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**“SOURCES AND VALIDITY OF VARIOUS ROUTES OF
POLITICAL FUNDING.”**

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I. ABSTRACT:

“India celebrates elections as the biggest festival of democracy. Why political funding is an essential part of this festival will be described in this research. The author showcases the effects of the relation between the donor and donee on the functioning of the government. The research will provide critical analysis of funding laws and policies in India.

How the government’s incentives towards transparency felicitate the anonymity of the political funding will be the subject matter of this research. The research will also display the rights of the voter. In the end this research, will point out the fact that how the funding policies like Electoral bonds are affecting voter’s right and violates Article 19 of the constitution.”

Keywords: *Disclosure, Political funding, Transparency and Quid-pro quo relationship.*

I.I OBJECTIVE OF RESEARCH:

- 1. The main objective of this research is to define the various sources and validity of the routes of political funding.*
- 2. Define how the nondisclosure of the information regarding political funding affects the voter’s right to freedom of speech and expression.*

I.II RESEARCH QUESTIONS:

- 1. What are the various sources of political funding in India?*
- 2. Is all mediums of the political funding are legal in the eye of law?*
- 3. Is the government's incentives towards the transparency in the political funding are amenable to the rights of the voter?*

II. INTRODUCTION:

India is the world's largest democracy, in which elections are among the biggest events that can influence the lives of its citizens. Elections required a huge workforce and money for campaigning and to propagate the agenda to the voters. Population, increase in the size of constituencies, competition and separate elections of state and national assembly's are the main factors for the costliest elections in India¹. The election of 2019 was the world's most expensive election. In a vast country like India, money plays the biggest role in the process of election the biggest reason for the priority to the rich candidate at the time of distribution of ticket. A party or an independent candidate gets financial support from the corporate and individuals. In the early days of independence, there were no limitations on corporate for political funding. In 1951 for the first time, Company's Act has put the restriction on the political funding of corporate to prevent them to get leverage of government policies through donation².

It is argued that an individual can express his political opinion by casting his vote, so political funding is a way for a company to support the ideology of a party. It is also said that political funding provides equal opportunity to every candidate to contest the election by financial support. In research, it is found that 71 percent of the total declared income of national parties and 58 percent of the regional parties came from unknown sources in the year of 2004-05.³ The perspective of corporate and individuals for political funding is to influence the policies

¹ Sethia, Aradhya, Where is the Money?: Paths and Pathologies of The Law of Party Funding, NLUJ Journal of Legal Studies p no. 1

² ibid

³ Association of democratic reform, analysis of sources of funding of national and regional parties in 2004-05.

of the government for his favour, so it is important to the voter to get information pertaining to the funding sources of the parties and to the candidates. Lack of transparency in political funding has been raised through the report of the Law Commission. It is argued that the anonymity in the disclosing the amount of funding leads to the violation of the right to an informed vote. India has witnessed a lot of changes in the policies and framework of political funding. However, all such incentives were failed to bring transparency in political funding. In this direction, a new scheme known as Electoral bonds came in the year of 2017 which support the concept of anonymity in political funding.⁴

The constitutional validity of the electoral bonds is also becoming a question as it restricts the voter from getting information related to the political funding to the parties. In the case of State of up v. Raj Narain⁵ the court held that freedom of speech includes the right to get informed about the public functionaries. Casting the vote is an expression of political opinion by exercising the right to freedom of speech. It suggests that the right to informed vote includes right to know about the details of political funding.

III. POLITICAL FUNDING REGIME IN INDIA:

During the early days of independence, there was no limitation on the corporate contributions to the political parties. These contributions were based on the MOA for the regulatory favours to the contributing company in exchange for their contribution⁶. At that time so many concerns were raised on the prevalence of the corporate contribution. It is argued that a party holding incumbency has to make policies in the 'public interest' not for its funders⁷. Therefore any contribution to the political parties that can influence government policies cannot be a legal activity. The corporate contribution to the political party on the basis of the MOA was challenged in the Koticha Case, it has been said that the contribution details should be disclosed. The court directed the company to declare the profit and loss statement and also

⁴ Reserve Bank of India Act 1934 ,s 31 as amended by Finance Act , s 137.

