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OPACITY, EQUALITY, AND POLITICAL FINANCE: EVALUATING THE SUPREME COURT'S 2024 VERDICT ON ELECTORAL BONDS

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I. ABSTRACT

This research critically explores the Supreme Court of India's landmark 2024 judgment that struck down the Electoral Bonds Scheme (EBS) along with the related amendments to the Representation of the People Act, the Companies Act, and the Income Tax Act. Adopting both doctrinal and comparative perspectives, the study engages with questions of transparency in political funding, constitutional rights, and the wider implications for safeguarding free and fair elections in India. The Court unanimously concluded that by allowing unlimited and anonymous corporate donations, the EBS violated the voters' right to information under Article 19(1)(a) and political equality under Article 14 – thereby eroding the democratic foundation of "one person, one vote." The paper also assesses how the 2017 Finance Act systematically diluted earlier safeguards, such as the ₹20,000 disclosure threshold under Section 29C of the Representation of the People Act, the 7.5% ceiling on corporate donations under Section 182 of the Companies Act, and the mandatory record-keeping obligations under Section 13A of the Income Tax Act. By weakening or removing these provisions, the EBS entrenched opacity, widened economic inequality in political influence, and opened the door to quid pro quo arrangements. In its reasoning, the Court reaffirmed the integrated approach to fundamental rights by invoking the doctrine of "manifest arbitrariness" and applying the proportionality test. At the same time, this paper argues that the Court could have gone beyond reinstating the earlier legal framework. While striking down the EBS, it could have issued guidelines that both acknowledged the government's rationale for introducing the scheme and set transparency safeguards for future reforms. Such principles would have provided Parliament with a constitutional roadmap for designing a more balanced and accountable

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framework of political funding. Accordingly, this study proposes illustrative guidelines that the Court might have introduced while delivering its decision.

II. KEYWORDS

Electoral Bond Scheme (EBS); Doctrinal Analysis; Constitutional rights; Proportionality and manifest arbitrariness

III. INTRODUCTION

A. CONTEXT AND PURPOSE OF THE RESEARCH

The nexus between financial influence and political decision-making has long posed a challenge to democratic governance. In India, debates on political funding have evolved from early warnings by leaders like Dr. B. R. Ambedkar and Atal Bihari Vajpayee, who cautioned against the moral hazards of corporate influence, to modern concerns over opaque donation mechanisms. Despite periodic legislative reforms, the system has continued to privilege anonymity over accountability.

The introduction of the Electoral Bond Scheme (2018)[3] (hereinafter EBS) represented an attempt by the legislature to reform political donations by introducing banking transparency while protecting donor privacy. Although well-intentioned, the scheme's design blurred the line between confidentiality and secrecy. When the Supreme Court of India, in Association for Democratic Reforms v. Union of India (2024)[4] (hereinafter 'ADR case', 2024), declared the scheme unconstitutional for violating the citizens' Right to Information[5]It reaffirmed the primacy of transparency in electoral democracy. Yet, in doing so, the Court restored the pre-bond status quo, disregarding the legislative intent to modernize political funding. This study argues that a more balanced approach was possible, one that acknowledged the reformist purpose of the scheme while prescribing judicially crafted guidelines to regulate its deficiencies instead of nullifying the entire framework.

[3] Electoral Bond Scheme, 2018, S.O. 29(E), Gazette of India (Jan. 2, 2018)
[4] Association for Democratic Reforms v. Union of India, (2024) SCC OnLine SC 267 (India)
[5] See India Const. art. 19(1)(a) (as interpreted to include the right to information)

B. RESEARCH PROBLEM AND OBJECTIVES

In the ADR case (2024), the Supreme Court struck down the Electoral Bond Scheme, declaring it unconstitutional for violating the voters' right to information. While this aligns with the democratic principle of transparency, the Court's decision provided no interim mechanism to regulate political donations post the the Electoral Bond Scheme. This research asks whether the court could have used its constitutional powers provided under Article 32 or 142[6] to fill gaps as it has in past cases by issuing guidelines to address legislative voids.

The paper will explore a constitutionally viable, policy-sensitive reform path, including judicial directives and comparative models to ensure accountability in campaign finance without simply reverting to the opaque pre-bond status quo. Judicial invalidation, while necessary, should be accompanied by transitional guidance to uphold democratic stability.

C. RESEARCH QUESTIONS

This study is led by a set of Research questions designed to uncover the critical aspects of Electoral Financing. Answering these questions will help in comprehensively analysing the issue and drawing meaningful conclusions. The questions are outlined below.

- To what extent can the Supreme Court, under Article 32 and 142 of the Indian Constitution, prescribe interim safeguards for political funding in the wake of the Electoral Bond Scheme judgement?
- How do precedents like Vishakha (1997)[7] and D.K. Basu (1997)[8], where the Court framed protective guidelines to remedy legislative gaps, form the possibility of court-mandated finance regulations in this context?

[6] India Const. art. 32, cl. (ii), (iv); art. 142, cl. (i)
[7] Vishakha v. State of Rajasthan, (2012) SCC OnLine SC 124 (India)
[8] D.K. Basu v. State of West Bengal, (1997) 1 SCC 416 (India)

- What constitutional principles and separation of powers limits govern the Judiciary's role in campaign finance reform, and how might policy imperatives (e.g., transparency, fairness) influence judicial intervention?
- What specific interim measures could be constitutionally ordered to regulate political donations until new legislation is enacted?
- How comparative experiences from other democracies' campaign finance systems inform India's path forward, and how might elements of these models be integrated into the Court's reform proposals?

Through these questions, the study will examine the judgment in detail, appreciating its conclusions and critically evaluating aspects where the Court could have issued supplementary directions rather than reverting to previous law.

D. SCOPE AND LIMITATIONS OF THIS RESEARCH

This research paper examines the constitutional, judicial, and policy dimensions of political financing in India, with specific reference to the Supreme Court's judgment in the ADR case (2024), which struck down the EBS. It traces the historical evolution of law and thought surrounding corporate and anonymous political contributions, beginning with early reflections by B. R. Ambedkar, Atal Bihari Vajpayee, and Justice M. C. Chagla, and extending to contemporary statutory and judicial developments.

