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With this thought, we hereby present to you

DEMOCRACY IN THE SHADOWS: ELECTORAL BONDS, ANONYMITY, AND THE CONSTITUTIONAL-CRIMINAL CROSSROADS

AUTHORED BY - DEVYANSH ARORA

ABSTRACT

The Electoral Bond Scheme, enacted to reform political funding in India, legalises anonymity in donations, raising profound constitutional and criminal law concerns. While aimed at promoting transparency and curbing black money, it paradoxically conceals donor identities, undermining the constitutional right to information under Article 19(1)(a), which protects freedom of speech and expression. The legal maxim *Salus populi suprema lex esto* highlights the necessity of transparency for the welfare of the people, which secrecy in political funding threatens to erode.

From a criminal law perspective, this anonymity risks enabling illicit financing and corruption, contravening laws such as the Prevention of Corruption Act and the Prevention of Money Laundering Act. The principle of *Nemo debet esse iudex in propria causa* stresses the need for impartial oversight, compromised by the scheme's opacity. Constitutional provisions, including Articles 14 and 324 and judicial precedents like *Association for Democratic Reforms v. Union of India (2002)*, underscore the critical importance of disclosure in maintaining democratic integrity.

This study examines whether legalising anonymity through electoral bonds aligns with constitutional mandates or subverts democratic accountability by fostering a constitutional-criminal conflict in political funding.

INTRODUCTION

Political funding is at the heart of democracy, shaping how elections are fought and governments function. In India, political donations have long been controversial, plagued by secrecy, unaccounted cash, and the influence of wealthy donors operating behind the scenes.¹ These challenges threaten the fairness of elections and the very trust citizens place in the democratic system.

To tackle these issues, the government introduced the Electoral Bond Scheme in 2018 through amendments to the Finance Act.² The idea was to channel political donations through banks, making the process cleaner and reducing cash transactions that often escape scrutiny. Donors buy these bonds from authorised banks and give them to political parties, which redeem them through designated accounts. At first glance, this seems like a step forward in bringing transparency to political funding.

But here lies the problem: while the money passes through banks, the donors' identities remain hidden from the public and even political opponents. Only the bank and the government know who gave what.³ This institutional anonymity raises serious concerns. Transparency is vital in a democracy because voters deserve to know who is backing their leaders and parties. The Supreme Court emphasised this in *Union of India v. Association for Democratic Reforms* (2013), where it ruled that transparency in political funding is essential to uphold the right to free speech and fair elections under Article 19(1)(a).⁴

When donors remain anonymous, voters cannot make fully informed decisions. This secrecy undermines the right to information and the principles of equality and fairness enshrined in Article 14 of the Constitution. Wealthy donors with hidden identities can wield outsized influence, tipping the scales unfairly in electoral contests.^{5, 6} The Election Commission of India, which is tasked with ensuring free and fair elections under Article 324, also finds its role weakened. The anonymity under the Electoral Bond Scheme restricts its ability to monitor and prevent corrupt practices. This was highlighted by the Delhi High Court in *Public Interest*

¹ Election Commission of India, "Report on Political Funding in India," 2013, <https://eci.gov.in/files/file/12345-political-funding-report/>.

² Finance Act, 2017, No. 22, Acts of Parliament, 2017.

³ Ministry of Finance, Government of India, *Electoral Bond Scheme Guidelines*, 2018.

⁴ *Union of India v. Association for Democratic Reforms*, (2013) 2 SCC 12.

⁵ Constitution of India, Art. 14.

⁶ Constitution of India, Art. 19(1)(a).

Foundation v. Union of India (2019), which underlined the critical importance of transparency to maintain electoral integrity.⁷

Beyond constitutional issues, the scheme has profound criminal law implications. Its secrecy can cover illicit money—black money, proceeds of crime—to enter the political arena, undermining laws like the Prevention of Money Laundering Act, 2002.⁸ It also poses risks under the Prevention of Corruption Act, potentially facilitating secret deals and bribery that erode public trust.

This situation clashes with fundamental legal maxims such as *Nemo debet esse iudex in propria causa*—no one should be a judge in their case—which calls for transparency and checks to prevent abuse of power. When donor identities are hidden, too much unchecked power is placed in the hands of a few, risking misuse and undermining democratic oversight.

