation of the People Act, 1951, the Income-tax Act, 1961, and the Companies Act, 2013. The statutory mechanism had operationalized a framework of non-transparent, unlimited corporate political contributions channeled through the State Bank of India. Striking down the Scheme, the Court held that withholding donor identity from the public infringes upon the voter's fundamental right to information under Article 19(1)(a) of the Constitution, which is essential to participatory democracy. Applying the four-pronged doctrine of proportionality, the Court concluded that curbing black money in political financing did not satisfy the "least restrictive means" test, nor could donor privacy override the voter's right to know. Furthermore, the Court struck down the amendment to Section 182 of the Companies Act, 2013, which had eliminated the statutory ceiling on corporate donations, holding it manifestly arbitrary under Article 14 by placing commercial entities on par with individual voters and legitimizing shell company contributions. As consequential relief, the Court directed the State Bank of India to disclose purchaser and recipient data to the Election Commission of India for public release. This case note critically examines the judgment, its doctrinal interplay with democratic egalitarianism, the standard of double proportionality, the Court's decision to leave the Money Bill question unresolved, and the lingering institutional dilemmas surrounding campaign finance reform in India.

Keywords - Electoral Bonds, Article 19(1)(a), Corporate Political Spending, Proportionality Standard, Manifest Arbitrariness.

I. INTRODUCTION

A five-member Constitution Bench of India delivered a unanimous verdict in the case of *Association for Democratic Reforms & Anr. v. Union of India & Ors.*[1] on February 15, 2024 holding the Electoral Bond Scheme, 2018 unconstitutional. The Scheme was notified by the Central Government on January 2, 2018[2] and provided political parties with a new method of fundraising using anonymous banking instruments. The Scheme aimed to promote digital banking donations by hiding the identity

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[1] *Association for Democratic Reforms v. Union of India*, (2024) 5 SCC 1 (India); 2024 INSC 113.

[2] Ministry of Finance (Dep't of Econ. Affairs), Notification No. S.O. 29(E), Gazette of India (Jan. 2, 2018).

of political donors; however, it caused a lack of transparency in relation to the information known to the electorate.

This verdict has been a landmark moment for Indian Constitutional law. This case relates to the intersection between political funding and democracy. The Court held that the right to information contained in Article 19(1)(a) gives the voter the right to know who is funding political parties. As a result, the Electoral Bond Scheme along with the amendments made to the Representation of the People Act, 1951 ("RPA"), Income-tax Act, 1961 ("IT Act") and Companies Act, 2013 were held to be unconstitutional.

This case note will provide a critical analysis of the judgment. It will outline the changes made under the Finance Act, 2017. It will analyse the proportionality standards set out by Chief Justice D.Y. Chandrachud (in conjunction with Justices B.R. Gavai, J.B. Pardiwala and Manoj Misra) and the agreement of Justice Sanjiv Khanna. The judgment will then be analysed in terms of double proportionality and its implications on future democracy in India.

II. BACKGROUND AND LEGISLATION

Electoral Bond Scheme, 2018

Before the Finance Act, 2017 was enacted political parties were required to make disclosures in relation to political funding under the following provisions of legislation:

1. Section 29C of the RPA required political parties to submit a report to the Election Commission of India ("ECI") containing information on all contributions over INR 20,000 made by any person or company. If they did not make the disclosure they would lose their exemption from tax.
2. Section 182 of the Companies Act, 2013 limited the amount of political funding a company could make to 7.5% of its average net profit of the past three financial years. They were required to make a board resolution approving the contribution and disclose the name of the political party and the exact amount paid in the company's profit and loss account.
3. Section 13A of the IT Act allowed political parties to claim tax exemptions on voluntary contributions provided they kept detailed accounts of contributions and disclosed the donor's name, address and permanent account number if they exceeded INR 20,000.

