

Electoral Bond and the Question of Transparency in Indian Politics

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ABSTRACT

The source of political funding is important in democracies as it is directly linked with integrity and transparency. Transparency, or lack of it, can either stabilize or hinder the development of a political system. The introduction of electoral bonds in Indian politics sparked a significant debate regarding transparency and accountability in political funding. This article aims to assess the implications of electoral bonds on the transparency of political funding in India. It will analyze the background of electoral bonds, the controversies surrounding their introduction, and their impact on the transparency of political donations. Through a comprehensive review of the literature and an analysis of current developments, this paper seeks to provide valuable insights into the complex relationship between electoral bonds and transparency in the Indian political system.

Introduction

Political funding is a fundamental component of any democracy as it facilitates political engagement and representation. Nonetheless, without effective regulation, it can compromise the integrity of political systems and institutions, thus posing a threat to the institution of democracy. Rules pertaining to the financing of political parties and election campaigns, as well as lobbying, play a vital role in upholding integrity, transparency, and accountability in any democratic system. Transparency in political funding contributes to reducing corruption, minimizing corporate lobbying, fostering inclusivity in electoral processes and strengthening democracy. On the other hand, anonymity in political funding enables individuals and groups to align with their political preferences without the fear of retribution.

In big democracies like the US, big corporations and lobbying groups play an essential role in political funding. These entities wield significant influence over government policies. Money's influence in election financing is linked to power, exclusivity and distortion. The dependence on securing financial support leads to apprehension about unfavourable donations and results in a tendency to safeguard the interest of influential lobbying groups. Furthermore, candidates compete for funding, while donors also face the challenging decision of which candidate to support. The attempt to implement the regulations in political financing has been undermined by concerns regarding individual liberties (Kuhner 2014).

Political financing distorts the electoral process of democracies. In order to mitigate the negative impact of money during elections, there has been advocacy for “state funding”. It is based on the rationale that state funding can help safeguard democracy by minimizing *quid-pro-quo* practices. However, scholars have pointed out that regulating and monitoring money in elections remains a significant challenge. Moreover, state funding has the potential to contribute to a decline in social mobilization efforts by the political parties and could potentially contribute to the growth of authoritarianism within the parties (Boston and Mladenovic 2010). In nascent democracies where the institutional framework is still developing, electoral funding plays a very crucial role. Regulating electoral funding ensures that all citizens have equal opportunities to participate in the process. Regulations on spending and contributions tend to promote a level playing field. It ensures that the candidates with genuine popular appeal are not overshadowed by rich candidates. Transparency in political funding allows voters to make informed choices and contributes to the legitimacy of political institutions. The public trust reduces the likelihood of democratic collapse and enhances stability in the system. Political funding increases inequalities in society by impacting the policy outcome of the government as well. The groups with greater access to money dominate the political landscape and affect the less affluent voters. In the longer run, economically affluent individuals and groups are more preferred in the government’s policies. Thus, regulation in political financing is also significant in bringing in egalitarian policy outcomes, thus upholding the cardinal principle of political equality in democracy (Flavin 2015).

The supporters of anonymity in political funding argue that transparency hinders political negotiations as the candidates may feel restricted by public scrutiny, potentially resulting in gridlock. Anonymity enables donors to express their political preferences without fearing retribution, hence promoting a more inclusive public discourse. This is especially pertinent for marginalised and minority groups. The emphasis on anonymity and its role in shielding individuals from persecution was stressed during the introduction of electoral bonds in India during the 2017-18 budget. The then finance minister argued that this scheme would help promote transparency in Indian democracy.

Transparency in Democracy

Transparency is a cornerstone of democracy, as democratic systems rely on public trust and perception. Elected representatives frequently share information with the public because their political survival depends on maintaining voter approval. However, scholars like Schumpeter (1942) and Przeworski et al. (2000) argued that this reliance on public opinion can lead democratic leaders to conceal information to avoid public disapproval. Mani and Mukund (2007) asserted that democratic leaders prioritize highly visible public goods, such as famine prevention, over less visible issues, like malnutrition prevention, as the former resonate more with voters. Similarly, Kono (2006) contended that democracies are more transparent about policies aligned with public preferences but obscure actions that might provoke voter dissatisfaction. These perspectives suggest that democratic leaders often balance transparency with strategic withholding of information to maintain voter appeal.