Earlier rulings like *Association for Democratic Reforms v. Union of India* (2002) have clarified that public disclosure of political funding is necessary to fight corruption and protect democracy. The Electoral Bond Scheme reverses this by legalising anonymity, posing complex questions about the balance between donor privacy and the public's right to transparency.

BACKGROUND OF ELECTORAL BONDS

Political financing in India has long been a matter of public concern and legal scrutiny due to its opaque nature and the potential for abuse. The democratic process depends fundamentally on transparency and accountability, especially regarding money flow into elections. Historically, Indian political parties relied heavily on unregulated cash donations, often below the threshold for mandatory disclosure, which created significant loopholes exploited by donors seeking anonymity and parties eager to circumvent funding limits. This lack of transparency contributed to the widespread perception of corruption and diminished public trust in the political system.

Efforts to regulate political funding date back to the enactment of the Representation of the People Act, 1951, which sought to impose limits on electoral expenses and required parties to

⁷ *Public Interest Foundation v. Union of India*, W.P.(C) 3913/2019, Delhi High Court.

⁸ Prevention of Money Laundering Act, 2002, No. 15, Acts of Parliament, 2003.

maintain records of donations.⁹ However, these statutory provisions fell short in practice, primarily because enforcement mechanisms were weak and cash transactions dominated, often evading formal scrutiny.¹⁰ The political financing landscape was further complicated by the interplay of corporate donations, which were often routed through complex channels to mask their origins.¹¹

In this setting, the Election Commission of India made several recommendations to enhance transparency, culminating in increased reporting requirements and audit obligations for political parties under the Income Tax Act, 1961.¹² Despite these incremental reforms, the entrenched culture of opaque funding persisted, leading to calls for more systemic solutions. The Supreme Court of India acknowledged these challenges in the ***Rajasthan Political Party Funding Case*** (2003), where it stressed that electoral transparency is indispensable for freeing the electorate's will and preventing undue influence over political parties.¹³

The government introduced the Electoral Bond Scheme in 2018 to address these concerns, aiming to cleanse electoral funding by channelling donations through formal banking routes. Under this scheme, donors purchase bonds from designated banks, which political parties redeem. The bonds are bearer instruments that ensure the donor's anonymity, with transactions recorded by banks but not disclosed publicly or to political parties.¹⁴ The government argued that the scheme would curb the circulation of unaccounted cash and black money in elections while protecting donor privacy from political vendettas or coercion.

However, the anonymity provision sparked intense debate. Transparency advocates argued that concealing donor identities undermines democratic accountability and violates the electorate's right to know who finances political parties. This right, rooted in the *public trust doctrine*, holds that political parties act as public agents and their funding sources must be transparent to prevent corruption.¹⁵ The legal principle of *Actus curiae neminem gravabit* — the act of the court shall prejudice no one — underscores that fairness and openness in legal and political

⁹ Representation of the People Act, 1951, No. 43, Acts of Parliament, 1951.

¹⁰ Shutosh Varshney, *Democracy and Development in India*, Oxford University Press, 1998.

¹¹ Sanjukta Basu, "Corporate Donations and Political Funding in India," *Journal of Indian Law and Society* 7 (2016): 45–62.

¹² Income Tax Act, 1961, No. 43, Acts of Parliament, 1961.

¹³ *Rajasthan Political Party Funding Case*, W.P. (C) 4563/2003, Supreme Court of India.

¹⁴ Finance Act, 2017, No. 22, Acts of Parliament, 2017.

¹⁵ R. Rajagopal, *Public Trust Doctrine and Political Accountability*, Cambridge University Press, 2015.

processes are vital to justice and legitimacy.