The scope of analysis is confined to the Indian legal framework—principally the Constitution of India, the RPA, 1951, and the Companies Act, 2013—and explores how these instruments interact with judicial interpretations to shape transparency and accountability in political finance. The study also incorporates a comparative perspective through limited references to other jurisdictions such as the United Kingdom, the United States, and Canada, with the purpose of drawing normative insights rather than conducting exhaustive comparative analysis.

The study's limitations arise from its focus on doctrinal and qualitative analysis. It does not undertake an empirical examination of campaign expenditures or political-party accounts, nor does it engage with unpublished or confidential data. The comparative component is illustrative and designed to contextualize, not quantify, the

discussion. While policy implications are explored, the research refrains from recommending specific administrative or financial mechanisms, recognizing these as matters for legislative and executive discretion.

E. METHODOLOGY AND SOURCES OF DATA

The research employs a doctrinal and analytical methodology. Through doctrinal inquiry, it examines primary legal materials such as constitutional provisions, statutory enactments, judicial decisions, and parliamentary debates, to determine how principles of transparency and accountability have evolved within India's democratic framework. The analytical dimension evaluates whether, within the bounds of constitutional authority, the Supreme Court could have adopted a guideline-based approach to regulate political funding following the invalidation of the Electoral Bond Scheme.

The study draws upon secondary sources such as Law Commission Reports, reports of the Election Commission of India (hereinafter ECI), scholarly articles, commentaries, and authoritative books to supplement primary research. Official government publications and verified databases (including those of the Ministry of Law and Justice and Parliament of India) have been consulted to ensure accuracy and authenticity. Select comparative references from the United Kingdom, the United States, and Canada provide additional perspective on how democracies worldwide reconcile judicial restraint with the demand for transparency in political finance. All references follow the Bluebook: A Uniform System of Citation (21st ed).[9], maintaining consistency and traceability throughout the work.

IV. POLITICAL FINANCE - BACKGROUND AND EVOLUTION

A. COLONIAL LEGACY AND THE FIRST ELECTORAL LAWS IN INDEPENDENT INDIA

Historical institutions established during colonial rule have left enduring imprints on India's political and economic fabric, a persistence often termed 'institutional

[9] *The Bluebook : A uniform System of Citation* (Columbia L. Rev. Ass'n et al. eds., 21st ed.2020)

overhang'[10]. British India after 1857 operated through two main administrative systems—Presidencies under direct British control and Residencies or princely states governed indirectly through British "Residents." Presidencies such as Bombay, Madras, and Calcutta experienced greater administrative centralization, exposure to modern education, and early participation in provincial elections. In contrast, many princely states, including Hyderabad and Rajputana, maintained limited engagement with nationalist politics to safeguard their autonomy.[11]

The colonial land revenue systems further shaped regional disparities. The Zamindari and Taluqdari models concentrated power in landlords, while Ryotwari and Mahalwari settlements empowered cultivators and village collectives. These structural differences influenced literacy, public investment, and political participation. Areas under direct rule, with established bureaucratic and electoral frameworks, were better positioned for democratic adaptation after independence.[12] Post-1947 reforms, such as the creation of a uniform voter list and the adoption of universal adult franchise, sought to bridge these colonial disparities. Nevertheless, remnants of unequal land relations and historical governance models continue to influence patterns of political mobilization and voting behaviour in India's rural landscape.

The very first general elections of independent India, which which was conducted between October 1951 and February 1952, laid the foundation for the country's democratic framework. The framers of the Constitution envisioned an Election Commission independent of political influence and accountable only to the people. Initially, the Draft Constitution proposed separate commissions for the Union and the states, but widespread reports of disenfranchisement during the preparation of the first electoral rolls prompted a significant shift.[13] On June 15, 1949, the Constituent

[10] Shree Saha, India after Decolonization impact of colonial institutions on electoral outcomes, at 4 ; www.igidr.ac.in/alumni-test/
[11] Id. at 7
[12] Id. at 9-10
[13] Ornit Shani, The First Indian Election : Inclusion, Independence and the Making of 'We, The People', The Wire (Feb.18, 2022), https://thewire.in/history/the-first-indian-election-inclusion-independence-and-the-making-of-we-the-people (Submitted work at National University of Singapore on 2022-04-07)

Assembly adopted a unified, autonomous Election Commission for both national and state elections.

This decision stemmed from efforts to ensure that refugees, minorities, and marginalized groups were not excluded from voting due to technicalities such as residency requirements.[14] The Secretariat overseeing the first rolls prioritized inclusion over strict procedural compliance, thereby embodying the democratic ideal of universal adult franchise. The Representation of the People Act[15] (hereinafter as RPA) operationalized this vision by providing a legal structure for free, fair, and equal participation. In a society divided by caste, religion, and class, the preparation of an electoral roll representing all adults as equal citizens became the symbolic realization of the phrase "We, the People."[16]

B. PROGRESSIVE TIGHTENING OF DISCLOSURE NORMS (1951-2010)

The evolution of India's electoral disclosure regime has been gradual yet transformative. The RPA, 1951, required candidates to maintain and submit detailed accounts of election expenditure under Sections 77 and 78, but imposed minimal obligations on political parties regarding financial transparency.[17] Throughout the 1970s and 1980s, reforms focused primarily on spending limits rather than disclosure, enabling the persistence of opaque political funding.

A constitutional shift occurred with Union of India v. Association for Democratic Reforms.[18] (2002), and People's Union for Civil Liberties v. Union of India[19] (2003), where the Supreme Court recognized the electorate's right to information about candidates' criminal, educational, and financial records as intrinsic to free speech and

[14] Id.
[15] See Representation of the People Act, 1951 (43 of 1951) (India)
[16] Ornit Shani, The First Indian Election : Inclusion, Independence and the Making of 'We, The People', The Wire (Feb.18, 2022), https://thewire.in/history/the-first-indian-election-inclusion-independence-and-the-making-of-we-the-people (Submitted work at National University of Singapore on 2022-04-07)
[17] See Representation of the People Act, 1951 (43 of 1951), Sec. 77 & 78 (India)
[18] Union of India v. Ass'n for Democratic Reforms, (2002) 5 SCC 294 (India)
[19] People's Union for Civil Liberties (PUCL) v. Union of India, (2003) 4 SCC 399 (India)

expression under Article 19(1)(a)[20] . These rulings laid the foundation for transparency in political finance.

