
FUNDING THE DEMOCRATIC PROCESS: ANALYZING THE ELECTORAL BONDS OF INDIA

Mayank Vaishnav, Amity University Haryana

ABSTRACT

The role of political funding in shaping democratic processes has emerged as an important area of study, particularly in a vast and diverse democracy like India. In India, with a population exceeding 1.4 billion, elections are an immensely costly process. Political parties raise substantial funds to meet the expenses of election campaigning, party management, and various other activities. These funds are crucial for reaching out to the public, raising awareness of party manifestos, and persuading voters. Political funding in India originates from various sources, including voluntary donations from individuals, companies, electoral trusts etc. However, concerns have arisen over the use of undisclosed income to make donations, often to gain influence within the government through quid pro quo arrangements. This paper provides a comprehensive analysis of India's political funding mechanisms, focusing on their evolution, current practices, and the challenges they present. It delves into sources of political finance, including the controversial Electoral Bonds Scheme introduced in 2018, and evaluates the regulatory frameworks governing political donations, such as the Representation of the People Act and the Companies Act. The study critically examines issues related to transparency, accountability, and the influence of money in politics, with a special focus on how undisclosed donations and quid pro quo arrangements undermine electoral integrity and democratic governance. By highlighting the gaps in the current system, the paper advocates for reforms to ensure a more transparent and equitable political funding landscape, contributing to the discourse on enhancing the integrity of India's democracy.

Keywords: Electoral Bonds, Finance Act, Reserve Bank of India, Election Commission, State Bank of India, Supreme Court.

INTRODUCTION

“Building democracy is a complex process. Elections are only a starting point but if their integrity is compromised, so is the legitimacy of democracy.”

-Kofi A. Annan¹

In any democratic society, the source of political funding shapes the very foundations of governance and public trust. In India, political funding, primarily sourced from individuals and corporations, holds immense influence over elections, party activities, and Government decisions. Yet, a cloud of concern has long hung over the misuse of undisclosed funds and their potential to manipulate governance through covert quid pro quo deals. To confront this issue, the Indian Government introduced the Electoral Bonds Scheme in 2017, presenting it as a reform aimed at enhancing transparency by routing anonymous donations through formal banking channels.

However, from its inception, the Scheme faced intense scrutiny and widespread opposition. Critics, ranging from the Reserve Bank of India and the Election Commission to legal scholars and civil rights advocates, raised alarms that the Scheme, far from fostering transparency, would deepen opacity in political donations, fuelling corruption and eroding the integrity of elections. These deep-rooted concerns ultimately culminated in a landmark legal challenge in the case of *Association for Democratic Reforms v. Union of India*² where the Supreme Court held the scheme to be violative of Article 19(1)(a) for lack of transparency and therefore, unconstitutional.

With the discontinuation of electoral bonds, political funding in India is poised to revert to traditional methods, relying primarily on voluntary donations from corporations and individuals. Therefore, we find ourselves confronting familiar issues once again: the pervasive flow of black money in political funding, the risk of donations tied to quid pro quo arrangements, and a troubling lack of transparency. The Supreme Court judgment calls for a system that ensures transparency in political donations, recognizing the critical need for

¹ Kofi A. Annan, “Supporting Elections and Democracy”, Kofi Annan Foundation, 22 June 2014, <https://www.kofiannanfoundation.org/news/global-commission-on-elections-democracy-security-2/>

² Association for Democratic Reforms Vs. Union of India, Writ Petition (C) No. 880 of 2017

openness in funding sources.

RELEVANCE OF MONEY IN POLITICS

“Politics has become so expensive that it takes a lot of money even to be defeated”.

-Will Rogers

Elections are an imperative aspect of democracy and cost a great amount of money. Political parties require money for their campaigning, party management and various other activities. Throughout the year, political parties sustain significant expenses to maintain operations across the country. These include salaries for staff, travel costs, and overhead expenses. Elections for Parliament or State Assemblies are held every year without fail, necessitating additional spending on campaign activities, publicity, travel, and logistical arrangements. These cumulative costs often amount to hundreds of crores³. For example, in the financial year 2022-23 alone, the total expenditure of the National Political Parties was 2062.29 crores⁴.