⁵ State of UP v. Raj Narain (1975) 4 SCC 428.

⁶ Reserve Bank of India 1934 , s 34 as amended by finance act s 137.

⁷ Fox. Justin, Government Transparency and policymaking, March 12, 2005, JEL Classification: D72, D78.

publish the details of political funding in two newspapers⁸. However, no obligations were made to the other companies to disclose the details of political funding to the public. Santhanam Committee has observed corruption and lack of transparency in the process of political funding to the parties. In the response of the Santhanam Committee, Indira Gandhi government introduced a new amendment in the political funding which says that any contribution made by a company or an individual illegal⁹. The argument in favour of corporate funding is that political funding is a medium for a joint-stock corporation to express its political opinion¹⁰.

The ban on corporate funding fails to impose a restriction on the political funding after this amendment new ways were evolved for corporate funding:

1. Briefcase Politics or Under the Table Transaction:

In this process, the money is directly transferred to the political party in the cash form and such contribution is only known to the donor and donee.

2. Indirect Sources:

After the ban on corporate funding, companies have started donating money by giving a discount on the advertisement and in other things related to the campaigning. This enables corporate to donate funds without violating any law for a long time. Companies Act 2013 has imposed limitation on the political funding through indirect sources by included a new section in the political funding which says that any type of contribution which gives an advantage to the political party will come under political funding¹¹.

IV. FOREIGN CONTRIBUTION:

Section 2 of the foreign contribution act has imposed restriction on the political funding through foreign sources but when Delhi High Court finds that the both major parties BJP and CONGRESS receiving donation from the foreign sources, the parliament has amended the

⁸ Koticha (n 14) [6].

⁹ Companies Act 1956 ,s 293 –A as inserted by Companies (Amendment) Act 1969 .

¹⁰Ibid

¹¹ The companies Act 2013 ,s 182 .

definition of '*foreign sources*' from the foreign contribution act to overruled the judgment of the Delhi High court¹². This shows government apathy toward making any law to remove illicit financing and to restrict contribution from such sources that can influence public policies. *Foreign Contribution Act 2017* has also introduced some new changes which make it easier for political funds. It has removed the contributions caps that were earlier 7.5% of the average net profits of its previous three years¹³. Now a company after completion of its three years can donate any sum to the political parties. However, it becomes a barrier for a new company to establish themselves solely by getting political favours. Albeit it enables big corporate companies to contribute a huge amount to the political parties, which leads a few companies to capture the functioning of government and can set up new avenues for political corruption¹⁴.

V. LIMITATION ON CANDIDATES EXPENDITURE:

It is observed that the ban on corporate funding increased the functioning of black money in the election campaigning. Politicians have not showcased their willingness to bring transparency in the political financing they have amended the law by using the government's discretionary power to increase the access to funding. In the case of *Kanwar Lal v. Amar Nath Chawl*¹⁵, Supreme Court said that the expenditure sustain by the party and independent supporter on behalf of the candidate should be included in the candidate's expenditure. To overrule the Supreme Court's judgment parliament amended the section 77(1) of the RPA which says that any type of expenditure for the candidate's election campaign not authorized by the candidate will not be included on the candidate's expenditure limit. This clause was further interpreted by the Supreme Court in the Common Cause judgment¹⁶, S.C. says that party spending on behalf of the candidate will be included on the candidate's expenditure limit and the candidate had to disclose every detail of the expenditure by the party and his supporter on his behalf. In 1996 a new development held through an amendment in the RPA

¹² Ibid.

¹³ Companies Act 1956, s 182 as Amended by s 154 . Finance Act ,2017 .