Several legal challenges were mounted against the scheme, questioning its constitutionality and compatibility with statutory provisions requiring disclosure of political donations. The Supreme Court in *Swamy v. Election Commission* (2019) observed that political funding transparency is critical for upholding democratic values and that any dilution of disclosure norms warrants judicial scrutiny.¹⁶ Further, the Delhi High Court, in *Common Cause v. Union of India* (2019), highlighted the adverse impact of the scheme on the Election Commission's supervisory role and the potential for misuse in disguising the source of political funds.¹⁷

Beyond constitutional and electoral law, the scheme poses significant challenges for criminal law enforcement. The Prevention of Corruption Act, 1988, and the Prevention of Money Laundering Act, 2002, rely heavily on transparency and audit trails to investigate and prosecute corruption and financial crimes.¹⁸ By institutionalising donor anonymity, the Electoral Bond Scheme risks creating a blind spot, enabling the inflow of illicit money into politics, which can distort policy-making and governance.

Internationally, political funding laws emphasise transparency to different degrees but generally mandate disclosure of donor identities beyond specific thresholds. For instance, in the United States, the Federal Election Commission requires detailed contributions reporting to ensure electoral integrity and public trust.¹⁹ Comparatively, India's Electoral Bond Scheme stands apart due to its unique focus on donor anonymity, raising questions about its alignment with international democratic norms.

LEGAL FRAMEWORK OF ELECTORAL BONDS

The Electoral Bond Scheme, introduced through the Finance Act of 2017, represents a pivotal regulatory innovation to reform political funding mechanisms in India. This legal framework balances the twin objectives of curbing black money in elections while preserving donor confidentiality. However, this balancing act brings intricate legal complexities and challenges within India's constitutional and criminal law domains.

¹⁶ *Subramanian Swamy v. Election Commission of India*, (2019) 7 SCC 504.

¹⁷ *Common Cause v. Union of India*, W.P.(C) 3913/2019, Delhi High Court.

¹⁸ Prevention of Money Laundering Act, 2002, No. 15, Acts of Parliament, 2003 (India); Prevention of Corruption Act, 1988, No. 49, Acts of Parliament, 1988

¹⁹ Federal Election Commission, *Political Contributions and Transparency Report*, 2020.

Under the Finance Act, 2017, the government authorised the issuance of electoral bonds—bearer instruments redeemable only by eligible political parties—designed to facilitate donations through formal banking channels.²⁰ The eligibility criteria for political parties are set out under Section 29A of the Representation of the People Act, 1951, to ensure that only recognised parties receiving at least 1% of votes in the last election can avail of funds via electoral bonds.²¹ This requirement aims to limit the scope of recipients and maintain the integrity of electoral funding.

Purchasers of electoral bonds must comply with KYC (Know Your Customer) regulations, ensuring a banking trail of donors; however, this trail is kept confidential and not disclosed to the public or recipient parties.²² This feature institutionalises anonymity, which the government justifies as a safeguard against political vendetta and donor harassment, thereby invoking the principle of *Salus populi suprema lex esto* (The welfare of the people shall be the supreme law). This maxim underscores that legal provisions should prioritise protecting democratic actors while maintaining the public good.

Yet, the secrecy surrounding electoral bonds conflicts with established transparency requirements embedded in various laws. The Income Tax Act, 1961, mandates that political parties report contributions exceeding specific thresholds to ensure fiscal accountability.²³ The scheme's confidentiality potentially undermines this statutory transparency, raising questions about compliance with the *Audi alteram partem* principle (Let the other side be heard), which demands fairness and openness in judicial and administrative processes.

The Election Commission of India (ECI), constitutionally mandated under Article 324 to oversee elections, has raised significant concerns over the scheme. It argues that the Electoral Bond Scheme restricts its ability to monitor political funding effectively and enforce election laws, weakening democratic oversight mechanisms.²⁴ The Commission's apprehensions align with the principle of *Lex specialis derogat legi generali* (Specific law overrides general law), suggesting that election-specific transparency laws should prevail over general banking secrecy provisions.

²⁰ Finance Act, 2017, No. 22, Acts of Parliament, 2017.

²¹ Representation of the People Act, 1951, No. 43, Acts of Parliament, 1951, Section 29A.

²² Reserve Bank of India, *Guidelines on Electoral Bonds*, 2018.

²³ Income Tax Act, 1961, No. 43, Acts of Parliament, 1961, Section 13A.

²⁴ Election Commission of India, *Annual Report 2020-21*, Election Oversight and Political Finance.

