



# Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820  
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

---

## Critical Analysis of the Impugned Electoral Finance bonds Scheme of 2018

Gautam Barnwal<sup>a</sup>

<sup>a</sup>Department of Law, University of Calcutta, Kolkata, India

*Received* 13 October 2022; *Accepted* 23 October 2022; *Published* 27 October 2022

---

*Democracy is a very expensive process. Political parties in India solicit donations from all conceivable sources, including "illegal" and "interested" money, to fund their campaigning and daily operations. The integrity of Indian democracy is seriously threatened by this. While this is going on, an increasing number of nations have chosen the route of public subsidies and direct funding of parties and political activities in an effort to lessen reliance on vested interests, equalise political opportunity, and increase the transparency and accountability of democratic processes. For example, recent research shows that more than two-thirds of Americans trust the government less because of the influence of big donors.<sup>1</sup> This article looks at the problems this conflict provides for, electoral politics in general as well as the basic tension that is now present in the Indian election finance system. This article makes the argument that the Electoral Bonds Scheme has produced a gloomy contribution system that lends itself to no quick and simple fix along with making a case for or against the constitutionality of the scheme. The Electoral Bonds Scheme raises challenging concerns concerning whether this predicament can be resolved by the Parliament or by the Apex Court. Over the last two decades, democracy has spread all across the world in unprecedented ways. Democracies increased from 48 in 1989 to 95 today.<sup>2</sup>*

---

<sup>1</sup> 'Supporting Elections and Democracy' (Kofi Annan Foundation, 22 June 2014)

<<https://www.kofiannanfoundation.org/supporting-democracy-and-elections-with-integrity/global-commission-on-elections-democracy-security-2/>> accessed 12 October 2022

<sup>2</sup> Monty G. Marshall & Benjamin R. Cole, 'Global Report 2011: Conflict, Governance, and State Fragility' (Research Gate, 2011)

**Keywords:** *electoral finance, electoral competition, electoral politics, law and justice, special reports.*

---

## INTRODUCTION

*“Building democracy is a complex process. Elections are only a starting point but if their integrity is compromised, so is the legitimacy of democracy.”*

– Kofi A. Annan

The Electoral Finance Bonds Scheme of 2018, which was announced on January 2, 2018, enables Indian residents and domestic businesses to contribute these bonds – which are issued in multiples of Rs 1,000, Rs 10,000, Rs 1 lakh, Rs 10 lakh, and Rs 1 crore – to political parties of their choice, who then have 15 days to redeem them. An individual can purchase bonds on their own or in a group with other persons. There is no restriction on how many electoral bonds an individual (including business organisations) may buy. The approved bank shall deposit the number of bonds not cashed within the fifteen-day validity period in the Prime Minister Relief Fund (PMRF). So far 146 bonds totalling Rs 20.2835 crore (0.275%) have been placed in the PMRF. As a result, the political parties cashed 99.725% of the bonds they had bought over the seventeen phases during the validity period.<sup>3</sup>

Prime Minister Narendra Modi urged political parties to reach an agreement on the issue of public funding of elections in India halfway after the demonetisation push.<sup>4</sup> The Prime Minister was making reference to the escalating election expenses as well as the ongoing infusion of "black money" or illicit funds into the nation's political system. India's political systems are severely vulnerable to illegal finance, which is a harsh fact. This may be deduced from the fact that over two-thirds of the political donations received by registered political parties come from

---

<[https://www.researchgate.net/publication/232621340\\_Global\\_Report\\_2011\\_Conflict\\_Governance\\_and\\_State\\_Fragility](https://www.researchgate.net/publication/232621340_Global_Report_2011_Conflict_Governance_and_State_Fragility)> accessed on 12 October 2022

<sup>3</sup> 'Electoral Bonds and Opacity in Political Funding' (*ADR India*, 6 July 2022)

<[https://adrindia.org/sites/default/files/ElectoralBondsNote\\_March\\_July2021\\_updated.pdf](https://adrindia.org/sites/default/files/ElectoralBondsNote_March_July2021_updated.pdf)> accessed 16 October 2022

<sup>4</sup> 'PM Narendra Modi calls for state funding of polls to combat corruption' (*The Times of India*, 16 November 2016) <<https://timesofindia.indiatimes.com/india/pm-narendra-modi-calls-for-state-funding-of-polls-to-combat-currupcion/articleshow/55447163.cms>> accessed 12 October 2022

allegedly "unknown" sources.<sup>5</sup> The Electoral Bonds Scheme was introduced by the Finance Act of 2017, notified by the Ministry of Finance in 2018, and challenged in the case of *Association for Democratic Reforms v Union of India*.<sup>6</sup> As a result, it was a topic that was frequently discussed and deliberated among legal experts, elected officials, and regular citizens. While the government said that the Election Bonds Scheme was a crucial campaign reform that would increase openness in electoral spending, its opponents viewed the programme as a wolf in sheep's clothing. Unregulated money in politics means that the competition in politics is not equal, even though supporting political parties and electoral campaigns is crucial to democracy's operation. The impression that wealth buys political influence and endangers political equality is fuelled by the enormous increase in campaign spending. Additionally, the Supreme Court has often avoided ruling on the constitutionality of the Electoral Bonds Scheme or granting a stay order against it when it has been challenged there. The Chief Justice's court believed that given the time constraints, it would be impossible to resolve the important questions raised by the case.<sup>7</sup>

## OVERVIEW OF THE ELECTORAL FINANCE BONDS SCHEME

The Electoral Bonds Scheme essentially opened the floodgates of funding for one political party while shutting out all other political parties,<sup>8</sup> which caused a radical shift in the relative number of resources available to the party that is currently in power and the other parties. First, Section 29C of the Representation of the People Act, 1951 which no longer requires the declaration of donations made through electoral bonds, made this lopsided funding received by political parties much worse.<sup>9</sup> Secondly, an amendment to Section 182 of the Companies Act of 2013,<sup>10</sup>