Although it is often said that votes are cast by people, not by money, numerous studies have highlighted the significant direct and indirect influence that money wields in electoral politics⁵. Money is used by parties to sway voting patterns during elections. It exerts its influence on the electoral process and results through methods like vote purchasing and funding electoral campaigns. The effectiveness of campaigns in swaying voter behaviour is evident due to the influence of television ads, campaign events, and direct interaction with voters⁶. Political parties employ creative approaches to campaigning that extend beyond conventional methods like advertisements, door-to-door canvassing, and rallies to broaden their outreach. For instance, they may sponsor religious or community events and organize sports matches and cultural competitions with cash prizes⁷. These outreach efforts leave a lasting impression on voters, directly impacting their voting decisions. Therefore, increased campaign expenditure

³ Arun Jaitley, "Why Electoral Bonds Are Necessary", Press Information Bureau, 7 Jan. 2018, <https://pib.gov.in/newsite/PrintRelease.aspx?relid=175452>.

⁴ Association for Democratic Reforms, "Analysis of Income and Expenditure of National Political Parties for FY 2022-23" 4 (2024).

⁵ Conrad Foreman, "Money in Politics: Campaign Finance and its Influence over the Political Process and Public Policy", 52 UIC J. Marshall L. Rev. 185 (2018)

⁶ D. Sunshine Hillygus, "Campaign Effects on Vote Choice", in Jan E. Leighley (ed.), *The Oxford Handbook of American Elections and Political Behavior* 326-345 (Oxford University Press, 2010).

⁷ Michael A. Collins, "Navigating Fiscal Constraints: Dalit Parties and Electoral Politics in Tamil Nadu", in Devesh Kapoor and Milan Vaishnav (eds.), *Costs of Democracy: Political Finance in India* 119-152 (Oxford University Press, 2018).

directly contributes to enhanced outreach efforts, subsequently influencing voter behaviour. As a result, political parties in India spend heavily on election campaigning and awareness programs. For example, in the financial year 2022-23, the Bhartiya Janata Party, the incumbent party at the Centre, alone spent Rs. 1092.15 crores, 80.21% of its total expenditure, towards elections and general propaganda while The Indian National Congress, the major opposition party, spent 191.55 crores, 41.22% of its total expenditure, towards elections⁸.

Money also shapes the political landscape by creating barriers to entry and limiting the types of candidates and political parties that can actively participate in elections. Studies indicate that political parties often prefer to nominate candidates who can largely finance their own campaigns, reducing reliance on party funds⁹. This practice disproportionately disadvantages candidates from socio-economically weaker sections, as they face additional challenges in securing the necessary financial resources for competitive campaigns.

The Supreme Court too, in *Kanwar Lal Gupta v. Amar Nath Chawla*¹⁰, emphasised that money gives candidates and parties with larger funds a significant advantage in public outreach, allowing them to propagate their agendas more effectively than rivals with fewer resources. This financial disparity creates serious discrimination, denying some candidates an equal opportunity and reducing the voters' equal voice, thereby undermining democratic fairness.

EVOLUTION OF POLITICAL FUNDING IN INDIA

Representation of People Act, 1951

The Election and Other Related Laws (Amendment) Act of 2003 brought amendments to the Representation of the People Act¹¹, introducing Section 29C, which mandates political parties to disclose details of contributions received. Under this provision, the treasurer of a political party, or an authorised representative, must prepare an annual report listing contributions exceeding Rs 20,000, received from individuals or companies, excluding Government-owned entities, during the financial year. This report must be submitted to the Election Commission

⁸ Association for Democratic Reforms, "Analysis of Income and Expenditure of National Political Parties for FY 2022-23" 8 (2024).

⁹ Neelanjan Sircar, *Money in Elections: the Role of Personal Wealth in Election Outcomes in Costs of Democracy: Political Finance in India* (ed. By Devesh Kapur and Milan Vaishnav) OUP 2018

¹⁰ *Kanwar Lal Gupta v. Amar Nath Chawla & Ors.*, (1975) 3 SCC 646

¹¹ The Representation of The People Act, 1951, Act No. 43 Of 1951

before the deadline for filing the party's income tax return, as specified by the Income Tax Act. Any political party failing to submit the report will lose its entitlement to the tax exemptions provided under the Income Tax Act.