In response, the Election and Other Related Laws (Amendment) Act[21], 2003 inserted Section 29C was inserted into the RPA, mandating political parties to disclose contributions exceeding ₹20,000 and maintain audited accounts to qualify for tax exemptions under Section 13A of the Income Tax Act, 1961. By 2010, disclosure norms had evolved from procedural formalities to constitutional instruments reinforcing electoral integrity and public accountability.

C. INTERPLAY BETWEEN CORPORATE DONATIONS AND THE COMPANIES ACT

Political scholars have long emphasized that the link between wealth and governance is as old as organized politics itself. Notably, within a decade of India's independence, concerns about this nexus surfaced in the judiciary. Justice M.C. Chagla, then Chief Justice of the Bombay High Court, articulated these apprehensions in Jayantilal Ranchhoddas Koticha v. Tata Iron and Steel Co. Ltd.[22] (1957), while adjudicating a proposal by the Tata Iron and Steel Company to contribute funds to political parties. Justice Chagla cautioned that such financial involvement posed "a danger which may grow apace and which may ultimately overwhelm and even throttle democracy in the country."[23]

The entanglement of business interests and political influence, however, predates independence. Prominent industrialists like G.D. Birla, Jamnalal Bajaj, Purushottamdas Thakurdas, Seth Hukumchand, and Sarala Devi Chaudhurani had extended financial assistance to M.K. Gandhi and the Indian National Congress during the freedom movement. A decisive shift occurred in 1969 when the then government repealed Section 293A of the Companies Act, 1956, thereby enforcing a complete prohibition on corporate contributions to political parties. The move was ostensibly aimed at severing the business–politics nexus, but it also gave rise to

[20] See India Const. art. 19(1)(a) (guaranteeing the right to freedom of speech and expression)
[21] Election and other Related Laws (amendment) Act, 2003, No. 46, Acts of Parliament, 2003 (India)
[22] Jayantial Ranchhoddas Koticha & Ors. v. Tata Iron & Steel Co. Ltd., AIR 1958 Bom. 155
[23] Id. (M.C. Chagla, C.J., observation)

alternative, informal channels of political funding. Parties began publishing "souvenirs" featuring paid corporate advertisements—essentially surrogate donations—and engaged in covert transactions during the era of the license-permit raj, a practice colloquially termed "briefcase politics." This statutory ban persisted until 1985, when it was eventually revoked.[24]

The framework regulating corporate donations to political parties in India has undergone a gradual transformation shaped by evolving political and legal priorities. The Companies Act, 1956,[25] first introduced Section 293A[26], allowing limited corporate contributions under defined restrictions. This provision was strengthened in 1960, when companies were required to publicly disclose such payments in their financial statements. However, in 1969, the Indira Gandhi administration abolished the provision entirely, seeking to dismantle the growing nexus between business and politics. The prohibition remained in force until 1985, when the law once again permitted political funding under specific conditions.

Meanwhile, the Income Tax Act amendment of 1978 granted tax exemptions to political parties for voluntary donations, further shaping the funding landscape. A major overhaul arrived in 2013 with two developments — the introduction of the Electoral Trusts Scheme.[27], which allowed corporates to channel funds through registered trusts, and Section 182 of the Companies Act, 2013[28], which limited political donations to 7.5% of a company's average net profits[29] From the previous three years, and required full disclosure. This remained the operative framework until the unveiling of the Electoral Bonds Scheme in the 2017–18 Budget, marking a decisive shift in the transparency and structure of political finance in India.

[24] Jagdeep S. Chhokar, Corporate Business and the Financing of Political Parties, The India Forum (May 09, 2024), https://share.google/d5Jz5So1FY9vgpFUf
[25] Jagdeep S. Chhokar, Corporate Business and the financing of political parties, The India Forum, https://www.theindiaforum.in/sites/default/files/article_pdf/2024/05/11/1569-1715404098.pdf
[26] Companies Act, 2013, No. 18 of 2013, § 293A, India Code (2013)
[27] The Electoral Trust Scheme, 2013, Notification No. S.O. 309(E), Ministry of Finance, Dept. of Revenue (Jan. 31,2013)
[28] Companies Act, 2013, No. 18 of 2013, § 182, India Code (2013)
[29] Devendra Poola & Vinitha Anna John, Behind the curtain : Unravelling corruption in the electoral bonds scheme, Research Square, https://www.researchsquare.com/article/rs-6936778/v1

D. FOUNDATIONAL PERSPECTIVES ON MONEY AND DEMOCRACY IN INDIA

Before Independence, B.R. Ambedkar expressed critical views about both Mahatma Gandhi and Mohammed Ali Jinnah, highlighting his disagreement with their respective political methods, saying that 'in establishing their supremacy, they have taken the aid of big business and money magnates' 'For the first time in our country, money is taking the field as an organized player', he said in Pune in 1943.[30]

Ironically, long before the contemporary debates on electoral transparency, India's first Prime Minister from the Bharatiya Janata Party and the party's founding president, Atal Bihari Vajpayee, had cautioned against the corrosive influence of corporate money in politics. In a private member's bill introduced in the Rajya Sabha on 17 August 1962, titled the Companies (Amendment) Bill to Curb Influence of Money Power in Politics, Vajpayee sought to amend the Companies Act, 1956, to prohibit corporate donations to political parties.[31]The bill:- supported across party lines but opposed by the Congress majority—was ultimately rejected.[32].

Explaining the purpose of his proposal, Vajpayee argued that companies operating on shareholders' capital had "no moral right to fund political parties as shareholders may not subscribe to the views of the company," insisting instead that political funds should come from voluntary contributions by party members and sympathizers.[33]. Summing up the debate, he warned, "There will not be any capitalist who will give donations to Congress just because he agrees with the policies of Congress… They do not do this in order to see the flowering of a particular ideology, but to further their interests."[34] His intervention, later reproduced in The Constructive Parliamentarian,

[30] Apoorva Mandhani, Indian Politicians hit the jackpot with 1957 TISCO case. It set the tone for political funding, ThePrint (Nov. 25, 2023, 01:07 pm IST), https://share.google/jTTWdXXLBrqtuvoEb
[31] Himanshi Dhawan, Vajpayee Opposed Corporate funding of parties in 1962 (Sep. 7, 2017, 10:43 am),, The Times of India, https://timesofindia.indiatimes.com/india/vajpayee-opposed-corporate-funding-of-parties-in-1962/amp_articleshow/60403320.cms
[32] Id.
[33] Himanshi Dhawan, Vajpayee opposed corporate funding of parties in 1962, The Times of India (Sep. 7, 2017, 10:43 IST), https://timesofindia.indiatimes.com/india/vajpayee-opposed-corporate-funding-of-parties-in-1962/articleshow/60403320.cms
[34] Id.