<sup>5</sup> '69% of funds for India political parties from unknown sources: Report' (*The New Indian Express*, 24 January 2017) <<https://www.newindianexpress.com/nation/2017/jan/24/69-of-funds-for-india-political-parties-from-unknown-sources-report-1563076.html>> accessed 12 October 2022

<sup>6</sup> *Association for Democratic Reforms v Union of India* Writ Petition (Civil) No. 889/2017

<sup>7</sup> Gautam Bhatia, 'Opinion | Supreme Court's interim order on electoral bonds is disappointing' (*Hindustan Times*, 13 April 2019) <<https://www.hindustantimes.com/columns/sc-s-interim-order-on-electoral-bonds-is-disappointing/story-yLzsFRChHZMoMZwbezMk4N.html>> accessed 12 October 2022

<sup>8</sup> 'Chart 1: EBS Donations to Political Parties, 'Decoding India's electoral bonds scheme' (*Observer Research Foundation*, 30 November 2019) <<https://www.orfonline.org/expert-speak/decoding-indias-electoral-bonds-scheme-58260/>> accessed 12 October 2022

<sup>9</sup> Representation of the People Act 1951, s 29C

<sup>10</sup> Companies Act 2013, s 182

which no longer imposes any restrictions or prohibitions on the companies about making political contributions, and thirdly, an amendment to Section 13A of the Income Tax Act of 1961,<sup>11</sup> which now exempts political parties from keeping a record of the donations made through electoral bonds. Lastly, the amendment to Section 2(1)(j)(vi) of the Foreign Contributions Regulation Act, 2010, which now permits foreign corporations to financially influence Indian elections and policies;<sup>12</sup> ensuring that the incumbent government's party would not only receive enormously disproportionate amounts of electoral funding but also escape from any form of accountability for the funds received through the Electoral Bonds.

This Article tries to look looks at the problems this conflict provides for electoral politics in general as well as the basic tension that is now present in the Indian election finance system. This paper makes the argument that the Electoral Bonds Scheme has produced a dystopic system for donations that lends itself to no quick and simple remedy, rather than making a case for or against the constitutionality of the Electoral Bonds Scheme is being introduced as a Money Bill under Article 110<sup>13</sup> of the Constitution or about the amendments violating the principles of "free and fair elections." The Electoral Bonds Scheme raises challenging concerns regarding whether the Parliament can address this issue or if the Supreme Court is the sole option.

The enormous rise in funds obtained by the political party of the current government –leaving the opposition and other parties far behind–was the obscene result of the Supreme Court's refusal to give a restraining order on the Electoral Bonds Scheme. This was so that the current government would always receive the King's share of electoral money as a result of the Electoral Bonds Scheme's creation of a quid pro quo connection between the government and the contributors. India has received praise and admiration from throughout the world for its successful implementation of democracy<sup>14</sup> in a complex, huge nation with high levels of poverty and illiteracy, but its democratic system is plagued by corruption and lack of transparency and accountability. The expansion of money's influence on India's electoral system is the most

---

<sup>11</sup> Income Tax Act 1961, s 13A

<sup>12</sup> Foreign Contributions Regulation Act 2010, s 2(1)(j)(vi)

<sup>13</sup> Constitution of India 1951, art. 110

<sup>14</sup> Ashutosh Varshney, 'India Defies the Odds: why democracy Survives' [1998] Journal of Democracy

concerning trend. After the 2012 US presidential elections, the 16th Lok Sabha Election was perhaps the second-most costly election.<sup>15</sup> Research by the Centre for Media Studies placed the amount at a staggering INR 30,000 crore, or almost US\$5.5 billion. This estimation is reasonable.

Buying votes by giving cash, alcohol, drugs, and others is also a widespread practice. The cash seized by the expenditure observers of the Election Commission of India reached record levels in the last elections, with more than INR 150 crore seized from Tamil Nadu alone.<sup>16</sup> The need to raise more money grows as elections get more expensive for parties and candidates alike. Because it is harder to generate modest donations and because their transaction costs are still quite expensive in India,<sup>17</sup> the importance of "interested money" from corporations has grown.<sup>18</sup> Various corporate houses generously support the majority of the major political parties in India.<sup>19</sup> For instance, a startling 89 percent of all donations come from the private sector or corporate contributions, among the sources of gifts that are known.

## RELEVANCE OF MONEY IN ELECTIONS AND POLITICS

The former chief election commissioners have often attested to the crucial influence that money plays during elections (CECs). The Election Commission, which was able to control the muscle power in elections, utterly failed to do so in the case of the money power, according to the former chief election commissioner, Mr. N. Gopalaswamy. The horrors of the money power during elections are obvious, and the general influence of money in politics is a stain on the principle of fairness, freedom, and transparency, which are the cornerstones of the Constitution,

---

<sup>15</sup> John Hudson, 'The Most Expensive Elections in History by numbers' (*The Atlantic*, 6 November 2012) <<https://www.theatlantic.com/politics/archive/2012/11/most-expensive-election-history-numbers/321728/>> accessed 08 October 2022

<sup>16</sup> Devesh K. Pandey, 'Rs. 150 crore, 2 lakh dhotis: why EC pulled the plug on polls in 2 TN constituencies' (*The Hindu*, 28 May 2016) <<https://www.thehindu.com/news/national/tamil-nadu/Rs.-150-crore-2-lakh-dhotis-why-EC-pulled-the-plug-on-polls-in-2-TN-constituencies/article14344249.ece>> accessed 8 October 2022