Income Tax Act, 1961

The Taxation Laws (Amendment) Act of 1978 introduced Section 13A into the Income Tax Act¹², exempting political parties from income tax on their earnings derived from financial contributions and investments. The rationale behind this amendment was that the tax exemption would increase the availability of funds from “legitimate sources.” However, to qualify for this tax benefit, political parties were required to meet specific conditions outlined in the proviso:

- i. The party had to maintain proper books of account and related documents that would allow the Assessing Officer to determine its income accurately;
- ii. A record of all voluntary contributions exceeding twenty thousand rupees had to be kept, along with the donor's name and address; and
- iii. A certified accountant was required to audit the party's accounts.

Corporate Contributions

Section 182 of the Companies Act, 2013¹³ allows corporate contributions to political parties, except Government-owned companies and those that have been operational for less than three financial years. Beyond direct monetary donations, the provision also encompasses indirect forms of support. This includes instances where a company provides backing to a political party through alternative channels, such as funding advertisements in materials that promote the party, or engaging in activities that, although not direct financial contributions, still bolster public support for the party. Even if funds are not directly transferred to the political party, these actions are considered political donations under the law.

Initially, the Companies Act of 1956 did not even address corporate political contributions. Nonetheless, companies often amended their Memorandum of Association to enable such

¹² The Income Tax Act, 1961, Act No. 43 Of 1961

¹³ The Companies Act, 2013, Act No. 18 Of 2013.

contributions, as seen in *Jayantilal Ranchhoddas Koticha*¹⁴. The Bombay High Court upheld the company's right to amend its memorandum, with Chief Justice M.C. Chagla cautioning against the potentially corrupting influence of corporate funding on democracy.

Prompted by the absence of a regulatory framework, Parliament introduced Section 293A via the Companies (Amendment) Act of 1960, which limited annual contributions to a political party or individual for political purposes to the greater of ₹25,000 or 5% of the company's average net profits over the past three years. Full disclosure in the profit and loss account, listing both the amount and recipient details, was required.

In 1963, the Santhanam Committee's Report on Prevention of Corruption¹⁵ brought attention to widespread corruption at high political levels, attributing it to the unchecked collection of funds and election activities by political parties. The Committee recommended that all corporate donations to political parties should be entirely banned. Following these recommendations, Section 293A of the Companies Act 1956 was amended by the Companies (Amendment) Act of 1969, establishing a prohibition on companies making financial contributions to any political party, individual, or organisation for political purposes.

In 1985, Parliament again amended Section 293A, in the process reversing its previous ban on political contributions by companies. It allowed a company, other than a government company and any other company with less than three years of existence, to contribute any amount or amounts to any political party or to any person for any political purpose. It further provided that the aggregate of amounts which may be contributed by a company in any financial year shall not exceed five percent of its average net profits during the three immediately preceding financial years. This provision was retained under Section 182 of the Companies Act 2013. The only change was that the aggregate amount donated by a company was increased to seven and a half per cent of its average net profits during the three immediately preceding financial years.

THE ELECTORAL BONDS SCHEME

In March 2017, the Finance Act of 2017¹⁶ was enacted to implement the Electoral Bonds

¹⁴ *Jayantilal Ranchhoddas Koticha v. Tata Iron and Steel Co. Ltd.* AIR 1958 Bom 155

¹⁵ Report of the Committee on Prevention of Corruption, 1964 [11.5].

¹⁶ The Finance Act, 2017, Act No. 7 of 2017

Scheme and this Act made changes to the provisions of the Reserve Bank of India Act, 1934, the Representation of People Act, 1951, the Income Tax Act, 1961, and the Companies Act, 2013. The Scheme was then notified on 2nd January 2018. Below are the key Features of the Electoral Bonds Scheme¹⁷:

- Bonds could be purchased by Indian citizens or entities incorporated in India, including individuals, companies, and other legal entities, either individually or jointly.
- Only political parties registered under Section 29A of the Representation of People Act and receiving at least 1% of the vote in the last general election were eligible to encash bonds, which must be done through an account at an authorized bank (State Bank of India).
- Buyers must comply with the Reserve Bank of India's KYC norms.
- Bonds had to be purchased using Indian rupees via demand draft, cheque, ECS, or direct debit.
- Bonds were issued in values of ₹1,000, ₹10,000, ₹1,00,000, ₹10,00,000, and ₹1 crore.
- Bonds had to be encashed within 15 days of issuance, failing which the amount would be deposited into the Prime Minister's Relief Fund.

