

Shadows Of Secrecy: Electoral Bonds And The Debate Over Transparency In Indian Democracy

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Abstract

This study delves into the debate surrounding bonds, in India. These bonds were introduced in 2017 to allow donations to parties. However, they faced criticism for promoting corporate funding, which could compromise transparency and infringe upon citizens' right to information. The research examines how electoral bonds function and their impact on funding highlighting contributions to the governing party. Opposing parties raised concerns that this system could facilitate money laundering and excessive corporate influence in politics. The study concludes by emphasizing the need to find a ground between transparency and confidentiality, in finance systems to safeguard democracy.

Keywords: Electoral Unconstitutionality, Political financing, Electoral Transparency, Corporate donations, Money laundering, Electoral integrity, Political donation laws, Electoral Democracy

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I. Introduction

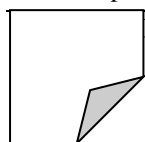
Background on Electoral Bonds in India

India's political campaign financing has a long history of opacity, whereby black money and corporate interests have mushroomed the system exponentially while remaining anonymous to the public. To curb corruption, electoral corruption, and the trend of cash transactions, the Modi government introduced electoral bonds in 2017 to enhance the transparency of the electoral process. The scheme allowed for "anonymous donations to Indian political parties to be transacted through designated branches of the State Bank of India while also encouraging genuine donations and shielding the donors from political fallout, especially from the ruling party, in this case." However, "From day one, critics and members of the opposition have been up in arms". This was because the scheme offered "a means for unlimited and undisclosed corporate donations to the political outfits in power. This was criticized for "deficiencies in accountability which were undermining democratic processes in India". However, the scheme was open for subscriptions a year later, in March 2018, and the ruling BJP party dominated donations. With the 2024 general elections approaching, and even beyond that, the electoral bonds have attracted even more scrutiny from exhibitions. Oppositions have indicated that the ruling party has benefitted more from the scheme at the expense of their fund's collection.¹ (Chishti)

Understanding Electoral Bonds: Mechanism and Operational Dynamics

Electoral bonds are a mechanism introduced by the Indian government in 2017 to reform political funding. "They function as instruments for making anonymous donations to political parties through specified

¹ "Purandare, Uttara. 'Electoral Bonds: Ensuring Transparency in the Electoral Process?' Ashank Desai Centre for Policy Studies, IIT Bombay, 8 May 2019, www.cps.iitb.ac.in/electoral-bonds-ensuring-transparency-in-the-electoral-process/."



branches of the State Bank of India.”² “These bonds are available in various denominations, ranging from Rs 1000 to Rs 1 crore, with a limited tenure of 15 days for encashment by the recipient parties.”³ Electoral bonds aim to enhance transparency in political financing and reduce cash transactions by enabling legitimate donations while maintaining the privacy of donors.

Anonymity of donors

Electoral bonds allowed anonymous donations to political parties, departing from transparency norms. Purchased without donor identification, they could be transferred to parties for encashment within 15 days. (Sale of Electoral Bonds at Authorised Branches of State Bank of India (SBI)) This anonymity raised concerns of untraceable corporate and foreign influence, with the majority of donations favouring the ruling BJP. Critics argued this compromised democratic accountability. Despite government claims of donor privacy protection, experts emphasized the importance of transparency. Electoral bonds also facilitated anonymous foreign funding of parties, further obscuring foreign influence. The removal of caps and disclosure requirements increased anonymity. India's once transparent party funding norms were severely undermined, prompting scrutiny from civil society and the judiciary.

Procurement of Electoral Bonds from SBI Branches by Donors

Electoral bonds are a financial instrument introduced by the Government of India in 2018 to transparently fund political parties. “These bonds can be purchased by individuals and entities from specified branches of the State Bank of India (SBI).”⁴ “The donors can then donate these bonds to political parties of their choice, which can encash them within a prescribed time frame.”⁵ The primary purpose of the system of electoral bonds is to establish transparency in political funding, minimizing the amount of cash in political contributions. Nonetheless, critics argue that the above system grants donor’s anonymity since the donor’s identity is unknown to the public and even the donor’s political party.

The process of procurement involves donors visiting designated SBI branches and purchasing electoral bonds of various denominations. These bonds are then provided to political parties, which can redeem them for cash. “The lack of transparency regarding the identity of donors has led to debates about the potential misuse of these bonds to funnel illicit funds into the political system.”⁶ while electoral bonds aim to streamline political funding and reduce corruption, there are ongoing discussions about their effectiveness in achieving transparency and accountability in the political process.