edited by N.M. Ghatate stands as an early parliamentary acknowledgment of the conflict between economic power and democratic integrity.[35]

One of the earliest and most significant judicial reflections on the dangers of monetary influence in politics appeared in Jayantilal Ranchhoddas Koticha and Others v. Tata Iron & Steel Co. Ltd.[36], decided in 1958 by Chief Justice of Bombay High Court M.C. Changla. In his judgment, he underscored the dangers of permitting large companies to fund political parties. He cautioned that such contributions could compromise the integrity of the electoral process and the very foundations of democracy. The depth of his concern is evident in his own words, *"It is with considerable uneasiness of mind and a sinking feeling in the heart that we approach this appeal and the proposal of the Tata Iron & Steel Co. Ltd. that they should be permitted by an amendment of their Memorandum of Association to make contributions to political parties. Democracy in this country is nascent, and it is necessary that democracy should be looked after, tended, and nurtured so that it should rise to its full and proper stature. Therefore, any proposal or suggestion which is likely to strangle that democracy almost in its cradle must be looked at not only with considerable hesitation but with a great deal of suspicion……. On first impression, it would appear that any attempt on the part of anyone to finance a political party is likely to contaminate the very springs of democracy. Democracy would be vitiated if results were to be arrived at not on their merits but because money played a part in the bringing about of those decisions.*

The form and trappings of democracy may continue, but the spirit underlying democratic institutions will disappear. History of democracy has proved that in other countries democracy has been smothered by big business and money bags playing an important part in the working of democratic institutions and it is the duty not only of politicians, not only of citizens, but even of a Court of law, to the extent that it has got the power, to prevent any influence being exercised upon the voter which is an improper influence or which may be looked at from any point of view as a corrupt influence. The very basis of democracy is the voter and when in India we are dealing with adult suffrage it is even more important than elsewhere that not only the

[35] N.M. Ghatate ed., The Constructive Parliamentarian : Selected Speeches and Debates of Atal Bihari Vajpayee (Delhi Publication Division, Govt. Of India, 1994)

[36] Jayantilal Ranchhoddas Koticha and Others v. Tata Iron and Steel Co. Ltd., AIR 1958 Bom 155

integrity of the representative who is ultimately elected to Parliament is safeguarded, but that the integrity of the voter is also safeguarded, and it may be said that it is difficult to accept the position that the integrity of the voter and of the representative is safeguarded if large industrial concerns are permitted to contribute to political funds to bring about a particular result.

On the other hand, we must not overlook a circumstance that is inseparable from the way the world has developed and democratic institutions have evolved. We are no longer dealing with a city-state where democracy flourished among the few thousand citizens who knew each other, who knew the representatives, who knew the conflicting policies that they had to adjudicate upon. We are now dealing with a democracy which is spread over a whole continent; we are dealing with millions of voters; and whether it is a desirable or an undesirable result, the result has undoubtedly come about that you need large organizations, you need large political parties, you need modern methods of carrying on propaganda, and all that requires money and funds, and money and funds are to be obtained and normally they are obtained by the party from its sympathizers and supporters. But whatever our view may be as to the Tightness or wrongness of what the Tata Iron & Steel Co. proposes to do, however strongly we may feel that the danger of the corrupting influence of money must not be allowed to increase in this country and it must be strongly curbed, we could only be guided sitting in a Court of law by legal principles and not by our own views as to politics or morality." [37]

V. THE LEGAL AND REGULATORY STATUS QUO

A. EXISTING FRAMEWORK GOVERNING POLITICAL DONATIONS IN INDIA

Before the enactment of company law provisions on political contributions, the RPA, 1951, served as the primary legislative framework governing political donations in India. Under Chapter IV-A, dealing with the registration of political parties, Section 29B recognizes that a registered political party is entitled to accept voluntary contributions from any person or company other than a government company, while Section 29C mandates that every such party must declare to the Election Commission the particulars of contributions exceeding the prescribed monetary limit. Together,

[37] Jayantilal Ranchhoddas Koticha & Ors. v. Tata Iron & Steel Co. Ltd., AIR 1958 Bom. 155 (Justice MC Chagla)

these provisions were intended to secure a degree of transparency in political funding and to ensure public disclosure of financial inflows to political entities.

Subsequently, the corporate dimension of political finance was addressed through the Companies Act, 1956, wherein Section 293A[38] regulated the circumstances under which companies could contribute to political parties or electoral purposes. This framework was later refined under the Companies Act, 2013, where Section 182[39] replaced the earlier provision, setting out conditions, disclosure requirements, and monetary ceilings for such corporate donations. Parallel to these enactments, the Income Tax Act, 1961, through Section 13A[40]Extended tax exemptions to political parties on the condition that they maintain proper records of income and expenditure and file the requisite statements with the Election Commission.

Taken together, these statutes created a layered but imperfect system—where the RPA addressed the entitlement and disclosure of donations, the Companies Acts regulated corporate participation and reporting, and the Income Tax Act provided fiscal incentives for compliance—forming the legal foundation of India's political funding regime prior to the introduction of the Electoral Bond Scheme.

B. THE EBS - LEGISLATIVE INTENT, STRUCTURE, AND CRITIQUES

The **legislative intent** underlying the introduction of the Electoral Bond Scheme was made explicit in the Union Budget Speech for 2017–2018[41], delivered by the then Finance Minister, Mr. Arun Jaitley. In his address, Mr. Jaitley acknowledged the persistent opacity surrounding political funding in India and emphasized the necessity of introducing structural reforms to promote transparency without discouraging legitimate contributions. He observed that donors were often hesitant to contribute through conventional banking channels, as doing so would inevitably reveal their identities and potentially expose them to retaliatory consequences. Recognizing this practical dilemma, he proposed the Electoral Bond Scheme as a

[38] Companies Act, 1956, No. 1, Acts of Parliament, 1956 (India), § 293A
[39] Companies Act, 2013, No. 18, Acts of Parliament, 2013 (India), § 182
[40] Income Tax Act, 1961, No. 43, Acts of Parliament, 1961 (India), § 13A
[41] Ministry of Finance, Govt. of India. Union Budget 2017-18 : Budget Speech by Hon'ble Finance Minister (Feb. 1, 2017)

mechanism designed to "cleanse the system of political funding."[42] By reconciling the twin objectives of donor confidentiality and financial transparency within a formalized, banking-based framework.