HOW POLITICAL FUNDING WAS AFFECTED BY THE SCHEME

Before the introduction of the Electoral Bonds Scheme, political funding in India primarily originated from conventional sources such as voluntary donations by individuals, corporate contributions, electoral trusts, and additional avenues like membership fees and party-owned assets. Over time, voluntary donations by individuals and corporate entities have consistently emerged as the dominant source of political funding. For instance, in the financial year 2016-2017, the seven national political parties garnered 74.98% (Rs 1,169.07 crore) of their total income from voluntary contributions¹⁸.

¹⁷ Electoral Bond Scheme, 2018, <https://www.scobserver.in/wp-content/uploads/2021/10/Electoral-Bonds-Scheme-2018.pdf>

¹⁸ Association for Democratic Reforms, "Analysis of Income & Expenditure Of BJP & INC: FY- 2016-2017" 8 (2018).

These donations are regulated under various legal frameworks, notably the Representation of the People Act, 1951, the Companies Act, 2013, and the Income Tax Act, 1961. Despite the inclusion of various safeguards within these laws to ensure transparency and accountability in political donations, concerns persist about a significant portion of these contributions coming from anonymous or undisclosed sources. For instance, in the financial year 2016-2017, 45.98% of the total income of the seven national political parties originated from unknown sources—donations for which political parties are not required to disclose donor information¹⁹.

As a response to these concerns, the Electoral Bonds Scheme was introduced as part of the 2017 Finance Bill by then Finance Minister, Mr Arun Jaitley, underscoring the urgent need for reforms in India's political funding system, given the country's stature as the world's largest democracy. The enactment of the Finance Act of 2017 led to significant changes in this realm.

The Reserve Bank of India Act, 1934

Before the introduction of the Scheme, Section 31 of the RBI Act stipulated that only the Reserve Bank of India (RBI) or the Central Government, as authorised by the RBI Act, can draft, accept, issue, or make any bill of exchange or promissory note payable to the bearer. An amendment to the RBI Act through the Finance Act introduced Section 31(3), allowing the Central Government to grant permission to scheduled banks to issue electoral bonds. The State Bank of India was designated for this purpose.

Companies Act, 2013

The amendments to Section 182 significantly changed the landscape of corporate political donations. The key changes are as follows:

- i. Sub-section 1 of Section 182 was removed, eliminating the 7.5% cap on corporate donations. This allowed companies to make unlimited political contributions, regardless of their financial performance. Therefore, even loss-making companies were now allowed to donate whether profitable or not.
- ii. The amendment to sub-section 3 reduced the level of transparency required in corporate

¹⁹ Association for Democratic Reforms, "Analysis of Donations Received by National Political Parties: FY-2016-2017" 4 (2018).

political donations. Companies no longer had to specify how much money was given to each political party. Instead, they were only required to disclose the total amount of donations, making it harder to trace which parties were benefiting from corporate funding.

- iii. The newly introduced sub-section 3A mandated that all corporate contributions to political parties must be made through recognized financial channels such as cheques, bank drafts, or electronic clearing systems. This measure aimed to prevent under-the-table cash donations and ensure that the transactions were traceable through banking systems.

Income Tax Act, 1961

Amendment to Section 13A of the Act exempted political parties from maintaining records of contributions above Rs. 20,000 if received through Electoral Bonds. However, donations above Rs. 2,000 had to be made through recognized financial means like cheques, bank drafts, or electronic transfers.

Representation of People Act, 1951

Amendment to Section 29C of the Act relieved political parties from disclosing the specifics of contributions received through Electoral Bonds, thus allowing for unlimited donations without divulging donor details.

In essence, the revisions brought about by the Finance Act of 2017 resulted in the following:

- i. The introduction of a novel Scheme, Electoral Bonds, for financial contributions to political parties.
- ii. Political parties were relieved from the obligation to reveal the contributions obtained via Electoral Bonds.
- iii. Companies were exempted from disclosing the specifics of their contributions in any manner.
- iv. Unlimited corporate funding became permissible under the amendments.