<sup>17</sup> M.V. Rajeev Gowda & E. Sridharan, 'Reforming India's Party Financing and Election Expenditure Laws' (2012) 11(2) Election Law Journal <<https://casi.sas.upenn.edu/sites/default/files/upiasi/Reforming%20India%27s%20Party%20Financing%20and%20Election%20Expenditure%20Laws.pdf>> accessed 08 October 2022

<sup>18</sup> Niranjana Sahoo & Samya Chatterjee, 'Corporate Funding of Elections: The Strengths and Flaws' (*ORF Issue Brief*, 15 March 2014) <<https://www.orfonline.org/research/corporate-funding-of-elections-the-strengths-and-flaws/>> accessed 10 October 2022

<sup>19</sup> *Ibid*

according to Mr. S. Y. Quraishi, a former chief election commissioner and member of the 13th Amendment Commission. He further added that legislators have become passive and sluggish when it comes to formulating policy as a result of the growing influence of money power in determining election results.<sup>20</sup> In addition, eminent journalist P. Sainath in his article titled "The medium, message, and the money"<sup>21</sup> highlighted that a candidate with a net worth of 5 crores was 75 times more likely to win an election than a candidate with a net worth of fewer than 10 lakhs. This statistic further supports the idea that money plays a decisive role in elections. These are the harsh realities of modern campaigning, where it costs a lot to run a successful campaign.<sup>22</sup> However, given that elections are by their very nature expensive affairs, there is no set formula to determine what would be the perfect sum of money needed to execute an efficient modern election campaign. Hence it is henceforth worthy to mention that money plays a bigger and more significant role in democracy at times of Elections, especially in a Country where there is a multi-party System like India.

## INDIA'S PERSPECTIVE OF THE SCHEME OF 2018

The situation of India offers a distinctive perspective on the relationship between money and politics in a growing democratic environment. India has a significant argument on its own merits. One in every six people on the earth who are of voting age resides in India, the most populous democracy in the world. Additionally, it is the longest-lasting democracy in the developing world, which means that it may serve as an example for other nations who are just beginning their democratic journeys but have not yet reached the same level of democratic consolidation. More than 8,000 candidates, from as many as 464 political parties, ran in India's extraordinarily competitive elections in 2014, proving beyond a shadow of a doubt that the

---

<sup>20</sup> 'Poll Expenditure, The 2019 Elections' (CMS Research House, 30 May 2019)  
<<https://cmsindia.org/sites/default/files/2019-05/Poll-Expenditure-the-2019-elections-cms-report.pdf>>  
accessed 12 October 2022

<sup>21</sup> P. Sainath, 'The medium, message and the money' (*The Hindu*, 26 October 2009)  
<<https://www.thehindu.com/opinion/columns/sainath/The-medium-message-and-the-money/article13666073.ece>> accessed 12 October 2022

<sup>22</sup> Association for Democratic Reforms & National Election Watch, 'Analysis of Funds Collected and Expenditure Incurred by National Political Parties – Lok Sabha 2004, 2009 & 2014' (*Association for Democratic Rights*, 2 March 2015) <<https://adrindia.org/research-and-report/political-party-watch>> accessed 12 October 2022

stakes of electoral fights are high and the results far from predetermined. There is a huge amount of subnational variety present within this turbulent democratic environment. The formal federal structure of India, which consists of 28 states (with nine union territories directly under the control of the central government), enables researchers to make use of state-level heterogeneity while maintaining a consistent institutional architecture.

Many people are agreeing that there is an increasing amount of money engaged in Indian elections, but the reasons for this development are important to note. First, since the economy opened in 1991, both the size of the economy and the electorate have increased by a factor of five. There is a good chance that these structural modifications have affected election expenditure separately. Second, the electoral environment in India has become much more competitive. Beginning in the late 1960s, the Congress party's monopoly on power began to wane. As a result, political parties sprung up throughout India to fill the void. In comparison to 1952, when the average winning margin in parliamentary elections was 15%, it fell to less than 10% in 2009.<sup>23</sup> To put this figure into context, the typical margin of victory in a US congressional campaign for a seat in the House of Representatives in 2016 was 37%. Third, over time, the parties' organisational capacity has weakened. Political leaders who are charismatic (and frequently dynastic) and more dependent on private funding than on party coffers are replacing strong party institutions. For instance, 22% of India's newly elected Members of Parliament (MPs) come from political families. Fourth, there have been a tremendously increased number of elections overall. Nearly three million posts were made available for local elections as a result of the 73rd and 74th amendments to the Indian constitution, which were passed in the early 1990s and created a new, three-tier system of local government. Decentralization resulted in more fiscal devolution, raising the stakes for winning local elections and, consequently, the possible financial rewards of holding local government. India has failed to control political finance in the face of this flood of funds, which explains why the nation does badly on most international measures of political finance regulation. India's system of controlling political

---

<sup>23</sup> Praveen Rai & Sanjay Kumar, 'The Decline of the Congress Party in Indian Politics' (2017) 52(12) *Economic and Political Weekly* <<https://www.epw.in/journal/2017/12/web-exclusives/decline-congress-party-indian-politics.html>> accessed 10 October 2022



funding has failed in the face of this inflow of cash, which explains why the nation does badly on most international indices of such regulation.

