

ELECTORAL BONDS SCHEME & ELECTION FINANCE: A SYSTEMATIC PROCESS TO IMBALANCE THE ELECTORAL LEVEL PLAYING FIELD

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Abstract

Transparency and fair play in elections are the oil to any popular democratic machinery. In India free and fair elections are entrenched as a part of the basic structure of the Constitution. It implies that any law or amendment anathematic to the concept of a glasnost electoral process would be visited with severe judicial consequences. To this effect an 'independent' election commission is entrusted to check the electoral spending by political parties as an impartial watchdog. A recent 2018 notification of the Central Government brought into force a novel fund-raising scheme for the political parties. These donations would be anonymous with permissible non-reporting to election commission. In effect, anyone can donate any sum to certain political parties, and the concerned parties need not record or report the same to the Election Commission. The structures of the scheme cycle-back on the string of transparency, and fair electoral play. The paper does a constitutional analysis of the electoral bonds scheme. The analysis is so important since the scheme carries the potential to destabilize the electoral battleground. Accordingly, the paper is divided into four parts for a structured comment. The first part is an introduction to the concept of electoral bonds scheme, and the structure of the paper generally. The second section theorise the relevance of electoral finance, and study the 2018 scheme as an aberration to the principles of sound finance. Next part would highlight the constitutional infractions committed by the scheme by hitting at the core concepts of the Constitution by using the framework elaborated in the second part. The Supreme Court's refusal of stay order of the bond scheme adds fuel to the fire. The last part would cover suggestions to bring the 2018 bonds scheme in line with the constitutional values.

Key Words: Electoral Bonds, Democracy, Constitution, Elections, Transparency, Election Commission, Fair Play

I. INTRODUCTION

Quinquennial democratic showdown transforms India into a free-market of ideologies for which each voter-consumer can cast vote for only one political party (or candidate). Fairness demands transparency in the process from the beginning to the last, from filing of nomination papers, electioneering, and to the final installation of a new legislature. There are severality of interlocked concerns that have often merited alarmingly moot considerations ranging from freebies inducement, muscle power, booth capturing, unprincipled speeches etc. The operationalization for most of the mentioned malpractices demand deep pockets to pierce the electorate. In fact and in law, one of the key challenges for maintaining purity of the process is to channelize the monetary procurement and spending. Opining otherwise invites the threat of debasing the democracy in its truest sense, and making it a 'Moneyocracy'. Law attempts to level the playing field by proscribing certain acts which are classified as electoral offences under the Representation of People Act, 1951 ("RP Act") and also by regulating the funding and spending to a limited extent. It is tritely sufficient to point out that the RP Act provisions on capping the election expenditure applies only to candidates, and not to political parties.¹

The political landscape is latently bruised by iniquitous availability and access to finances, and its sourcing to a few big political parties which turns 'principle of fair play' head over heels. Adding to the *semi*-democratic slant of the current electoral landscape is the fresh pack of purchasable electoral bonds. In this paper, I intend to interdict the scheme as being militant to the accepted, and established normative constitutional values. Precedent to this enquiry are a few mandatory questions. What are these constitutional values that underpin the electoral process generally, and such finance, peculiarly? Are these values legally imbued? A forth setting argument is construed in attempting to answer these questions which in turn will be used to point the chinks in the bonds' armour. To facilitate the prime and the anterior incursions, the paper follows a three-pronged layout excluding this introductory section. Next part runs into creation of theoretical framework based on the rhetoric of fair play. Second section would articulate the electoral bonds scheme, and examine its constitutional propriety on the cognition of the set theoretical framework. It would also entail the scrutiny of the Supreme Court's order on the point. The last leg of the paper is peroration, and some reflections, and implications of the survival of the scheme on present and future of the polity.

II. SYNERGIZED LENS OF TRANSPARENCY

Democracy is a costly business. The electoral contestation requires garnering, and mobilization of heavy funds to suit the deep pocketed expenditures for mass reach and canvassing. The political giants are immersed in arranging finance, legal or illicit. It is well a documented fact that most of the political funding is undocumented, from unknown sources.² That apart, there are

¹ Representation of People Act, 1951, § 77, No. 43, Acts of Parliament, 1951 (India).

² PTI, 69% of funds for India political parties from unknown sources: Report, THE NEW INDIAN EXPRESS, Jan. 24, 2017, <https://www.newindianexpress.com/nation/2017/jan/24/69-of-funds-for-india-political-parties-from-unknown-sources-report-1563076.html>.

glaring differences in the political party spending. As per the expenditure reports filed by the political parties for the seventeenth Lok Sabha elections, BJP spent around 12 million rupees (12,64,33,57,790), with INC at 8,20,89,33,152, and rest of the parties far behind.¹ It implies of the total expenses BJP spent 44%.² Again, a voice of caution is necessary, there are shadow reports which guarantee that the actual expenses exceed manifold the officially disclosed numbers. In fact, the 2019 general election was the most expensive election of the world hitherto.³ Can such lopsided access to funds be terms as 'fair play in action'? Certainly not. More funds, ensures greater piercing of the electorate through multitude of approaching and reaching campaign techniques, even if one assumes all the corrupt practices are refrained from in the process. More fundamental question arises on the source of funds. 53% of the total finance is from unknown sources.⁴ This is a transgression of settled international norms of electoral transparency, and Constitutional spirit as expounded by the Supreme Court. It is imperative to briefly elicit these international and judicial standards before embarking of the specific issues with the bonds scheme.