However, other scholars emphasize that transparency transcends the mere act of holding elections. Scholars like Adsera et al. (2003), Mcmillan and Zoido (2004), Besley and Burgess (2002), and Islam (2006) highlight the critical role of open information in enabling citizens to make informed decisions. Their work suggests that greater transparency in democracies not only enhances governance but also increases the likelihood of leaders being re-elected, reinforcing the reciprocal relationship between openness and public trust. This suggests that transparency is fundamental to ensure the dependability and integrity of public institutions. It enhances accountability by allowing citizens to access critical information and actively participate in the decision-making process (Jashari and Pepaj 2018).

In Indian democracy, the importance of transparency was highlighted through the enactment of the Right to Information Act, 2005. This landmark legislation granted citizens the right to obtain information of public interest from government offices, fostering greater transparency and accountability across public authorities. Another shedding moment in the history of Indian democracy was the judgement of SC on the Electoral Bond Scheme which underscored the need for transparency in democratic governance.

Introduction of Electoral Bond Scheme in India: Transparency or *Quid Pro Quo*?

In the 2017-18 budget, the then Union Finance Minister Arun Jaitley proposed the Electoral Bond Scheme (EBS) to enhance transparency in political funding (Association for Democratic Reforms VS Union of India, 2024). On 14 May 2016, the Finance Act was amended to allow foreign companies with major stakes in Indian entities to donate to political parties, overturning prohibitions under the Foreign Contribution Regulation Act (2010) and the Foreign Exchange Management Act (1999).

Further changes on 31 March 2017 amended key laws such as the Representation of People Act (RPA) 1951, the Reserve Bank of India (RBI) Act 1934, the Income Tax Act 1961, and the Companies Act 2013. These amendments authorized the government to allow banks to issue electoral bonds (RBI Act). Furthermore, it exempted political parties from maintaining records of donations made via electoral bonds (Income Tax Act). It removed requirements for political parties to disclose bond donations (RPA). It also lifted restrictions on corporate contributions to political parties and disclosure of recipients (Companies Act).

These changes enabled unlimited, anonymous corporate donations and diminished legislative oversight, raising concerns about transparency and accountability in political funding. The amendments made to introduce the EBS raised several concerns among the civil and political community. The concerns are around the impact on transparency in political financing, the involvement of corporate donations, and the citizen's right to information under Article 19 (1) (a) of the Indian Constitution. On 4 September 2017, the Association for Democratic Reforms (ADR) and Common Cause filed a Public Interest Litigation (PIL) in the SC of India under Article 32 of the Indian Constitution, questioning the scheme's transparency. In January 2018, the CPI (M) filed a similar petition arguing that EBS violated Articles 14 and 19(1) of the Indian Constitution (Association for Democratic Reforms VS Union of India (2024)).

On 25 March 2019, the Election Commission of India (ECI) submitted an affidavit to the SC against the EBS, arguing that it compromises transparency. The ECI had earlier raised concerns with the government in May 2017 about the scheme's impact on transparency in political funding. However, the government justified the scheme as a measure to curb black money. The union government argued that the EBS limited transactions through the SBI and required Know Your Customer (KYC) details, thus ensuring accountability. In April 2019, a three-judge bench of the SC directed all political parties to submit details of electoral bond donations to the ECI in sealed envelopes by 30 May 2019. The Court acknowledged that ECI raised serious questions about the transparency of political funding, which could affect the integrity of the electoral process in India (Supreme Court Observer 2019).

The Attorney General of India, representing the ECI, later defended the scheme, stating it aimed to regulate unaccounted money and argued that its effectiveness could only be observed after its implementation after the election results. He emphasised that the government had implemented the EBS through amendments to the Finance Acts of 2016 and 2017, aiming to reduce the flow of black money into the political system (Rajagopal 2024).