ANALYSING THE SCHEME

Curbing Black Money

The Government backed the Electoral Bond Scheme as a measure to reduce black money in political funding, arguing it would bring transparency by replacing anonymous cash donations with accountable funds while protecting donor privacy²⁰. In the Supreme Court, the Solicitor General emphasized that the scheme curbed the use of black money and encouraged clean donations²¹.

As held by the Supreme Court, the Government's argument that the Scheme aids in reducing the use of unaccounted money in Political Funding holds some validity but is not without substantial limitations. The scheme requires that bonds be purchased only through electronic transfers, cheques, or other banking methods, which substantially enhances the transparency of financial transactions.

The Solicitor General mentioned that in the financial year immediately before the introduction of the scheme (2016-17), political parties received 81% of their contributions—₹580.52 crores—through voluntary contributions. After the scheme's implementation, 47% of contributions came through electoral bonds, representing regulated funds²². However, this reasoning is flawed as it oversimplifies the nature of cash donations, implying that all such contributions are linked to black money. In reality, not all cash donations signify illicit funding. For example, individuals contributing small amounts during party rallies typically do so in cash. These smaller, grassroots-level contributions are often legitimate and represent popular support rather than a means to funnel unaccounted wealth.

Additionally, the amendments introduced by the Finance Act of 2017 to the IT Act had already imposed a requirement that any donations above ₹2,000 must be made via account payee cheques, bank drafts, or electronic transfers, thus eliminating cash donations for higher amounts. This measure was significant in curbing the flow of black money in political contributions. While the Electoral Bond Scheme supplements this by introducing anonymity

²⁰ Association for Democratic Reforms Vs. Union of India, Writ Petition (C) No. 880 of 2017

²¹ Arun Jaitley, "Why Electoral Bonds Are Necessary", Press Information Bureau, 7 Jan. 2018, <https://pib.gov.in/newsite/PrintRelease.aspx?relid=175452>.

²² Association for Democratic Reforms Vs. Union of India, Writ Petition (C) No. 880 of 2017

for donors, its effectiveness is somewhat undermined by the lack of full transparency.

Donor Privacy

A key justification for the Government's introduction of the Electoral Bond Scheme was to allow individuals and entities to contribute to political parties while safeguarding donor privacy.

In PUCL, the Supreme Court was faced with the issue of balancing two competing rights in the Electoral process. In this case, the Court upheld the voter's right to know the criminal and financial backgrounds of electoral candidates, affirming that transparency is essential for free and fair elections. The Court ruled that the public's right to transparency outweighed the privacy concerns of the candidates.

In the Electoral Bonds case²³, the Supreme Court was faced with the issue of balancing the right to privacy of donors with the broader public interest of transparency in political donations. The Court acknowledged that the right to political expression, guaranteed under Article 19(1)(a) of the Constitution, is closely linked with the privacy of political beliefs and affiliations. It emphasized that the formation of political opinions, the precursor to political expression, requires the protection of these affiliations. Without privacy, individuals may face state repression or personal discrimination, especially if their views deviate from the mainstream. Drawing from its ruling in the *Puttaswamy* case²⁴, where it was held that the right to privacy, including informational privacy, extends to a person's beliefs, thoughts, and opinions, the Court held that informational privacy would extend to financial contributions as well since they often reveal a person's political affiliations.

Case of the alphanumeric codes

In April 2018, an investigation by *The Quint* revealed the presence of hidden alphanumeric codes on Electoral Bonds, which are invisible to the naked eye²⁵. These codes, detectable only under specific lighting conditions, raised concerns about the anonymity the Electoral Bonds Scheme promised. The *Quint* highlighted that these unique codes could potentially link donors

²³ Association for Democratic Reforms Vs. Union of India, Writ Petition (C) No. 880 of 2017

²⁴ Justice KS Puttaswamy v. Union of India, (2017) 10 SCC 1

²⁵ Poonam Aggarwal, "Secret Policing? When The Quint Exposed Electoral Bonds Carry Hidden Numbers", *The Quint*, 17 March 2024, <https://www.thequint.com/news/politics/hidden-number-on-election-electoral-bond>

to the political parties they contributed to, undermining the core principle of anonymity.