The normative objective of "equalising influence" serves as the foundation for the original theoretical justification of political finance regulation, particularly the public funding proposal. This is relevant in the perspective of the scheme of 2018 as the political parties that are in power in the current scenario will enjoy stronger money influence over elections than the other political parties leading to a great influence of money in politics. This effort aims to ensure that certain influential groups or individuals do not have undue influence over electoral processes.<sup>24</sup> Political equality, in the opinion of its proponents, promotes the idea of "equal political influence," or the idea that no citizen should have greater influence over politics than other people. This suggests that having more money or wealth should not give you greater influence over politics, and vice versa, having less money or wealth should not drastically reduce your ability to influence politics.<sup>25</sup> Public financing is advocated for by political philosophers and democracy experts including John Rawls, Robert Dahl, and Ronald Dworkin to preserve equal political influence and stop wealthy candidates from leveraging their financial advantage to beat less well-off rivals.<sup>26</sup> In his foundational work, *A Preface to Democratic Theory*, Dahl makes the case for the maintenance of voter autonomy and equal political power, which calls for voters to have the same knowledge about the options available to them on election day. Dahl believes that restrictions over the information that any one person or organisation possesses should not be used to influence voter decisions.<sup>27</sup>

## IMPACT OF THE ELECTORAL BONDS SCHEME OF 2018

As has been stated by the former Prime Minister of India, Dr. Manmohan Singh, stated that it was crucial to "address the expansion of money power in elections to protect the health of our

---

<sup>24</sup> *Ibid*

<sup>25</sup> Keena Lipsitz, 'Democratic Theory and Political Campaigns' (2004) 12(2) *The Journal of Political Philosophy* <[https://www.researchgate.net/publication/227581601\\_Democratic\\_Theory\\_and\\_Political\\_Campaigns](https://www.researchgate.net/publication/227581601_Democratic_Theory_and_Political_Campaigns)> accessed 12 October 2022

<sup>26</sup> *Ibid*

<sup>27</sup> Robert A. Dahl, *A Preface to Democratic Theory* (Chicago: University of Chicago Press, 1956)



(India's) democratic polity" given the significant role that money plays in elections.<sup>28</sup> In light of this, the finance ministry unveiled the electoral bonds programme, which was presented as a substitute system designed to purge the political fundraising system and provide a transparent framework for supporting elections. The abandoning of the transparency rules for donations made through Electoral Bonds, which were instituted to encourage and ensure that dirty money from obscure sources is unable to enter electoral finance, was the primary flaw of the Electoral Bonds Scheme.

It is paradoxical that the Electoral Bonds Scheme, which was designed to provide accountability and transparency in the system, has instead rendered it so weak that the incumbent government obtains a sizable portion of electoral donations in the form of electoral bonds. The study by the think tank "Factly" revealed the consistent pattern of the political party in power consistently getting donations that were much more than those received by all other parties combined, as seen in the figure below.<sup>29</sup> Then the *Association for Democratic Reforms v Union of India* case,<sup>30</sup> which would permanently change the jurisprudential debate on the funding of political campaigns, brought a challenge to the Electoral Bonds Scheme. By avoiding answering questions about the constitutionality of the electoral bonds scheme while issuing an order requiring the political parties to provide the Election Commission with an account of funding received through electoral bonds in sealed covers, the court issued its landmark decision, which created a dichotomy in an electoral donation. However, the Court effectively upheld the electoral bonds scheme by dodging questions about constitutional validity, rejecting the stay order, and, finally, ordering the political parties to provide the election commission with information that would not be made public during the course of elections. This allowed the government to enforce the electoral bonds scheme to its fullest extent.

---

<sup>28</sup> Niranjana Sahoo, 'Towards public financing of elections and political parties in India: Lessons from global experiences' (*Observer Research Foundation*, 20 November 2017) <<https://www.orfonline.org/research/towards-public-financing-elections-political-parties-india-lessons-global-experiences/>> accessed 10 October 2022

<sup>29</sup> Bharath Kancharla, 'Income of National Parties soars in 2018-19, thanks to Electoral Bonds' (*FACTLY*, 11 January 2020) <<https://factly.in/income-of-national-parties-soars-in-2018-19-thanks-to-electoral-bonds/>> accessed 12 October 2022

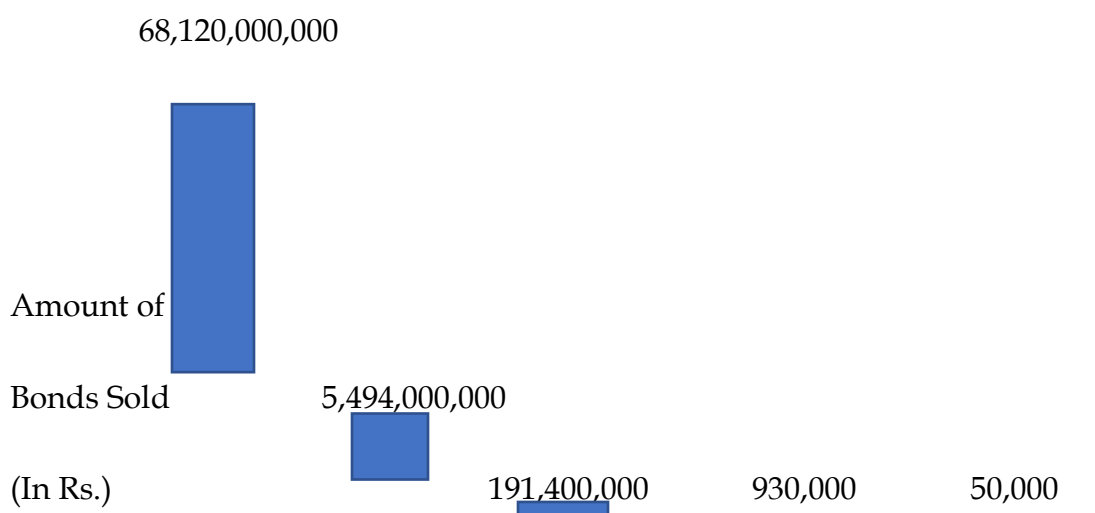
<sup>30</sup> *Association for Democratic Reforms v Union of India* Writ Petition (Civil) No. 880/2017