Increased Anonymity in Political Donations: Exercising Political Equality or Facilitating Corruption?

The Electoral Bonds Scheme has introduced significant anonymity into political donations, allowing donors to contribute to political parties without public disclosure of their identities. While the State Bank of India records donor identities, the public is denied access to this information. The government justified this anonymity as a measure to protect donors from potential political retribution, asserting that transparency is achieved since donations occur through formal banking channels. In an affidavit submitted to the SC, the government argued that the public does not have an absolute “right to know” the identity of donors (Fernandes 2024). Attorney General R. Venkataramani contended that such a right must be balanced with reasonable restrictions, asserting that the privacy of donors is necessary to protect them from political retribution.

The government also alleged that the scheme maintains accountability because only the SBI is authorised to issue and redeem the bonds and keeps record of donor’s identities. Under the EBS scheme, only few branches of SBI were authorised to sell electoral bonds that can be purchased in denominations of Rupees One Thousand, Ten Thousand, One Lakh, Ten Lakhs and One Crore. The bonds are to be sold in few allotted times of the year and except the SBI, nobody is authorised to know the donor’s identity. Electoral Bonds are valid for only fifteen days from the date they are issued. If a political party tries to deposit the bond after the stipulated time, they won’t receive any money from it.

However, the petitioners alleged that lack of transparency creates opportunities for unscrupulous actors to exploit the system. Companies could be established solely to channel funds to political parties in secret, using these anonymous instruments. This secrecy makes it difficult to track the sources of political donations and whether the companies are receiving any special favours from the government in return for their support. The amendments also infringe people’s “Right to Know”, a key aspect of Freedom of Expression under Article 19 (1) (a) of the Indian Constitution. It impinges citizen’s right to make informed decisions especially during the elections. This restriction cannot be justified under the reasonable limitations as enshrined in Article 19 (2) of the Indian Constitution (includes grounds like public order and national security). The petitioners also alleged that since most of these donations have gone to a single party (BJP) and these bonds have been redeemed and purchased during the elections, it creates an imbalance in the electoral process. Thus, these anonymous donations provide an unfair advantage by allowing them to outspend their competitors and leading to unfairness. Also, the ruling party’s exclusive access to donor information would deter companies from contributing to significant opposition parties due to fear or intimidation (Mohan 2024). The considerable disparity in funding between the BJP (the ruling party) and other political parties further illustrates this point.

The two Central Agencies namely RBI and ECI have also expressed concerns regarding the EBS. The RBI argued that allowing other banks to issue electoral bonds would undermine the authority of the RBI to issue financial instruments, potentially affecting the value of India’s currency. It also warned that the electoral bonds can also be used for money laundering as it will make it hard to track illegal or suspicious transactions (Joy 2022). The RBI also insisted on the use of electronic bonds rather than physical bonds as the physical bonds can be misused, especially by the shell companies. It also recommended restricting issuance of bonds to only

RBI Mumbai to minimise risks, but the government authorised twenty-nine SBI branches to issue bonds. The removal of disclosure requirement reduces public oversight of corporate political contributions. Thus, it increases the risk of corruption and the potential for quid pro quid arrangements between corporate donors and political parties. This amendment was severely criticised by the petitioners and the central agencies. The ECI labelled it as a ‘retrograde step’ in terms of transparency, arguing it obscures whether political parties receive donations from government-owned or foreign companies (prohibited under Section 29B of the RPA).

The introduction of EBS in 2018 imposed additional criteria for political parties to access donations through these bonds. To use these bonds, the political parties must be registered under Section 29A of the RPA and obtain a minimum of 1% of the votes in the preceding election. While approximately 105 parties are eligible, research by *The Reporters Collective*, indicates that only 19 parties in India have received donations using these bonds, with the Election Commission listing just 17 of them. Notably, the ruling BJP has received 68 % of the total funds, while smaller, regional, and unrecognized parties either received minimal donations or none at all.

