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## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **A COMPREHENSIVE APPROACH TO ENSURING FIDUCIARY RESPONSIBILITY IN ELECTORAL FUNDING**

AUTHORED BY - KHUSHI DIXIT & KRITIKA AGRAWAL

## **ABSTRACT**

*Maintaining the integrity, openness, and equity of the election process depends on ensuring fiduciary responsibility in electoral funding. The article offers a thorough method for comprehending and negotiating the intricate interactions between stakeholders' practical difficulties, ethical commitments, and legal needs. It explores the legislative framework that controls election financing, including rules for disclosure, spending caps, contribution limitations, and banned funding sources. The significance of upholding public trust is emphasized by discussing ethical issues such preventing conflicts of interest, improving transparency, and fostering equity.*

*The research delves into pragmatic issues such as proficient oversight and implementation, adjusting to technological progressions, and harmonizing the concerns of heterogeneous stakeholders. Outlining their roles in maintaining financial integrity, specific fiduciary duties of candidates, political parties, donors, regulatory organizations, and voters are highlighted. Lastly, to guarantee fiduciary duty, best practices such creating explicit regulations, carrying out frequent audits, offering training, and involving the public are advised. Stakeholders can promote a reliable and just democratic system and protect the electoral process by implementing this all-encompassing strategy.*

## **Introduction**

What comes to mind first when we say democracy? Transparency and fairness! Election is one way to ensure transparency and fairness in a democracy where the rulers are elected by the consent and votes of citizen. Elections as a process involve various steps such as the announcement of dates and schedules, nomination of candidates, election campaigning, and more. The entire process should be conducted in a manner that is fair and transparent. However, when we talk about electoral funding, which is a crucial part of the election campaign, there is a significant lack of transparency. In the past,



the term "electoral funding" wasn't commonly used in politics, but corporations still funded political parties. Political parties were funded by large corporations and organizations, yet innocent voters had no idea about these financial connections. Despite numerous amendments and the introduction of new provisions, nothing has effectively ensured fairness in elections. The persistent lack of transparency continues to undermine public trust in the democratic process. This article delves into the legal concepts of electoral funding, exploring the practical challenges and proposing solutions to ensure fiduciary responsibility in electoral funding. It aims to provide a comprehensive understanding of the mechanisms behind political financing and the steps necessary to create a more transparent and fair electoral system<sup>1</sup>.

Funding during elections is a common practice that often leads to the flow of black money into the political system. To curb this illicit flow of funds, the NDA government introduced the concept of electoral bonds. While the intention behind electoral bonds was to create a cleaner, more transparent way for corporations to fund political parties, it inadvertently opened new avenues for anonymous donations. The Supreme said that it against the citizens right to know and article 19(1)a of Indian Constitution<sup>2</sup>.

This article discusses how ethical considerations in electoral funding are vital for preserving the integrity and fairness of the electoral process. Avoiding conflicts of interest, limiting excessive corporate influence, preventing illegal funding, providing equal access to resources, respecting donor privacy, using funds ethically, and maintaining public trust are all essential for upholding the democratic principles that support free and fair elections. Addressing these ethical concerns helps to create a political environment where elections genuinely reflect the will of the people, free from undue influence and corruption<sup>3</sup>.

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<sup>1</sup> Dipak Kurmi, India's Electoral Funding: Challenges, Transparency and Reforms, The Sentinel, Feb. 21, 2024, <https://www.sentinelassam.com/more-news/editorial/indias-electoral-funding-challenges-transparency-and-reforms>.

<sup>2</sup> P. Mittal & V. Agarwal, Electoral Bonds: Efficacious Or A Camouflaged Road To Tyranny, 6 Indian Pol. & L. Rev. 20-54 (2021).

<sup>3</sup> A. Kashyap & G.S. Gill, Electoral Bond Scheme: The Legitimate Opacity in Political Funding, 1 Law Essentials J. 79 (2020).



## **History of Political Funding in India**

Electoral funding has been part of Indian Democracy since so many years. In the past, there were no restrictions on how much money companies could donate to political parties. However, this could lead to corruption, as companies might donate money to parties in exchange for favors. The Santhanam Committee was set up by the Indian government to look into ways to prevent corruption. The committee recommended that companies should not be allowed to donate money to political parties. The government accepted this recommendation and banned companies from donating money to political parties. This was seen as a way to make the political system more democratic.

On the recommendation of Santhanam Committee Indira Gandhi imposed ban on corporate donation. Although the companies did not complied with ban and adopted alternative method to donate money to parties and named it as payment for service and not donation.\* Further during the Rajiv Gandhi's Government in 1985 he lifted the ban on companies donation to political parties, though he put a restriction on donation limit of 5% of companies average net profit. Beside this provisoion the companies are also required to mention all the records of political donation in it's report.\* Afterwards through Companies Act 2013 the donation limit was relaxed and increased from 5% to 7.5%.