Although SBI defended the codes as security features, claiming that there is no system in place to link donors to political parties, the mere existence of such a tracking mechanism could compromise donor privacy and lead to the misuse of information. By April 2019, the Government confirmed that Electoral Bonds indeed carried a serial number as a counterfeiting deterrent. The Finance Ministry clarified that this number, invisible to the naked eye, was not accessible to Government entities or recorded by the SBI, ensuring anonymity. Former Finance Secretary Subhash Chandra Garg, a key figure in the scheme's development, also stated that the unique codes were only security features and were neither tracked nor recorded at the time of purchase or deposit by political parties²⁶. Despite these assurances, the revelations sparked widespread fears that Electoral Bonds, originally intended to promote transparency, could instead be misused to exert political influence and potentially lead to retaliation against donors, thereby undermining the democratic process.

The possibility of quid pro quo arrangements

One motive behind corporate contributions to political parties might be to gain income tax benefits. However, companies have been funding political parties long before the Indian legal framework introduced tax exemptions on such contributions in 2003. This indicates that tax savings are not the primary driver; the primary aim is often to influence the political landscape in ways that may ultimately boost their business interests. The 170th Report of the Law Commission of India also highlighted this trend, noting that “most business houses already know where their interest lies and they make their contributions accordingly to that political party which is likely to advance their interest more.”²⁷

At a fundamental level, financial donations give contributors a privileged position in political discourse, granting them greater access to legislators. This access, in turn, facilitates the ability to shape policy decisions²⁸. Those with significant economic resources are better positioned to make political donations, increasing the likelihood of quid pro quo arrangements, as the

²⁶ “Electoral bonds case: What are unique alphanumeric numbers?”, Moneycontrol, 21 March 2024, <https://www.moneycontrol.com/elections/lok-sabha-election/electoral-bonds-what-are-unique-alphanumeric-numbers-that-supreme-court-asked-sbi-to-disclose-article-12484341.html>

²⁷ Law Commission of India, 170th Report on the Reform of the Electoral Laws (1999)

²⁸ Joshua L. Kalla and David E. Broockman, “Campaign Contributions Facilitate Access to Congressional Officials: A Randomized Field Experiment” (2016 60(3)) American Journal of Political Science

intertwining of money and politics creates fertile ground for such exchanges. These arrangements may manifest in the form of favourable policy changes or the granting of licenses to benefactors.

The RBI had also raised concerns about the possibility of money laundering and recommended issuing Bonds electronically and exclusively through the RBI. However, these suggestions were overlooked²⁹.

The data made public relating to the Electoral Bonds clearly shows that, between April 2019 to January 2024, the ruling party, the Bhartiya Janata Party, was the largest beneficiary of the Electoral Bonds Scheme. During this time, a total of Rs. 12,769 crores worth of Electoral Bonds were encashed. Out of the total, Bonds worth Rs. 6,060 crores were encashed by the BJP, approximately 47 per cent of the total value of the Bonds. The All-India Trinamool Congress was the second-largest beneficiary of Bonds, encashing Bonds worth Rs. 1609 crore. The Indian National Congress, on the third number, encashed Bonds worth Rs. 1421 crores³⁰.

Also, as per Clause 12 of the Scheme, bonds can be physically handed to party representatives, or contributors can disclose their identities after the transaction. Thus, political parties may know who is funding them and who is not. Between April 12, 2019, and February 15, 2024, corporate and business entities bought Electoral Bonds totalling Rs 11,780.0297 crore, which accounts for 96.91% of the total amount. On the other hand, individuals purchased Bonds worth Rs 375.48 crore, representing only 3.09% of the overall pool³¹. Based on this data it is quite evident that Electoral Bonds were mostly used by corporates rather than individuals for political funding.

This overwhelming disparity suggests that the Scheme disproportionately benefited the ruling party, skewing the political playing field. Moreover, the lack of public transparency and accountability in the Scheme fostered an environment ripe for quid pro quo arrangements, further eroding trust in the fairness of Electoral processes and amplifying the very issues of corruption and opaque political financing that it intended to mitigate.