¹⁴ Ibid

¹⁵ AIR 1975 ,308SCR (2) 269.

¹⁶ AIR 1619,1996 SCC (4) 33.

which reduces the campaign period to 14 days earlier it was 21 days before the date of elections, however the expenditure limit for a candidate exceeds to 450000 rupees from 150000 rupees for Lok Sabha and 150000 rupees from 50000 rupees for the legislative assembly. Further, in 1997 it exceeds to 1500000 rupees and 700000 rupees for Lok Sabha and Legislative assembly respectively.

Election Commission in response to the Delhi High Court's decision¹⁷, in a PIL filed by Association for democratic reform makes it mandatory for every candidate to furnish details related to its education qualification, criminal record and his or her assets and liabilities as well as of his or her spouse.

*People's Union for Civil Liberties v. UOI*¹⁸, the S.C. said that the voter expresses its political opinion through voting and to get the necessary information about the candidates comes under the Article 19A. It is important to a voter to get acquainted with the relevant antecedents of the candidate to ascertain the right candidate. However, no law ever made to disclose the details of the funding and expenditure of a candidate to the voter.

VI. ELECTION REFORM:

Rajiv Gandhi government had lifted the ban on corporate funding by making an Amendment in the Companies Act 1985 Section 293(A). It allows corporate to contribute to the political parties on certain conditions.

1. The contribution should be approved by the board of directors.

*2. A company cannot contribute more than 5% of its net profit of the previous three years.*¹⁹

*It was further changed in 2013 through which a company can contribute to 7.5% of its average profit of the previous three years*²⁰.

Dinesh Goswami Committee on electoral reform recommended that the unauthorized spending for a candidate should be made punishable offence to impose the limitation on the

¹⁷ Association for Democratic Reforms v. UOI (2002) 5 SCC 294 .

¹⁸ People's Union of Civil Liberties v. UOI (2003) 4 SCC 399 .

¹⁹ Companies Act 1956 , s 293 –A as Amended by Companies (Amendment) Act 1985.

²⁰ Companies Act 2013, s 182.

candidate's expenditure. It also recommended state funding in kind for the limited sources for example – Vehicle fuel, rental charges of microphones etc²¹. In 1979 a new initiative was taken to bring transparency in the political funding by making an Amendment in the Income Tax act by emphasizing on the exemption of political parties from taxation on filing income tax returns which consisted of the details of all contribution of more than 20,000²². A company or a political party could easily exempt himself from getting disclosed by cumulating a big amount into the small amounts of 19,999.

It was further amended in the year of 2003 this makes 100% tax deduction of the political contribution by the corporate on disclosing the details of the funding, it should be made through formal channel rather than cash²³. This scheme was failed to bring transparency in political funding in spite of having a clause of 100% tax deduction companies had not to showcase any interest in disclosing the contribution details. However, it had become successful in imposing the limitation on political funding in the form of cash²⁴.

Companies had found a new way to exempt himself from disclosing the details and to felicitate the political funding to the parties. Companies had established Electoral trust through which they can transfer the sum to the political parties without getting disclose as on the paper record the donation comes from the trust and not from the corporate²⁵. These Electoral trust owing to a separate legal identity²⁶, it helps the companies to felicitate the anonymity of the political funding. In this way, these companies prevent themselves from getting extorted by opposition parties and quid pro quo allegations. However, the companies, who were transferring money to the political parties through Electoral Trust was not able to get the benefit of the tax deduction scheme as it was not directly transferring to the political

²¹ Kumar. Manoj, Chaudhary .Manu, Reforms in Election Funding in India page 2.

²² Income Tax Act 1961, s 132.

²³ Income Tax Act 1961, s80GCB, 80GGC.

²⁴ Deputy Commissioner of Income Tax, Circle 3,Pune v Smt Anjali Hardikar ;(2018) 170 ITD 398 (Pune – Trib) .