NDA government through financial bill of 2017 amended section 182 of Companies act 2013, Now the donation limit is not limited to 7.5%, can thus donate any amount of money and political parties can receive donations from profit as well as loss making companies and they are not even required to disclose the identity of recipient.

Foreign companies were also involved in funding political parties, so the government introduced the Foreign Contribution Regulation Act (FCRA) in 1976 to regulate funding by foreign corporations to organizations and political parties in India. Organizations or political parties accepting funding need to comply with the guidelines given in the FCRA; otherwise, they are not allowed to receive funds. The Delhi High Court decision in Indian National Congress (I) vs. Institute Of Social Welfare & Ors. significantly altered the landscape of political funding in India. In this landmark ruling, the court found two major political parties, the Indian National Congress (INC) and the Bharatiya Janata Party (BJP), guilty of accepting donations from companies registered in India but controlled by foreign entities. This ruling highlighted a serious violation of the Foreign Contribution Regulation Act (FCRA), which strictly prohibited political parties from receiving contributions from foreign sources.

In response to this decision and the subsequent legal implications, the government introduced amendments to the FCRA in 2016 and 2018. These amendments fundamentally changed the regulations surrounding political donations. Under the revised FCRA, foreign companies or Indian companies with foreign stakeholders were permitted to donate to political parties without violating the law. This legislative change meant that political parties would no longer be held guilty for accepting funds from such sources.

### **Practical Challenges**

In order to achieve fiduciary responsibility in electoral fundraising, one must successfully navigate a number of real-world obstacles. In order to preserve election fairness, openness, and public confidence, these issues must be resolved.

In India, there is a discernible trend where laws can be passed relatively swiftly and with minimal hesitation, but their enforcement can take years, often stymied by a host of practical challenges. Regulatory authorities face significant difficulties in monitoring and enforcing compliance due to constraints related to staffing, technological capabilities, and budgetary resources. Historically, a substantial portion of India's election politics has been financed through illicit financial transfers facilitated by shadowy networks and informal channels. The proportion of funds political parties received through formal banking methods has historically been lower in comparison. The liberalization of India's financial system in the 1990s marked a significant shift. As the commercial sector expanded and its share of the national revenue grew, there was a corresponding increase in the amount of unaccounted money flowing into the country. This influx of unaccounted money had profound impacts, amplifying its influence and involvement in political activities. The situation was further exacerbated by the introduction of electoral bonds. These bonds serve as intermediary financial instruments that allow donors to contribute to political parties in secret, thereby providing a legal shield against regulatory scrutiny and enabling clandestine business-politics relationships to flourish. Electoral bonds were introduced with the intention of cleaning up political funding by ensuring that donations were channeled through formal financial systems. However, the secrecy they afford to donors has undermined this goal. By allowing anonymous contributions, electoral bonds have created a loophole that can be exploited to facilitate the flow of unaccounted money into the political system. This undermines efforts to achieve transparency and accountability in political financing. Moreover, the entrenched nature of illicit financial networks means that these challenges

are not merely logistical but also systemic. The widespread use of informal channels and the deep-rooted connections between business interests and political parties create an environment where illicit financial flows are difficult to detect and control. The introduction of electoral bonds has provided a veneer of legitimacy to these practices, making it even harder for regulatory authorities to intervene.

Maintaining openness regarding political financing is essential to raising public understanding. One significant criticism centers on the difficulties in tracking down the real source of funding when buying electoral bonds, which makes it impossible to determine the real cause of funds. Through introduction of electoral bond voters are unable to know which organization funded a political party but ruling party can get this information from SBI, and this is against democracy. While the intention behind electoral bonds may be to streamline political donations, they have also introduced several transparency issues that undermine public trust. Most of the countries prefer that the elections are funded publicly so that transparency is maintained among voters. This will improve fairness in elections. So, the practical challenge is that there is no transparency while providing fund, the main aim of the government should be ensuring that the elections must be funded publicly, if not funded publicly then the voters must have information regarding which political party has been funded by which organization. The ruling government should be barred from accessing this information but voters should be allowed to get this information. in the electoral machinery, democracy is all about striving to build harmony and trust between all its pillars through open dialogue, transparency in processes, and continuous improvement of the system by active participation in democratic practices\*. The voters has right to know about the assets and information regarding the background of candidates { **Association For Democratics Reforms vs Union Of India on 15 February, 2024** }