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CASE COMMENTARY: ASSOCIATION FOR DEMOCRATIC REFORMS V. UNION OF INDIA (2024) -THE ELECTORAL BONDS VERDICT

Charul Pande

1. INTRODUCTION

In Association for Democratic Reforms v. Union of India (2024), the Supreme Court of India delivered a constitutionally significant ruling striking down the Electoral Bonds Scheme, 2018 ("EBS"). The decision reaffirmed that electoral democracy is not merely about formal voting but about informed voting, and that opacity in political financing can distort the democratic process. The Court located the voter's right to know the sources of political funding within Article 19(1)(a), and held that the State cannot justify blanket anonymity in political donations on the asserted ground of protecting donor privacy.

2. BACKGROUND AND FACTS

The EBS was introduced through the Finance Act, 2017 and operationalised in 2018. Under the scheme, a donor could purchase electoral bonds from designated branches of the State Bank of India ("SBI") and donate them to eligible political parties, which could encash the bonds through specified accounts. The scheme ensured that the public could not trace which donor funded which political party.

The challenge, led by the Association for Democratic Reforms (ADR) and other petitioners, targeted:

1. The EBS itself; and

2. Statutory amendments enabling anonymity and expanded donor eligibility, including changes to:

- the Representation of the People Act, 1951 (removing disclosure of bond donations),
- the Companies Act, 2013 (removing caps and disclosure requirements for corporate political donations), and
- the Foreign Contribution (Regulation) Act, 2010 (broadening the ability of certain foreign-influenced entities to donate).

Petitioners argued that the scheme undermined free and fair elections by shielding political finance from public scrutiny, enabling quid pro quo arrangements, and permitting disproportionate influence by wealthy donors especially corporations.

3. ISSUES BEFORE THE COURT

The Court considered, in substance, the following constitutional questions:

1. Whether anonymous political donations under the EBS violate the voter's right to information under Article 19(1)(a).

2. Whether the scheme and connected amendments violate Article 14 by enabling unequal access to political influence and information.

3. Whether the State's justification, protecting donor privacy and preventing retribution meets constitutional scrutiny (including proportionality).

4. Whether the removal of limits and disclosure obligations for corporate funding unconstitutionally facilitates distortion of the electoral process.

4. ARGUMENTS

Petitioners (ADR and others):

- The right to vote meaningfully includes a right to know the financial backers of political parties and candidates; funding sources are integral to evaluating potential conflicts of interest.
- Anonymity enables corruption and policy capture, preventing accountability.
- Corporate donations, especially unlimited donations without meaningful disclosure, permit companies to act as conduits for influence and quid pro quo.
- Amendments passed via the Finance Act, 2017 were used to implement substantive electoral changes with diminished parliamentary scrutiny.

Union of India:

- Donor anonymity is necessary to protect political privacy and prevent victimisation or retaliation.
- The EBS channels funds through banking mechanisms, discouraging cash-based political funding.
- Complete disclosure could chill political participation (through donations), which is also a democratic interest.

5. DECISION AND HOLDING

A Constitution Bench (CJI D.Y. Chandrachud, Justices Sanjiv Khanna, B.R. Gavai, J.B. Pardiwala, and Manoj Misra) struck down the Electoral Bonds Scheme, 2018 and invalidated related statutory amendments enabling anonymity and unrestricted corporate donations.

Key directions included:

- Immediate cessation of issuance of electoral bonds.
- SBI to furnish details of bonds purchased and encashed to the Election Commission of India (ECI).
- ECI to publish the details for public access, enabling voter knowledge of political funding.

6. RATIO DECIDENDI (CORE LEGAL PRINCIPLES)

A. Right to Information as Part of Article 19(1)(a)

The Court held that the voter's right to information includes the right to know political party funding, because such information is crucial for effective political choice. Elections are the mechanism through which citizens hold political power accountable; shielding funding sources obstructs that accountability.

Importantly, the Court treated information about political donations not as peripheral curiosity but as democracy-relevant speech and knowledge.

B. Donor Privacy vs. Democratic Transparency, Proportionality

The State's justification of donor privacy was assessed against constitutional standards of reasonableness and proportionality. The Court accepted that privacy concerns may exist but held that:

- A blanket anonymity regime is disproportionate, because it extinguishes the public's right to information rather than narrowly tailoring protections to genuine risks.
- Less restrictive measures (e.g., targeted protections in exceptional cases) could address concerns without destroying transparency.

C. Corporate Donations and Distortion of Electoral Equality

By enabling unlimited corporate political contributions and weakening disclosure norms, the amendments created conditions for undue influence and policy capture. Corporations, unlike individuals, may deploy shareholder money for political purposes, the Court treated this as raising a special risk of distortion in democratic politics. The combined legal architecture expanded corporate capacity to donate + donor anonymity was found particularly harmful.

D. Article 14 and Unequal Political Influence

While the scheme purported to apply uniformly, the Court found that its effects entrenched inequality: anonymity disproportionately benefits powerful donors who can secure influence without public scrutiny, while citizens are denied equal access to information essential to democratic evaluation.

7. SIGNIFICANCE OF THE JUDGMENT

A. Constitutionalising Political Finance Transparency

This ruling is a major step in placing political funding within the discipline of constitutional rights. The judgment clarifies that transparency in party funding is not a policy preference but a constitutional necessity flowing from Article 19(1)(a).

B. Rebalancing Privacy Claims in the Electoral Context

The Court did not reject privacy as irrelevant. Instead, it held that privacy cannot be used as a general shield to cloak democratic processes in secrecy, particularly where the information concerns potential influence over governance.

C. Strengthening Electoral Integrity

The decision addresses structural risks: quid pro quo arrangements, regulatory capture, and the erosion of public trust. By mandating disclosure through SBI and the ECI, the Court emphasised that meaningful electoral accountability requires traceability of funding.

D. Institutional Message: Democracy Cannot Run on Secret Money

The ruling sends a clear institutional message that "cleansing" elections cannot be achieved merely by moving transactions into formal banking channels while retaining secrecy. Clean elections require both legality and visibility.

8. CRITICAL EVALUATION

Strengths

1. Normative clarity: The judgment anchors transparency in first principles of democratic accountability and informed choice.

2. Robust scrutiny: It rejects “ends justify means” reasoning where the means fundamentally negate voter rights.

3. Structural realism: The Court acknowledges that the greatest harm of opaque funding is not always provable as direct bribery; it is the systemic skewing of policy incentives and electoral competition.

Concerns and Open Questions

1. No comprehensive replacement framework: Striking down the scheme restores disclosure norms, but India still lacks a coherent statutory architecture for political finance transparency, auditing, and enforcement.

2. Implementation and compliance: Transparency depends on timely, accurate disclosure and effective oversight, areas historically vulnerable to delay and under-enforcement.

3. Balancing genuine retaliation risks: The judgment leaves open the design of narrowly tailored protections where there is credible threat, suggesting a need for legislative crafting rather than broad secrecy.

9. CONCLUSION

Association for Democratic Reforms v. Union of India (2024) is a landmark reaffirmation that the right to vote includes the right to know, particularly the financial forces shaping political competition and governance. By striking down the Electoral Bonds Scheme and associated amendments, the Supreme Court placed constitutional limits on secret political funding and reinforced the idea that democratic legitimacy requires transparency, not just formal legality. The case now stands as a defining precedent on the constitutional boundaries of political finance in India, and a call for Parliament to enact a rights-compliant, transparent, and enforceable political funding framework.