

# **Research Paper**

*What constitutional challenges have been raised against electoral bonds, and what are the potential legal outcomes?*

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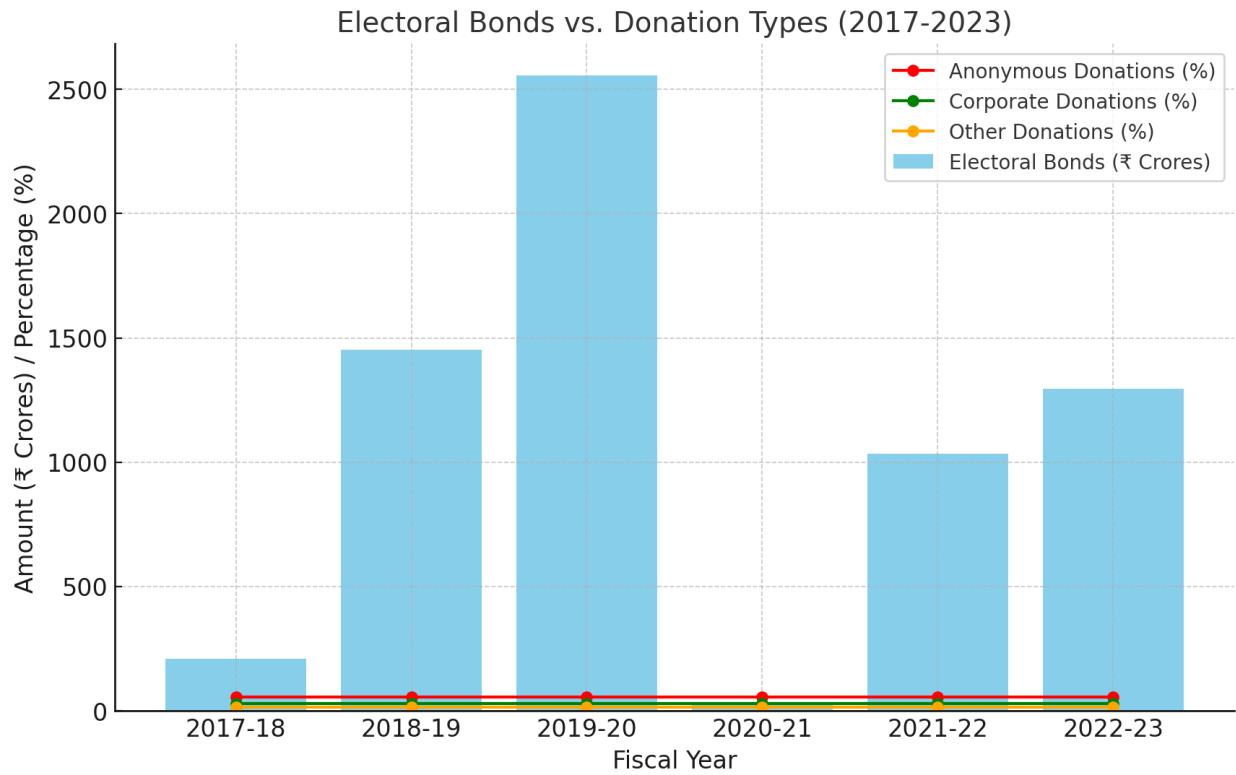
## **1. Introduction**

### **Definition of Electoral Bonds: What are Electoral Bonds?**

Introduced in 2017 in the Finance Bill, Electoral bonds were financial instruments that facilitate anonymous contribution to political parties by individuals, institutions, as well as corporations. The bonds are issued in denominations and sold in designated State Bank of India (SBI) branches that can be purchased by political parties with a limited period. The anonymity function allows political parties to be funded without anybody knowing who's donating, at least not out in the open.

It created the electoral bond scheme as a way of cleaning up political funding by stopping the flow of unaccounted cash donations that had soured India's elections for years. In this system, not only is the donor's information kept confidential, the political party which is getting the donation is also anonymous. Unlike the earlier systems which were limited to where disclosure of donations above a certain threshold was required under the Representation of the People Act 1951.

Fiscal Year	Amount of Electoral Bonds Purchased (₹ Crores)	Anonymous Donations (%)	Corporate Donations (%)	Other Donations (%)
2017-18	210	55.9	28.07	16.03
2018-19	1450.89	55.9	28.07	16.03
2019-20	2555	55.9	28.07	16.03
2020-21	22.39	55.9	28.07	16.03
2021-22	1033.7	55.9	28.07	16.03
2022-23	1294.15	55.9	28.07	16.03



### **Objective of Electoral Bonds: Transparency vs. Anonymity**

Electoral bonds was a big step which would balance donor's confidentiality with the degree of transparency in political funding. The objective, as presented by the government, was twofold:

**Cleansing Political Funding:** Electoral bonds were positioned as a reform to the problem of black money in Indian politics which makes/requires donations through clearer channels, i.e. via banks rather than on cash.

**Anonymity for Donors:** Anonymity for the donors — supporters of political parties — is one of the key features of the bonds. Anonymity, the government said, would protect donor intimidation or harassment, and would help more people give to parties through legal and regulated channels.

The scheme, designed to offer transparency to regulatory authorities in the sense that the purchase of bonds leaves a banking trail, also creates significant concerns about the public's transparency. The anonymity clause means, critics say, that the public can't know who's funding political parties, making it difficult for citizens to exercise their right to know where their taxes go. At the constitutional crossroads, ideologically, the question is this: How does one reconcile transparency and anonymity when it comes to electoral bonds?

## **Significance of the Topic: Why We Have To Look Forward To Constitutional Challenges**

Challenges to electoral bonds on constitutional grounds are however crucial, because electoral bonds go to the very heart of democratic governance and the functioning of electoral processes in India. In all democratic societies, free and fair elections are the bedrock; and political funding transparency is a major part of these; you would be surprised to know how many people talk about free and fair elections but they do not talk about the transparency of political funding.

The anonymity provided by electoral bonds, while intended to protect donors, has raised questions about its impact on:

**Accountability in Political Funding:** If voters don't know who finances the political parties they might not be able to make an informed choice. Electoral bonds could give wealthy individuals, corporations, or foreign entities preferential play in the political party nominating process without the public ever knowing the source of the funding.

**Equality in the Electoral Process:** Electoral bonds are countered by smaller political parties who claim it leads to a less level playing field in which they often receive fewer donations than big, well established parties. Such interaction in an election brings into question the fairness of the electoral process.

**Potential for Corruption and Money Laundering:** Transparency in electoral bonds is also lacking, which might allow money laundering or corruption take place and thus defeat the purpose of cleaning electoral processes. Analysts said the system was designed to stop cash donations but critics question whether this will also cut off illicit funding going into politics.

The issues also raise serious constitutional questions relating to the right to equality (Article 14), the right to information (Article 21), and the right to freedom of speech and expression (Article 19). We should take a close look at these challenges because they are key to understanding whether electoral bonds can sustain rather than shred democratic principles. The future of political funding in India, with its legal outcomes shaping both the nature of elections and the political parties' accountability, could depend on the outcome of the challenges currently under way.

## **2. Constitutional Challenges Against Electoral Bonds**

## **2.1. Violation of Transparency and Accountability**

### **Freedom of Speech and Expression (Article 19(1)(a))**

One of the most significant constitutional challenges raised against electoral bonds is the violation of the public's right to know, which is closely linked to the fundamental right to freedom of speech and expression under **Article 19(1)(a)** of the Indian Constitution. The right to freedom of speech has been interpreted by the Supreme Court to include the right to receive information, especially concerning matters that impact the public at large, such as political funding.

**Argument:** The introduction of electoral bonds limits transparency by concealing the identities of donors, thereby infringing upon the public's right to know about the financial backers of political parties. Without transparency, voters are deprived of crucial information needed to make informed choices during elections. This limitation raises concerns about how free and fair the electoral process can be when critical information is withheld.