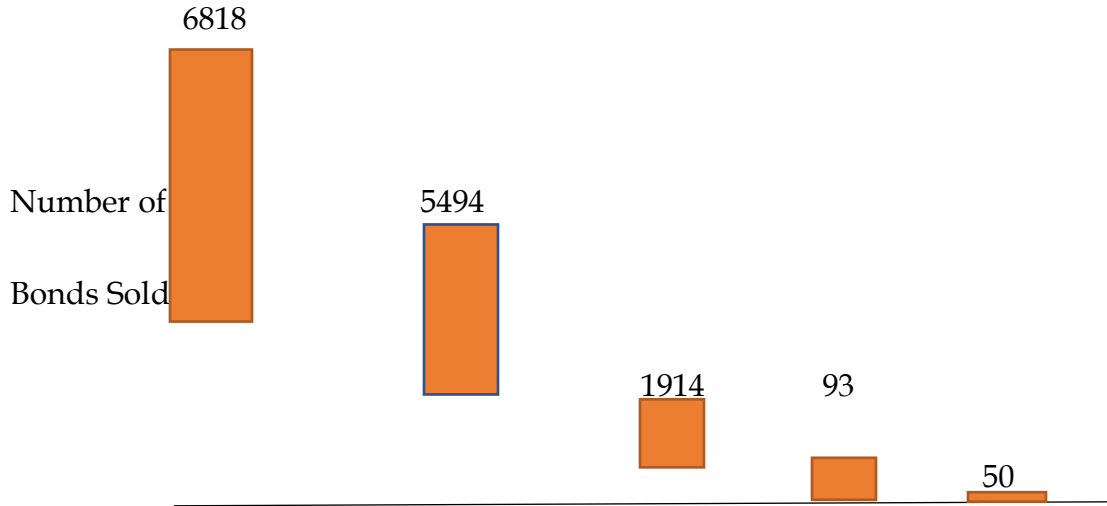
### DATA ANALYSIS OF THE ELECTORAL FINANCE BONDS SCHEME OF 2018

ADR examined the total amount of electoral bonds that the political parties acquired and redeemed throughout the course of the seventeen phases from March 2018 to July 2021, broken down by branch and denomination. The first studies showed that:

- Between March 2018 and July 2021, 14,363 Electoral Bonds worth Rs. 7380.638 crores were auctioned in total across seventeen phases. During this time, 14,217 bonds totalling Rs. 7360.3545 crores were redeemed. During the general election season in 2019 (March and April), just two months, or 49.075% of the total amount of electoral bonds, were acquired. The total number of bonds sold throughout the course of all 17 phases is broken down below each phase.
- During the three months leading up to the Lok Sabha elections in 2019 (phase VIII, phase IX, and phase X), parties redeemed 60.26 percent of the entire amount of electoral bonds.
- The fact that 92.30% or Rs 6812 cr of the total bond value acquired was in the denomination of Rs 1 crore suggests that corporations rather than private persons are buying these bonds.

**Figure1: Denomination-wise sale of Electoral Bonds during 17 Phases**





- The headquarters of the National Parties are in New Delhi, where 9718 electoral bonds worth Rs 5407.072 crore, or 73.46% of the total electoral bonds redeemed between March 2018 and July 2021 were cashed (the highest bond value was paid in Mumbai).
- Recognized political parties got a total of Rs 6,201.53 cr through electoral bonds between FY 2017-18 and FY 2019-20. A staggering 67.98% of this, or Rs 4,215.89 crore, was obtained by the political party in power.
- Also, according to the BJP's annual audit report, which was submitted to the Election Commission, the party received contributions in the amount of Rs 210 crore in the form of electoral bonds for the fiscal year 2017-18. A stunning 95% of the electoral bonds bought in 2017-18 were represented by this. BJP had received Rs 1,450.89 crore in electoral bonds for FY 2018-19, while INC had received Rs 383.26 crore. Following the BJP, which reported obtaining Rs 317.861 cr (9.237%) of the total declared bonds by recognised parties in FY 2019-20, INC reported receiving Rs 2555 cr (74.245%) of the declared bonds from electoral bonds.
- The Electoral Bonds Scheme has become the most widely used method of funding political parties since it gives contributors and political parties anonymity. Donations obtained through electoral bonds accounted for more than 52% of the overall revenue of National Parties and 53.83% of the total revenue of Regional Parties examined by ADR for FY 2018-19.

- According to research conducted by ADR, for the FY 2018–19, the BJP, INC, NCP, and AITC declared receiving a total of Rs 1960.68 crore, while the BJD, TRS, YSR-C, Shiv Sena, TDP, JDS, and SDF received a total of Rs 578.49 crore in donations via electoral bonds.
- During the FY 2019-20, of the political parties whose annual audit reports are available on the ECI website as of 10th August 2021, 18 recognised political parties have declared receiving a total of Rs 3441.32 cr from donations via electoral bonds.
- In the fiscal year 2018–19, national parties got the highest corporate donations, totalling Rs. 881.26 billion. In FY 2016–17, it was Rs. 563.19 crore, while in FY 2014–15, it was Rs. 573.18 crore (during which the 16th Lok Sabha elections were held).<sup>31</sup>

