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# TRANSPARENCY AND ACCOUNTABILITY: EXAMINING THE IMPACT OF ELECTORAL BONDS ON POLITICAL FINANCING IN INDIA

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## ABSTRACT

In a landmark decision in *Association for Democratic Reforms & Anr v. Union of India & Ors.*<sup>1</sup>, the Supreme Court invalidated the electoral bonds program, stating that citizens had a right to know if political parties had made any collaborative transactions in form of purchasing electoral bonds for quid pro quo exchanges in return of favourable corporate interests or benefits. Earlier, an important turning point in the history of political campaign funding in India had been the introduction of electoral bonds. Electoral bonds, which were purportedly intended to increase transparency and reduce the impact of black money on political fundraising, have drawn a lot of attention and discussion.

The author through this paper explores the complex dynamics behind electoral connections and examines how they affect political responsibility, democratic integrity, and the elections in India as a whole. The research gives an insight into election politics and its connection to the electoral financing scheme with an analysis of democratic ineffectiveness of electoral alliances in overriding democratic principles. The author also through this paper establishes how electoral bonds have previously affected political behaviour, impacted free and fair elections, and diminished the general state of India's democratic institutions.

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<sup>1</sup> 2024 INSC 113

## Introduction

The Indian government announced the Electoral Bonds program in the year 2017, which aimed to purge the nation's political fundraising structure. In a turn of events the Indian Supreme Court provided our democracy a much-needed boost and on Thursday, February 15, 2024, the unanimous decision in *Association for Democratic Reforms v. Union of India*<sup>2</sup> was delivered by the supreme court, written by Chief Justice DY Chandrachud on behalf of himself and three other justices, and by Justice Sanjiv Khanna on behalf of himself, the Court upheld the fundamental tenet that our right to political equality is inextricably linked to our ability to vote in the knowledge that we possess. Declaring a number of Indian laws that paved way for the electoral bonds to exist as invalid, the apex court further held that the these amendments made under the electoral bond scheme had a profoundly negative impact on India's democracy.

## Background

India's institutional structure has long been beset by political meddling, administrative overreach, and a failure to disseminate norms of responsibility both inside and outside of institutions. Yet for many years, we have consoled ourselves by emphasizing how many structural ills plaguing Indian government have mostly been assigned to lower-level organizations and agencies. "The head, that is, the elite institutions at the national level remain sound and functional, but this head is no longer reliably connected via nerves and sinews to its own limbs," economist Lant Pritchett once said in a remarkable way.<sup>3</sup>

The government intended to adopt a new mode of electoral funding, which would set itself apart from the murky status quo by embracing the widely recognized but frequently ignored ideal of openness in electoral reform, as promised by late finance Minister Arun Jaitley in his 2017 Budget address.<sup>4</sup> Notifying the scheme took over a year, but the core working foundation was straightforward. If people, organizations, or businesses would like to donate to political parties, they can go to the State Bank of India (SBI) and buy tax free time limited bearer bonds in certain denominations during specific times of the year, which they can then deposit into the

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<sup>2</sup> Ibid.

<sup>3</sup> Pritchett, Lant. *Is India a Flailing State? Detours on the Four Lane Highway to Modernization*. HKS Faculty Research Working Paper Series John F. Kennedy School of Government, Harvard University. RWP09-013.

<sup>4</sup> Arun Jaitley Finance Minister of India, *Speech of Budget 2017-2018*, (<https://www.indiabudget.gov.in/doc/bspeech/bs201718.pdf>) visited at 12 February

political parties' registered bank accounts.

There were certain changes needed to be made in the Finance Act, 2017 to introduce the electoral reforms put forward. Earlier as mandated according to section 31 of The Reserve Bank of India Act, 1934, any bill of exchange or promissory note for payment of money to the holder of the note or bond may only be drawn, accepted, made, or issued by the RBI or the Central Government allowed by the RBI under the RBI Act. But with the changes in the Finance Act, 2017, it allowed Section 31(3), which allows the government of the country to grant permission to any scheduled bank to issue electoral bonds, was added to the RBI Act. Therefore, it is vital to compare the legislative modifications with the laws governing political party donations in order to comprehend the setting in which they were proposed.