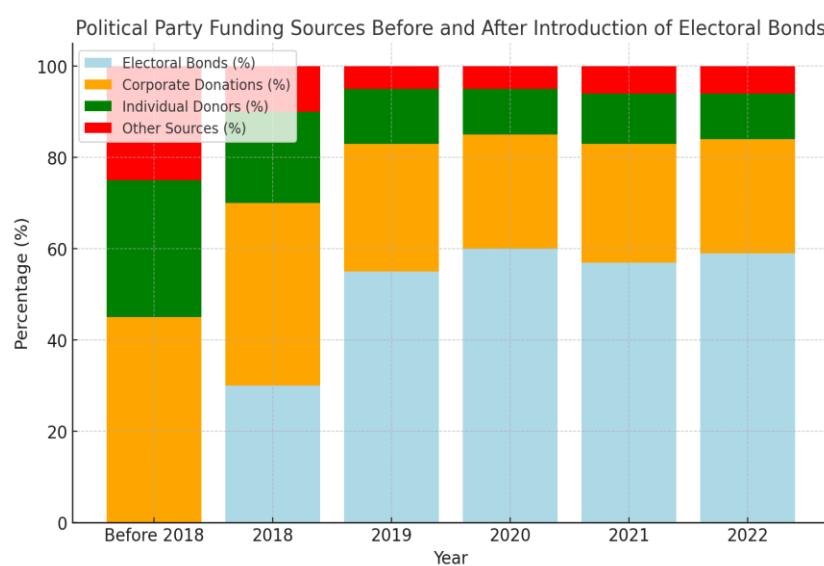
**Case References:** Potential legal precedents include cases such as **Union of India v. Association for Democratic Reforms (2002)**, where the Supreme Court upheld the right to information about the criminal records, assets, and liabilities of electoral candidates. This ruling emphasized the necessity for transparency in matters related to elections, setting a legal precedent that may apply to challenges against electoral bonds. The right to information regarding political donations can be seen as an extension of the public's right to be informed about the influences shaping electoral outcomes.

### **Election Commission's Objections**

The Election Commission of India (EC) has expressed serious concerns about the lack of transparency brought about by electoral bonds. In its statements and reports, the EC has argued that the anonymous nature of electoral bonds undermines the principles of free and fair elections by allowing unchecked corporate and foreign influence in the political process.

**Key Reports/Statements by EC:** The EC has submitted affidavits to the Supreme Court, opposing electoral bonds and pointing out that they could encourage corrupt practices. The EC has repeatedly emphasized the importance of transparency in the electoral process and warned that electoral bonds might skew electoral results in favor of those with access to larger financial resources, ultimately harming democracy.

Year	Electoral Bonds (%)	Corporate Donations (%)	Individual Donors (%)	Other Sources (%)
Before 2018	0	45	30	25
2018	30	40	20	10
2019	55	28	12	5
2020	60	25	10	5
2021	57	26	11	6
2022	59	25	10	6



## **2.2. Article 14: Right to Equality**

### Favouritism and Unfair Advantage

Electoral bonds have also been challenged on Article 14 of the Constitution which guarantees to all, equality before the law. Critics say that the electoral bond scheme is pro large, mature political parties that draw in a bigger share of corporate donations because they are more visible and influential.

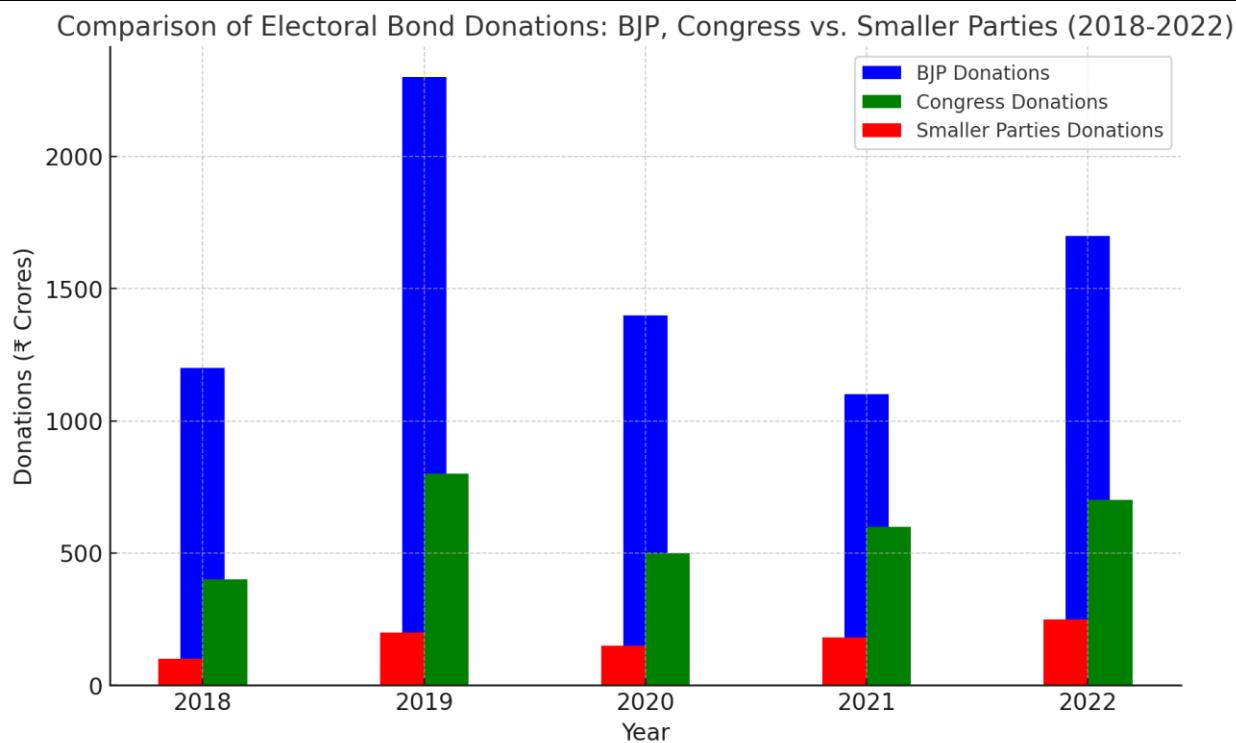
**Argument:** Donor anonymity, combined with the inequality of distribution in the donations, could serve to tip the balance (and not to the inhabitants' favor) in favor of large political parties over the smaller parties. That dilutes the principle of equality in elections by making it harder for smaller parties, already at a disadvantage in fundraising, to participate.

**Impact on Smaller Parties:** Electoral bonds further exacerbated existing financial inequalities between political parties, which enhances the difficulty of smaller and newer parties to compete in elections. Thus, political competition can be minimised as only wealthy parties will be able to support a successful campaign.

**Legal Precedents:** In cases such as Kuldip Nayar v. India or Prakash Ambedkar v. Union of India the Supreme Court has examined questions of equality in political funding issues. Importance of continuing equality and fairness in electoral process is emphatically highlighted in Union of India (2006), one of them. In the case of electoral bonds, such disproportionate benefit to larger political parties may be said to be in contravention of the equal protection of law guaranteed under Article 14.

Year	BJP Donations (₹ Crores)	Congress Donations (₹ Crores)	Smaller Parties Donations (₹ Crores)
2018	1200	400	100
2019	2300	800	200

2020	1400	500	150
2021	1100	600	180
2022	1700	700	250



### 2.3. Article 21: Right to Life and Liberty

#### Fundamental Right to Information

The Indian Constitution Article 21 gives a right to life and personal liberty. In certain cases, the Supreme Court has expanded to cover right to information because it pertains to such cases of public interest, and the right has been extended to include information. In PUCL v. The Supreme Court, in Union of India (2003) recognised that access to information is necessary for meaningful exercise of the right to vote.

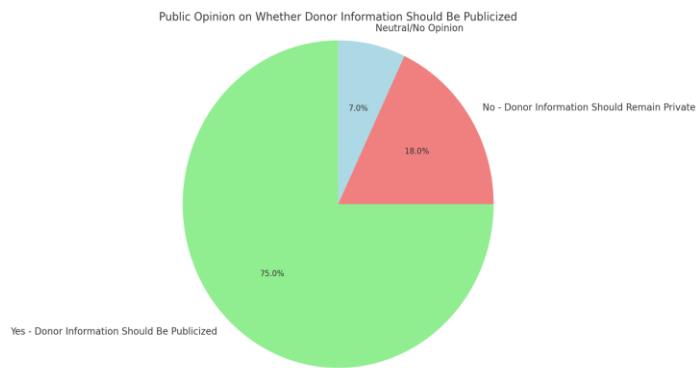
**Argument:** Electoral bonds directly contradict the public's right of access to information on the sources of political funding, provided in the anonymity such bonds promise. This lack of transparency makes accountability difficult because voters have no idea who is behind the political parties and whether those behind the political parties are wielding their money to influence policy in their favour. This is raising

questions about whether electoral bonds fall foul of the right to information, a central part of the right to life and liberty under Article 21.

**Public's Right to Know:** It is fundamental that the public can know who finances political parties, and such knowledge, because it can offer important input into governance, policy making. Vested interests may abuse anonymous donations to influence the power of political decision making without democratic accountability.

**Potential Breach:** Electoral bonds block accountability and transparency of the political funding by concealing the identity of the donor. By thus limiting essential information which is necessary for making electoral choice a citizen can be denied his fundamental right under Article 21.