²⁵ Sethiya. Aradhya, Where is the Money? : Paths and Pathologies of the Law of Party Funding, NLUJ Journal of Legal Studies .page no. 12.

²⁶ Stevens. Harry and Sethi. Aman, Electoral Trusts: How some of India's biggest companies route money to political parties.><https://m.hindustantimes.com/interactives/electoral-trusts-explained>.

party²⁷. The donation was felicitated to the political parties through Electoral trust, which is a separate legal identity and not from the companies. This restricts these companies from getting benefit of the tax deduction scheme. The Income Tax Act was amended in the year of 2009 which allows companies to get tax exemption on the political funding through Electoral Trust²⁸. It was further Amended in the year of 2013 which required disclosing the details of the political funding to get the benefit of the tax deduction scheme. It was also required from the Electoral Trust to have a record of the political funding²⁹. However the donation made in form of cash were exempted from getting the exemption of the tax.³⁰

All these Amendments were felicitating the anonymity to the voter with the funding details of the political party and candidates. The Election Commission has introduced some new changes in the political funding through the Electoral Trust. Electoral trust is required to disclose the funding details to the Election Commission and to the Income Department³¹. This development was held in a direction to bring transparency in some manner as there were no provisions for the public disclosure of political contribution³².

VII. ELECTORAL BONDS:

NDA government had notified Electoral bonds scheme in 2017. Electoral bonds are bearer instrument in the nature of promissory notes, issued by the SBI and certain other banks³³. An individual or any artificial juridical person can purchase the bonds and donate the fund to the political parties. RBI Act, 1934, enables the government to authorize certain banks to issue Electoral bonds³⁴. Donation through Electoral bonds is exempted from tax by an Amendment

²⁷ Sethiya. Aradhya, Where is the Money? : Paths and Pathologies of the Law of Party Funding, NLUJ Journal of Legal Studies .page no. 13.

²⁸ Income Tax Act 1961, amendment to s80 GCB.

²⁹ Income Tax Rules 2013, rule 17CA(11).

³⁰ Income Tax Rules 2013, rule 17CA(5).

³¹ Guidelines for Submission of Contribution Reports of Electoral Trusts(No.561 Electoral Trust/2014/PPEMS,6June2014)<http://eci.nic.in/eci_main/1/polpar/ElectoralTrust_06062014.

³² Gowda and Sridharan (n 30) 230.

³³ Aryan. Ashish, Explained: What are electoral bonds and why is there controversy? Business Standard Nov20 2019

³⁴ RBI Act 1934, s 31 as amended by Finance Act , s 137.

made in the Income Tax Act 1961³⁵. Electoral bonds scheme has removed the contribution limit to the companies and also exempted donor and political parties from disclosing requirements by an Amendment in the RPA 1951³⁶. Electoral bonds are facilitating partial anonymity as the funding details are not transpired to the voters. This exempted corporate and individual funder from getting extorted by the opposition parties and quid pro quo allegations. It is observed that Benami funds had been transferred into valid funds with the help of Electoral bonds³⁷. RBI has also raised its concerns by saying that Electoral bonds will increase money laundering cases and affect the basic banking laws³⁸. SC. in response to the PIL filed by ADR directed all political parties to furnish the funding details to the Election Commission includes the amount and name of the donor³⁹. In the absence of laws, the voter is deprived of funding details which are an instrument to ascertain the best candidate.

VIII. NECESSITY OF PUBLIC DISCLOSURE OF DETAILS OF THE CANDIDATES:

In the case of ADR v. UOI, Supreme Court directed the EC to make it mandatory to the candidates to furnish the details pertaining to the educational qualification, assets and criminal antecedent. S.C. said that a voter express his political opinion by casting his vote. It is important to disclose the necessary details to judge the candidate's capacity.⁴⁰ If the appropriate details of the candidate are not provided to the voter then it can be said that the voter is deprived from his right to freely express. Delhi High Court said that right to know is derived from the right to freedom of speech⁴¹. Felicitation of Non-disclosure or misinformation of necessary details regarding a candidate will amounts to the violation of the Right of freedom of speech. In the case of Kihoto Hollahan v.Zachillchu⁴², it is said that the

³⁵ RPA 1951, s 29C; as Amended by s. 137 Finance Act 2017.