## **ANALYSIS OF ELECTORAL BONDS**

### **Mechanism of Electoral Bonds**

Electoral bonds are bearer instruments that carry no interest and are tax free. These are issued as promissory notes which are akin to Bearer Instruments. These must be paid on demand to the holder of the instrument. The crucial point of observance is that they don't carry the name of purchaser.

### **Legal Framework and Regulations**

The Finance Bill of 2017 included the introduction of Electoral Bonds. The Ministry of Finance within the Department of Economics announced the Electoral Bond Scheme 2018 on January 2, 2018. A notification of the new act was given on January 29, 2018 in accordance with Section 31(3) of the RBI Act. The Electoral Bond is a bearer financial instrument that is issued in the form of a promissory note and does not bear the buyer's name.<sup>5</sup>

### **Persons who can purchase the bonds:**

An individual who is either

- (i) An Indian citizen or,

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<sup>5</sup> Electoral Bond Scheme, Clause 2(a).

(ii) An entity incorporated or established in India may acquire the Bond.<sup>6</sup>

Further persons are classified as:

(a) individuals;

(b) Hindu undivided families;

(c) companies;

(d) associations of persons or bodies of individuals, whether incorporated or not,

(e) any artificial juridical person that does not fit into any of the aforementioned categories, and

(f) any agency, office, or branch owned or controlled by such a person. Bonds can be purchased alone or in conjunction with other people.<sup>7</sup>

#### **Persons who benefit from Electoral bonds:**

Any organization that qualifies as a legitimate political party in India may cash an electoral bond.<sup>8</sup> A political party must be registered under Section 29A of the RP Act and have received at least 1% of the total votes cast in the most recent general election for the State's Legislative Assembly or House of People in order to be eligible to obtain an electoral bond.<sup>9</sup> Bonds can only be cashed by qualified political parties via their bank accounts through the designated State Bank of India and its limited bank branches.<sup>10</sup>

Payments for the bond's issue can be made in Indian rupees via direct debit to the buyer's account, demand draft, check, or Electronic Clearing System. If a demand draft or check is used for payment, it must be made payable to the issuing bank at the location. In denominations of Rs. 1000, 10,000, 1,00,000, 10,00,000, and 1,00,00,000, the bonds are issued.<sup>11</sup> The bond has a fifteen-day validity period from the day of issuance. If the bond is deposited beyond

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<sup>6</sup> Ibid, Clause 3(1).

<sup>7</sup> Ibid., Clause 3(3)

<sup>8</sup> Ibid., Clause 12

<sup>9</sup> Ibid., Clause 3(4)

<sup>10</sup> Ibid., Clause 2(b)

<sup>11</sup> Ibid., Clause 5

fifteen days, no payment will be issued to a political party<sup>12</sup>. The bond will be deposited by the approved bank with the Prime Minister's Relief Fund if it is not cashed within fifteen days.<sup>13</sup>

The approved bank shall maintain the confidentiality of the information provided by the buyer. It will only be made public upon request from an appropriate court or when a criminal case is filed by any law enforcement organization.<sup>14</sup> According to the Central Government's specifications, the bond will be on sale for 10 days per quarter in the months of January, April, July, and October.<sup>15</sup> In the year of the General Elections to the House of People, bonds will be accessible for an extra thirty days, as determined by the Central Government.<sup>16</sup>

According to the Central Government's specifications, the bond will be on sale for 10 days per quarter in the months of January, April, July, and October.<sup>17</sup> In the year that general elections to the House of People are scheduled, bonds will be accessible for an extra thirty days, as determined by the Central Government.<sup>18</sup> It is not possible to trade the bonds, hence they are non transferable.<sup>19</sup>

### **Changes Incorporated for Introduction of Electoral Bonds:**

Invoking a declaration of unconstitutionality for the Electoral Bond Scheme and its corresponding provisions, the petitioners initiated proceedings under Article 32.

These provisions include:

- a. Section 137 of the Finance Act 2017 and its correlation with Section 29C of the RP Act;
- b. Section 135 of the Finance Act 2017 and its correlation with Section 31 of the RBI Act;
- c. Section 154 of the Finance Act 2017 and the corresponding modification to Section 182 of the Companies Act.