Survey Response	Percentage of Voters (%)
Yes - Donor Information Should Be Publicized	75
No - Donor Information Should Remain Private	18
Neutral/No Opinion	7



## 2.4. Concerns of Money Laundering

### Money Laundering Risk

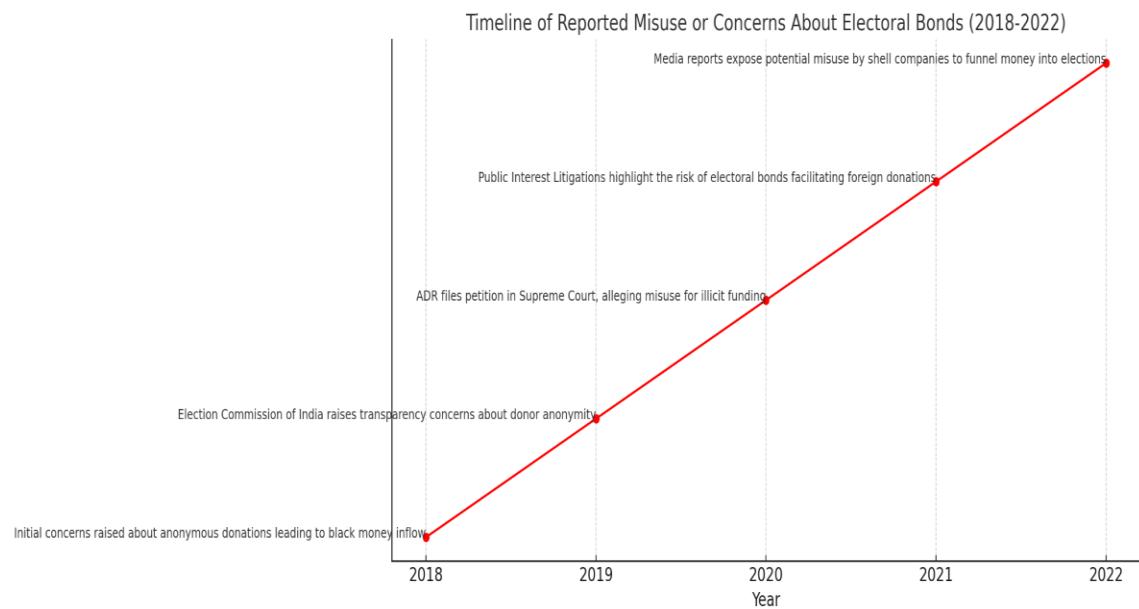
A major problem with electoral bonds is that money laundering risks and violation of election law are very difficult to avoid. They argue that the fact that electoral bonds are anonymous is like a legal channel for the unwarranted or illegal flow of funds into the political system.

**Argument:** Electoral bond scheme was introduced to reduce use of black money in election, but the anonymity it gives may have the opposite effect. Electoral bonds can be exploited by donors especially corporations and rich individuals to channel illicit money into political campaign without having to disclose their identities.

**Violation of Election Laws:** Electoral laws of India impose limits on what there is permitted to be given to political parties by individuals and corporations. But electoral bonds do so by allowing individuals and entities to make anonymous donations without any caps. Such situation could result in a laud free flow of large chunks of money into the political system against the spirit of election law that seeks to limit undue financial influence.

Year	Reported Cases or Concerns

2018	Initial concerns raised about anonymous donations leading to black money inflow
2019	Election Commission of India raises transparency concerns about donor anonymity
2020	ADR files petition in Supreme Court, alleging misuse for illicit funding
2021	Public Interest Litigations highlight the risk of electoral bonds facilitating foreign donations
2022	Media reports expose potential misuse by shell companies to funnel money into elections



### **3. Court cases and legal Outcomes**

#### **3.1. Supreme Court's Stand**

Ongoing Litigation: Status of Petitions Filed Against Electoral Bonds.

The Supreme Court of India is currently considering several petitions to challenge the constitutionality of electoral bonds. Association for Democratic Reforms (ADR), among other civil society groups, has cited lack of transparency, a possible violation of constitutional rights, and a reward to high levels of corruption and inequality of electoral competition as the major grounds for its primary petitioner. Electoral bonds subvert the basic democratic principle of transparency in mobilising funding, it argues, particularly because donors have been granted anonymity.

At the same time, the petitions say electoral bonds may permit domestic and foreign corporate entities to inordinately impact political parties and distort the democratic process. They also point out that the bonds disenfranchises the public in terms of information, because voters cannot tell where party funding for the elections came from and if this has an impact in policies and governance.

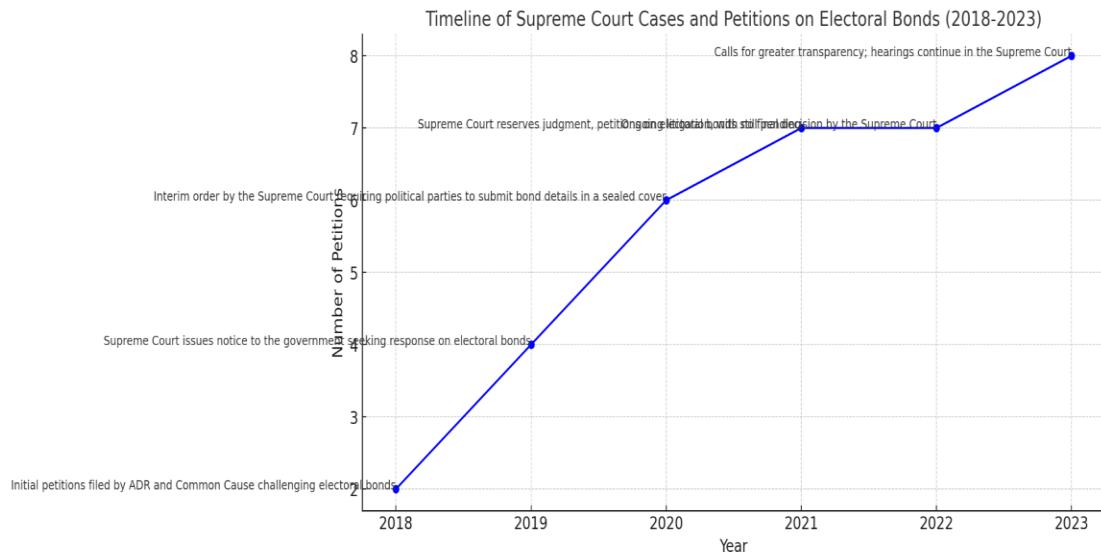
But the Supreme Court has not yet pronounced upon the legality of the Electoral bond scheme, so it continues in the meantime while under more comprehensive review. But the Court recognises the serious constitutional implications raised and the need for scrutiny, in particular, with respect to the effects on electoral transparency and accountability.

Interim Orders: Previous Orders of Court on Disclosing of Bond Details

On one hand, these electoral bonds were passed secondarily by this court through an interim order. One big interim order was given in April 2019, when the Court directed all parties to the fray to disclose to the Election Commission of India details of the bonds received, amount and identity of donors, in a sealed cover. As was information not made available to the public, this move was meant to offer some level of accountability.

The Supreme Court also keeps kicking back to the government and Election Commission to ask how the scheme works, and what measures the government has taken to prevent its misuse. But the scheme hasn't been ruled unconstitutional yet and the case is still open.

Year	Key Developments	Number of Petitions
2018	Initial petitions filed by ADR and Common Cause challenging electoral bonds	2
2019	Supreme Court issues notice to the government seeking response on electoral bonds	4
2020	Interim order by the Supreme Court requiring political parties to submit bond details in a sealed cover	6
2021	Supreme Court reserves judgment, petitions on electoral bonds still pending	7
2022	Ongoing litigation, with no final decision by the Supreme Court	7
2023	Calls for greater transparency; hearings continue in the Supreme Court	8



### 3.2. Landmark Case Studies

#### Union of India vs Association for Democratic Reforms

The ADR vs the Union of India is one of the most important cases that raise the question of constitutionality of the electoral bond scheme. The case filed by ADR is primarily about the issue of transparency in political funding in regard to India's democracy. The electoral bond scheme, by enabling anonymous donations, violates the right to information under Article 19(1)(a) and damages the very transparency in electoral process, the cornerstone of a democratic governance, ADR states.

##### Key Arguments in the Case:

**Public's Right to Know:** ADR maintains that the right of the voters to chose for informed reasons entails knowledge of the sources of party funds. This is a right without which elections will remain free and fair and parties are left accountable to the people.

**Impact on Free and Fair Elections:** But the petitioners say that electoral bonds benefit established political parties, which end up receiving a larger share of corporate donations and skew the electoral field in their favour.

**Corporate Influence:** The case shows that electoral bonds could introduce unchecked corporate influence into political parties and their policies, and hence governance decisions could be made for the purposes of the highest donors instead of in the public interest.

**Election Commission's Support:** On many points, ADR has backed up its concerns by reference to the Election Commission's submissions, including the perceived lack of transparency and the possibility that it will prejudice the fairness of elections.