³⁶ Income Tax Act 1961, s 13- A as Amended by s. 11 Finance ACT 2017.

³⁷ Ibid.

³⁸ Business standard, What is electoral bond- benefits, validity, conditions, controversy Nov 18 2019><https://www.business-Standard.com/about/What-is-Electoral-bond>.

³⁹ Suhrit.Parthasarthy, Why Electoral Bonds Are Unconstitutional, BloombergQuintopinion Apr.13 2019.

⁴⁰ AIR 2001 Dehli 126, 2000 (57) DRJ 82.

⁴¹ [Ibid].

⁴² 1992 SCR (1) 686, 1992 SCC Supl. (2) 651.

disclosure of the sufficient details to the voter is required for the survival of the democracy. It has been argued that the voter's education is essential for the true reflection of the mandate. In accordance to the above-mentioned case laws, it can be said that voting is a form of expressing the political opinion and informed vote is an essential element for a voter to exercise the right to freedom of expression.

IX. RIGHT TO KNOW AND RIGHT TO VOTE:

Right to know formulated in the case of *State of UP v. Raj Narain & other*⁴³, It has been said that every person has right to know about the details of the public functionaries and the public policies. Right to know should also available to the voter for getting information of the candidates as the winning candidate will hold the public office.

Information regarding the candidate will make a view to the voter about the efficiency of the candidate for the policymaking. Right to know about the candidate is as significance for freedom of expression as Right to vote. In the case of *PUCL v. UOI*⁴⁴, the Supreme Court held that the Indian voter has Right to obtain information about political candidate under Article 19(1). If a person is not barred from casting vote then it can't be said that his Right to vote has been infringed, on the other hand infringement of Right to vote will be the violation of the Article 19(1). It is also recognized at the international level according to the Article 21 of the Universal Declaration of Human Right everyone has right to take part in the government in his country, directly or through freely chosen representative⁴⁵. Right to vote is considered as the Statutory Right as held in N.P. Ponnuswamy's case. In the case of PUCL the court held that Right to vote is a fully fledged fundamental right, integral to the freedom of expression guaranteed under Article 19(1) of the constitution⁴⁶. Harvard's professors,

⁴³ 1975 AIR 865, 1975 SCR (3) 333.

⁴⁴ PUCL v. UOI (2003) 4 SCC 399.

⁴⁵ [https:// www. Thehansindia.com/posts/index/News- Analysis/2018-11-03/Right to vote as a constitutional right.](https://www.Thehansindia.com/posts/index/News-Analysis/2018-11-03/Right-to-vote-as-a-constitutional-right)

⁴⁶ N.P. Ponnuswamy case (1952 SCR 218) , PUCL case (2013) 10 SCC 1 [https://](https://www.Thehansindia.com/posts/index/News-Analysis/2018-11-03/Right-to-vote-as-a-constitutional-right)

[www.Thehansindia.com/posts/index/News- Analysis/2018-11-03/Right to vote as a constitutional right.](https://www.Thehansindia.com/posts/index/News-Analysis/2018-11-03/Right-to-vote-as-a-constitutional-right)

namely Steven Levitsky and Daniel Ziblatt in their research, have described that the not recognizing voter's right is the indication of the dying democracy⁴⁷.

X. PUBLIC DISCLOSURE OF POLITICAL FUNDING:

It has been established that the voters have the right to get informed about the political candidates. The arising question is that, whether the Right to informed vote is also included public disclosure of funding details. In the case of *Ramesh Thappar v. State of Madras*⁴⁸, the court held that the democratic society should be sufficiently informed of all such information that can strengthen the voter in taking appropriate decision in casting vote. Disclosure of political funding should be included in such information. The anonymity of the sources of political funding to the voters indicates towards the quid pro quo relationship of donor and donee. It is accepted the winning candidate will serve the interest of the voter. In that view it is important to the voter to know about the parties and the candidates.