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<sup>12</sup>Ibid., Clause 6

<sup>13</sup> Ibid., Clause 12(2)

<sup>14</sup>Ibid ., Clause 7(4)

<sup>15</sup>Ibid., Clause 8(1)

<sup>16</sup>Ibid., Clause 8(2)

<sup>17</sup>Ibid., Clause 8(1)

<sup>18</sup>Ibid., Clause 8(2)

<sup>19</sup>Ibid., Clause 14

d. Section 11 of the Finance Act 2017 and its correlation with Section 13A of the IT Act.<sup>20</sup>

The Finance Act, 2016 went into effect on May 14, 2016. It changed the definition of "foreign source" in Section 2(1)(j)(vi) of the Foreign Contribution Regulation Act, 2010 (FCRA) to permit foreign corporations with a majority stake in Indian enterprises to make political party donations. Before, the Foreign Exchange Management Act of 1999 and the Foreign Corrupt Practices Act forbade foreign corporations from making donations to political parties. The Representation of the People Act, 1951, the Reserve Bank of India Act, 1934, the Income Tax Act, 1961, and the Companies Act, 2013 were revised on March 31, 2017, by the Finance Act, 2017. Political party exemptions under Section 13A of the Income Tax Act were modified by Section 11 of the Finance Act of 2017.<sup>21</sup>

The RBI Act's Section 31 was modified by Section 135. The central administration was able to issue electoral bonds by 'authorizing any scheduled bank to issue.' A proviso to Section 29C of Representation of Peoples Act was created by Section 137, which exempted political parties from disclosing donations made through electoral bonds in their 'Contribution Reports.' Contributions from businesses and individuals 'in excess of twenty thousand rupees' are disclosed via these reports to the parties. Section 182 of the Companies Act, 2013 was changed by Section 154, removing the cap on the amount of money a business might give to a political party. Only up until recently, businesses could only give 7.5 percent of their net revenues over a three-year period.<sup>22</sup>

## **ELECTION COMMISSION OF INDIA'S VIEW ON THE ELECTORAL BONDS PROGRAM**

One of the respondents, namely the Election Commission of India (ECI) was in strong opposition of the Electoral Bond Scheme, they submitted an affidavit<sup>23</sup> on March 25, 2019, before the Honourable Supreme Court objecting to the Electoral Bond Scheme (EBS). According to the declaration, the law runs counter to the objective of political money and its

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<sup>20</sup> 'Press Release Introduction of the Scheme of Electoral Bond' (*Introduction of the Scheme of Electoral Bond*, ([https://dea.gov.in/sites/default/files/Electoral Bonds Press RELEASE\\_2-1-2018.pdf](https://dea.gov.in/sites/default/files/Electoral%20Bonds%20Press%20RELEASE_2-1-2018.pdf)) visited 11 February 2024

<sup>21</sup> 'Electoral Bonds Judgement' (*Supreme Court Observer*) (<https://www.scobserver.in/cases/association-for-democratic-reforms-electoral-bonds-case-background/>) visited 11 February 2024

<sup>22</sup> *Ibid.*,

<sup>23</sup> Counter Affidavit on behalf of Election Commission of India, Association for Democratic Reforms Anr vs. Union of India Ors(*Arguments-transcript-day-3-electoral-bonds.PDF*) (<https://www.scobserver.in/wp-content/uploads/2021/10/Arguments-Transcript-Day-3-Electoral-Bonds.pdf>) visited 23 February 2024

ingenuousness. Furthermore, it stated that on May 26, 2017, the ECI sent a letter to the Union Government alerting it to the potential 'repercussions/impact on the transparency aspect of political finance/funding'.<sup>24</sup> They further argued that keeping political parties' donation information secret would prevent them from disclosing information about foreign funding. 'Unchecked foreign funding of political parties in India, which could lead to foreign companies influencing Indian policies,' the document said in its spirit.

The EBS was "a pioneer step in bringing electoral reforms, to ensure that the spirit of transparency and accountability in political funding is maintained," according to a rejoinder filed by the Union government on April 1, 2019. The Union asserted that there was an "unregulated flow of black money" into political organizations since the groups mostly accepted cash donations.<sup>25</sup> The State Bank of India is the only authorized bank that is permitted to issue these bonds, therefore the Union guaranteed that these problems would no longer impede the funding of politics. Moreover, revealing KYC information guarantees accountability.