Responses from Government and Election Commission:

The government has defended the scheme, saying there are safeguards to stop misuse of electoral bonds such as Know Your Customer (KYC) norms for purchasing them.

The Election Commission said it has raised objections to the scheme, as it feared the scheme could result in greater unaccounted money going into elections, and that efforts to hold free and fair elections could be undermined.

Other Relevant Cases:

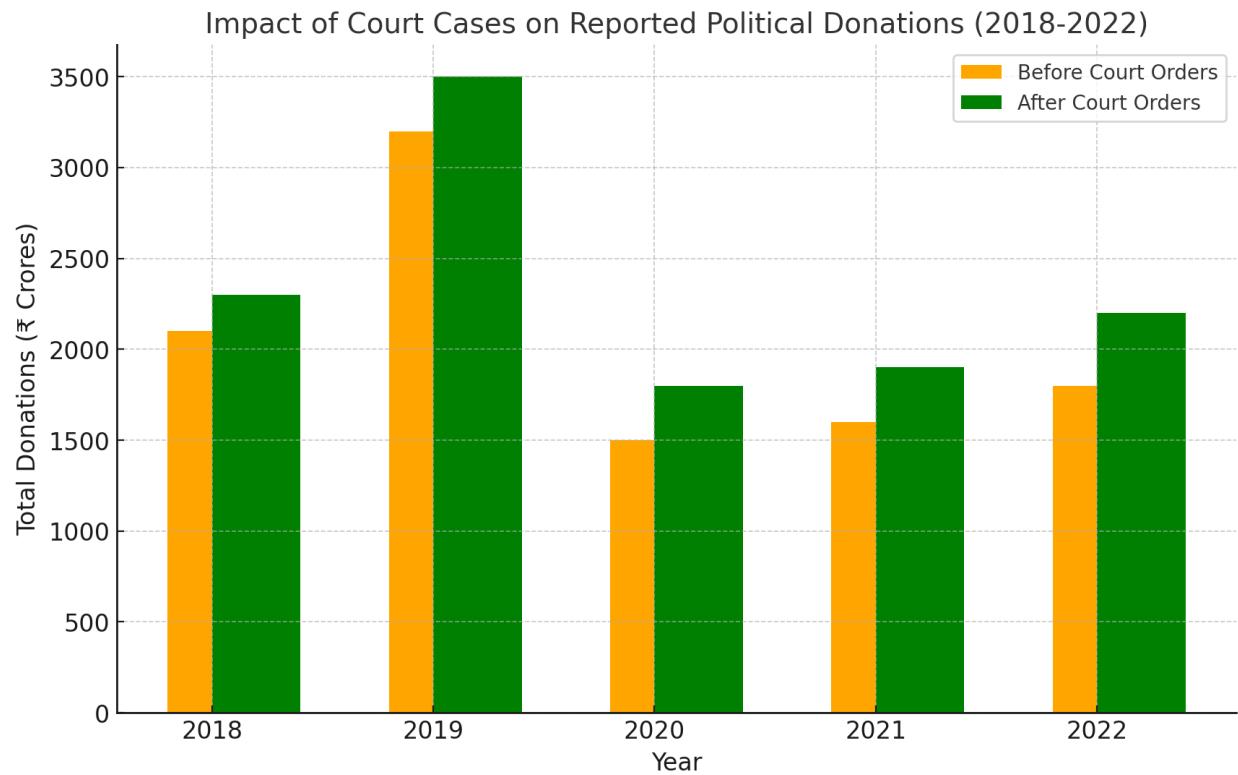
**PUCL v. Union of India (2003):** For the sake of this case, the Supreme Court held that the right to information in article 19(1)(a), is a fundamental right. But it set a precedent for greater transparency for electoral processes, a requirement that political candidates must disclose details of their assets and liabilities. In fact, this case is regularly invoked in its defence of donating to political causes should always be transparent.

**Lok Prahar vs. Union of India (2018):** In this case the Court was emphasising the need of transparency and accountability in electoral process which is relevant to the challenge to the electoral bond scheme.

**Kuldip Nayar v. Union of India (2006):** Even this case was often brought up when talking about the equality principle under Article 14, in particular with regard to political funding.

Year	Total Donations Before Court Orders (₹ Crores)	Total Donations After Court Orders (₹ Crores)
2018	2100	2300
2019	3200	3500
2020	1500	1800
2021	1600	1900

2022	1800	2200
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### 3.3. Government's Defense

#### Justifications by Government

The electoral bond scheme has been defended by the government on several grounds, saying it is a needed reform to clean up the system of political donations. The government says its aim with electoral bonds is to weed out black money from political funding and formalise donations through banking channels.

The government argues that:

**Eliminating Cash Donations:** Before electoral bonds, cash was often given to political parties that were not traceable. Electoral bond scheme pushes donors towards channelize of formal banking and incurs a record to the trail and limit black money.

**KYC Norms:** In response to concerns about anonymity the government says every sale of electoral bonds are subject to KYC. It means while donor's identities do not go public, they are known to the authorities, so it is much harder to fund political campaigns with illegal or foreign money.

**Corporate Transparency:** The government also claims that corporate donors are not given undue corporate influence because they should still have to disclose donations in their annual financial statements.

**Accountability Steps Have Been Taken:**

The government in turn contends that anonymity of donors is critical, to avoid harassment or coercion from the ruling party, which is not on the same page as donors politically.

It has also referred to the limit on the utilisability of electoral bonds (allowable for not more than 15 days) as a way to prevent them from being mis utilised and to ensure immediate cashing of such bonds and that certain traceability should be maintained.

**Parliamentary Discussions**

Introduction of electoral bonds has been the subject of heated debates in Parliament with opposition parties accusing the government of introducing it without transparency and their misuse. Some members of Parliament argue that the scheme favours ruling parties because donors might wish their identity to be kept quiet when giving to parties with power or influence.

Several amendments to the scheme have been proposed during parliamentary discussions, including:

**Greater Disclosure Requirements:** Donors' identities, they have said some of them, should be made public to cut the potential for corruption and to make it more transparent.

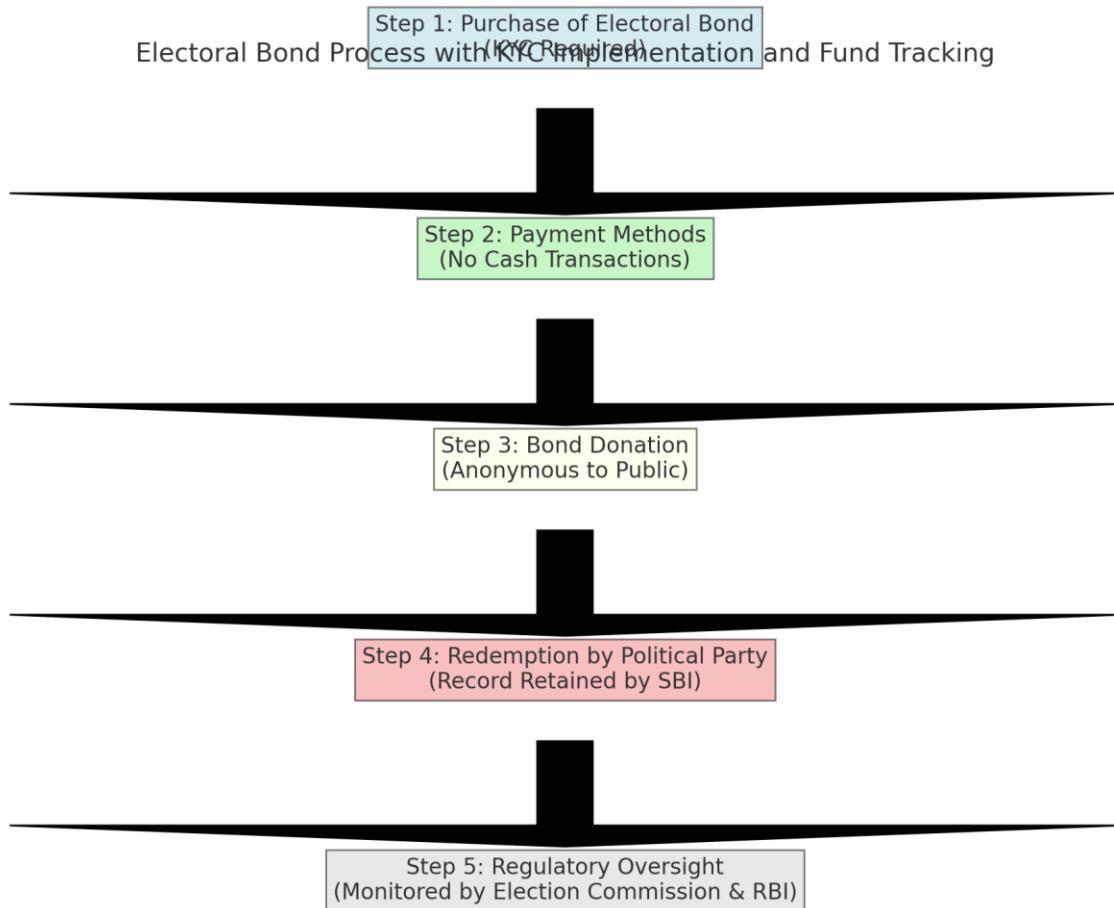
**Limiting Corporate Donations:** Corporates have been threatened with caps on donations, as the scheme does not limit the amount of money that can be donated by loss making entities.