As Mr. Jaitley later explained, *"The Electoral Bond Scheme … envisages total clean money and substantial transparency coming into the system of political funding."*[43] At the same time, he affirmed the government's willingness to refine the framework: *"The Government is willing to consider all suggestions to further strengthen the cleansing of political funding in India. It has to be borne in mind that impractical suggestions will not improve the cash-denominated system; they would only consolidate it."*[44]

VI. STRUCTURE OF THE ELECTORAL BOND SCHEME

The Government of India, through a notification dated 2 January 2018[45], introduced the Electoral Bond Scheme with the stated objective of promoting transparency and accountability in political funding. The scheme was conceived as a banking instrument, intended to replace cash-based donations with verifiable transactions routed through authorised financial channels.

Under this framework, any Indian citizen or entity incorporated in India may purchase electoral bonds from designated branches of the State Bank of India (SBI). The bonds, available in fixed denominations ranging from ₹1,000, ₹10,000, ₹1,00,000, ₹10,00,000 and ₹1 crore, are bearer instruments issued without any interest component and remain valid for fifteen days from the date of issue, within which it is supposed to be in cash failing which the authorized bank is obligated to deposit the same with the Prime Minister's Relief Fund. Purchases are permitted only after completion of Know Your Customer (KYC) verification, and payments must originate from an existing bank account to ensure the traceability of legitimate funds.

Only political parties registered under Section 29A of the Representation of the People Act, 1951, and having secured at least one percent of the votes polled in the most recent

[42] Id.
[43] PIB Notification, (Jan. 7, 2018, 03:19 IST), https://share.google/81hKhIyJnRhybAEKR
[44] Id.
[45] Ministry of Finance, Dept. of Economic Affairs, Notification dated Jan. 2, 2018, https://share.google/s3XrQQQqQMoFQi3F7

general election to the Lok Sabha or a State Legislative Assembly are eligible to receive such donations. The sale of bonds is scheduled for 15-day windows in January, April, July, and October, with an additional thirty-day window permitted during general election years at the discretion of the Central Government.

The bonds can be redeemed exclusively through a verified bank account maintained by the eligible political party with the authorised bank. To operationalise the scheme, coordinated amendments were introduced in several statutes, including the Companies Act, 2013; the Income Tax Act, 1961[46]; the RPA, 1951; the Foreign Contribution (Regulation) Act, 2010[47]; and the Reserve Bank of India Act, 1934[48]— each facilitating the issuance, purchase, and disclosure mechanisms integral to the new system.

A. IMPACT ON THE EXISTING LEGAL FRAMEWORK

The introduction of the Electoral Bond Scheme necessitated amendments across multiple statutes to align the existing framework with the new mode of political funding. The Finance Act, 2017[49] Amended provisions in the Companies Act, 2013 (Section 182) to remove the cap on corporate donations and exempt companies from disclosing the names of recipient political parties. Parallel amendments to the Income Tax Act, 1961 (Section 13A)[50] And the RPA, 1951 (Section 29C) diluted disclosure obligations for both donors and political parties. Similarly, changes to the Foreign Contribution (Regulation) Act, 2010[51] and the Reserve Bank of India Act, 1934[52] Facilitated the issuance of electoral bonds and the acceptance of foreign-origin donations through Indian subsidiaries. Collectively, these modifications marked a decisive shift from a disclosure-based regime to one emphasizing financial formalization over public transparency.

[46] Income tax Act, 1961 (Act No. 43 of 1961)
[47] The Foreign Contribution (Regulation) Act, 2010 (Act No. 42 of 2010)
[48] The Reserve bank of India Act, 1934 (Act No. 2 of 1934)
[49] The Finance Act, 2017, No.7 of 2017
[50] The Income Tax Act, 1961, § 13A
[51] The Foreign Contribution (Regulation) Act, 2010, (Act No. 42 of 2010)
[52] The Reserve bank of India Act, 1934 (Act No. 2 of 1934)

B. INSTITUTIONAL CRITIQUE & RESERVATIONS OF THE ELECTORAL BOND SCHEME

In a letter dated 2 January 2017, the Reserve Bank of India (RBI) addressed its concerns to the Joint Secretary, Ministry of Finance, regarding the Government's proposal to authorize Scheduled Banks to issue electoral bearer bonds as a means of political funding. This correspondence took place before the passage of the Finance Act, 2017.

The RBI raised strong objections, emphasizing three key points. First, it argued that allowing multiple non-sovereign entities to issue bearer instruments would dilute the RBI's exclusive authority to issue instruments that could potentially function as currency. The central bank cautioned that, if such bonds were circulated in large quantities, they might undermine public confidence in the banknotes issued by the RBI. Second, while the purchaser's identity would be available through the Know Your Customer (KYC) process, the identities of intermediary persons or entities transacting the bonds later would remain unknown. The RBI observed that this opacity would conflict with the principles underlying the Prevention of Money Laundering Act, 2002.

Finally, the RBI pointed out that the government's objective—to facilitate transparent political donations—could already be achieved through existing mechanisms such as cheques, demand drafts, or electronic transfers. Therefore, the introduction of a new bearer instrument in the form of electoral bonds was, in its view, unnecessary. In response to the RBI's objections, the Ministry of Finance, through its letter dated 30 January 2017, disagreed with the concerns raised by the central bank.

It clarified that:

- The RBI had misconstrued the fundamental purpose of introducing electoral bonds, which was to preserve the anonymity of donors while ensuring that all contributions were made from legitimate, tax-paid income; and

- The apprehension that such bonds could circulate as a parallel currency was misplaced, as the bonds would carry a limited validity period for redemption.