Due to the Know Your Customer requirement, the identity of the person or entity acquiring the bearer bond will be known by the bank, but the identities of the intervening individuals or entities remained unknown as a whole. The issuance of electoral bonds can be used in the face of money laundering, using it as the considering the fact that for transfer from the original subscriber of a bond to a transferee can be paid in cash. This would have an influence on the principles of the Prevention of Money Laundering Act of 2002. There won't be a record of transactions left behind. Although the donation would remain anonymous as a result, it will further provide numerous more individuals in the transmission chain anonymity.

## **ELECTORAL FUNDING OF ELECTIONS**

The judicial system has not imposed a limit on the amount of money that a political party or a politician running for election may accept. Still, a maximum amount of money can be spent by a candidate or their representative in relation to Parliamentary and Assembly elections between the date of nomination and the announcement of the results is set forth and can be read in

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<sup>24</sup>A .Vishnoi, 'Election Commission Opposed Electoral Bonds' *The Economic Times* (<https://economictimes.indiatimes.com/news/politics-and-nation/election-commission-opposed-electoral-bonds/articleshow/107732582.cms?from=mdr>) visited 23 February 2024

<sup>25</sup> (*Arguments-transcript-day-3-electoral-bonds.PDF*) (<https://www.scobserver.in/wp-content/uploads/2021/10/Arguments-Transcript-Day-3-Electoral-Bonds.pdf>) visited 23 February 2024

Section 77 of the RPA in conjunction with Rule 90 of the Conduct of Election Rules 1961. The highest expenditure limit in a Parliamentary seat ranges from Rupees 75, 00,000 to 95, 00,000, contingent upon the size of the State and Union Territory.<sup>26</sup>

The law does not, however, set any restrictions on the amount of money that a political party may spend. Contributions to candidates are not subject to legal restrictions. It controls solely the political party contributions. Nonetheless, spending by candidates is controlled, not by the political party. Money, it is said, does not vote; people do. Nonetheless, research has shown that money influences electoral politics both directly and indirectly.<sup>27</sup> Its effect on election results is the main way that money directly affects politics. Both intelligent and uneducated voters' voting behavior is impacted by campaigns. Because campaign activities allow an informed voter to learn more about the policies and ideologies of the political parties, the influence of campaigns on an informed voter is additional.<sup>28</sup>

In order to expand their reach, political parties employ cutting-edge campaign strategies that go beyond the conventional approaches of commercials, door-to-door canvassing, and processions. Political parties, for instance, fund neighbourhood fairs and religious festivals, hosting athletic events, and hosting literary contests with financial prizes<sup>29</sup>. The sort of candidates who might be attracted to politics is likewise restricted by money and financial resources including political parties that participate in the election contesting on national and regional level. Research have revealed that political parties' choice of candidates is influenced by money because parties would rather run candidates who can raise a significant portion of their own funding independently of the party.

Candidates from socioeconomically disadvantaged groups also have additional obstacles as a result of the intimate relationship between politics and money.<sup>30</sup> According to the judgment in *Kanwar Lal Gupta v. Amar Nath Chawla*,<sup>31</sup> money can be used as a resource for political solicitation, including advertising, which broadens a candidate's audience. In contrast to their

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<sup>26</sup> Rule 90, Conduct of Election Rules, 1961

<sup>27</sup> 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)

<sup>28</sup> D Sunshine Hillygus, Campaign Effects on Vote Choice in "The Oxford Handbook of American Elections and Political Behavior" (Ed. Jan E. Leighley 2010)

<sup>29</sup> Michael A. Collins, Navigating Fiscal Constraints in "Costs of Democracy: Political Finance in India" (edited by Devesh Kapur and Milan Vaishnav) OUP, 2018

<sup>30</sup> 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

<sup>31</sup> (1975) 3 SCC 646



adversaries in politics, a candidate or political party with substantial financial resources has 'much greater opportunity for the propagation of its program,' the court said. In such cases inequality in politics is seen to lead to future serious discrimination between individuals or political parties based on money power and other factors.