²⁹ RBI letter to the Finance Ministry dated 27th September 2017

³⁰ Disclosure of Electoral Bonds by the Election Commission of India, 2024, <https://www.eci.gov.in/disclosure-of-Electoral-Bonds>.

³¹ Association for Democratic Reforms, "Party-Wise Data on the Denomination of Electoral Bonds Encashed Between 12 April 2019 to 15 February 2024" 1 (2024).

Lack of Transparency in Donations

In India, political parties hold immense importance in elections, with many individuals casting their votes based on party ideology and manifestos rather than the eligibility and capability of individual candidates. As a result, it is crucial for voters to understand how these political parties are funded, as this transparency allows for more informed decision-making. However, the Electoral Bonds Scheme obscures this vital information, effectively placing a veil over political party funding, which undermines the democratic process by limiting voters' ability to scrutinize the financial influences behind the parties they support³². Although political funding through formal banking channels was intended to enhance transparency, the Scheme allowed the identity of donors to remain hidden from the public. Below are the problems with the scheme

- i. The amendments introduced by the Finance Act, particularly to the Representation of the People Act, 1951 have allowed political parties to accept donations through electoral bonds without revealing the identities of their benefactors. This loophole has ushered in a new era of unlimited political funding, free from public oversight, fostering an environment where donor anonymity reigns supreme. The Election Commission of India (ECI) too had vocally condemned this exemption from disclosure, labelling it a serious threat to transparency and democratic integrity³³.
- ii. Companies, due to their substantial financial influence and potential for quid pro quo arrangements with political parties, should be subject to stringent disclosure requirements. Section 182(3) of the Companies Act initially required companies to disclose specific details of their contributions to political parties, aiming to prevent corporate influence over electoral democracy and to keep the public informed. However, the 2017 amendment via the Finance Act only mandates the disclosure of the total contributions, omitting details about the recipients, which restricts voters' access to critical information necessary to detect corruption.
- iii. The amendment to the Income Tax Act, 1961 exacerbated the issue by exempting political parties from maintaining records of donations exceeding ₹20,000 if made

³² Association for Democratic Reforms Vs. Union of India, Writ Petition (C) No. 880 of 2017

³³ Election Commission of India to the Ministry of Law and Justice, letter 56/PPEMS/Transparency/2017, dated 26th May 2017

through electoral bonds. Previously, parties were required to meticulously track such donations to qualify for tax benefits, ensuring a degree of accountability in the funding process.

Voting, being a fundamental aspect of democratic engagement, requires that citizens are equipped with knowledge that enhances their ability to participate effectively in the electoral process. Therefore, by allowing political parties to withhold details about their funding sources, the Scheme compromised this right, hindering the electorate's ability to hold parties accountable. The opacity created by the Scheme directly contradicts the democratic principle that voters should have access to information necessary for making educated choices in elections.

In the Electoral Bonds Case, the Hon'ble Supreme Court relied on its previous rulings in *People's Union for Civil Liberties v. Union of India*³⁴ (*PUCL*) and *Union of India v. Association for Democratic Reforms*³⁵ (*ADR*), where it was established that voters have the right to access information necessary for them to exercise their freedom to vote, and this right is protected under Article 19(1)(a) of the Constitution. The rulings in *PUCL* and *ADR* were found to extend to political parties as well.

The Supreme Court, in balancing the right to privacy of donors concerning their political donations against the public's right to transparency in political funding, found that the amendments made by the Finance Act of 2017 disproportionately favoured donor privacy over public interest. The Court observed that these amendments shift the balance unduly towards private donor interests, undermining transparency in the democratic process and denying the public access to essential information on political funding sources. Thereafter, the Court declared that the proviso to Section 29C(1) of the Representation of the People Act, Section 182(3) of the Companies Act, and Section 13A(b) of the Income Tax Act, were all unconstitutional and violative of Article 19(1)(a).

Unlimited corporate funding

The influence of a corporation on the political landscape far exceeds that of an individual, both in terms of the vast amounts they can contribute and the objectives behind these contributions.