Subsequently, by a communication dated 4 August 2017, the Deputy Governor of the RBI proposed that India could consider issuing electoral bonds on a transitional basis through the Reserve Bank itself, in accordance with the existing provisions of Section 31(1)[53] Under the Reserve Bank of India Act, 1934. The RBI, while conceding this limited possibility, suggested that a series of safeguards should be incorporated to prevent potential misuse of the bonds for illicit or undesirable purposes. These safeguards include

- Restricting the maximum tenure of each electoral bond to fifteen days;[54]
- Allowing purchases only in fixed denominations, such as one thousand, ten thousand, or one lakh rupees;[55]
- Permitting the purchase of bonds exclusively through KYC-compliant bank accounts;[56]
- Requiring that redemption be made solely by depositing the bonds into the designated account of an eligible political party;[57]
- Opening the sale of bonds for a limited window, possibly twice a year, for seven days each; and[58]
- Conferring the authority to issue electoral bonds exclusively upon the RBI's Mumbai office.[59]

The draft Electoral Bond Scheme was subsequently shared with the Reserve Bank of India (RBI) for its review and comments. Under this draft, the authority to issue electoral bonds was proposed to be extended not only to the RBI but also to other

[53] Reserve Bank of India Act, 1934, § 31, cl. 1
[54] Association for Democratic Reforms v. Union of India, 2024 SCC OnLine SC 267, para. 19, at 14
[55] Id.
[56] Id.
[57] Id.
[58] Id.
[59] Id.

notified Scheduled Commercial Banks. In its letter dated 14 September 2017, the RBI raised objections to this proposal, warning that allowing commercial banks to issue such instruments could adversely affect public confidence in the scheme and, more broadly, undermine the credibility of India's financial system as well as the institutional integrity of the central bank itself.[60]

The RBI reiterated its earlier concern that bearer bonds could be exploited by shell companies to facilitate money-laundering activities. To mitigate these risks, the central bank recommended that electoral bonds be issued in electronic form rather than as physical instruments. According to the RBI, electronic issuance would

- minimize the potential for money-laundering misuse,
- lower administrative and operational costs, and
- ensure greater security and traceability in the system.[61]

The Reserve Bank of India (RBI) subsequently placed the proposed Electoral Bond Scheme before the Committee of the Central Board for its consideration and advice. During its deliberations, the Committee expressed strong reservations regarding the issuance of electoral bonds in physical form. These concerns were formally conveyed to the finance minister through an RBI letter dated 27 September 2017. The central bank's reservations were detailed as follows.

- "Issuance of currency is a 'monopolistic function' of a central authority, which is why Section 31 of the RBI Act bars any person other than the RBI from issuing bearer bonds."[62]
- "Issuance of electoral bonds in the scrips will run the risk of money laundering since the consideration for transfer of scrips from the original subscriber to a transferee will be paid in cash. This will not leave any trail

[60] Id. at 15
[61] Id.
[62] Association for Democratic Reforms v. Union of India, 2024 SCC OnLine SC 267, para. 21, pg. 15 & 16

of transactions. While this would provide anonymity to the contributor, it will also provide anonymity to several others in the chain of transfer."[63]

- "Issuance of electoral bonds in the scrip form could also expose it to the risk of forgery and cross-border counterfeiting besides offering a convenient vehicle for abuse by "aggregators"; and."[64]
- "The electoral bond may not only be seen as facilitating money laundering but could also be projected (albeit wrongly) as enabling it."[65]

As stated in the judgment of *Association for Democratic Reforms & Anr. v. Union of India & Ors.,* the Election Commission of India, by a letter dated 26 May 2017, addressed to the Ministry of Law and Justice, observed that the amendments introduced by the *Finance Act, 2017* to the *Income Tax Act, RPA,1951, and the Companies Act* would have a "serious impact on the transparency of political finance and the funding of political parties." The letter further noted that the amendment to the *Representation of the People Act*, which exempted political parties from disclosing donations received through electoral bonds, constituted a retrograde step in the pursuit of transparency in political funding.

The Election Commission of India (ECI) expressed serious concern over the removal of provisions in the Companies Act that had earlier mandated the disclosure of political contributions by companies. It is recommended that corporate donors continue to specify party-wise contributions in their profit and loss accounts to preserve transparency in political funding. The ECI also objected to the deletion of the first proviso to Section 182(1), which had imposed a cap on corporate donations. According to the Commission, reinstating this limit was essential because, as follows.

- Allowing unlimited corporate funding could facilitate the flow of black money into politics through shell companies, and

[63] Id.
[64] Association for Democratic Reforms v. Union of India, 2024 SCC OnLine SC 267, para. 21, pg. 15 & 16
[65] Id.

- The earlier cap ensured that only financially sound and established companies were eligible to make political donations.[66]

C. THE SUPREME COURT'S 2024 JUDGEMENT

In a landmark decision delivered on 15 February 2024, the Supreme Court of India unanimously struck down the Union Government's 2018 Electoral Bonds Scheme. The bench held that the scheme violated the citizens' right to information guaranteed under Article 19(1)(a) of the Constitution. Emphasising electoral transparency, the Court directed an immediate halt to the sale of bonds and instructed the State Bank of India to submit details of all bonds purchased since 12 April 2019, including the names of purchasers and the political parties that received them. The Election Commission was then mandated to publish this information by 13 March 2024.

The judgment of the SC in the EBS case on the matter of Right to Information stated that in the case of State of Uttar Pradesh v. Raj Narain[67], Justice KK Mathew observed that the fair and unbiased administration of justice serves a vital public interest, and this necessity can only be fulfilled through the disclosure of relevant and material documents. The learned judge reinforced this principle by linking Right to Information with Article 19(1)(a) of the Constitution. This principle was further explained in the case of SP Gupta v. Union of India[68]. The opinion of Justice P N Bhagwati in the case recognised that in a democratic governance, transparency and accountability are vital features. Further, the Court recognized that the effective participation of citizens in democratic governance is not just a means to an end but an end in itself.

The court in its judgment of EBS also referred to cases Union of India v. Association for Democratic Reforms.[69] and PUCL v. Union of India[70] This collectively affirms that Citizens should have access to information that helps them take part meaningfully in a democracy. Since voting is one of the key ways people participate in governance,

[66] Association for Democratic Reforms v. Union of India, 2024 SCC OnLine SC 267, para. 23, at 17
[67] (1975) 4 SCC 428
[68] 1981 Supp SCC 87
[69] (2002) 5 SCC 294
[70] (2003) 4 SCC 399

they must be informed so that their choices are made with understanding and good judgment.

The Court pointed out that the Constitution of India did not make any reference to Political Parties on its adoption. First time any reference was made when the Tenth Schedule was included in the Constitution by the Constitution (Fifty-Second) Amendment Act, 1985, directing that upon nomination of candidates, they enjoy the patronage of their respective Political parties and are financed by the parties; therefore,, the voters elect a candidate with the objective that the candidates political party will come to power and fulfil the promises.[71] Building upon these established principles, the SC, in its 2024 judgement on EBS, examined whether the anonymity granted to political donors was consistent with the constitutional mandate of transparency and political equality.