However, under sections 11, 135, 137 and 154 of the Finance Act, 2017, Parliament made significant changes:

- Subsection (3) added to section 31 of the Reserve Bank of India Act, 1934 permitted the Central Government to authorise any scheduled bank to issue promissory notes in the form of Electoral Bonds.
- A proviso added to Section 29C of the RPA exempted political parties from disclosing donations made in the form of electoral bonds in their annual contributions.
- A proviso added to Section 13A of the IT Act exempted political parties from disclosing the name and address of donors who had made donations in the form of electoral bonds.
- Section 182 of the Companies Act, 2013 was amended so that there was no limit on the amount of money a company could donate. There was no requirement for the company to have been in existence for at least three financial years and there was no requirement to disclose the political party they were donating to. Only the total amount could be disclosed.

The Electoral Bond Scheme, 2018 permitted any Indian citizen or company incorporated in India to purchase non-interest bearing promissory notes from designated branches of the State Bank of India ("SBI") in increments of INR 1,000 up to INR 1,00,00,000. The bonds would only be valid for 15 days and would not contain any information on the donor or recipient. The bonds could only be cashed in by political parties registered under section 29A of the RPA that had obtained at least 1% of the votes in the last General/Assembly Election.

Background and Temporary Relief

The amendments and Electoral Bond Scheme were challenged in 2017 and 2018 by the Association for Democratic Reforms ("ADR"), Common Cause and the Communist Party of India (Marxist) in Public Interest Litigations under Article 32. They claimed that the amendments legalised corruption and allowed corporate secrecy. This meant that voters would not be able to make an informed decision.

An interim relief was granted on April 12, 2019.[3] This stated that all political parties who had received donations in the form of electoral bonds must disclose all information in sealed envelopes to the ECI. Applications were made to suspend the sale of bonds in advance of the 2021 State Assembly elections. However, the Court refused to suspend the Scheme as donors were required to comply with Know Your Customer ("KYC") requirements.[4] In late 2023, it was recognised that the case raised some fundamental issues and so was referred to a five-member Constitution Bench.

[3] *Association for Democratic Reforms v. Union of India*, (2019) 14 SCC 344 (India).
[4] *Association for Democratic Reforms v. Union of India*, (2021) 11 SCC 586 (India).

Arguments

The petitioners argued that:

1. The right to information in Article 19(1)(a) (as recognised in *Union of India v. ADR*[5] and *PUCL v. Union of India*[6]) includes knowing who is funding political parties.
2. The removal of limits on corporate donations was arbitrary under Article 14. This allowed loss-making and shell companies to donate illegal money and create a quid pro quo situation without being scrutinised by shareholders or the public.
3. Unlimited anonymous donations from corporations would create an imbalance in democracy.

The Union of India and SBI argued that:

1. The scheme aimed to reduce black money by requiring all donations to be made in the form of a demand draft, cheque or electronic payment.
2. Donors including corporations have a fundamental right to privacy under Article 21 (*K.S. Puttaswamy v. Union of India*[7]). This protects them from being targeted by political parties.
3. The regulation of political funding is a matter for Parliament and the Court should not interfere.

III. SUPREME COURT VERDICT

Unanimously the Supreme Court held that the Electoral Bond Scheme, 2018 along with the amendments to the RPA, IT Act and Companies Act were unconstitutional. This was based upon three reasons:

- *Right to information [Art. 19(1)(a)]* – The right to know who is funding political parties is a fundamental right. This is necessary for an informed electorate.
- *Proportionality Test* – The aim was legitimate; however, it failed the proportionality test as it was not the least restrictive method. The right to know outweighed the right to privacy.
- *Arbitrary under Article 14* – The 7.5% profit limit was removed. This allowed shell and loss-making firms to donate.

[5] *Union of India v. Association for Democratic Reforms*, (2002) 5 SCC 294 (India).
[6] *People's Union for Civil Liberties v. Union of India*, (2003) 4 SCC 399 (India).
[7] *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 (India).