II. Challenges And Controversies In Electoral Funding: Electoral Bonds And Donor Privacy Vs. Transparency

The question of the donor’s privacy or transparency has shown great controversy regarding electoral bonds. Therefore, they may help reduce cash-based operations, but the level of their anonymity appears to carry undue non-accounted-for influence into politics. As it is properly formulated, “the tension between privacy and transparency...lies at the heart of safeguarding the health of our democracies”. Thus, any proposals for reforms in the future shall eliminate this contradiction to enhance possibilities for fairness and integrity of democratization to prevail.

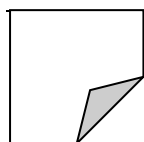
² ibid

³ Ananda, D. "ELECTORAL BONDS: A Peril to Democracy and Transparent Elections in India." *Journal of Liberty and International Affairs*, vol. 9, no. 1, 2023, pp. 89-100, <https://doi.org/10.47305/JLIA2391090a>.

⁴ ibid

⁵ Sinha, Shubhajit Roy and Avishek G Dastidar. "Electoral Bonds Election Funding Arun Jaitley Party Finances Political Donations India." *The Indian Express*, 3 January 2018, www.indianexpress.com/article/explained/electoral-bonds-election-funding-arun-jaitley-party-finances-political-donations-india-5015438/.

⁶ A Constitutional Analysis to Demonstrate India’s Electoral Bond Scheme. www.legalserviceindia.com/legal/article-15257-a-constitutional-analysis-to-demonstrate-india-s-electoral-bond-scheme.html.



Examining the Nexus: Electoral Bonds and the Ruling Party Connection

As previously mentioned, the electoral bonds were introduced by the Government of India in 2018 to ensure a high level of transparency in political funding. Despite that, various studies have indicated a connection between the electoral bonds and ruling party dynamics. More precisely, electoral bonds have become a primary source of political parties' funding, and the ruling party benefits the most. Most importantly, an unknown donor identity is one of the primary concerns – individuals and corporations remain anonymous when supporting political parties through electoral bonds. As a result, the ruling party's donors have often been accused of bias and favouritism affiliated with the ruling party, undermining democracy's values. Therefore, many stakeholders have expressed their views to reform the legislative framework and include the disclosure of donor identities and funding limitations through electoral bonds. Unless these concerns and issues are addressed, democracy and democratic processes are at significant risk (Electoral Bonds - the legalized form of corruption).

Balancing Act: Prioritising Donor Privacy Versus Transparency in Electoral Funding

Electoral funding is a complicated matter due to the necessity for a balance between donor privacy and transparency. The use of electoral bonds was meant to remove this conundrum as donors are not revealed to recipient parties. However, the entire idea has led to debates concerning the limitation of trust and the possibility of violence. On the one hand, it is critical to keep the identity of donors hidden as they may encounter retaliation or pressure to serve politicians. Meanwhile, on the other hand, the secrecy of donors has led to a lack of trust and bribes. The optimal balance is a more sophisticated strategy that respects donors' rights but also ensures that the balance may be maintained relying on standards applied to other locations in the world. Thus, respecting donor privacy should be combined with transparency and accountability so that donors can donate freely (Vaishnav).

III. The Nexus: Electoral Bonds And Transparency Deficiency

This nexus has been most notably exposed with the introduction of electoral bonds, which allow for the legal but opaque passage of funds to political parties. Despite the aim of simplifying funding contributions, using electoral bonds for donations has obscured the identities of the donors and manifested concern for electoral transparency. It further reveals the need for swift and complete reforms geared towards improving transparency standards and legislative practice to preserve the future of democracy.

Examining the Impact of Electoral Bonds on Democratic Principles

The introduction of electoral bonds in India has sparked concerns about their impact on democratic principles. "They raise transparency issues due to anonymous donations, potentially allowing illicit funds into politics."⁷ Electoral bonds also favour wealthy donors, undermining equal political participation. Regulatory challenges further complicate oversight. Overall, these factors risk eroding public trust in democratic institutions, necessitating reforms to uphold transparency, accountability, and fairness in the electoral process.