The Supreme Court, in its 2024 judgment on the Electoral Bonds Scheme, reaffirmed that India's electoral democracy is founded on the ideal of political equality, a value protected by the Constitution through the principle of "one person, one vote" and the reservation of seats for Scheduled Castes and Scheduled Tribes to counter structural inequalities.

In examining the issue of donor anonymity under the Electoral Bond Scheme, the Court disagreed with the Union Government's assertion that political parties had no access to donor identities. It held that while the scheme provides formal or de jure anonymity, in practice this anonymity does not exist. Various procedural gaps allowed political parties to trace or identify contributors—for instance, through direct handover of bonds, disclosure of details by donors after purchase, or cross-verification via party intermediaries.

The Court further observed that a striking ninety-four percent of electoral bond contributions were of one crore rupees, indicating that the scheme disproportionately benefited affluent donors who already enjoyed proximity to power. This arrangement, the Court reasoned, granted selective anonymity—concealing donors from the public

[71] Assn. for Democratic Reforms (Electoral Bond Scheme) v. Union of India, (2024) 5 SCC 206

but not from political parties. Ultimately, the Court emphasized that transparency in political funding is integral to an informed vote, and that concealing the sources of party finances undermines voters' right to information. Accordingly, it held that the Electoral Bond Scheme and related provisions violate Article 19(1)(a) of the Constitution to the extent that they obscure information essential for meaningful electoral choice.

The Supreme Court next examined whether the infringement of the voter's right to information under the Electoral Bond Scheme could be justified under the test of proportionality. (applied first in Modern Dental College & Research Centre and Others v. State of Madhya Pradesh and Others[72] And later modified in K.S. Puttaswamy (Retired) and Anr. (Aadhar) v. Union of India and Anr. (5J)[73]Applying the established four-pronged proportionality standard, the Court considered.

- whether the restriction pursues a legitimate aim,
- whether there is a rational connection between the measure and its objective,
- whether it represents the least restrictive means, and
- whether its impact is disproportionate to the right affected.

Even assuming that curbing black money constitutes a legitimate state objective, the Court held that the anonymity of contributors was neither a rational nor necessary means to achieve that goal. Under the rational connection test, the Court noted that while anonymity may theoretically encourage donations through formal banking channels, it does not directly or effectively advance the stated objective of eradicating black money.

Proceeding to the least restrictive means test, the Court compared three modes of political contribution—direct electronic transfer, contributions via Electoral Trusts, and Electoral Bonds. It was observed that in cases of electronic transfers exceeding ₹20,000, voters can access complete information regarding the donor and the political

[72] (2016) 7 SCC 353
[73] (2019) 1 SCC 1

party. In contrast, under the Electoral Bond Scheme, voters receive no such information, as both companies and political parties are only required to disclose aggregate amounts, not specific details of contributions or recipients. This lack of transparency, the Court noted, defeats the purpose of the right to information.

While contributions through Electoral Trusts provided partial transparency, the Electoral Bond Scheme offered complete anonymity, making it the most restrictive mechanism in terms of public disclosure. Furthermore, the Court pointed out that the scheme lacked safeguards to prevent trading or misuse of bonds, undermining its claimed purpose of curbing black money. On this basis, the Court concluded that the Electoral Bond Scheme failed the "least restrictive means" test. It was not the only or the most effective measure to address the problem of illicit electoral funding. Other available methods, such as transparent electronic transfers or contributions through regulated trusts, could achieve the same objective with minimal interference with the voter's right to information under Article 19(1)(a).

D. MISSED OPPORTUNITY FOR GUIDELINES WITH COMPARATIVE REFERENCE

In exercising its powers under Article 142[74] Under the Constitution, the Supreme Court is entrusted with the duty to ensure complete justice in any matter before it. This provision has often enabled the Court to step in and frame interim guidelines where a legislative vacuum exists, ensuring that constitutional rights are not left unprotected until Parliament enacts a law. Notably, this judicial innovation was seen in Vishakha v. State of Rajasthan (1997)[75], where the Court issued detailed directions on preventing sexual harassment at the workplace, and in D.K. Basu v. State of West Bengal (1997)[76], which laid down safeguards against custodial abuse and police misconduct. Similarly, in Lakshmi v. Union of India (2013)[77]. The Court prescribed

[74] India Const. art. 142 (granting the Supreme Court wide discretionary power to ensure complete justice between the parties)
[75] See Vishaka v. State of Rajasthan, (1997) 6 SCC 241 (India)
[76] See D.K. Basu v. State of West Bengal. (1997) 1 SCC 416 (India)
[77] See Laxmi v. Union of India, (2014) 4 SCC 427 (India)

regulatory measures on the sale of acid in the absence of statutory control. These precedents reflect the Court's willingness to act as a constitutional sentinel by bridging gaps in governance.

The Supreme Court's decision in Anoop Baranwal v. Union of India[78] Marked a significant shift in how the institutional independence of the Election Commission of India is understood. For decades, appointments to the Commission were effectively controlled by the executive, since the President acted solely on its advice. Recognising that this practice diluted the constitutional expectations of a natural and autonomous electoral body under Article 324, the Court intervened to address the legislative vacuum. In its Judgement of 2nd March 2023[79]The Court directed that, until Parliament enacts a law governing these appointments, the Election Commissioner must be selected by a committee consisting of the Prime Minister, the Leader of Opposition of the Lok Sabha, and the Chief Justice of India.

This shift was grounded in the Court's concern that free and fair elections require an Election Commission insulated from partisan pressure. The ruling has particular relevance for the regulation of political finance, as in the absence of an independent Commission, the enforcement of disclosure norms, regulation of political donations, and scrutiny of electoral expenditure would remain vulnerable to executive influence. Moreover, the Court's adoption of a committee-based selection model reflects a comparative constitutional approach, drawing parallels with appointment mechanisms used for other independent bodies. In this sense, Anoop Baranwal exemplifies the judiciary's willingness to fill legislative gaps, an approach that parallels the court's stance in the Electoral Bond case and highlights how judicial intervention can serve as a constructive response to Parliament's inaction.