This imbalance has created an unequal playing field in elections, where larger parties can outspend their competitors in advertising, campaigning, and electoral mobilization (Chokkar 2024). In contrast, smaller parties struggle due to limited financial resources, undermining the principle of political equality essential for a healthy democracy. The EBS exacerbates financial disparities, weakens democratic competition, and diminishes electoral fairness by allowing wealthier parties to dominate the political landscape. Political equality, which ensures all parties have equal opportunities to contest elections and gain voter support, is significantly compromised under this scheme.

Between 2019 and 2021, the petitioners urged the SC to rule on the matter. In early 2021, the Association for Democratic Reforms (ADR) petitioned the Court to halt the sale of electoral bonds, citing concerns about corruption and the promotion of black money. On 26 March 2021, three judges bench rejected the plea to stay the sale of electoral bonds. The Court rejected concerns about foreign corporate influence on India’s electoral process, calling them “misconceived”, clarifying that Clause 3 of the EBS only allows Indian citizens or companies incorporated in India to purchase the bonds. The bench also criticized the petitioners for repeatedly seeking the same relief, discouraging further applications (The Indian Express 2021). However, in October 2023, the petitioners approached the Court again, requesting a ruling before the 2024 General Election.

The Supreme Court Judgement and Afterwards

On 15 February 2024, the SC unanimously declared the EBS as unconstitutional, citing violations of the right to information under Article 19(1) (a) of the Constitution (Raja Gopal 2024). The five-judge Constitution Bench, led by Chief Justice of India (CJI) D.Y. Chandrachud, ruled that the scheme, which allowed anonymous political donations, undermined transparency and accountability in political funding (Association for Democratic Reforms and Others v State Bank of India (2024) SSC 2).

The Court emphasized that the right to information is crucial for a functioning democracy allowing citizens to make informed electoral decisions. It expressed concerns over potential *quid pro quo* arrangements, where large corporate donations could influence political parties, thereby compromising the integrity of free and fair elections. In his concurring opinion with

CJI Chandrachud, Justice Sanjiv Khanna held that amendments to the Income Tax Act and the Representation of the People Act, which facilitated anonymous political donations through electoral bonds, were unconstitutional as they bypassed essential disclosure requirements.

The Court rejected the government's justification that the EBS was necessary to curb black money. It observed that the EBS failed the proportionality test outlined in the *KS Puttaswamy* case and cited less intrusive alternatives to ensure transparency, including a Rs 20,000 cap on anonymous donations or the use of electoral trusts. Addressing the government's argument on donor privacy, the court clarified that privacy rights do not extend to political contributions made to influence policy decisions. While small donations from individuals, such as students or daily wage workers, might warrant anonymity, large corporation contributions often serve business interests and demand disclosure.

The Court immediately prohibited the SBI to issue the electoral bonds and issued several directives to reinforce transparency such as mandating the SBI to disclose details of electoral bonds encashed by political parties, and the Election Commission of India must publish this information on its website by 31 March 2024. Additionally, the Court struck down key legislative amendments such as Section 182 of the Companies Act. This section removed the limits on corporate political contributions, and the classification of corporate donations as equivalent to individual contributions was deemed arbitrary, given the corporation's disproportionate influence in the political process (Bhaumik 2024). Similarly, Section 29 C of the Representation of the People Act was also struck down. The Court reinstated the requirement to disclose donations exceeding Rs. 20,000, balancing the right to information with donor privacy.

This landmark judgment reinforces transparency in political funding, ensuring fairer electoral processes and safeguarding democratic principles. While the petitioners presented their case against the EBS, the government defended the scheme as a reform measure. However, the procedure for implementing the EBS and the subsequent details regarding it in the wake of the SC judgement undeniably prompted critical reflection on these claims and counterclaims.

Introduction of EBS: The Constitutionality and Other Issues

The petitioners have challenged the classification of the Finance Act, 2017, as a money bill, arguing that it enabled the government to bypass the Rajya Sabha, which plays a crucial role in legislative scrutiny. Under Article 109 of the Indian Constitution, Money Bills are only introduced in the Lok Sabha. While the Rajya Sabha may provide recommendations, it holds only advisory powers and must return the bill within 14 days. If it fails to do so, the bill is deemed passed, providing the Lok Sabha significant authority over Money Bills.