Violation of the right to information

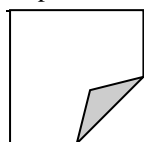
The constitutional right to information in India was violated by the electoral bonds. In any quantum, donors have donated vast sums of money to political parties without disclosing their names. Weinstein, as it stifles Article 19's fundamental right to vote under (1)(e), violates its branch by not providing the voter with enough material for an informed decision. Polls have been unable to establish an election. It was revealed that such a restriction on information does not demonstrate the benevolent rationality for restriction admissible under Article 19(1)(a) (an OI, which allows restriction, inter alia limited is required for the preservation of national sovereignty in the case of security and public order. Consequently, all electoral bonds were cancelled, and the parties were required to report their transactions to the Count. It was considered a remarkable achievement to raise democratic standards by allowing voters to determine party donors (Bhattacharya and Rakhecha).

Whitening Black Money Through Electoral Bonds

"Electoral bonds did not meet their stated objectives of reducing black money and increasing transparency in political funding."⁸ The government argued that using formal banking channels for donations would decrease the use of illicit cash in elections. However, the Court found that electoral bonds provided a new way for black money to be funnelled to political parties, as over 75% of the Rs 16,000 crores donated went to the ruling party. (Mallapur) The removal of donation caps and the requirement for transparent reporting made the bonds a tool for opacity, not transparency. Experts suggest that black money may have merely shifted from cash

⁷ Squad, Ias. "Political Funding in India." IAS SQUAD, 18 Mar. 2024, ias-squad.in/political-funding-in-india.

⁸ G. SAMPATH. "The danger of electoral bonds". The Hindu, 21 November 2017, <https://www.thehindu.com/opinion/op-ed/the-danger-of-electoral-bonds/article20602008.ece>



to banking channels, with shell companies using illicit funds to buy bonds anonymously. Rather than curbing illicit donations, the bonds legitimised them due to this lack of transparency. Additionally, by allowing unlimited donations, electoral bonds opened avenues for money laundering. The Association for Democratic Reforms noted that opaque bonds are worse than cash donations, which at least leave a paper trail. The Court emphasised that transparency is a globally recognized method to combat illicit political funding, and by granting anonymity to donors, the bonds failed to clean up political finance as claimed. ([Sampath](#)) This situation highlights a significant judicial observation that while opacity fosters illegality, transparency facilitates regulatory oversight.

Cases

Electoral bonds, introduced through the Finance Bill of 2017, have created significant concerns regarding transparency and regulatory oversight in political donations in India. “Previously, companies were required under Section 293A of the Companies Act 1956, and later Section 182 of the Companies Act 2013, to disclose political contributions in their financial statements, ensuring stakeholders knew about the political affiliations and contributions of a corporation.”⁹ These laws limited contributions to a percentage of profits and mandated transparency.

However, amendments made by the Finance Bill, of 2017, exempted electoral bond donations from these transparency requirements. This allows any entity, including potentially shell and foreign companies, to donate undisclosed amounts anonymously, thereby bypassing previous safeguards and potentially enabling money laundering and foreign influence in Indian politics. “The case of **Jayantilal Ranchhoddas Koticha v. Tata Iron & Steel Co. Ltd.** previously highlighted judicial concerns about political contributions impacting democracy”¹⁰. ([Finance Bill: Minor legislative tweaks prompt major fears for democracy’s future](#))

Further amendments have also obscured the financial transparency in political funding. Changes to the Representation of People Act, of 1951, and the Income Tax Act, of 1961, have reduced the obligations of political parties to report detailed contributions over certain thresholds, undermining previous norms that aimed to maintain a traceable link between donors and political parties ([Jaswal](#)).

The Supreme Court, in **Association of Democratic Reforms v. Union of India**, opted not to halt the electoral bond scheme but required parties to disclose their sources to the Election Commission. ([Chopra](#)) Despite this, the scheme has facilitated an influx of anonymous contributions, with over Rs. 6200 crores sold in electoral bonds, raising alarms about the undermining of democratic transparency and increasing the risk of foreign and corporate interference in Indian elections.

The Scheme was criticized by the Reserve Bank of India, indicating that the scheme allows a legal framework for black money and violates the dignity of financial laws making money laundering disguised as a regular donation scheme. Nevertheless, the electoral bonds were launched, but the introduced scheme emphasized opacity instead of transparency.

IV. Electoral Bonds And Political Donations: Assessing Impacts, Comparisons, And Critiques In Indian Democracy

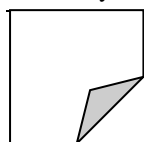
“Electoral Bonds and Political Donations: Assessing Impacts, Comparisons, and Critiques on Indian Democracy” is one MS Word file that objectively examines the structure and operations of electoral bonds through political funding in India. Mallapur specifically focuses on three components: the direct impacts of electoral bonds on political financing, a comparison of the Indian system of political donation with the rest of the democratic world, and criticism of the legal framework surrounding donations in India.