However, in the Electoral Bonds judgment, the Court refrained from exercising this power. Instead of framing temporary guidelines to preserve transparency while

[78] Anoop Baranwal v. Union of India, Case Background, Supreme Court Observer, https://www.scobserver.in/cases/anoop-baranwal-v-union-of-india-election-commission-appointments-background/

[79] Judgment Summary, Supreme Court Observer, https://www.scobserver.in/reports/election-commission-appointments-judgement-summary/

addressing the deficiencies of the Electoral Bond Scheme, it reverted to the pre-existing legal framework, disregarding the fact that the scheme, despite its flaws, was introduced with the intent to reform older, less effective funding mechanisms. The Court could have, consistent with its earlier approach, laid down interim principles and directed the legislature to enact a comprehensive law governing political funding. Such an approach would have maintained the balance between transparency, accountability, and the practical realities of electoral finance until a statutory framework was developed.

VII. REFORMS AND THE WAY FORWARD

A. COMPARATIVE INSIGHTS: LESSONS FROM GLOBAL MODELS

Across democratic jurisdictions, the regulation of corporate political funding has evolved to balance participation with transparency. In the United States of America, corporations are prohibited from donating directly to candidates, yet they exert substantial influence through Super PACs (Independent expenditure-only political action committees)[80], which can spend unrestricted sums on election advertising provided they act independently.

The current system was fundamentally altered by the Supreme Court (USA) (2010) case Citizens United v. Federal Election Commission.[81]. Donors' identities are required to be disclosed in their system. The United Kingdom allows registered domestic companies to contribute to political parties, but mandates full disclosure of large donations and strictly forbids the use of funds originating abroad. Canada, meanwhile, enforces one of the world's most stringent rules on corporate political funding—completely banning contributions from corporations and trade unions while tightly monitoring third-party political spending. Each of these frameworks, though distinct, reflects an underlying commitment to transparency and accountability in electoral finance.

[80] See *Citizens United v. FEC, 558 U.S. 310 (2010)* ; SpeechNow.org *v. FEC, 599 F.3d 686 (D.C. Cir. 2010)*
[81] Id.

In comparison, India's Electoral Bond Scheme attempted to reform opaque cash-based political donations but ended up institutionalizing secrecy instead. The Supreme Court, while rightly striking it down for violating the voters' right to information, could have taken inspiration from these global practices. Rather than reverting to the pre-existing, unregulated system, the Court might have exercised its authority under Article 142 to frame interim guidelines—ensuring both transparency and the orderly flow of legitimate political funding until Parliament enacted a comprehensive law. Such an approach would have mirrored global democratic standards and transformed a constitutional invalidation into a constructive reform.

B. FRAMEWORK FOR INTERIM REGULATIONS: SUGGESTED GUIDING PRINCIPLES

A comparative examination of political funding practices in the United States, the United Kingdom, and Canada reveals that transparency and traceability of donations form the core of democratic campaign finance. Each jurisdiction balances the right to political participation with safeguards against corporate or foreign influence. While the United States allows corporate-linked spending through independent Super PACs under disclosure obligations, the United Kingdom maintains direct corporate donations under strict domestic source verification. Canada adopts an even more conservative model, prohibiting corporate and union donations altogether. These global frameworks indicate that transparency and domestic accountability—rather than secrecy—are central to clean political financing.

Drawing from these models, India could have utilized the opportunity following the invalidation of the Electoral Bond Scheme to adopt an interim regulatory mechanism rooted in similar principles. Much like the U.K., India could have allowed corporate donations but only from entities conducting genuine business within the country and using verifiable domestic funds. The U.K.'s practice of mandating public disclosure of all significant donations to the Electoral Commission provides a replicable model for real-time transparency through a centralized, publicly accessible digital portal. Additionally, requiring certification of corporate contributions through board

resolutions, as in the U.K., would reinforce internal accountability and prevent shell companies from being used as political conduits.

By adapting these elements—domestic-source validation, mandatory corporate authorization, and real-time disclosure—India could have created a hybrid model that maintains the constitutional balance between the freedom to fund political activity and the public's right to information under Article 19(1)(a). Such an approach would have aligned with the principle of "complete justice" under Article 142, allowing the Supreme Court to issue interim guidelines ensuring transparent political funding until Parliament enacts comprehensive legislation.

VIII. CONCLUDING REFLECTIONS: BEYOND INVALIDATION TOWARDS CONSTRUCTIVE JUDICIAL REFORMS

The Supreme Court's 2024 judgment invalidating the Electoral Bond Scheme was undoubtedly a landmark step in reaffirming citizens' right to information and democratic accountability. Yet, its broader legacy depends not only on what it struck down, but on what it could have built thereafter. The Court's intervention re-established constitutional fidelity but simultaneously exposed the structural gaps that continue to exist in India's political finance regime. By reverting to the pre-2018 system, the judgment restored legality but not necessarily transparency—leaving unresolved the fundamental challenge of balancing legitimate political funding with the need for public accountability.

A truly transformative outcome would have required the Court to move beyond invalidation and toward constructive reform. The use of Article 142 to frame interim regulatory guidelines could have served as a bridge between judicial correction and legislative inertia, ensuring that the absence of a constitutionally compliant law did not revive a system known for its opacity. Earlier precedents such as Vishakha, D.K. Basu, and Lakshmi v. Union of India demonstrate that judicial creativity in the face of statutory silence can set durable norms for governance until the legislature intervenes. That approach, had it been followed here, might have yielded a more balanced transition from the flawed bond mechanism to a transparent, regulated funding framework.

Looking forward, the judgment presents an opportunity for both the judiciary and the legislature to collaborate in building a coherent legal framework for political finance. The comparative insights from the U.K., U.S., and Canada illustrate that transparency, traceability, and domestic-source restrictions are not incompatible with democratic fundraising. India's constitutional democracy would benefit from adopting these features through a structured statute, supported by independent audit mechanisms and digital disclosure requirements. Thus, the path ahead must not be limited to celebrating judicial invalidation but must advance toward institutional reform—anchored in transparency, guided by comparative wisdom, and rooted in the constitutional promise of informed citizenship.

In reaffirming India's democratic spirit, it is essential to look beyond the mere invalidation of a policy and towards reforms that enhance transparency and civic trust. President Droupadi Murmu amply reminded the nation, *'India is called the mother of democracy…..our diversity has only united us.'*[82] These words encapsulate the enduring resilience of Indian Democracy, a system that, despite its imperfections, continues to evolve through both legislative wisdom and judicial introspection.

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