## REASONS WHY THE ELECTORAL BONDS SCHEME SHOULD BE UNCONSTITUTIONAL

The impugned Electoral Bonds Scheme of 2018 has violated the fundamental "Right to Know" of the citizens at large. The core principles of accountability and openness are severely undermined by such a foolish and arbitrary limitation on the information. By suppressing important public information, the political elite is made even more unaccountable and unanswerable, which goes against the core principles of "Democracy and Rule of law." and also the Finance Act, of 2024 which introduced the system of electoral bonds through various amendments in the RPA 1951 and ITA 1961 are unconstitutional as they do not require political parties to mention the names and address of those contributing by way of electoral bonds in their common contribution reports filed with the Election Commission of India annually. This will have a major implication on transparency in political party finances and will fundamentally alter the perception around political donations.<sup>32</sup>

Not only that but also the scheme of 2018 has allowed for unrestricted corporate donations to political parties as well as anonymous financing by both Indian and international firms, both of which can have serious repercussions on democracy in India. The aforementioned reforms have

---

<sup>31</sup> 'Association for Democratic Reforms & National Election Watch' (*ADR India*, 7 July 2022) <[https://adrindia.org/sites/default/files/ElectoralBondsNote\\_March\\_July2021\\_updated.pdf](https://adrindia.org/sites/default/files/ElectoralBondsNote_March_July2021_updated.pdf)> accessed 10 October 2022

<sup>32</sup> *Ibid*

legalised anonymous donations and abolished the limitations on corporate political contributions. The use of electoral bonds, which are exempt from disclosure under the RPA 1951, was introduced by the Finance Act of 2024, opening the door to unrestricted, unauthorised funding of political parties. The amendment to the Income Tax Act, of 1961 allows anonymous donations up to Rs 20,000 and donors need not provide their names or PAN details leading to contributions received by political parties exempted from being taxed. Thus, political parties can avoid scrutiny by recording donations as being less than Rs 20,000 and facilitating anonymous donations and it also violates the fundamental right of citizens under Article 19(1) (a) to be privy to information regarding potential electoral candidates. The country's autonomy is seriously jeopardised by these Amendments, which are also likely to hurt electoral transparency and encourage political corruption. They have also made the unholy nexus between politics and corporate houses shadier and more treacherous, and they increase the likelihood that special interest groups and corporate lobbyists will abuse them.

Also, India Today in its media report titled “Caught on Camera: Politicians Offer to Convert Black Money into White For 40% Commission. In its report, Representatives of some of the main political parties in the nation were caught on camera acting as middlemen for undeclared money along the murky path of evasion. They were discovered to be conducting their dubious activities inside their party offices in Delhi, Noida, and Ghaziabad. The BSP's Ghaziabad district President, Virendra Jatav, met the undercover reporters for India Today while he was acting as a businessman. Jatav was fast to exchange the phony Rs 10 crore from the investigation team for a hefty fee.

“It will be exchanged for 35-40 percent. Nothing less than 40 percent,” the BSP leader said. Titu Yadav, a member of the Samajwadi Party's Noida Mahanagar branch, offered to exchange the faulty notes for fresh money at the same rate. “The rate (for exchanging black money) is 40 percent,” he said.

“You mean for exchanging the old notes, right?” asked the undercover reporter.

“You'll get the new ones. Yes. Take it 'hand-to-hand' at 40 percent,” replied Yadav.

It was discovered that some lawmakers were acting as touts for illicit money transactions right in the middle of the national capital. TS Krishnamurthy, a former chief election commissioner, stated that all political parties practised double standards regarding electoral reforms. He stated that politics is still the source of the problem with black money and that all parties engage in questionable financial practices. Hence India Today Expose” exposes how political parties have been able to generate unaccounted money without any backlashing or repercussion from the affirmed authorities.

In yet another report by one of the News media, Indian Express in its report titled “Poll Panel Lists 200 Parties That Exist Mostly on Paper, Will Send It to Income Tax for Action. Election Commission Suspects many of These Dormant Parties Being Used for Money Laundering, Need Scrutiny.” in which the report highlighted that there were almost 200-odd political parties that were directed by the Election Commission of India to the Central Board of Direct Taxes (CBDT) to be delisted. These political parties, many of which, EC officials suspect, could be nothing but money-laundering operations, are parties that have not contested any election since 2005 and exist mostly on paper. According to sources who spoke to The Indian Express, the purpose of the communication was to ask CBDT to check into the financial problems of these political organisations because they are no longer eligible for any tax benefits available to registered political parties.

According to sources, the Election Commission (EC) wanted the CBDT to take a "deep look" at the finances of these delisted parties so that the public will understand that establishing a political party with the goal of "converting black money into white" is no longer a wise decision. According to a source, the EC decided to use its inherent powers under Article 324 of the Constitution, which gives it the authority to "control the conduct of all elections," after waiting years for succeeding governments to take action on its proposal to amend pertinent laws to ensure that there is adequate transparency in the manner in which funds flow to political parties and are spent by them. It has decided to delist the 200 or so political parties in light of this.<sup>33</sup>

---

<sup>33</sup> ‘Poll Panel Lists 200 Parties That Exist Mostly on Paper, Will Send It to Income Tax for Action. Election Commission suspects many of these Dormant Parties Being used for Money Laundering, Need Scrutiny’ (*Indian*

## CASE LAWS SUPPORTING THE CAUSE FOR CALLING THE SCHEME OF 2018 UNCONSTITUTIONAL

In *State of U.P. v Raj Narain*,<sup>34</sup> the Apex Court has held that Article 19(1)(a) includes the right of citizens to know every public act and everything that is done in a public way, by their functionaries. In its judgment in *Union of India v Association for Democratic Reforms & Another*,<sup>35</sup> a three-judge Bench of this Court affirmed that Article 19(1)(a) necessarily and mandatorily includes the right of citizens to know relevant information about potential candidates for election to decide independently to cast their votes in favour of a candidate. Another three-judge Bench of this Court in *People's Union for Civil Liberties & Anr. v Union of India & Anr.*<sup>36</sup> reaffirmed this interpretation of Article 19(1)(a) while holding that voters have the right to know about a candidate's qualifications and financial status. In paragraph 18 of the judgment, the Court states: "So, the foundation of a healthy democracy is to have well-informed citizens-voters." The Court further held in paragraph 42 that fundamental rights do not have fixed contents, but are made vibrant by an interpretation by this Court to create a "truly republic democratic society" and that "there can be little doubt that exposure to public gaze and scrutiny is one of the surest means to cleanse our democratic governing system and to have competent legislatures" (at paragraph 78).