Consequently, some voters are denied a 'equal voice' and some candidates are denied an 'equal chance' would automatically follow. In the case of *Vatal Nagaraj v. R Dayanand Sagar*,<sup>32</sup> Justice V R Krishna Iyer said that politicians frequently use large sums of money facilitated by political parties to circumvent the law's spending cap. The court recognized that significant financial contributions are 'necessary evils of modern elections,' which they hoped would be eliminated as soon as possible. In the case of *Common Cause (A Registered Society) v. Union of India*,<sup>33</sup> this Court focused on the conspicuous use of funds by political parties to support their slates of candidates. The political parties in their pursuit of power, forget the purpose and spirit behind the elections. Justice Kuldip Singh remarked that 'Candidates spent almost a trillion rupees in the General Election, but no one is held accountable for the majority of funds were wasted in this manner, and nobody is held accountable. No one reveals where the money comes from. Both an audit and appropriate accounting are absent. Nobody is sure where the money comes from. Because it violates the obligatory legal restrictions, this blatant exhibition of black money cannot be allowed in a democracy where the rule of law is established.'

#### **ANONYMITY AND NON-DISCLOSURE OF INFORMATION ON ELECTORAL FINANCING:**

According to the Finance Act of 2017, Section 29C of the Representation of Peoples Act, 1950 political parties are exempt from disclosing financial donations made using electoral bonds. In a same vein, the political party is not required to keep a record of donations for contributions made through electoral bonds under section 13A of the IT Act as modified. Section 182 of the Companies Act 2013 was also modified by the Finance Act 2017 to remove the previous requirement that firms disclose specific information about the amount they donate to political parties in their profit and loss statements. Companies that have donated money to political parties are now only obligated to reveal the total amount given, not any specific information

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<sup>32</sup> (1975) 4 SCC 127

<sup>33</sup> (1996) 2 SCC 752

about the political party that the payment was made to.<sup>34</sup>

One of the most important and fundamental aspects of the Electoral Bond Scheme is the donors anonymity. A bearer banking instrument without the buyer's name on it is known as an electoral bond.<sup>35</sup> The information provided by the buyer may only be disclosed by the authorized bank in response to a court order or the filing of a criminal prosecution by law enforcement, according to legal requirements.<sup>36</sup>

### **THE RIGHT TO INFORMATION OF THE VOTER VERSUS ANONYMITY OF ELECTORAL BONDS**

It has been decided that people' rights to information including the rights of the voters to know about the antecedents of their contesting candidates, along with channels in which they are being politically funded are included and guaranteed under Article 19(1)(a).The respondent in *State of Uttar Pradesh v. RajNarain*<sup>37</sup> requested a summons for papers related to an election petition. The State asserted its right to non disclosure of such document under privilege. Justice KK Mathew noted in his concurring opinion that “the public has a right to the fair administration of justice, and that right can only be preserved by disclosing pertinent and important information. The people of this country have a right to know every public act public.” learned Judge reiterated this idea by citing Article 19(1)(a) of the Constitution, "

In the case of *S.P Gupta v. Union of India*<sup>38</sup> In order to prevent the publication of the letters between the Law Minister, the Chief Justice of the Delhi High Court, and the Chief Justice of India about the reappointment of Additional Judges, the Union of India claimed immunity. When speaking about the legal position regarding accusations of non-disclosure, Justice P N Bhagwati commented that the "right to know" is protected by the Constitution and is essential to obtaining "true facts" about how the nation and the democracy works. The opinion also acknowledged that accountability and transparency of governance as crucial aspects of democratic governance. Voting is a continual process by which voters not only select

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<sup>34</sup> Vinod Rai 'India's Electoral Bond Scheme: Declared Unconstitutional by the Court', Association of Democratic Reforms.

<sup>35</sup> Electoral Bond Scheme, Clause 2(a)

<sup>36</sup> Ibid., Clause 7(4)

<sup>37</sup> (1975) 4 SCC 428

<sup>38</sup>1981 Supp SCC 87

representatives to represent them but also keep the government accountable which can only be possible if they have enough data to make such choice.