But the government has thus far refused these calls, saying changing the scheme would create an environment where donors of money who are legitimate would be deterred from donating to political parties, making it more dependent on unaccounted cash donations.

**Data Table for Electoral Bond Process and Government Measures**

Step	Description	KYC Implementation	Fund Tracking

Step 1: Purchase of Electoral Bond	Bonds are purchased from designated SBI branches.	KYC norms required for bond purchasers.	Records of purchase are maintained by SBI.
Step 2: Payment Methods	Payment can only be made via bank drafts, cheques, or digital methods.	Ensures that no cash transactions are involved.	Electronic tracking through banking systems.
Step 3: Bond Donation	The buyer donates the bond to a political party of their choice.	The donation remains anonymous to the public.	SBI retains a record of the donation.
Step 4: Redemption by Political Party	The political party redeems the bond from SBI within 15 days of issuance.	Political party details are recorded but not disclosed publicly.	Transaction is tracked by SBI and reported to the RBI.
Step 5: Regulatory Oversight	The Election Commission and RBI monitor the overall process to prevent misuse.	KYC information is available for auditing purposes.	Oversight ensures that the funds are used as intended.



## 4. Potential Legal Outcomes

### 4.1. Increased Transparency

Court-Mandated Disclosure: Lessons the Court Should Learn if it is Side tracked by Greater Transparency

The potential legal trajectory of the on going cases could be a court ordered disclosure of electoral bond donations, with all the ingredients of shaping the political funding domain in India. The Supreme Court may be forced to rule that the current anonymity regime violates constitutional principles, namely the right to receive information (Article 19 (a) of the Constitution) and the right to equality (Article 14), and order the disclosure of donors' identities. With this, voters would be much better informed about who is funding political parties and make more informed choices.

If the court ruled in favour of transparency, then there would be a legal requirement that political parties reveal who donated to them, how much they'd donated and when. The EC might have a public registry of all the donations to an extent where it becomes easy for citizens to know where the money is from.

Possible Amendments: Legislation Requiring Disclosure, Reporting to the Election Commission from Donors

The Court might force the government to codify legislative amendments if the current system is found to be insufficiently transparent. Possible reforms could include:

Full Donor Disclosure: The amendments say political parties have to reveal who donated to them and how much, to the Election Commission, with the provision for that info to be made public.

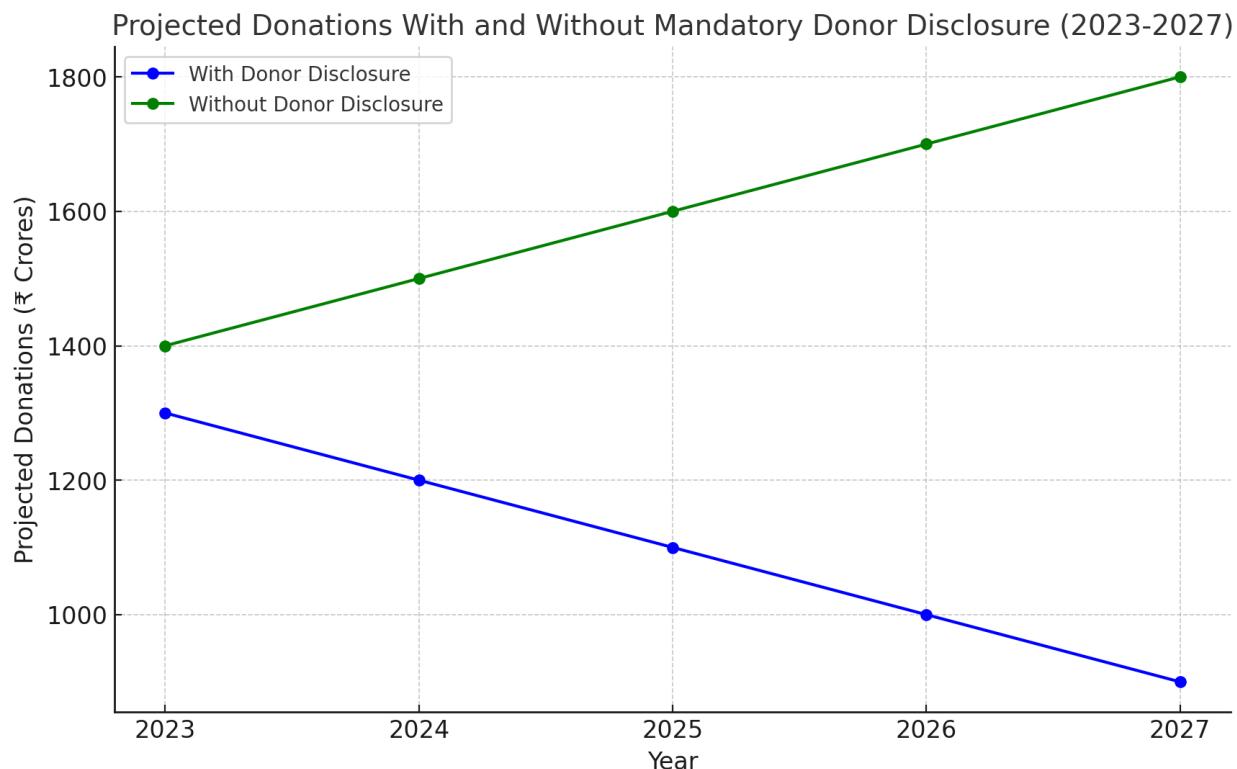
Mandatory Quarterly or Annual Reporting: It may be compelled to prepare detailed reports for which parties will be scrutinized for any discrepancies or illegal contributions. They could report on these things, may report on these things, may report them, may mail them, may publish them, may mail them, may publish them, may publish them online, may publish them for public inspection online.

Caps on Donations: It may recommend or encourage such legislative amendments as to restrict the amount of anonymous giving any one entity can give, to stop those who have the most from influencing who gets elected in significant ways.

If the result of the ruling is to disclose donors, it is likely to affect the relationship between political parties and their donors by reducing willingness to make large donations if they see themselves publicly exposed. That could mean corporations become more cautious, and political campaigns are switched up as to how the money is raised.

Year	Projected Donations with Disclosure (₹ Crores)	Projected Donations without Disclosure (₹ Crores)
2023	1300	1400
2024	1200	1500

2025	1100	1600
2026	1000	1700
2027	900	1800



#### **4.2. Electoral Bonds May Be Possible Striking Down**

Constitutional Challenge to Anonymity: Political Funding in India: What Would it Mean?

A Supreme Court order that strips electoral bonds of anonymity would represent a huge shift for political funding in India. There is a danger the Court will rule that the anonymity feature is incompatible with both the right to equality (Article 14) as well as the right to information (Article 19(1)(a)) on the basis of transparency and fairness in electoral processes.

It would also probably be the end of anonymous political donations made in the form of electoral bonds. That would result in a new, more open system, incorporating both the reinstatement of the prior criteria for

disclosure of donations or introducing a new, publicly accountable funding mechanism. Abolition of electoral bonds would compel political parties to follow more transparent fundraising practises, and possibly it could open up the space for election funding by state as an alternative reform for stuff illegal influence by specious donors.

#### Impact on Political Parties: Donation Strategies, Funding Patterns, and Party Functioning Change

Ruling against electoral bonds would change the political parties' game plan when it comes to raising money. The lack of anonymity for donors could slow political parties down when they desperately need more money, as corporations and the wealthy might rather keep their contributions secret. This could lead to:

**Increased Reliance on Small Donations:** This could ultimately democratise the fundraising process, if political parties choose to put money up crowd-funded, or through complementing their other streams with smaller but more transparent donations from the general public; but if so, it could reduce the total amount raised.