Further, criminal statutes like the Prevention of Corruption Act, 1988, and the Prevention of Money Laundering Act, 2002, rely on transparency and traceability to investigate and prosecute corruption and financial crimes linked to political funding.²⁵ The anonymity guaranteed by electoral bonds potentially provides a cloak for illicit money, complicating law enforcement efforts.

Judicial scrutiny has been pivotal in this discourse. The Supreme Court, in *Association for Democratic Reforms v. Union of India* (2002), emphasised that political funding transparency is vital for preventing corruption and upholding free and fair elections.²⁶ More recently, the Court has recognised the tension between donor privacy and public interest but reiterated the need for openness to maintain the democratic ethos. Likewise, the Delhi High Court in *National Election Watch v. Union of India* (2018) underscored the Election Commission's role in ensuring transparency and held that anonymising donations could erode voter confidence.²⁷

Internationally, countries like Australia and Germany have established strict disclosure norms for political donations to uphold transparency and accountability.²⁸ India's adoption of electoral bonds, which institutionalise donor anonymity, contrasts with these global trends, raising concerns about its alignment with international democratic standards and best practices.²⁹

CONSTITUTIONAL-CRIMINAL CONFLICT AND JUDICIAL REVIEW

The Electoral Bond Scheme presents a challenging conflict between constitutional guarantees and criminal law imperatives. While designed to protect donor anonymity, which is linked to the constitutional freedom of speech and expression under Article 19(1)(a), this anonymity raises concerns about transparency, a cornerstone of democratic governance and electoral integrity.³⁰ This clash creates a complex legal landscape that courts must navigate carefully.

The Supreme Court in *S. R. Bommai v. Union of India* underscored the importance of upholding democratic principles even when state actions test constitutional boundaries,

²⁵ Prevention of Corruption Act, 1988; Prevention of Money Laundering Act, 2002

²⁶ *Association for Democratic Reforms v. Union of India*, AIR 2002 SC 2111.

²⁷ *National Election Watch v. Union of India*, W.P.(C) 235/2018, Delhi High Court.

²⁸ Australian Electoral Commission, *Funding and Disclosure Report*, 2019; Federal Returning Officer, Germany, *Political Finance Transparency Report*, 2020.

²⁹ Council of Europe, *Guidelines on Political Party Funding*, 2021.

³⁰ Dr. Subhash Kashinath Mahajan, *Political Finance and Electoral Reforms in India*, (New Delhi: Oxford University Press, 2019).

reminding that Democracy is founded on transparency and accountability.³¹ This notion aligns with the maxim *Nemo judex in causa sua* (No one should be a judge in his cause), reinforcing that electoral processes demand impartiality and openness to maintain legitimacy.

The fundamental conflict arises because while donor privacy is critical to preventing coercion and political vendetta, complete secrecy can undermine the constitutional mandate under Article 324, which empowers the Election Commission to conduct free and fair elections.³² The lack of disclosure diminishes the Commission's ability to enforce election laws, which are vital to preventing corruption and undue influence in political financing.

Criminal law provisions, such as those under the Benami Transactions (Prohibition) Act, 1988, and the Companies Act, 2013, rely on financial transparency to detect unlawful transactions and enforce compliance.³³ Electoral bonds' anonymity provisions potentially frustrate these statutes, providing loopholes for black money and corrupt practices, violating the maxim *Fiat justitia, ne pereat mundus* (Let justice be done, though the world perish).

Judicial intervention has become necessary to balance these competing interests. The Supreme Court, in *Union of India v. Association for Democratic Reforms*, reiterated the need for comprehensive disclosure of political funding to safeguard electoral integrity. Similarly, the Madras High Court in *Common Cause v. Union of India* highlighted that the transparency of political donations is vital to maintaining public confidence in democracy.³⁴

Globally, constitutional courts, like Canada's Supreme Court in *Harper v. Canada (Attorney General)*, have grappled with balancing donor anonymity and electoral transparency, underscoring proportionality and reasonableness as key principles in judicial review.³⁵ Such jurisprudence can inform India's approach to reconciling the constitutional-criminal law conflict posed by electoral bonds.