The Courts have acknowledged the importance of information in securing the objective of self-development by holding the government responsible and helping people find the truth in a marketplace of ideas. The freedom of speech and expression also involves the ability to get information that would allow individuals to discuss political, moral, and social concerns.<sup>39</sup> In addition to promoting representative democracy, these discussions would also lessen the monopoly on information and the spread of false information.

The Apex Court has time and again acknowledged that engaging in democratic governance effectively serves as both a means and an objective in and of itself. This reading of Article 19(1)(a) is consistent with the widely accepted view that the goal of the Constitution and basic freedoms is to ensure the circumstances necessary for both individual and collective self-development.<sup>40</sup>

It contains details that would be vital to advance various types of participatory democracy and is not limited to knowledge on the operations of public servants. The privilege of Information is interpreted instrumentally, acknowledging the importance of the right in promoting the accomplishment of democratic objectives. In *Union of India v. Association for Democratic Reforms (ADR)*<sup>41</sup>, according to the ruling of this Court, voters have a right to adequate information about candidates so they can use their democratic right to vote sensibly. It was decided that this kind of information was required for elections to be held in a ‘free and fair manner.’

In *PUCL v. Union of India*<sup>42</sup> actions were brought under Article 32 before this Court to contest Section 33-B of the Representation of Peoples Act. Judge M. B. Shah, while writing the judgment for the majority, pointed out that Section 33-B was unconstitutional because it effectively rendered the Court's ruling invalid and along with it the three-judge bench's ruling in the *Union of India v. Association for Democratic Reforms (ADR)*<sup>43</sup>, which enabled the tracing and the right to know the background of candidates contesting elections. The

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<sup>39</sup> *DC Saxena v. Hon'ble The Chief Justice of India*, (1996) 5 SCC 216

<sup>40</sup> *Supriyo v. Union of India*, 2023 INSC 920

<sup>41</sup> (2002) 5 SCC 294

<sup>42</sup> (2003) 4 SCC 399

<sup>43</sup> *Ibid.*, 33

knowledgeable Judge also remarked that right to information of a voter is a part of Article 19(1) (a). Voters are entitled to information that is "essential" to selecting the candidate for whom they should cast their ballots.

## **CONSTITUTIONAL VALIDITY OF DONOR PRIVACY**

The Union of India argued before the court that the state had an interest in launching the Electoral Bond Scheme, because it ensures that information regarding financial contributions to political parties is kept secret in order to safeguard the contributor's informational privacy regarding their political allegiance. Financial donations' secrecy and anonymity is that it protects donor privacy. The State's position is that in such a case the right to information can be prohibited because donor privacy is a fundamental right in and of itself, even if it cannot be linked to the reasons listed in Article 19(2).

In the given case of Justice K.S. Puttaswamy vs. Union of India and Ors<sup>44</sup>, a nine-judge bench of the Supreme Court ruled that the right to privacy is protected by the Constitution. The Supreme Court linked the right to privacy to the fundamental principles of liberty, dignity, and the absence of arbitrariness that underpin Part III requirements. The discussion of the extent of the right to privacy in Justice KS Puttaswamy case, it laid down certain contours in the field of privacy through which we can analyze the concept of donor privacy, as:

1. Included in the right to privacy is the ability to 'repose', or the freedom from undesirable stimuli, 'sanctuary', defence against prying eyes, privacy while making personal judgments, and independence with regard to individual decisions in the given case which includes right to make free and fair elections.
2. Decisions pertaining to the body and mind are included in the category of private decisions. Both the choice and the decision-making process are covered by privacy. Lack of privacy over electoral thinking will stifle opinions and promote homogeneity, which is counter to the democratic principles enshrined in the Constitution.<sup>45</sup>
3. The ability to exercise choice and privacy would allow for the essential liberties such the

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<sup>44</sup> (2017) 10 SCC 1

<sup>45</sup> Ibid., Paragraph 168, Paragraph 19

unrestricted freedom of speech, association, and opinion.<sup>46</sup>

4. Privacy is not granted to a place it is bestowed upon a person. The extent of confidentiality cannot be limited to the 'private' area alone; and Informational privacy is very much included in the definition of privacy. When combined, information that would appear unimportant in silos can have a significant impact on how people make decisions in electoral process.<sup>47</sup>