Article 110 (1) of the Indian Constitution defines a Money Bill as legislation that exclusively deals with matters such as taxation, government borrowing, payments or withdrawals from the Consolidated Fund or the Contingency Fund of India or the auditing of government accounts. Clause (g) of Article 110 (1) further allows any incidental matters related to these financial subjects to be included under the Money Bill category (Rangarajan 2024). Even the Finance Act or the Appropriation Act is considered a Money Bill, as these deal primarily with taxation and government expenditure from the Consolidated Fund. However, the petitioners argued that the Finance Act, 2017 introduced provisions, such as amendments affecting the appointment and service conditions of tribunal members, which fall outside the constitutional scope of a Money Bill (Karpuram 2024). They argue that by classifying such provisions under a Money

Bill, the government circumvented the more rigorous scrutiny that would have taken place in the Rajya Sabha. Thus, it raised questions about the constitutionality of the Act.

Another issue surrounding them was the removal of upper limits on funding. The Finance Act, 2017 removed the cap of 7.5 % on corporate donations previously mandated by the Companies Act, 2013. This cap was calculated based on a company's net profits over the preceding three years, and corporations were also required to disclose the recipient party. With the removal of this limit under the EBS, corporations could donate any amount to political parties without disclosing the beneficiaries (political parties). This lack of disclosure made it difficult to trace corporate donations, potentially leading to preferential treatment for donors and increasing the risk of corporate influence over political parties and policy-making. The critics have argued that such transactions pave the way for *quid pro quid* arrangements wherein corporations could secure favorable treatment from political parties in return for financial support. The petitioners have claimed that such donations are often tantamount to bribes, with corporations allegedly using electoral bonds to gain favorable treatment from agencies like the Central Bureau of Investigation (CBI), Enforcement Directorate (ED) and the Income Tax Department. It has sparked concerns about the potential influence of large corporations on political parties and electoral outcomes (Association of Democratic Reforms & Anr. v Union of India & Ors (2017) SSC 25-26).

Despite the government's justification that the EBS promotes transparency by channeling donations through banks, the scheme has been mired in controversy. According to the data provided for the financial year 2022-23, the Bhartiya Janata Party (BJP) received Rs 1294.14 crores via electoral bonds, accounting for 61 % of its total donations of Rs 2,120 crore. The Indian National Congress (INC) received Rs 171.02 crore, down from Rs 236 crore as compared to the financial year 2021-22 (Election Commission of India 2024). This was a significant increase compared to the previous year (2021-22), when the BJP received ₹1,775 crore in total contributions.

The All India Trinamool Congress Party (AITC) emerged as the second largest recipient of EBs, receiving Rs 1,609 crore between 12 April, 2019 and 24 January 2024 (Jeelani 2024). The Bhartiya Rashtra Samiti (BRS) secured Rs 1,322 crore in total, making it the fourth-largest recipient of such funds in the country. The BRS received a substantial portion of this sum within just a few days, including Rs 268 crore on 12 April, 2022 and Rs 218 crore on July 13, 2023. The Telugu Desam Party (TDP) recorded a sharp rise in its contributions, earning Rs 34 crore from electoral bonds in 2022-23, which was ten times more than what it received the previous year. The Samajwadi Party did not receive any for the financial year 2022-23 compared to Rs. 3.2 crore in 2021-22 (The Hindu 2024). This illustrates that the EBS primarily reinforced the political parties in power and failed to contribute to transparency, contrary to the assertions made by its proponents.