In the case of *Common Cause v. UOI*⁴⁹, the court said that the money for the election campaigning is generated from the various unknown sources and black sources. The felicitation of black money is polluting the mandate of the citizens⁵⁰. Non-disclosure of funding harm the voter's Right to know about candidate and parties. Anonymity of the voter to the funding violates his Right freedom of speech and expression. Electoral bonds also felicitate the anonymity then it can be said that the prevalence of electoral bonds is the violation of Article 19(A) of the constitution.

XI. CONCLUSION:

India is a democratic country, where the citizens of India have given the right to choose their representative for the framing of government by casting their vote. It has been found that the

⁴⁷Steven Levisky& Denial Ziblatt, This is how democracies die ><https://www.theguardian.com/us-news/commentisfree/2018/Jan/21/this-is-how-democracies-die>.

⁴⁸ 1950 AIR 124, 1950 SCR 594.

⁴⁹ 1996 AIR 1619, 1996 SCC (4) 33.

⁵⁰ Ibid.

money is considered as a primary requirement of a candidate and political party to contest the election. It has been established through this research that the most of the funding to the political parties come from unknown and black sources. Law Commission reports have found the prevalence of black money in the political campaigning. A study by Jennifer Bussell says that the survey between the 2011 to 2014 of an estimated 25000 incumbent believe that the black money is the important source of political funding⁵¹. In this direction the government had made changes in the laws pertaining to the political funding in an attempt to bring transparency; for instance, 20,000 thresholds.

In this scheme, the donor has to disclose the details of the amount of more than 20,000. It has been found that the donor used to exempt himself from disclosing the details by cumulating a big amount into the small amount of less than 20,000⁵². Government has also given the temptation of tax exemption on the political funding to the corporate and political parties on the condition of disclosing the funding details. It has been observed that instead of having the provision of tax exemption the corporate tries to avoid himself from disclosing the funding details in order to prevent themselves from the quid pro quo allegation and getting extorted by the opposing parties.

In the case of ADR V.UOI⁵³, the court said that the candidate has to disclose the details about his educational qualification, criminal antecedents and assets. It has been established through the various case laws and the studies of the election campaigning that the voter is entitled to get sufficient information about the candidate and political parties to express his political opinion under the Article 19(1) of the constitution. It has been also established that the disclosure of the funding will also come under the right to an informed vote. Right to informed vote is an important is an element of freedom of speech. Then it can be concluded that it should be protected by the government. In the case of Mcclay v. Newsouth wales⁵⁴, The Australian High court observed that the political funding can be a threat to the right to equality. However it is also found that the political funding is helpful to provide equal

⁵¹ Bussell. Jennifer, India: Whose Money Has the Most Influence? , Hindustan Times 24 July 2018.

⁵² Kumar Manoj chaudary, Manu Reforms in elections Funding in India Page No. 2.

⁵³ AIR 2001 Dehli 126, 2000 (57) DRJ 82.

⁵⁴ Mc Cloy v. New South Wales (2015) 257 CLR 178, 202 [27].

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opportunities to the candidates. David Strauss said that ban on the political funding will increase the participation of the criminals into the politics⁵⁵. All these things indicate that the government has to make laws to bring the transparency in the political funding and the rights of the voter can be protected. Indian democracy requires some effective reforms instead of strict laws because it may evolve the method of under the table transaction⁵⁶.

⁵⁵ Strauss. David, What is the Goal of Campaign Finance Reform?, University of Chicago Legal Forum; Vol. 1995 , Article 6.

⁵⁶ Sethia. Aradhya, Where is the Money?: Paths and Pathologies of The Law of Party Funding, NLUD Journal of Legal Studies.