

# CURRENT AFFAIRS

WITH

**A. MANGTANI**

**ELECTORAL REFORMS  
PART - II  
(ELECTION FINANCE)**



## INSIGHT IAS ACADEMY

*India's Best Institute for Civil Services Prep.*

**CENTRAL DELHI**

60/17, Above Subway  
Old Rajinder Nagar, New Delhi - 110060

**NORTH DELHI**

B-18, Main Road, Satija House  
Dr. Mukherjee Nagar, Delhi-110009



011-45090051

09818333201

09871216382

E-MAIL : [insightiasacademydelhi@gmail.com](mailto:insightiasacademydelhi@gmail.com)

• WEBSITE : [www.insightiasacademy.com](http://www.insightiasacademy.com)

# INSIGHT GENERAL STUDIES

## ELECTORAL REFORMS PART II – ELECTION FINANCE

### ELECTORAL BONDS

### STATE FUNDING OF ELECTIONS

#### SUMMARY SNAPSHOTS OF THE CURRENT LAWS GOVERNING ELECTION FINANCE

The law regulating election finance in India has to be ascertained after examining the provisions of the RPA Act and Election Rules, the Companies Act, the IT Act and the Foreign Contribution (Regulation) Act.

CATEGORY	EXISTING REGULATION
Limits on Expenditure	Yes <ul style="list-style-type: none"><li>70 Lakhs for Parliamentary constituencies and Rs. 28 lakhs for Assembly constituencies.</li><li>Includes party and supporter spending towards a candidate's campaign.</li><li>Excludes expenditure incurred by "leaders of a political party" for travel for propagating the party's program.</li><li>Excludes expenditure by parties or their supporters incurred for generally propagating the party's program as long as no specific candidate is mentioned (given S. 77's focus is on "candidate" and not party)</li></ul>
Disclosure of Expenditure	<ul style="list-style-type: none"><li>True copy of account of election expenses of every contesting candidate lodged with the District Election Commissioner within thirty days of election of returned candidate</li></ul>
Limits on Contribution	None <ul style="list-style-type: none"><li>No limits on individual contributions.</li><li>Corporate contributions to political parties are allowed as long as the (non-government) company is three years old; its aggregate contribution in every financial year is below 7.5% of its average net profits during the three immediately preceding financial years. <b>(See the recent changes below)</b></li><li>Ban on foreign contribution to candidate or political party.</li><li>No limits on political party accepting contribution.</li></ul>
Disclosure of Contribution	By Party: Report detailing all contributions above Rs. 20,000 received from any person or company submitted in each financial year to the Election Commission. By Company: Profit and Loss account will detail the total amount contributed and the name of the party to which contribution made in every financial year.
Public Funding	Partial

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**CONTACT: amitmangtani.iitb@gmail.com**

## of Election Campaigns

- No direct State subsidy.
- Partial in kind subsidy in the form of free allocated air time on state owned electronic media (since 1996) to parties based on their past performance.
- Free supply of copies of electoral rolls and identity slips of electors to candidates.

### RECENT CHANGES IN THE ELECTION FINANCE LAWS

- **The Finance Act 2017 brought two major changes:**
  - The first eliminates the cap on corporate giving (which previously stood at 7.5% of a corporation's average net profits over the previous three years).
  - The second abolishes the provision that firms must declare their political contributions on their profit and loss statements.
- Till recently, there was a ban on foreign contribution to candidates and political parties. Foreign funding of political parties was banned under Section 3 of the Foreign Contribution (Regulation) Act, 2010. **In April 2016, government amended the Foreign Contribution Regulation Act (FCRA), 2010 through the Finance Bill, 2016.**
  - The main objective of this amendment was to make way for the political parties to receive donations from foreign companies such as Vedanta as "Indian Source" despite of their being "foreign".

### NEED FOR ELECTION FINANCE REFORM

It is now well established that money plays a big role in politics, whether in the conduct or campaigning for elections. The Election Commission of India (hereinafter "ECI"), in its guidelines issued on 29<sup>th</sup> August 2014, recognised that "concerns have been expressed in various quarters that money power is disturbing the level playing field and vitiating the purity of elections.