The first part is an assessment of the level of transparency and verified sources of party funding while highlighting a few benefits to the ruling party. The second contrasts India’s track with the rest of the democratic world in terms of transparency and regularity. “The final section, Critiques of Existing Law, critically examines recent legal amendments related to electoral bonds, addressing concerns about reduced transparency and potential increases in corruption.”¹¹ the discussion aims to provide a comprehensive overview of electoral bonds' role within political funding in India and how it compares to practices globally.

⁹ Kashyap, Shreeya. Thesis for Submission July 2021. City, University of London, July 2021, openaccess.city.ac.uk/id/eprint/26564/1/Shreeya_Kashyap_Thesis_for_Submission_July_2021.pdf.

¹⁰ Sen, Sukla. "Demonetisation, One Year After: Towards A Synoptic View." *Countercurrents*, 28 November 2017, www.countercurrents.org/2017/11/demonetisation-one-year-after-towards-a-synoptic-view/.

¹¹ Sharma, Padmakshi, and Live Law. “Challenging Electoral Bond Scheme Due to Its Non-Revealing Nature | Violates Right to Information and Encourage Corruption.” *Live Law*, 31 Oct. 2023, www.livelaw.in/top-stories/electoral-bonds-violate-citizens-right-to-information-promotes-corruption-prashant-bhushan-to-supreme-court-day-1-241317.



Electoral Bonds: Unfettered Advantage to the Ruling Party

The political funding system in India has been adversely affected by the introduction of electoral bonds, with an unequal advantage for the party in power. The implementation of the electoral bond, which allows for anonymous donations, obscures the identities of individual donors and the amounts contributed.

This form of anonymous donation raises concerns about whether politically connected individuals influence the government and whether powerful donors enter into dubious agreements with the ruling party. The party in power receives a significant amount of money raised by parties through electoral bonds. According to data, over 75% of the total contributions raised through these bonds have been given to the party in power. This creates disparity from a financial perspective since the ruling party has more funds to carry out an efficient election campaign.

Besides, anonymous funding limits the ability of voters and monitoring authorities to monitor money from donors. Since no mechanism in place could be used to trace money from parties and donors, there is no way of determining whether policies and decisions are given the priority that favours the interests of a few. The policy capture risk is high during elections and other decision-making processes when only a few individuals can keep parties afloat.

Moreover, the significant funding advantage through electoral bonds can distort the electoral playing field, making it difficult for opposition parties to compete effectively. This imbalance challenges the principle of fair competition and could potentially skew election outcomes towards those with greater financial backing rather than those with greater public support. Thus, while electoral bonds were introduced to cleanse the system of political donations from black money, they have instead favoured the ruling party by providing it with a significant and largely unchecked funding advantage, raising fundamental concerns about the integrity of democratic processes and the principle of fair and transparent governance. (Kumar et al.)

Comparative Analysis of Political Donations: India Versus Other Democracies

This comparative analysis of political donation systems across India, the United States, the United Kingdom, and Germany reveals diverse approaches to managing political finance. India's use of electoral bonds offers anonymity to donors, potentially reducing transparency and increasing the risk of corruption. In contrast, the U.S. requires disclosure of donors to political action committees, promoting transparency despite the high volume of corporate contributions. "The U.K. adheres to strict reporting requirements under the Political Parties, Elections and Referendums Act 2000, which mandates transparency in political funding."¹² Germany's model combines private donations with substantial state funding, aiming to minimise undue influence from wealthy donors and ensure electoral fairness. Each system reflects different balances between donor anonymity, transparency, and state involvement, highlighting varied strategies to safeguard democratic integrity.

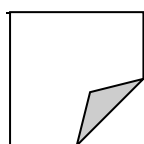
Criticism of Existing Political Donation Laws in India

Finally, India's political donation laws, particularly considering the 2017 introduction of the electoral bonds scheme, have been widely criticized for enabling corruption and a lack of transparency. This is primarily because while the electorate is unable to see which organizations, hitherto anonymous, finance political parties, things like policies may be unduly influenced by parties rather than public interest. As such, the lack of transparency is in stark contrast to countries such as the United States and the United Kingdom, where donations to political organizations must be publicly disclosed. It has been suggested that this kind of flexibility allows for corruption and sabotages the democratic process, as it is impossible to assess whether the actions of a party in power have been bought by its financier. Additionally, considering that India already has the Companies Act 2013 that requires full disclosure to protect stakeholders, Indian politics can be viewed as lenient comparatively. "Germany and Sweden implement strict donation limits and supplement with public funds to minimize the feeling of fiscal pressure" as it was put. Therefore, it is suggested that India should revise its ways regarding political organization financing to protect democratic integrity and minimize corruption.