### **RELEASE OF ELECTORAL BOND DATA BY THE STATE BANK OF INDIA**

The Supreme Court through its judgment directed, the State Bank of India (SBI) to provide the Election Commission of India (ECI) with complete set of electoral bond data in accordance with the court's orders, which is a noteworthy step. The Supreme Court declared a second time that the SBI must provide bond numbers. Following orders from the Supreme Court, the SBI provided the Election Commission with information about the purchase and redemption of electoral bonds. Each gift may be linked to the political party that received it using the bonds special alphanumeric number.<sup>48</sup>

The State Bank of India (SBI) was criticized by the Supreme Court on March 8, 2024 for failing to provide electoral bond numbers and for not abiding by its prior ruling. The Supreme Court unequivocally declared that the lender 'has to be disclosed' the electoral bond number, which connects contributors to beneficiaries of such political bonds. As per the time limit imposed by the Supreme Court, the Election Commission has posted comprehensive information on electoral bonds on its website, submitted to the ECI by SBI on 12.03.24 as derived from the State Bank of India (SBI).

Following a deadline set by the Supreme Court, the Election Commission made expansive information available to the public on electoral bonds, which it received from the State Bank of India (SBI). Major purchasers are identified by the data, including big corporate and businesses like, Vedanta, ITC, Mahindra & Mahindra, and personal donations by businessmen like Lakshmi Mittal.<sup>49</sup> The surprising note and coincidence was that while being under

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<sup>46</sup> Ibid., Paragraph 25 and Paragraph 29

<sup>47</sup> Ibid.

<sup>48</sup> State Bank of India vs. Association for Democratic Reforms and Others 2024 INSC 195

<sup>49</sup> 'Details of Electoral Bonds Submitted by SBI Part- I' (*Election Commission of India*) visited 14 March 2024

Enforcement Directorate's investigation, Future Gaming and Hotel Services purchased bonds totalling more than Rs 1,350 crore.

Significant purchases were also made by Vedanta Ltd., and other major corporate entities. Through these bonds, payments were made to the Congress, the BJP, and a number of other parties, these bonds enacted with the goal of improving political financial transparency serve a totally different purpose in reality. Following the time imposed by the Supreme Court, the Election Commission has posted comprehensive information on electoral bonds on its website, derived from the State Bank of India (SBI).<sup>50</sup>

Furthermore, Future Gaming and Hotel Services, a lesser-known company that is presently being investigated by the Enforcement Directorate, turned out to be a noteworthy purchaser of electoral bonds with a value of more than Rs 1,350 crore. Among the well-known corporations, Vedanta Ltd acquired bonds for Rs 398 crore, while the combined purchases of its three firms came to a total of Rs 246 crore.<sup>51</sup>In his own capacity, steel mogul Lakshmi Niwas Mittal purchased bonds valued at Rs 35 crore. Megha Engineering, a Hyderabad-based company that has won contracts for many significant infrastructure projects, purchased bonds totalling Rs 966 crore. Over Rs 10 crore worth of electoral bonds were bought by 213 contributors in total. The State Bank of India revealed that 22,217 electoral bonds were purchased between April 1 and

### **Non-Disclosure of Bond Numbers**

The Supreme Court voiced its disapproval of the bond numbers' non-disclosure; one day after the Election Commission of India published a list supplied by the State Bank of India of all businesses that bought electoral bonds since April 2019 to make political donations. A five-judge Constitution Bench notified the SBI and requested a response by Monday<sup>52</sup>, stating that the bank has a "duty-bound" need to provide the ECI with the bonds' unique alphanumeric code so that the receivers may be matched. Despite the court's directive that all

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<sup>50</sup> Details of Electoral Bonds Submitted by SBI Part- II' (*Election Commission of India*) visited 14 March 2024

<sup>51</sup>Mukhopadhyay S, 'Electoral Bonds Data Released: 10 Biggest Revelations' (*The Mint*) (<https://www.livemint.com/news/india/electoral-bonds-10-biggest-revelations-as-sbi-election-commission-release-detailed-data-11710465823684.html>) visited 18 March 2024

<sup>52</sup> State Bank of India vs. Association for Democratic Reforms and Others 2024 INSC 195

information be provided, CJI Chandrachud observed that the SBI had not sent the bond numbers to the ECI.