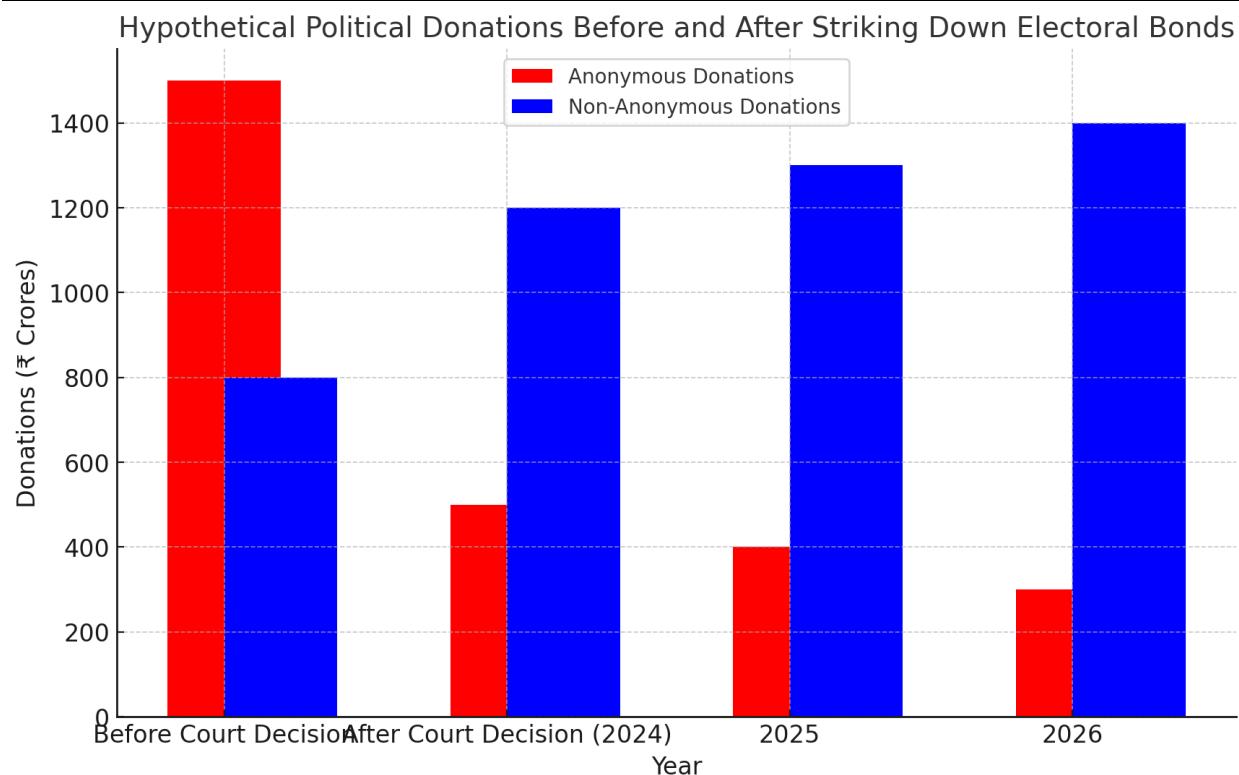
**Revised Corporate Donations:** When corporations are afraid of backlash or the appearance of favouritism public and companies may decide to reduce or completely refrain from making political contributions or to do so publicly and declare them.

**Greater Scrutiny of Campaign Finances:** It may also force more rigorous reporting and auditing requirements for parties, putting more pressure on the money the parties think is available to spend on campaigns.

In addition, political parties might be forced to find alternative sources of funding — away from monied anonymous beneficence and toward grassroots money. It could result in a more fair night, with smaller parties increasing their odds of beating out the bigger, usually better funded ones.

Year	Anonymous Donations (₹ Crores)	Non-Anonymous Donations (₹ Crores)

Before Court Decision	1500	800
After Court Decision (2024)	500	1200
2025	400	1300
2026	300	1400



#### 4.3. Election Laws Subject to Judicial Review

Wider Implications: Is This Now a Broader Funding and Transparency Review of Electoral Laws?

Supreme Court's ruling against electoral bonds could trigger wider judicial review of the entire electoral laws framework in India, especially the political funding and funding of electoral campaigns transparency.

Judicial scrutiny of electoral bonds may set the stage for a broader reconsideration of the political donation, election expenses and overall political parties regulatory framework.

#### Impact on Electoral Laws:

**Reform of Campaign Finance Laws:** The Court may rouse the government to pass new laws setting the limits on donations, disclosure requirements or imposition of penalties for non compliance. It could include forcing up regulation of corporate donations, reconsidering laws on foreign donors and perhaps putting a cap on political parties' election spending.

**Strengthening the Role of the Election Commission:** The Election Commission may prove to add muscle to its role of auditing political donations and expenses. One part of this could be giving the EC more enforcement powers to investigate and penalise violations of electoral funding law.

**Public Financing of Elections:** However, if the Court thinks that the current system of political donations is fundamentally flawed, it may have been prompted to create reforms which include state funding of elections. A system like this would give the government money to political parties in order to decrease how much money is spent on politics from private sources, and assessing the parties based on the number of votes they gathered in past elections.

#### International Comparisons:

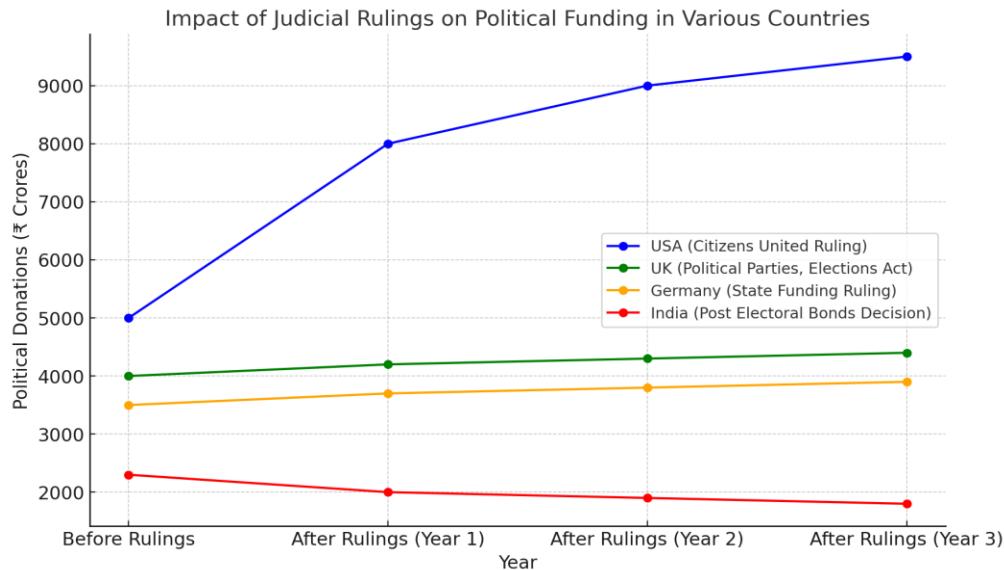
The ruling could yet spur India to consider overseas models of electoral funding, such as those in the United States or in parts of Europe, which at various levels maintain public funding, donor transparency, and limitations on corporate donations. These models might be used by the Court as an example of sorts to develop reforms suited to the Indian context.

#### Conclusion

Electoral reform may become a possibility should the Supreme Court rule in favour of more transparency. With the potential legal outcomes of greater disclosure requirements to a wiping out of the electoral bonds altogether, they will have far reaching consequences in the functioning of political parties and the democratic process in India. Furthermore, a judgement decimating electoral bonds anonymity could lead to revamping of electoral laws and possibly electoral law reform so that political finance will be reshaped to reduce undue influence of money on elections. The electoral bond system, as it stands today, and indeed

the entire transparency and accountability surrounding political funding in India, will likely yield to the judgement of the Court and for years to come.

Year	USA (Citizens United Ruling) - Donations (₹ Crores)	UK (Political Parties, Elections and Referendums Act) - Donations (₹ Crores)	Germany (State Funding Ruling) - Donations (₹ Crores)	India (Hypothetical Post Electoral Bonds Decision) - Donations (₹ Crores)
Before Rulings	5000	4000	3500	2300
After Rulings (Year 1)	8000	4200	3700	2000
After Rulings (Year 2)	9000	4300	3800	1900
After Rulings (Year 3)	9500	4400	3900	1800



## 5. Broader Implications

### 5.1. Impact on Electoral System

Fair and Free Elections: What Effect the Ruling Would Have on How Future Elections and Political Competition Will Be Shaped

A Supreme Court ruling against electoral bond scheme would drastically affect the Indian electoral system. Strange as it might sound, elections could be more fair and equitable if electoral bonds are struck down or heavily reformed for transparency. Here's how:

**Levelling the Playing Field:** Larger political parties tend currently to receive a disproportionate share of donations because of their visibility and influence. By being sure to make it publicly known who gives what, we could take some of the power that allows rich donors and massive corporations to essentially buy elections away, and leave smaller parties a more chance to compete on an even field. More competition in elections and greater diversity in political representation would come of this.

**Encouraging Public Confidence:** Increases in public confidence in the electoral process can only be achieved through greater transparency in political funding. When the information is available to citizens, they will make an informed decision, knowing which parties have which funding sources. It would alleviate the scepticism surrounding political donations — particularly the suspicion that powerful corporations or people who control political agendas are doing so behind closed doors.