There is a need for election finance reforms because of the following reasons:

- First, it is the undeniable fact that financial superiority translates into electoral advantage and so richer candidates and parties have a greater chance of winning elections.
- Second, and connected to the above point is the issue of equality and equal footing between richer and poorer candidates.
- Third, in complete contravention to the various laws and ECI notifications, there is widespread prevalence of black money, bribery, and quid pro quo corruption; this helps candidates fund their campaigns.
- Fourth, the current system tolerates, or at least does not prevent, lobbying and capture, where a sort of quid pro quo transpires between big donors and political parties/candidates. While the problem of

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bribery, corrupt practices and black money are important, to some extent, they have distracted from the larger problem of election finance and the capture of government by private individuals and interest groups. **This creates a nexus between corporate/industrialists and politician.**

- Finally, the argument for election finance reform is premised on a more philosophical argument that large campaign donations, even when legal, amount to “institutional corruption”, which compromises the political morality norms of a republican democracy. Instead of direct exchange of money or favours, candidates alter their views and convictions in a way that attracts the most funding. This change of perception leads to an erosion of public trust, which in turn affects the quality of democratic engagement.

## LEGAL LACUNAE

There are various loopholes in the laws regarding election expenditure, contribution and disclosure.

- First, and most importantly, despite the Election and Other Related Laws (Amendment) Act 2003, the subject of regulation under Section 77 of the RPA only covers individual “candidates” and not on political parties. Consequently, political parties and candidate supporters are allowed unlimited expenditure in propagating the party program, as long as no specific candidate is favoured.
- Second, clever accounting can allow parties to attribute large amounts of expenditure to their “leaders” and hence, avail of the exception under the Explanation to Section 77.
- Third, the scope of Section 77(1) is very narrow and applies only from the date of nomination to the date of declaration and thus any expenditure incurred in the remaining period is exempt from any limit or regulation.
- Fourth, regarding political contribution, the Rs. 20,000 disclosure limit can be easily evaded by writing multiple cheques below Rs. 20,000 each, or giving the money in cash.
- Finally, disclosure norms need to be strengthened. The ECI’s transparency guidelines do not have statutory authority and there is no legal consequence for non-compliance. Further, political parties and candidates file their returns with the ECI, without putting up the information online (on the ECI’s website) or making it easily available for public inspection (barring an RTI).

### CONTEXT

Union Budget in 2017-18 introduced two measures under a section titled “Transparency in Electoral Funding”:

- Reduction in the limit for cash donations to Rs.2000 from Rs.20000 and
- Issuance of electoral bonds and the amendment to the RBI Act to enable this.

Union Finance Minister has recently revealed some of the details of the electoral bonds scheme.

### BASIC DETAILS ABOUT ELECTORAL BONDS

- An electoral bond is designed to be a bearer instrument like a Promissory Note — in effect, it will be similar to a bank note that is payable to the bearer on demand and free of interest. It can be purchased by any citizen of India or a body incorporated in India.
- The bonds will be issued in multiples of Rs. 1,000, Rs. 10,000, Rs. 1 lakh, Rs. 10 lakh and Rs. 1 crore and will be available at specified branches of State Bank of India. They can be bought by the donor with a KYC-compliant account.
- Donors can donate the bonds to their party of choice which can then be cashed in via the party's verified account within 15 days.
- The bonds will be available for purchase for a period of 10 days each in the beginning of every quarter, i.e. in January, April, July and October as specified by the Central Government. An additional period of 30 days shall be specified by the Central Government in the year of Lok Sabha elections.
- Every party that is registered under section 29A of the Representation of the Peoples Act, 1951 (43 of 1951) and has secured at least one per cent of the votes polled in the most recent Lok Sabha or State election will be allotted a verified account by the Election Commission of India. Electoral bond transactions can be made only via this account.
- The electoral bonds will not bear the name of the donor. In essence, the donor and the party details will be available with the bank, but the political party might not be aware of who the donor is. The intention is to ensure that all the donations made to a party will be accounted for in the balance sheets without exposing the donor details to the public.
- A donor will get a deduction and the recipient, or the political party, will get tax exemption, provided returns are filed by the political party.

### DOES ELECTORAL BONDS BRINGS TRANSPARENCY IN POLITICAL FUNDING ?

The conventional system of political funding is to rely on donations. These donations, big or small, come from a range of sources from political workers, sympathisers, small business people and even large industrialists. The conventional practice of funding the political system was to take donations in cash and undertake these expenditures in cash. The sources are anonymous or pseudonymous. The quantum of money was never

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disclosed. The present system ensures unclean money coming from unidentifiable sources. It is a wholly non-transparent system.

Electoral bonds were first announced by Finance Minister as a major reform that could “cleanse the system of political funding in the country”. It was in sync, he said, with the government’s desire to move towards a cashless economy.

The introduction of these bonds will bring some element of transparency as much as all donors declare in their accounts the amount of bonds that they have purchased and all parties declare the quantum of bonds that they have received.

This instrument is such that it seeks to promote cashless political donations since these bonds can be purchased either through cash or cheque.