³⁴ *People's Union for Civil Liberties v. Union of India* (2013) 10 SCC 1

³⁵ *Union of India v. Association for Democratic Reforms* (2002) 5 SCC 294

Notably, neither the RPA nor the IT Act imposes a limit on individual contributions to political parties. While individuals may donate out of ideological support or affiliation with a particular political party, corporate contributions tend to be strategic business decisions, often aimed at securing favourable policies or benefits in return. This difference underscores the heightened impact corporations have on the political process, with their contributions typically directed towards achieving business-oriented goals rather than simply expressing political support. In essence, the amendment to the Companies Act, when viewed in conjunction with these other statutes, effectively places corporate entities and individuals on the same level concerning electoral contributions.

The Supreme Court held that before the amendment to Section 182, companies were limited to contributing only a certain percentage of their net aggregate profits, differentiating between profit-making and loss-making entities for sound reasons. This distinction was grounded in the logic that loss-making companies are more likely to engage in quid pro quo contributions rather than seeking tax benefits. By removing this classification, the Finance Act 2017 fails to address the heightened risk associated with contributions from loss-making companies, where the intent to secure political favours is potentially greater.

Therefore, the deletion of the proviso to Section 182(1) of the Companies Act, which permitted unlimited corporate contributions to political parties, was held to be arbitrary and violative of Article 14 of the Constitution for three key reasons: (a) it equates political contributions made by companies and individuals, despite the inherent differences between them; (b) it allows unchecked corporate influence over governance and the political process, undermining the principle of free and fair elections; and (c) it treats contributions from both profit-making and loss-making companies alike, disregarding their vastly different financial standing and potential influence.

SUGGESTIONS

Electoral Trusts, as outlined by the Supreme Court, offer an effective mechanism for curbing black money in electoral financing while maintaining transparency. These trusts are regulated under Section 2(22AA) and Section 13B of the Income Tax Act, along with Rule 17CA of the Income Tax Rules, 1962. They are designed to collect political contributions and distribute them to registered political parties while ensuring that anonymity is maintained between donors

and specific parties.

Key features of Electoral Trusts include:

- Contributions can only be made through traceable methods such as cheques, bank drafts, and electronic transfers, with cash donations prohibited.
- Detailed records of contributions and distributions are maintained, including the contributor's name, address, and PAN.
- At least 95% of the total donations received annually must be distributed to political parties, with limits on administrative expenses.
- Annual reports detailing contributions and distributions are submitted to the Election Commission of India (ECI) for transparency.

Electoral Trusts mitigate the fear of political consequences for donors, as the specific linkage between contributors and parties is not disclosed. This protects donors from potential backlash while promoting compliance with legal regulations. They strike a balance between transparency and anonymity, ensuring accountability in political funding while addressing the concerns of contributors. Additionally, contributions below ₹20,000 remain exempt from disclosure requirements, further encouraging legal and traceable political funding.

By promoting accountability, transparency, and anonymity, Electoral Trusts effectively address the issue of black money in electoral funding while safeguarding democratic processes.

Therefore, Electoral Trusts, combined with the legal requirement to make political donations above ₹2,000 exclusively through electronic transfers or cheques, create a robust solution for promoting transparency and accountability in political funding. This dual framework effectively curbs the flow of black money into elections while ensuring traceability of contributions. Electoral Trusts provide anonymity to donors regarding their support for specific political parties, reducing fears of political retaliation, while the mandatory use of traceable payment methods for donations above ₹2,000 ensures that all contributions are transparent and verifiable. Together, these measures strengthen the integrity of India's political funding system.

CONCLUSION

The Electoral Bonds Scheme, originally introduced to bring transparency to political funding, has instead exposed the tension between transparency and privacy in a democracy. Although it aimed to reduce the use of illicit funds in elections, its implementation created significant opacity, raising serious concerns about accountability, undue corporate influence, and the erosion of democratic principles. As the Supreme Court emphasized, transparency in political funding is not just an administrative concern but a constitutional necessity. Voters have the right to know who is financing political parties, as this information is vital for making informed electoral decisions.

Looking ahead, the challenge for India lies in designing a political funding framework that not only curbs corruption but also safeguards democratic integrity. Striking the right balance between ensuring transparency and protecting legitimate privacy will be critical in maintaining the fairness of the electoral process and the trust of the electorate.