The details provided by the SBI to the ECI shed light on the top donors to political parties, highlighting the intricate nexus between corporate donations and political influence. The top donors include companies from sectors like pharmaceuticals, healthcare, and education, among several others. Tamil Nadu-based Future Gaming and Hotel Services emerged as the largest donor to political parties. Future Gaming, headed by Santiago Martin, emerged as the largest contributor, donating Rs 542 crore to the All India Trinamool Congress (AITC), Rs 503 crore to the Dravida Munnetra Kazhagam (DMK), Rs 154 crore to the Yuvajana Sramika Rythu Congress Party (YSRCP), Rs 100 crore to the Bharatiya Janata Party (BJP), and Rs 50 crore to the Indian National Congress (INC) between April 2019 and January 2024 (The Hindu 2024).

This Lottery Company has faced legal challenges. In 2022, the Enforcement Directorate (ED) attached assets worth over Rs 409 crore, alleging that the company diverted lottery ticket proceeds for unauthorized incentives and gifts. Investigations have also linked the company owner and his family to money laundering and irregularities in the sale of lotteries by the Sikkim government (Biswas 2024).

The lottery company's owner family has strategically aligned itself with various political factions. Before the 2014 Lok Sabha elections, Martin's wife, Leema Rose Martin, joined the *Indhiya Jananayaga Katchi*, part of the BJP-led National Democratic Alliance (NDA) (Ahmed 2024). She campaigned alongside Narendra Modi, signalling a notable political alliance. In 2015, Martin's son, Charles Jose Martin also joined the BJP. The donations by Martin and his company to multiple parties indicate an attempt to secure influence across political landscapes and secure themselves from scrutiny by government agencies.

Hyderabad-based Megha Engineering and Infrastructures Limited (MEIL) emerged as the second-largest donor through electoral bonds between April 2019 and November 2023. MEIL and its subsidiaries donated a total of Rs 1,232 Crore to various political parties, including the BJP (Rs 584 crore), BRS (Rs 195 crore), DMK (Rs 85 crore), Yuvajana Sramika Rythu Congress Party (Rs 37 crore), TDP (Rs 28 crore), and INC (Rs 18 crore). Interestingly, MEIL has faced allegations of corruption, with the CBI launching an investigation in 2023 over claims that the company bribed officials from the National Mineral Development Corporation (NMDC) and Metallurgical & Engineering Consultants (MECON) to clear bills for a Rs 314 crore infrastructure project in Chhattisgarh. The contract involved infrastructure work for a steel plant in Jagdalpur, Chhattisgarh, and was awarded to MEIL in 2015. The CBI investigations revealed that payments were made to officials for various favours, including the clearance of bills and invoices. The company even allegedly created fake vouchers to cover up the bribes. Following the findings of this enquiry, a recommendation was made on 18 March, 2024 to convert it into a formal investigation, resulting in the registration of a regular case on 31 March, 2024, shortly after the disclosure of the donation data on 14 March, 2024 (The Hindu 2024).

Another major company, Aurobindo Pharma, contributed Rs 34.5 Crore to the BJP, Rs 15 Crore to the BRS, and Rs 2.5 Crore to the TDP, totalling around Rs 52 Crore. Notably, Rs 5 crore was donated to the BJP just five days after the arrest of one of the company's key promoters, in connection with the Delhi liquor excise policy case. Shortly after the accused revised testimony against the Aam Aadmi Party, he was granted bail on medical grounds by the Delhi High Court in May 2023 (The Times of India 2024). This raises questions about impartiality and potential misuse of political influence. The fact that a major financial contributor to the ruling party has become an approver against an opposition leader (Kejriwal) raised serious concerns, indicating a possible conflict of interest and implying a broader political agenda by the ruling party (The Times of India 2024). Further fuelling suspicions of *quid pro quo* transactions is Aurobindo Pharma's Rs 25 crore donation made two days after being selected under the Union government's Production Linked Incentive (PLI) scheme. The close timing of these donations with the awarding of lucrative government contracts raises concerns about the use of corporate contributions to gain political favour and influence policy decisions (The Reporters Collective 2024).