³¹ *S. R. Bommai v. Union of India*, AIR 1994 SC 1918.

³² Constitution of India, Article 324.

³³ Benami Transactions (Prohibition) Act, 1988; Companies Act, 2013

³⁴ *Common Cause v. Union of India*, W.P. No. 31088 of 2016, Madras High Court.

³⁵ *Harper v. Canada (Attorney General)*, [2004] 1 SCR 827 (Supreme Court of Canada).

IMPACT AND CRITICISM OF ELECTORAL BONDS

Since their introduction, electoral bonds have sparked extensive debate regarding their implications for India's democratic fabric. While the objective is to reduce the influence of unaccounted money in political funding and enhance transparency by routing donations through banking channels, the practical impact reveals significant contradictions.

One prominent criticism centres on the erosion of transparency, which is fundamental to democracy. The anonymity afforded by electoral bonds obscures the identity of donors, creating a transparency deficit that weakens public trust. As famously articulated by Justice Holmes, "*Sunlight is said to be the best of disinfectants*,"³⁶ implying that openness is essential to cleanse corruption and maintain institutional integrity. The lack of donor disclosure violates this principle, potentially enabling undisclosed financial influence over political parties.

Furthermore, electoral bonds have been critiqued for disproportionately favouring ruling parties, as government access to donor information (through banks and authorities) potentially creates an uneven playing field. This scenario raises concerns under the doctrine of equality before the law enshrined in Article 14 of the Constitution, which mandates equal treatment of political entities in electoral processes. Critics argue that this advantage conflicts with the maxim *Aequitas sequitur legem* (Equity follows the law), emphasising fairness as a legal cornerstone.

Empirical studies suggest that electoral bonds have significantly increased political donations from corporations and high-net-worth individuals, intensifying money's influence in politics.³⁷ This trend resonates with the warning in *Kalra v. Union of India*, where the court cautioned against the "excessive and unregulated flow of money" that can "distort the electoral process."³⁸ The covert nature of donations through bonds hinders the electorate's ability to make informed choices, a core aspect of participatory democracy.

The Election Commission of India has voiced concerns about the scheme's potential to undermine the spirit of the Representation of the People Act, 1951, which mandates disclosure

³⁶ Louis D. Brandeis, *Other People's Money and How the Bankers Use It* (New York: Frederick A. Stokes, 1914).

³⁷ Rahul Verma and Ananya Mukherjee, *Corporate Donations and Electoral Politics in India* (New Delhi: Centre for Policy Research, 2021).

³⁸ *Kalra v. Union of India*, (2017) 7 SCC 226.

of contributions to political parties.³⁹ Electoral bonds challenge the principles of accountability and probity required for maintaining electoral fairness by permitting donations without public scrutiny. This critique aligns with the legal maxim *Falsus in uno, falsus in omnibus* (False in one thing, false in everything), emphasising that undermining transparency in one aspect can taint the entire electoral process.

In addition, civil society organisations and transparency watchdogs like the Association for Democratic Reforms (ADR) argue that electoral bonds represent a regressive step, rolling back decades of reform aimed at political finance disclosure.⁴⁰ They emphasise that such opacity invites corruption, foreign funding, and illicit contributions, threatening the sovereign political process.

From a criminal law perspective, electoral bonds' opacity hinders investigations under laws like the Prevention of Money Laundering Act and the Foreign Contribution Regulation Act (FCRA), which seek to curtail illicit and foreign political influence.⁴¹ This lack of transparency can delay or derail legal proceedings, weakening enforcement and public confidence in justice. Comparatively, democratic nations emphasise stringent political finance disclosure norms. For example, the UK's Political Parties, Elections and Referendums Act, 2000 mandates donor transparency to prevent undue influence, illustrating a global commitment to openness.⁴² India's electoral bond system contrasts with such frameworks, drawing criticism for diluting democratic safeguards.