There is a digital trail under this system, but only certain entities are privy to these transactions—Reserve Bank of India, Election Commission, political parties, corporate donors, a public-sector bank and the income tax department. Nowhere in this equation do you see the media, civil society or the general public.

## Some Concerns with the Electoral bonds

- The opposition have pointed that the bonds will help any party that is in power because the government can know who donated what money and to whom.
- Any potential donor, corporate houses or industrialists do not have to worry about donating to the party in power, but will have to worry about donating to party in opposition. Any party in power wants to know the donors for opposition and they may face some trouble.
- There is nothing much said about how the political parties spend. There is a huge gap between the ceiling and the money actually spent.

**India faces a political funding trilemma — transparency norms, curbing black money, and broadening the constituency of donors.** This trilemma is not borne out of logical necessity, but out of existing economic and political circumstances, such as the general prevalence of black money in the economy and the lack of the Election Commission’s capacity to enforce laws. In the long term, these circumstances could be changed. A short-term reform, however, is unlikely to achieve all three objectives.

That said, the electoral bond is not necessarily the best available policy. However, the criticism of the bond scheme should factor in India’s political funding trilemma - transparency is only one of the three factors.

## Way Forward

The ideal solution would be to set up a National Electoral Fund to which all donors can openly contribute without expressing any preference for any political party. The funds could then be allocated to all registered political parties in proportion to the votes obtained. This will also address the donors’ concern for secrecy.

Once public funding of political parties is ensured, private donations must be totally banned. And since public funds will be involved, there must be an annual audit by the Comptroller and auditor General of India or an auditor approved by it. This will be the most decisive action electoral reform that the country needs.

According to Association of Democratic Reforms report, 69% of the income of political parties between 2004-05 and 2014-15 came from unknown sources. At the same time, NCRWC estimates current election funding expenditure to be 30-40 times the sanctioned limit. This points towards the widespread misuse of money in Indian electoral process which has led to corruption, cash for votes, money laundering, black economy, exclusion of honest candidates and negative social impact.

Hence, to make Indian electoral process clean, transparent and just, state funding of political parties has been advocated as significant electoral reform. **Indrajit Gupta Committee, Second ARC, Law Commission of India etc. have recommended it in various degrees.**

### Benefits of State Funding of Election

- **Provides level playing ground** – It allows candidates from all sections of society to start on an equal financial footing. This can encourage people with clean and honest image to join politics
- **Restricts Crony Capitalism** – it would reduce the dependence of political parties on private contributions, which usually comes from big corporates/business houses on a quid pro quo basis, thus, serve great public interest instead of private corporate gains and crony capitalism
- **Ensures Greater Transparency** – Since the political parties would receive a substantial amount of their income from the State, they would be obliged to ensure greater transparency in disclosing their income and expenditure, thereby help curb corruption.
- **Curtails Black economy**- It will reduce use of black money and money laundering in the electoral process.
- **Promotes intra party democracy** – It would reduce the clout of moneybags within the political parties since members' position will be based on merits and not wealth
- **Improves the functioning of democracy** – Candidates will be able to concentrate on important public issues rather than raising money, thus, providing fertile ground for 'citizen centric governance'.

### Challenges associated with the State Funding of Elections

- Unless there is a mechanism to completely restrict private contributions, the state funding will fail to check misuse of money power
- Biggest limitation for state party funding is lack of monitoring mechanisms for party expenditure.
- It is morally and economically untenable to use tax payers' money for funding elections, especially when urgent welfare programmes like health, education, poverty etc. face resource constraints.

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- State grants of funds would erode the independence of political parties as they would be answerable to the State even for their internal working and management of funds.
- Government grants may incentivize even the non-serious parties to contest election leading to mushrooming of political parties, and overburdening the electoral apparatus.
- There is no clear and widely accepted formula to allocate fund to new party or independent candidate before election. For eg. Whether it will be full or partial funding, or in cash or kind, or to all or just national parties etc.

## **The following are the observations of Law Commission:**

- Currently, a system of complete state funding of elections or of matching grants wherein the government matches the private funding (by donors or corporates) raised by political parties are not feasible given the economic conditions and developmental problems of the country.
- Given the high cost of elections and the improbability of being able to replace the actual demand for money, the existing system of giving indirect in-kind subsidies instead of giving money via a National Election Fund, should continue.
- Any reform in state funding should be preceded by reforms such as the de-criminalisation of politics, the introduction of inner party democracy, electoral finance reform, transparency and audit mechanisms, and stricter implementation of anti-corruption laws so as to reduce the incentive to raise money and abuse power.