Right to Information Expanded to Cover Political Funding

The Court rejected the argument made by the Union that the right to information under Article 19(1)(a) could only relate to information about candidates' background, education and criminal record. Chief Justice Chandrachud explained that the right to transparency in elections was established in *ADR* (2002) and *PUCL* (2003). Political parties are the heart of a parliamentary democracy and so cannot be separated from individual candidates:

"Political parties are the vehicle through which individuals contest elections and hold executive power . . . . It is untenable to separate political candidates from the political parties who sponsor them, fund their campaigns and hold sway over their legislative activities through the whipping system."[8]

The Court recognised that money plays a large role in politics. Knowing who is funding political parties is vital for voters to determine if policies are being implemented in the public interest.

Proportionality Test – The 4 Tests and Black Money Argument

As Article 19(1)(a) was engaged any limitation to the right to know must be assessed under Article 19(2). This requires the proportionality test to be applied to the legislation. The proportionality test can be broken down into 4 parts (*Modern Dental College*[9] and *Puttaswamy* (Privacy-9J)[10]):

Proportionality = Legitimate Objective ∧ Rational Connection ∧ Necessity (Least Restrictive) ∧ Balancing (*Stricto Sensu*)

1. *Legitimate Objective* – The Court acknowledged that reducing black money and ensuring that political funding goes through the banking system was a legitimate objective.
2. *Rational Connection* – There was a rational connection between introducing banking instruments and ensuring donations go through.
3. *Necessity (Least Restrictive)* – The scheme failed this part. The Court noted that allowing donors to be completely anonymous was not the least restrictive method of encouraging donations through the banking system. There are existing methods such as the Electoral Trust Scheme, 2013[11] which allow donations to be made electronically whilst still disclosing donor information and payments to the ECI.

[8] *Association for Democratic Reforms*, (2024) 5 SCC 1, ¶¶ 62–64.
[9] *Modern Dental College & Research Centre v. State of Madhya Pradesh*, (2016) 7 SCC 353 (India).
[10] *K.S. Puttaswamy*, (2017) 10 SCC 1, ¶ 310.
[11] Ministry of Finance, The Electoral Trust Scheme, Notification No. S.O. 309(E) (Jan. 31, 2013).

4. *Balancing* – The complete lack of disclosure greatly impacted the democratic process and the State could not prove that complete disclosure could not have been achieved alongside electronic banking.

Double Proportionality – Balancing the Right to Information and Right to Privacy

The Union argued that the scheme protected the donor's right to privacy under Article 21. This was a clash between the right to know under Article 19(1)(a) and the right to privacy in relation to political party membership under Article 21. The doctrine of double proportionality was applied (*Campbell v. MGN Ltd.*[12]). This doctrine was applied by the Court in *Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agarwal*.[13]

The Court recognised that:

- *Personal donations* – Donations from individual citizens would be small and therefore a personal expression of their political views. This should be protected from persecution by the state.
- *Large donations* – Donations from corporations would be for commercial purposes. They want to gain strategic advantages.

The Court recognised that applying complete anonymity to all donors regardless of the amount donated or if they were a corporation failed the proportionality test. The right to privacy of corporate donors donating large amounts of money to gain influence in business cannot override the public's right to vote with full information.

Arbitrary under Article 14 – Unlimited Corporate Donations

The most damning part of the verdict was in relation to the amendment to section 182 of the Companies Act, 2013. Before 2017, corporations could not spend over 7.5% of their average net profit on political funding. New companies could not donate during the first 3 years.

The Court held that the amendment was arbitrary under Article 14. This was based upon the case of *Shayara Bano v. Union of India*.[14]

1. *Equal treatment of Unequal* – The amendment treated individuals and corporations equally. Corporations have huge amounts of capital which can distort the elections.

[12] *Campbell v. MGN Ltd.*, [2004] 2 A.C. 457 (HL) (appeal taken from Eng.).
[13] *Cent. Pub. Info. Officer, Supreme Court of India v. Subhash Chandra Agarwal*, (2020) 5 SCC 481, ¶ 92 (India).
[14] *Shayara Bano v. Union of India*, (2017) 9 SCC 1, ¶ 101 (India).