A joint analysis by *The Hindu* and an independent research team examined donations made through electoral bonds by 45 companies, uncovering significant concerns about transparency, legality and potential money-laundering (Bose 2024). The companies were classified into four

categories based on their financial data from 2016-17 to 2022-23. Category A includes 33 companies which donated Rs 576.2 crore, with 75 %, i.e. Rs 434.2 crore going to the BJP. Despite reporting aggregate net losses exceeding Rs 1,00,000 crore and paying little or no direct taxes, their donations suggest that these could be fronts for other firms or involved in misreporting profits, raising money-laundering concerns. Category B comprises of 6 companies donating Rs 646 crore (Rs 601 crore to the BJP, 93 %), far exceeding their total net profits. This indicates potential fronting for other companies or profit misreporting. Category C contains 3 companies which donated Rs 193.8 crore, reporting positive net profits but negative taxes, indicating potential tax evasion. Category D contributed Rs 16.4 crore, but lacked any reported profit or tax data, raising concerns about their status as shell companies involved in money laundering. These findings align with the Reserve Bank of India's earlier warnings that the EB scheme, due to its opaque bearer-bond nature, undermines the principles of the Prevention of Money Laundering Act (PMLA). The data strongly validates the RBI's concerns about the scheme's vulnerability to misuse.

The large donations to political parties, combined with allegations of bribery and corruption, illustrate how electoral bonds can facilitate undue corporate influence over public institutions. This type of behaviour highlights how corporate donations through electoral bonds can be used to gain influence with political parties, potentially undermining democratic processes. The contributions made through Electoral Bonds have acquired political access and influence without following transparent principles (which are mandatory in a democracy). It has created a system where business interests and politics become intertwined. Hence, the initial purpose of electoral bonds, as stated by the government to enhance the transparency of political financing, has undermined and enabled corporations to evade responsibility, thereby eroding the integrity of democratic governance.

Conclusion

The initiative taken by the BJP-led government to introduce EBS in the Indian political system resulted in eliminating the vital regulatory protections that jeopardize the accountability and integrity of the democratic system. The removal of earlier restrictions on corporate donations, allowing the companies not to disclose their contributions, and the easing of constraints on foreign firms signify the dilution of established norms. In a landmark judgement, the five-judge SC bench unanimously declared the EBS of 2018 “unconstitutional and manifestly arbitrary” (Association of Democratic Reforms & Anr. v. Union of India & Ors., 2024). By directing the SBI and ECI to share and publish all the data in relation to EBS, the SC has ensured that transparency should be maintained in the Indian democratic system. It further prevents any political party in power from being autocratic and ensures accountability to the people.

One of the important aspects for bringing the EBS by the then Finance Minister Arun Jaitley, was to bring transparency in the Indian Political System. In his 2017 budget speech, he asserted that without transparency in Political funding, free and fair elections are not possible. However, the introduction of EBS has diluted the transparency. Before the introduction of EBS, all political funding above Rs. 20,000 was required to be reported to the ECI. The EBS implementation abolished this requirement on the pretext of providing secrecy to donors and shielding them from reprisal. But, if we look at the history of political funding, it is hard to find any such precedence in India's post-independence history. Moreover, overemphasis on maintaining the secrecy of the donor has given way to *quid pro quo*, which SC has also noted in its judgement. Therefore, with the introduction of EBS, non-transparency was legitimized and legalized in the name of transparency by the ruling party. The revelations in the published list on donations after the SC's judgement point out many questions, such as how the loss-

making companies could make huge donations. Why majority of the donations were made to the party in power? Were the donations made by the business entities compelled by the intention to influence ongoing intention against them?

Even though the EBS has been declared unconstitutional by the SC, the circumstances surrounding its introduction and the ensuing developments necessitate a critical examination. The intricate relationship between the money and politics poses a significant challenge to the integrity of the democracy. To address this issue and enhance transparency, concrete measures should be implemented like mandatory publication of comprehensive details regarding the financial donations, and legal measures to protect the “legitimate” donors. There should be research and deliberations on replacing private donations with public funding as well. Real-time reporting of political funding and a cap on the donation amount could also contribute to bringing compatibility between money and politics. The ongoing debates on money in politics centres on maintaining a delicate balance between safeguarding the donor’s anonymity and the imperative of enhancing transparency.

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