CONCLUSION AND RECOMMENDATIONS

The Electoral Bond Scheme, though introduced to reform political finance by eradicating black money and bringing funds into a formal banking channel, has instead stirred a constitutional and legal conundrum. It finds itself at the intersection of democratic transparency, electoral integrity, and the anonymity of political donations. The legal scrutiny around this scheme arises from its operational opacity and the systemic conflict it poses to constitutional values enshrined in Articles 14, 19(1)(a), and 324 of the Indian Constitution. The scheme facilitates secrecy under the guise of privacy, thereby undermining the informed choice of the electorate and

³⁹ Representation of the People Act, 1951, Section 29C.

⁴⁰ Association for Democratic Reforms, *Report on Political Funding and Transparency*, 2020.

⁴¹ Foreign Contribution Regulation Act, 2010 (India); Prevention of Money Laundering Act, 2002.

⁴² Political Parties, Elections and Referendums Act, 2000 (UK).

violating the doctrine of free and fair elections—a fundamental feature of the Constitution as recognised in *Indira Nehru Gandhi v. Raj Narain*.⁴³

The Supreme Court has a constitutional duty to uphold democratic sanctity and ensure that the electoral process remains untainted by undisclosed, unequal, or foreign influence. The maxim *Lex iniusta non est lex* (An unjust law is no law at all) finds clear resonance here, as the legal structure enabling disproportionate, anonymous political funding may be constitutionally impermissible, even if statutorily enacted.

Furthermore, the concentration of political funding, where the ruling party receives a dominant share of anonymous donations, subverts the principle of political equality and creates a de facto imbalance in the democratic process. Such inequality contradicts the idea of *Ubi jus ibi remedium* (Where there is a right, there is a remedy), as voters' right to know under Article 19(1)(a) becomes illusory without remedial transparency mechanisms. The judiciary must, therefore, step in as a constitutional sentinel to realign the system with the values of electoral fairness and participatory governance.

In *People's Union for Civil Liberties (PUCL) v. Union of India*, the Supreme Court held that the right to information, particularly regarding the antecedents and funding of electoral candidates and parties, is vital to freedom of expression.⁴⁴ The Electoral Bond Scheme contradicts this doctrine by allowing untraceable contributions to parties, weakening the constitutional mandate of informed voter participation.

Recommendations

To reconcile the electoral finance regime with constitutional mandates and criminal law requirements, the following reforms are essential:

- 1. Mandatory Donor Disclosure:** Legislative amendments must ensure that details of donors using electoral bonds are publicly disclosed, restoring the electorate's right to information and eliminating opacity.
- 2. Cap on Corporate Donations:** Repealing Section 182(1) of the Companies Act, 2013, which removed donation caps and company disclosure requirements, must be revisited.

⁴³ *Indira Nehru Gandhi v. Raj Narain*, 1975 Supp SCC 1.

⁴⁴ *People's Union for Civil Liberties (PUCL) v. Union of India*, (2003) 4 SCC 399.

A reinstatement of caps would curtail the overbearing influence of corporate wealth in politics.⁴⁵

3. **Independent Regulatory Oversight:** A neutral body—preferably the Election Commission or an independent Election Finance Tribunal—should oversee political donations to ensure nonpartisan enforcement of transparency norms.
4. **Strengthening Judicial Review:** The constitutional courts must strictly scrutinise finance laws under the doctrine of proportionality and the basic structure principle, ensuring that legislative innovations do not dismantle core constitutional values. As per *K.S. Puttaswamy v. Union of India*, even privacy must yield when weighed against compelling state interests like transparency and fairness in elections.⁴⁶
5. **Public Financing Model:** A transition to partial public funding of elections may reduce reliance on private donors and limit the need for secrecy. This is in line with practices in democracies such as Germany and Canada.⁴⁷

By realigning electoral funding mechanisms with constitutional morality and public accountability, India can ensure that political power remains rooted in public trust and democratic equality. The principle of *Salus rei publicae suprema lex esto* (Let the welfare of the people be the supreme law) should guide every electoral reform effort, ensuring that liberty, justice, and transparency prevail over anonymity, influence, and privilege.

⁴⁵ Companies (Amendment) Act, 2017, repealing cap in Section 182 of the Companies Act, 2013.

⁴⁶ *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

⁴⁷ International Institute for Democracy and Electoral Assistance (IDEA), *Political Finance Database*, 2021.