A three-judge Bench of this Court in *C. Narayanaswamy v C. K. Jaffer Sharief*<sup>37</sup> while considering expenses of candidates for elections, in paragraph 22 has held that: As the law stands in India today anybody including a smuggler, criminal or any other anti-social element may spend any amount over the election of any candidate in whom such person is interested, for which no account is to be maintained or to be furnished... It is true that with the rise in the costs of the mode of publicity for support of the candidate concerned, the individual candidates cannot fight the election without proper funds. At the same time, it cannot be accepted that such

---

*Express*, 21 December 2016) <<https://indianexpress.com/article/india/poll-panel-lists-200-parties-that-exist-mostly-on-paper-will-send-it-to-income-tax-for-action-money-laundering-fake-4437976/>> accessed 10 October 2022

<sup>34</sup> *State of UP v Raj Narain* [1975] 4 SCC 428

<sup>35</sup> *Union of India v Association for Democratic Reforms & Another* [2002] 5 SCC 294

<sup>36</sup> *People's Union for Civil Liberties & Anr v Union of India & Anr* [2003] 4 SCC 399

<sup>37</sup> *C Narayanaswamy v C K Jaffer Sharief* [1994] 3 SCC 170



funds should come from hidden sources that are not available for public scrutiny. ...if the call for "purity of elections" is not to be reduced to lip service or a slogan, then the persons investing funds, in furtherance of the prospect of the election of a candidate must be identified and located. The candidate should not be allowed to plead ignorance about the persons, who have made contributions and investments for the success of the candidate concerned at the election.

The arbitrary nature of the amendments lies in the unreasonable restrictions on the freedom of information regarding the identities of persons or corporations making contributions to political parties. Also, the harms inherent in allowing foreign money to influence the Indian electoral system was recognized by a Division Bench of the High Court of Delhi in *Association for Democratic Reforms v Union of India*,<sup>38</sup> wherein the Court held that foreign companies could not donate funds to Indian political parties while citing *Foreign and in International Politics* by John Montgomery in the following terms: Both foreign contribution and foreign aid can have different effects in diplomacy. It could serve to create a national presence by the foreign contributor. It has the potential of procuring international favours, and even influence or impose political ideology...". This potential to influence or impose political ideology is only strengthened by the impugned amendments in the Finance Act, 2018 by the twin accomplices of anonymity from the public and the lack of a cap on the monetary value of contributions.

The lack of transparency in the impugned amendments allows for an increase in pernicious quid pro quo arrangements between political parties and corporate contributors, who retain the right to disclose the fact of their contribution to the relevant political parties without any corresponding duty to reveal this information to the general public. The unavoidable and obvious consequence of such a system will be the passing on of benefits by parties forming the Government to those corporations who have funded them. Corruption in political life in India is a recognized reality and has been noted by this Court, notably in *Dr. P. Nalla Thampy Terah v Union of India*<sup>39</sup> where a five-judge Bench in paragraph 6 has stated that: "There is a perceptible awareness amongst political observers, if not amongst active politicians, that one of

---

<sup>38</sup> *Association for Democratic Reforms v Union of India* [2014] 209 DLT 609

<sup>39</sup> *Dr. P. Nalla Thampy Terah v Union of India* [1985] SCC 189

the ways to ensure that elections are free and fair is to weed out the influence of big money which, to use an expression which has become a household word, is more black than white.” In a decision of the Bombay High Court in *Jayantilal Ranchhodas Koticha & Ors. v Tata Iron & Steel Co. Ltd.*<sup>40</sup> whereat paragraph 1, the eminent Chagla, CJ has held as follows: “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.”

## **REASONS WHY THE ELECTORAL BONDS SCHEME OF 2018 IS LEGALLY ENFORCEABLE**

The funds received by various Political Parties via the Electoral Finance Bonds scheme used to be black money donations as the introduction of the Electoral Bonds Scheme, in 2018 has brought in a market shift from the old electoral system which suffered from many lacunas. Under the old system, massive amounts of political donations were being made in cash, by individuals/ Corporates, using illicit means of funding. This ensured that unaccounted criminal money/black money was pumped in for financing elections.<sup>1</sup> Also the result of such contributions in cash would inevitably be that neither the identity of the donor nor of the recipient- the political party would ever be known or disclosed. In other words, the system was wholly opaque and ensured complete anonymity. Furthermore, the unaccounted amount of money received by political parties was spent without being accounted for. Thus, enabling a parallel economy, as it were, through the use of the unaccounted amount of cash. In the old

---

<sup>40</sup> *Jayantilal Ranchhodas Koticha & Ors v Tata Iron & Steel Co. Ltd.* [1958] AIR 155 (Bom)

system, it was also observed that political parties were floated without any serious intention of contesting in elections, merely to be utilised as some kind of vehicle for a generation of large amounts of tainted cash.

Under the Scheme of 2018, Political Parties or candidates get resources from the government that has a monetary value. Access to publicly owned media, the use of government buildings for meetings and rallies, free or discounted public transportation for candidates and important party members during campaigns, free printing, and distribution of ballot papers (in nations where parties are responsible for providing them), free or discounted office space for party functions, interest-free loans to cover basic campaign costs, and tacit support are some of the most common indirect subsidies. More than 68% of nations worldwide provide political parties or candidates with some kind of indirect subsidy, according to International IDEA figures.