Former finance secretary Subhash Chandra Garg said on Friday that the State Bank of India (SBI) was not supposed to record the bond numbers and that doing so would have violated the anonymity promised to donors under the Electoral Bond Scheme, 2017. This came a day after the SBI released all information regarding the electoral bonds purchased and redeemed, including the alphanumeric codes of each bond that allowed donors to be matched with the recipients. Additionally, he made note of the prior, "ostensibly false," declaration that the bank had filed on the subject and exclaimed that the bank had filed ostensibly false affidavit.<sup>53</sup>

The SBI had done something "completely unlawful and unexpected." The bank had struck at the source by documenting the alphanumeric codes of the bonds that political parties had purchased and redeemed for donations. The bank had achieved a fundamental goal of the government-introduced programme in 2018 to facilitate anonymous political donations, he said, by documenting the alphanumeric codes of the bonds that were sold to contributors and cashed by political parties. The SBI stated in its initial statement that it would take three months to match the physical records of contributors and parties, which were maintained in two silos. However, further events indicate that they digitally captured the data.<sup>54</sup> It seems that their first affidavit was written with the intention of pushing data disclosure past the Lok Sabha elections.

The electoral bonds bought by donors indicate that certain bonds cashed by political parties lack a donor name associated with them.

Various political parties cashed 1,679 bonds worth ₹623.2 crore for which the donor's identity could not be found. Of the ₹623 crore, about ₹70 crore went to the Congress, ₹466 crore to the BJP, and ₹17 crore to the Trinamool Congress. It is observed that between April 12 to April 25, 2019, all bonds that were not traced to contributors were redeemed. The Supreme Court ordered the SBI to reveal all information on electoral bonds bought and cashed from April 12,

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<sup>53</sup>Hariharan S, 'Electoral Bonds Worth ₹623 Crore Remain Unmapped to Donors, SBI Data Reveals' (BusinessLine) (<https://www.thehindubusinessline.com/data-stories/electoral-bonds-worth-623-crore-remain-unmapped-to-donors-sbi-data-reveals/article67979873.ece>) visited 23 March 2024

<sup>54</sup>Prabhu S and Mitra C, 'want to Ensure Nothing Suppressed': Supreme Court to SBI on Electoral Bonds' (NDTV.com) (<https://www.ndtv.com/india-news/should-sbi-disclose-all-details-on-electoral-bonds-supreme-court-to-decide-5260204>) visited 21 March 2024

2019, therefore it appears that the omission occurred.<sup>55</sup> Though these bonds were cashed after the cut-off date, they were purchased in the period before the date, so the donors could not be mapped to them.

## CONCLUSION

Any democratic institution can only progress when there is clarity on issues that are fundamental to the basic electoral democratic principles. In relation to accountability of electoral bonds scheme there should be endeavour to work collectively to increase electoral political financing and transparency, data must be provided by the State Bank of India's data on electoral bonds and analysed in broader public welfare. It should include details on all the organizations, businesses, and people that bought electoral bonds, the parties that received them, and the connection between the two entities, analysing that was paid by whom. However, the SBI's disclosures yet have only addressed the donors who bought the bonds and the recipients, the actual issue of who was paid by whom is still unresolved.

First, the State Bank of India being a public bank, working towards larger public interest should close this information gap by providing information on the bond's unique alphanumeric code and serial number. The SBI was requested by the Supreme Court time and again to provide the Election Commission with these figures about the bonds that were bought and redeemed. Additionally, the Court has directed the SBI's Chairman and Managing Director to submit an affidavit by March 21 attesting to the disclosure of all relevant facts surrounding the bonds. The court's persistent efforts to provide total openness are much appreciated. Having said that, the SBI ought to release all of the data it possesses right now and not hold out for the Court's invitation and continuous reinforcements.

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<sup>55</sup> 'Supreme Court Directs SBI to Disclose All Electoral Bond Data Available with It Including Unique Alphanumeric Numbers' (Live Law) (<https://www.livelaw.in/top-stories/supreme-court-electoral-bonds-state-bank-of-india-252608>) visited 20 March 2024