V. Conclusion

In conclusion, although the introduction of electoral bonds in India was intended to increase transparency and limit the influence of black money in political contributions, its implementation has created substantial challenges to the integrity of democratic processes. As evidenced by the unequal distribution of contributions tilted toward the ruling party and the secrecy surrounding the donations, transparency and accountability in political contributions have diminished. Detractors maintain that the secrecy under which the bonds operate

¹² House of Commons Hansard Written Answers for 11 Dec 2007 (Pt 0001). 11 Dec. 2007, www.publications.parliament.uk/pa/cm200708/cmhansrd/cm071211/text/71211w0001.htm.



undermines democratic governance and enables anonymous corporate contributions that may lead to policy capture and economic influence. Furthermore, a comparison of the Indian model with systems of political contributions in other democratic societies reveals the inadequacy of the Indian approach, calling for immediate revision. It is noteworthy that the issue of anonymity and transparency, two key features of electoral bonds, has led to litigation from multiple ends that have shown the flaws of electoral bonds. This lawsuit demonstrates the improper benefits to the ruling party as well as the donor anonymity suggesting that the electoral bonds model is invalid and infringes democratic governance and constitutional rights. Therefore, I find that electoral bond reforms should reflect the safeguard of democratic governance and constitutional rights. Accordingly, reforms should enhance the disclosure of contributions, establish limits on donations, and strengthen the monitoring system to promote impartiality, openness, and confidence in the election process. Such a system reform would enable India to protect its democratic values against the economic threat of political contributions.

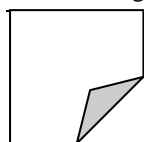
VI. Suggestions

- **Enhanced Transparency Measures:** Other measures that could be implemented include more stringent disclosure requirements, with donors and the amount they donate being disclosed to the public. Limiting the use of anonymous forms of donations such as electoral bonds should also be implemented as an anonymous donation allows donors to have undue influence over parties and the possibility of corruption. Furthermore, the donors' identities should be disclosed not only to the public but also to the parties receiving the donations.
- **Regulatory Oversight Strengthening:** There should be stronger oversight of regulatory mechanisms to ensure that political funding transparency standards are followed. Oversight and monitoring of political funding need to be strengthened. Regulatory bodies with the ability to ensure compliance with transparency requirements may need to be established.
- **Constitutional Review and Reform Advocacy:** Another option is to launch a comprehensive constitutional review of the electoral bond scheme and the laws associated with it. "Advocate for necessary reforms to address the constitutional concerns raised by the lack of transparency and accountability inherent in the current system". Under that, it may involve the submission of a writ in one of the Indian courts against the legality of bonds and the provision of proper legislative changes to ensure the constitutionality of donation systems. In this way, India would be able to better secure the rights of its citizens and safeguard its democratic aspirations through the integrity of the constitutional regime.
- **Aligning with Global Best Practices:** Fourth, India may attempt to benchmark its political donation laws against the best practices, namely that of the countries known for their robust regulations and transparency. This scoping exercise could reveal the gaps.
- **Public Awareness and Engagement:** Lastly, increasing awareness among voters and public engagement through empowering pro-transparency discussions on political funding may generate demand for changes and force the political leaders to respond to it. **Legal Reforms:** In addition, legal advocacy could be recommended. This activity may involve improving the laws and regulations by submitting them for the necessary review and pushing for reforms.¹³
- **Promoting civil society and media scrutiny:** Promote critical scrutiny of political funding by civil society organizations and mobilize media outlets to investigate the financing of political campaigns and report their findings. Moreover, they should advocate for emergency measures to address the loopholes and gaps that enable corruption.
- **Urging political will and leadership:** Push for political will and leadership to prioritize electoral reforms and commitment to democratic processes. Further, they should voluntarily reveal their sources of funds in support of legislation to reform current legislation and enhance party funding so the party is the only financier of party activities.
- **Multi-stakeholder collaboration:** Create a space for dialogue between government agencies, civil society organizations the media, and political parties to develop joint working mechanisms to fight against corruption in the funding. It would ensure that a compromise is established, and the appropriate strategy implemented.

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