#### **THE STATUS OF ELECTORAL DONATIONS AND FUNDING AT THE PRESENT**

The current electoral donation system essentially permits anonymous people, corporations, including foreign companies, to fund elections in unlimited amounts to enable the political party that has their best interests in mind to win elections as a result of the Supreme Court's refusal to grant a stay order on the electoral bonds scheme. The government's stated goal of reforming the electoral donation system and promoting openness is no longer served by this, which now serves a very different objective. "The early trends, as revealed via RTI information and the volume of donations (Rs 6128 crore in just 18 months) flowing via this channel, suggest to very a significant dilemma facing India's electoral system and nature of politics," one analyst remarked. In the democratic system of the nation, the government has effectively legalised crony capitalism.<sup>41</sup>

Parties are now treated with at least the same level of scepticism as other unseen forces that influence elected officials.<sup>42</sup> Because the major corporate funders have their particular interests,

---

<sup>41</sup> Niranjana Sahoo, 'Decoding India's electoral bonds scheme' (*Observer Research Foundation*, 30 November 2019) <<https://www.orfonline.org/research/corporate-funding-of-elections-the-strengths-and-flaws/>> accessed 10 October 2022

<sup>42</sup> James Madison, 'The Federalist Papers No. 10' (*Yale Law School: The Avalon Project*, 23 November 1787) <[https://avalon.law.yale.edu/18th\\_century/fed10.asp](https://avalon.law.yale.edu/18th_century/fed10.asp)> accessed 10 October 2022

the parties no longer serve as a crucial conduit between elected officials and the interests of citizens, but rather constitute a grave threat to those interests. Special interest groups, like corporations that give sizable sums of money, have compromised the integrity and independence of the parties because they can now donate an unlimited amount to a political party that will agree to advance their self-interest over the interests of the general public in exchange for campaign funding.<sup>43</sup>

### **LIMITING THE ROLE OF INTERESTED MONEY WHILE KEEPING AN EYE ON RISING COSTS**

Due to the falsity and reliability of the expenses reported by candidates and parties in India, it is challenging to assess the actual financial need. What is clear, however, is that corporate donations obtained through anonymous channels account for the majority of the funding used in elections. State financing injections can lessen, if not eliminate, the need for illicit corporate donations. Political parties must consent to stop obtaining donations from the business sector to receive state funding, as has been the case in the circumstances of several other nations. The case of Japan is instructive here. By using governmental support, Japan has been able to lower the cost of its elections. Over time, the nation's laws on expenditure, requirements for transparency, and restrictions on corporate donations have made public funds the primary source of income for the parties. It is important to combine public funding with expenditure caps and restrictions on, if not outright prohibitions on, corporate spending on elections.

In contrast, there were no meaningful restrictions in India before the 2003 revisions because the rules solely applied to candidates. The boundaries were lowered so drastically after 2003 that they had to be dishonestly crossed. The 1969 corporate gift restriction increased the amount of black money. As a result, the spending maximum must be established using actual cost predictions rather than arbitrary minimum limits. Additionally, corporate donations must be legalised up to a particular amount rather than being completely outlawed. India may gain a lot from what Canada has done. In Canada, the introduction of public funding came with strict

---

<sup>43</sup> *Davis v FEC* [2008] 128 S. CL 2774

rules, such as expenditure caps and tax breaks for lesser contributions. Tax incentives for large contributions were unsuccessful in India, while tax incentives for small contributions might help organisations raise more money from these gifts and rely less on corporate donations.

India can also benefit from Germany's experience, which employs the matching grants technique. The state doubles any money that parties raise in other ways. This may significantly affect how motivated parties are to increase revenue from tiny contributions and membership dues. Additionally, it addresses the issue of small contribution fundraising costs, which is a common one. Sweden is another excellent example of phasing out corporate donations in a similar manner. The imposition of state subsidies in Sweden, where corporate donations were a significant source of funding for political parties, had such a profound impact that the parties voluntarily stopped accepting corporate donations. Public funding and tax breaks have also been used to encourage small donations and grassroots finance in other Western European nations including France and the Netherlands. However, the Netherlands' reduced use of corporate funds can be explained by the favouritism of corporations in decision-making, which makes them feel less of a need to support political parties.<sup>44</sup>

The Indian situation, however, is considerably dissimilar from the Dutch one. To lessen parties' dependency on corporate donations, it is important to consider how to encourage small donations and membership dues. It's also important to think about when payments will be made. As state funds are typically not available during the campaign period, as in the cases of Colombia and Costa Rica, post-election repayment systems typically do not diminish reliance on corporate donations.

## CONCLUSION

The existing government altered its position and allowed donors to use the Electoral Bonds Scheme in the upcoming State Assembly elections after receiving an enormous amount of donations for the 2019 Lok Sabha elections. The time for deciding what to do next with the electoral bonds scheme to restore the equilibrium in the electoral donations should be imminent

---

<sup>44</sup> *Ibid*

given that this government is hesitant to give up on its incumbent's advantage. However, the possibilities for change continue to be gravely constrained and even fatally flawed. Therefore, until the Parliament or the Court finds a method to cooperate with or get past the unbalanced electoral equilibrium of funds received by the political parties, we may be stuck with it. Hence Electoral Bonds Scheme of 2018 in itself is a very significant step except for some of its odds and if certain modifications are applied in the Indian Sub-continent will make wonders and will be one of the most significant steps in controlling the monetary powers of various Political Parties and to regulate them.