2. *Creation of Shell Companies* – The removal of the 3 year rule and the limit on profits meant that companies could be created solely for laundering money and bribing political parties. Loss making companies or companies with zero revenue could donate unlimited amounts.
3. *Loss of Shareholder Democracy* – The removal of the requirement to disclose who they were donating to meant shareholders would not know how their company's money was being used.

Directions

The following directions were made by the Court:

1. The SBI must stop selling/issuing electoral bonds.
2. The SBI must provide the ECI with information on all bonds purchased and cashed in since the interim order of April 12, 2019. This must include information on when they were purchased, who purchased them, how much was paid and which political party cashed them in.
3. The ECI must publish all the data on their website.

IV. CRITICAL ANALYSIS

Returning to Democratic Equality

The case of *Association for Democratic Reforms* brings Indian Constitutional law back to the concept of democratic equality. Without true equality we cannot have modern representative democracies as wealth inequality would mean the political process would be secretly controlled.

When comparing to the controversial decision of *Citizens United v. Federal Election Commission*[15] by the United States Supreme Court, the Court recognised that corporate donations cannot be considered free speech. In *Citizens United* the Court struck down limits on independent political expenditure by corporations under the First Amendment. However, in *ADR* the Constitution Bench recognised that corporate money would threaten the democratic rights of the general public. By recognising that corporate donations are not ideological but transactional, the Court protected the electoral process from corporate oligarchy.

Rigorous Application of Proportionality and Arbitrariness

Both the Chief Justice and Justice Khanna applied rigorous proportionality testing:

- *Rigorous Necessity* – In many cases, Indian Courts apply the proportionality test loosely. However, the Court applied strict necessity testing and proved that the existence of the

[15] *Citizens United v. FEC*, 558 U.S. 310 (2010).

Electoral Trust Scheme completely destroyed the government's argument that they needed to keep donors anonymous.

- *Review of Economic Legislation* – The Union continuously argued that economic legislation and fiscal policies have a strong presumption of constitutionality. However, the Court was willing to look into the detail of Section 182 which shows that this type of legislation is not immune to judicial review when relating to fundamental rights.

The Money Bill Issue Not Addressed

Whilst the Court gave a clear decision on the substantive issues, they did not decide whether the amendments could have been passed as a Money Bill under Article 110.

The Finance Act, 2017 included wide ranging amendments to the RPA, Companies Act and RBI Act. This was done by categorising it as a Money Bill meaning that it did not need to go through the Rajya Sabha (where the ruling executive did not have a majority). The Constitution Bench noted that this wider issue had already been referred to a seven member bench in *Roger Mathew v. South Indian Bank Ltd.*[16] Therefore, they decided to only make a decision based upon the fundamental rights.

Whilst this was a practical decision it does mean the executive can utilise the Money Bill to push through changes to legislation which do not relate to the fiscal aspect of the country. This creates an issue within our parliamentary processes.

V. CONCLUSION

The Supreme Court's judgment in *Association for Democratic Reforms v. Union of India* has restored transparency as the key to a legitimate democracy. The Electoral Bond Scheme was struck down to protect the voter's right to vote with full information under Article 19(1)(a) and to prevent corporate influence under Article 14.

The following legal principles were established:

1. The right to information under Article 19(1)(a) gives voters the right to know who is funding political parties.
2. Anonymous political donations cannot be justified as a way of reducing black money when there are transparent methods of banking.

[16] *Roger Mathew v. South Indian Bank Ltd.*, (2020) 6 SCC 1 (India).

3. The principle of manifest arbitrariness protects democracy by striking down legislation which allows loss making entities and shell companies to donate.

Whilst the judgment has successfully removed a non-transparent funding method there are still issues left for Parliament to address. Untraceable cash donations of under INR 20,000, off the books spending and enforcing limits on political party expenditure are not addressed.

Overall, *Association for Democratic Reforms* acts as a safeguard for representative democracy. It shows that whilst money can play a part in business, it cannot buy secrecy in a constitutional republic.