**Discouraging Illicit Funding:** If the anonymity clause is struck down or reformed, the funding of illicit sources may well decrease. If parties are forced to reveal all financial contributions that go into elections then illegitimate parties are less likely to accept illegal donations and the elections will be cleaner and more ethical.

Such a ruling in the long run could overhaul India's political competition, and put financial power on back burner in favour of transparency and accountability. A place for money driven elections to potentiality give way to issues based campaigning and freer, fairer elections overall.

#### **Democratic Governance: Transparent Political Funding and Demiracy**

Solidarity of democratic governance cannot exist without transparent political funding. Disclosure and publicising political donations curbs abuses of the cash financing political parties and candidates, and makes them accountable to the electorate, not just to their funders. A Supreme Court ruling favoring transparency would reinforce this link by:

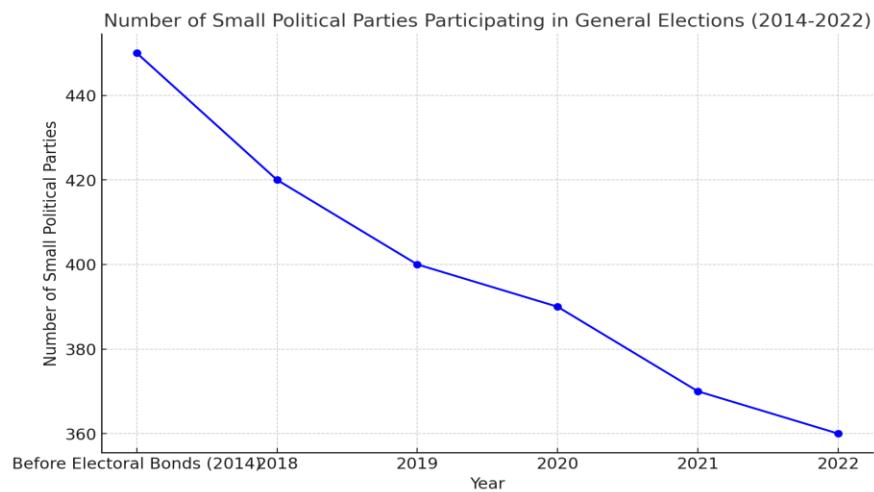
**Enhancing Public Accountability:** The public would be more accountable to know where their representatives' funding is coming from and how that is affecting their policies. When parties know that their donations are under scrutiny, they are more likely to develop policies in accordance with the interests of the general public rather than persistent interests of big donors.

**Reducing Corruption:** The transparent political funding reduces the opportunity for corruption by exposing the financial relationship of political parties and private donors. Until donations to political parties are secret, it's much easier for parties to engage in quid pro quo with corporations to benefit private interests in public policy. More transparency would help kill this influence and create a healthier democratic process.

**Strengthening Democratic Institutions:** Good transparent funding mechanisms would ensure that institutions like Election Commission of India (EC) can work in a better way as they will have full transparency of where the party finance is going. It would enable institutes to enforce election laws more stringently and make Indian democracy stronger.

We are proud to say that the ruling will help to make public funding of politics more open and accountable, and thus strengthen the foundations of democratic governance.

Year	Number of Small Political Parties Participating
Before Electoral Bonds (2014)	450
2018	420
2019	400
2020	390
2021	370
2022	360



## 5.2. International Perspective

Comparative Analysis: Other Countries and Political Donations, and Electoral Funding Transparency

Different models have been adopted by countries around the world to address elections funded transparently. A comparative analysis of different systems can provide valuable insights into how India could reform its electoral funding laws:

**United States:** In the U.S., both donors and recipients of political money are required to be revealed, which has of course led to a well-regulated system that is transparent. The amounts of an individual's or an entity's contributions over a certain amount are publicly disclosed through the Federal Election Commission (FEC), and an individual or entity may not give more than a certain amount to a particular person or entity. The ability of Super PACs (Political Action Committees) to spend without limit on their own behalf, but without coordination with candidates, is yet another loophole which does not require filling. This model points up the push and pull between transparency and the freedom of political expression, though critics worry about the influence of corporate money.

**United Kingdom:** But political donations are strictly regulated in the UK. Political parties have to give the Electoral Commission the details of donations that total more than a certain amount, and there are strict rules about where donations originate, which are designed to stop foreign influence. Political parties are also funded with public funds, which makes it possible for smaller parties to compete more equal to larger ones. UK approach is to have strict limits on donations and very public reporting.

**Germany:** Political parties in Germany are funded on a state level, where they get lots of money from the state if they did well in previous elections. It gags the impact of private contributions. Besides, detailed annual financial reports are publicised – the disclosure of which is subject to public scrutiny so that political parties' financial dealings are transparent.

**Canada:** Both limits of amount and source of donations are strict in Canada. All donations over a specified amount are also required for public disclosure. As in other countries, political parties in Canada also rely on state funding in order to reduce reliance on private donations. The electoral system of Canada is very transparent and tilts against undue influence from powerful financial interests.

The experience from these international examples is interesting because it suggests frameworks India could follow when reforming its political funding laws. These systems can yield lessons, particularly with respect to balancing donor privacy against public transparency, restricting private money influence, and replacing private with state funding to lessen reliance upon private donations.

## Lessons from Global Practices: What Reform is Possible for India; Lessons from Other Democratic Nations

India could follow many reforms on the lines of the other Democratic nations for promoting transparency and fairness in political donations. These potential reforms include:

**Mandatory Disclosure of Donations:** Like in the U.S., the UK and Canada, India might have a rule requiring disclosure of all donations above a certain threshold. With this in place, citizens will be able to find out who pays for political parties and will bring about increased accountability.

**Imposing Limits on Donations:** Such as Canada's system where it introduces limits to how much individuals, corporations and so on, can give to political parties, would prevent an undue influence of wealthy donors or powerful corporation. India could limit the amount that can be accepted, so that nobody can excessively impact the political dynamics with his donation.

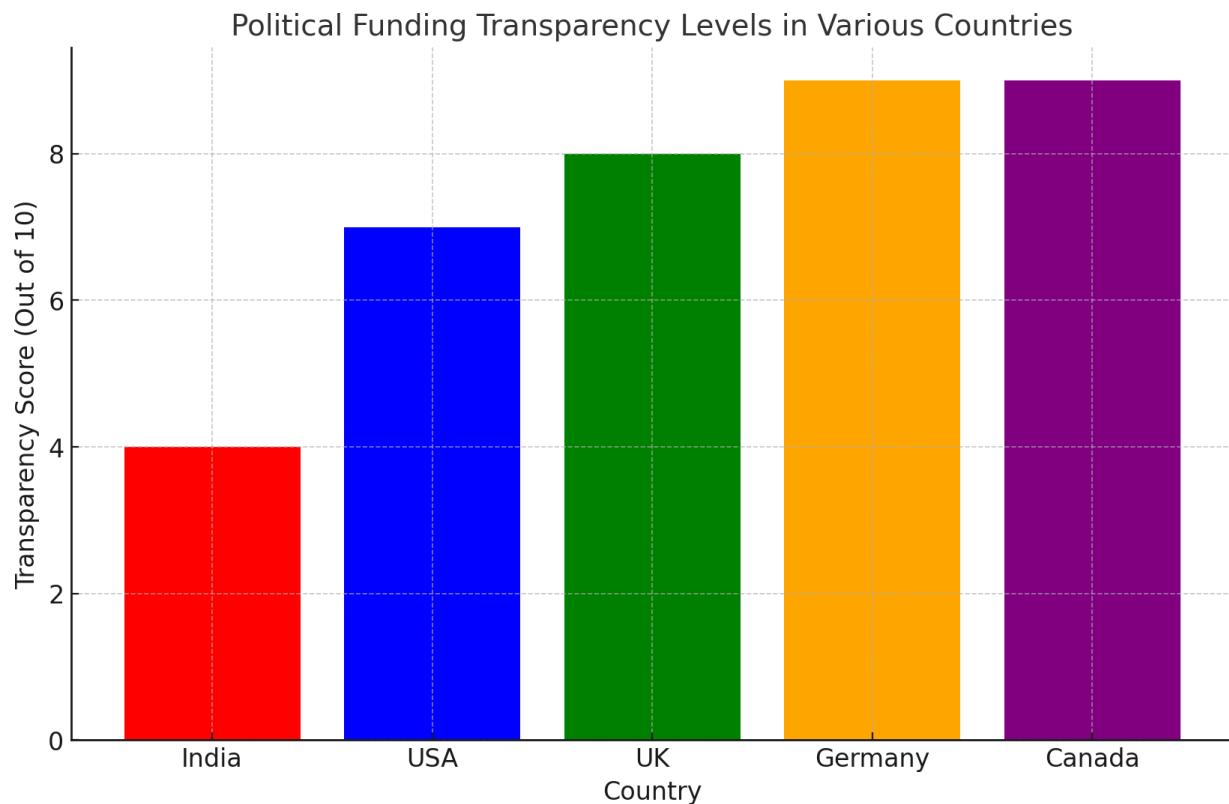
**State Funding of Elections:** Why not a state funding mode where political parties get funding in proportion to their result in elections of the past? Had this model been practised in Germany and Canada, it would have removed dependency on private donations while serving to prevent parties from kowtowing to corporate or wealthy individual interests, something far too common in the U.S.

**Strengthening the Role of the Election Commission:** One big reform would be to give the Election Commission of India the strength to monitor and audit political donations and spending more strongly. It would give the Commission more powers to look into discrepancies of party finances and punish offenders with fines.

**Preventing Foreign Influence:** India could follow the UK's lead and bring in stricter laws stopping foreign entities giving financial contributions to such elections. Electoral funding would stay within the boundaries of the country, helping to defend India's sovereignty.

Learning from the international practises, India can have a more transparent democratic model of political funding to enable democracy and curb the effect of private money on public policy.

Country	Transparency Score (Out of 10)
India	4
USA	7
UK	8
Germany	9
Canada	9



## Conclusion

The immediate issue of anonymous donations would not be the only thing that a ruling on electoral bonds would have far reaching implications for. Voters could also elect whether or not to turn Indian electoral system on its head, shaping it in favour of fairer competition and greater transparency regarding political

funding. India could learn from international practises and by making reforms, not only can it protect the integrity of its elections, but also rationalise the impact of money in democratic governance. Such a ruling, however, could finally open the way to a fairer and more transparent electoral process, and go a long way in restoring public confidence in democracy.

## **6. Conclusion**

### **6.1 Key Constitutional Issues Summary**

The debate over electoral bonds also brings out deep constitutional issue of transparency, equality and democratic accountability. The key constitutional challenges involve:

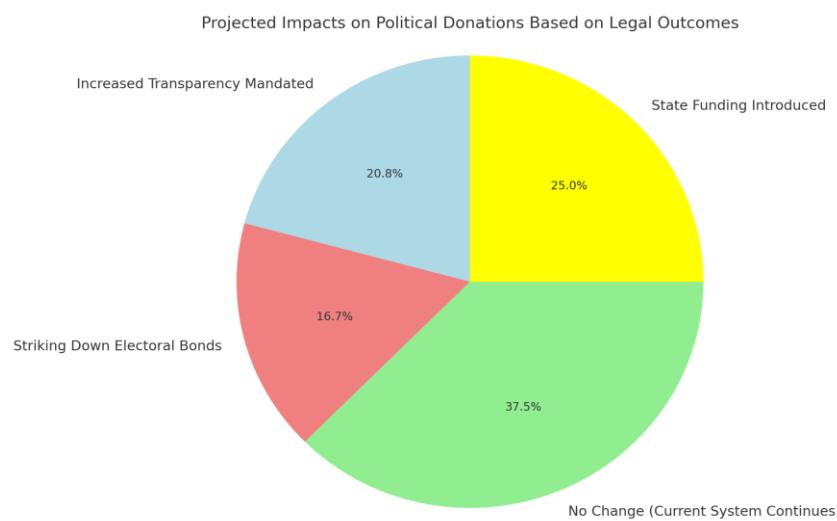
Violation of Article 19(1)(a) - Right to Freedom of Speech and Expression: Electoral bond scheme potentially restriction of the public's right to know which is accounted for in the framework of fundamental right of free speech under Article 19 (1) (a) of the Constitution. With political donations being conducted with zero transparency, voters lose a vital piece of information they'd need in order to make an informed electoral decision.

Violation of Article 14 - Right to Equality: This electoral bond scheme also appears to favour the bigger political parties that can attract bigger sums of anonymous donations, leaving smaller parties to the disadvantage. It goes against the principle of electoral equality, indeed undermining it by providing an unequal playing field: wealthier parties can outspend their competition.

Violation of Article 21 - Right to Life and Liberty: But the electoral bond scheme is said to undermine the right to information recognised by the Supreme Court as a fundamental right conferred on the people under Article 21 of the Constitution having regard to the right to life and liberty. Political funding is not transparent enough to ensure accountability for the political class and thus voters do not have tools to exercise their democratic right to fully participate in democratic process.

Besides those constitutional concerns, critics contend that electoral bonds may discourage corruption, money laundering and fund illegal funds into the political system, making electoral integrity a matter of concern.

Legal Outcome	Projected Impact on Political Donations (₹ Crores)	Projected Improvement in Transparency (%)
Increased Transparency Mandated	1000	75
Striking Down Electoral Bonds	800	90
No Change (Current System Continues)	1800	20
State Funding Introduced	1200	85



## **6.2 Possible Outcomes and their Consequences**

### **1. Increased Transparency**

The immediate outcome if the Supreme Court rules in favour of greater transparency would be to make donor identities and amounts donated through electoral bonds mandatory. It could make way for legislative changes that force political parties to declare their donors to EC (Election Commission of India), and that information could be made public.

Consequences:

**Political Accountability:** If elected, it would be forced into greater accountability towards the public about where their money is coming from. A risk of public backlash may make donors less likely to donate large sums in the first place, because they know their contributions will be disclosed.

**Greater Public Scrutiny:** By forcing information from which corporations or individuals are pumping money into political parties to be revealed to voters, this could influence their vote choices.

**Shift in Fundraising Strategies:** If political parties don't want to attract the attention they can draw by using large corporate or institutional donations, they might be forced to rely instead on smaller donations from individuals made in grassroots campaigns.

## **6.3 Electoral Bond Scheme: Striking Down.**

If the electoral bond scheme, which requires party candidates to deposit funds with the election commission before spending on the campaign, falls under scrutiny, and the Supreme Court rules that its anonymity clause is unconstitutional, then that would be the end of anonymous donations to political parties. The Court may require the government to design a better, more transparent political funding system.

Consequences:

**Elimination of Anonymous Political Donations:** A major shift in the way campaigns are funded in India is about to unfurl: All political donations would be subject to public disclosure. Transparency in the financial dealings of political parties is going to be necessary for reducing the power of wealthy donors.

**Potential for State Funding of Elections:** Without anonymous donations, there's a chance people would call for a state funded election system where the state supplies the dollars needed to campaign. It would remove the risk of corporate or private influence and would help to make the field a little more level for the smaller parties.

**Impact on Corporate Donations:** Currently, the bond system allows corporations to remain anonymous but since the corporations may be reluctant to support such schemes out of concern of being subjected to public scrutiny and backlash to follow.

#### **6.4 This judicial review resulting in broader reforms.**

Supreme court's ruling may pave the way for wider judicial scrutiny of electoral laws, especially political donations and campaign finance. Such legislation as might be recommended by the Court could make the political funding process more transparent and accountable.

Consequences:

**Strengthening of the Election Commission:** The Court may pressure for reforms granting increased power to the EC to monitor political donations, to audit party finances, and cheque observance of the transparency laws.

**Imposition of Donation Limits:** And new limits could be placed on how the money flows at election time, so that no one entity has a disproportionate impact on the election outcomes.

**Stricter Penalties for Non-Compliance:** These could include fines for political parties who break disclosure laws or try and get away with hiding where they get their money.

**Future of Electoral Funding Laws in India:** The Bases for Speculating Legal Challenges Triggering Reforms or Policy Changes

With legal challenges to electoral bonds already under way, it is almost certain that India's electoral funding laws will see major changes brought about through judicial orders, legislative amendments, or a combination of both. Based on the outcomes of ongoing court cases, several reforms or policy changes could be on the horizon:

**Public Disclosure of Donations:** The most likely (and most immediate) reform would be to require that all donations over some cutoff be made publicly known. This way, the electorate will make more informed choices and know it's where the political funding comes from.

**Introduction of Caps on Donations:** One of the changes that may come into force in India is the limits for the amounts of money that corporations, institutions, or individuals can give to political parties. These caps would allow that the wealthy donors wouldn't have disproportionate influence on political issues and there wouldn't be corruption.

State Funding of Elections: That could lead to renewed calls for state financing of campaigns overall, as well as for smaller parties facing an uphill battle with the size and wealth of established parties. This would lessen the reliance on donations from private venture capitalists, repeatedly branded as a source of corruption and adventurous competition.

Greater Role for the Election Commission: EC could have more powers to regulate political funding, by conducting audits; enforcing compliance with disclosure laws and imposing penalties for violations. That could make for a more transparent, more accountable electoral process.

Global Best Practices: Countries like Germany, Canada and the UK may be looked at for inspiration on how India can take the best of a model based on public funding of elections, along with stringent disclosure requirements that make political donations transparent and accountable.

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