A. International Standards

The international standards for election finance can be bifurcated into two categories, *viz.*, international expert committee reports, and the international convention-based standards. Institute for Democracy and Electoral Assistance has laid guidelines for reviewing the legal framework for elections. Relevant to the current discussion are the private funding, and expenditure control guidelines. Former includes cash or kind donations by the individuals, groups or corporations. The guidelines stress on freedom to raise private funds, if permissible by the national law regulating the elections, *by the party or the candidates*. Further, there should be *overall limit* of such fund-raising contributions tuned to maintain 'level playing field' to a reasonable degree, factoring in geographic, demographic, and material costs.⁵ The latter slice of expenditure control is suggested to be applied to the *candidates, and parties* to bring out semblance of an equal chance of winning.⁶ The fund-raising and expense control are meaningless without adequate disclosure requisites. The guidelines provide for period filing of contributions received, and expenses incurred at regular intervals. Breach of which must incur a *proportionate penalty*.

Inter-Parliamentary Union ("IPU") having a membership from 173 countries announced in its 'Declaration on Criteria for Free and Fair Elections', the regulation of political party funding, and campaigns. Another broad point of resounding relevance is to *create conditions for competition via legislative action on equitable basis*.⁷ The last two points are mentioned as *responsibility of the state*.

There are no international conventions that aims to be prescribe electoral standards. Through an interpretive route, one may glean electoral fairness in a piecemeal way.⁸ General Comment 25 of the Human Rights Committee on Article 25 of ICCPR is of telling gravity. Paragraph 19 points out principle of reasonable limitation on canvassing expenses where it is "necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure *on behalf of any candidate or party*."⁹ This approach covers candidates, and parties and allows unlimited campaign expenditure to the extent that expenditure does not dither free formulation of political opinions. Naturally, more funds lead to more campaigns, leading to wider reach, and shaping, and influencing political opinion. It tends to tilt the level playing field in favour of the parties on the basis of sustained patronage and corporate links.

B. Supreme Court's Red Flags on Money

The Indian Supreme Court across time has raised concerns regarding using of pelf and power, and its consequent effacement on levelling the playing field. 255th Law Commission of India report on electoral reforms captures some of those judgments. The Court in *Kanwar Lal Gupta*¹⁰, observed the use of money to gain electoral advantage by political parties. The observation is worth mentioning:

"money is bound to play an important part in the successful prosecution of an election campaign. Money supplies "assets for advertising and other forms of political solicitation that increases the candidate's exposure to the public." Not only can money buy advertising and canvassing facilities such as hoardings, posters, handbills, brochures etc. and all the other paraphernalia of an election campaign, but it can also provide the means for quick and speedy communications and movements and sophisticated campaign techniques and is also "a substitute for energy" in that paid workers can be employed where volunteers are found to be insufficient. *The availability of large funds does ordinarily tend to increase the number of votes a candidate will receive. If, therefore, one political party or individual has larger resources available to it than another individual or political party, the former would certainly, under the present system of conducting elections, have an advantage over the latter in the electoral process*."

The Court continued to added that well financed political parties or individuals should not bear any advantage to the poorly financed counterparts.¹¹ In another instance¹, the expressed its disappointment on the ground roots of elections. The court

¹ Recognized National Parties, Election Commission of India, <https://eci.gov.in/files/category/1143-recognized-national-parties/>.

² ADR, *BJP spent 44 % of all parties Lok Sabha poll expenditure*, ADR BLOG (June. 3, 2020), <https://adrindia.org/content/bjp-spent-44-all-parties-lok-sabha-poll-expenditure>.

³ Azman Usmani, *In Charts: India's Election Becomes The World's Most Expensive*, BLOOMBERG QUINT, June 4, 2019, <https://www.bloombergquint.com/elections/india-election-expenditure-2019-lok-sabha-elections-was-the-worlds-costliest>.

⁴ ADR, *Analysis of Sources of Funding of National Parties of India, FY 2017-18*, ADR BLOG (Jan. 23, 2019), <https://adrindia.org/content/analysis-sources-funding-national-parties-india-fy-2017-18>.

⁵ International Electoral Standards Guidelines for reviewing the legal framework of elections, Institute for Democracy and Electoral Assistance <https://www.idea.int/sites/default/files/publications/international-electoral-standards-guidelines-for-reviewing-the-legal-framework-of-elections.pdf>.

⁶ Id.

⁷ Declaration on Criteria for Free and Fair Elections, Inter-Parliamentary Union, <https://www.ipu.org/our-impact/strong-parliaments/setting-standards/declaration-criteria-free-and-fair-elections>.

⁸ Compendium of International Standards for Elections, Election Observation and Democratic Spirit, <https://www.eods.eu/library/Compendium-EN-N-PDF.pdf>.

⁹ Human Rights Committee, *CCPR General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote)* ¶ 19, CCPR/C/21/Rev.1/Add.7 (July 12, 1996).

¹⁰ *Kanwar Lal Gupta v. Amar Nath Chawla*, AIR 1975 SC 308.

¹¹ Id.

observed that the expenditure limits are regularly breached making the entrance of honest people in the legislatures arduous. The source of money, the court added, if believed are from unaccounted criminal money, in exchange of political protection, investments, contracts etc. It pollutes the entire system, and leads to compromised governance.² These observations stem from the constitutional spirit of India ensouled in the Indian Constitution.

These frank observations are dovetailed with the international standards as outlined above. The two-related principles that underlie those norms and the judicial observations are electoral fair play, and good governance. To that end, they synergize and intend to limit the use of money to ensure all candidates, and political parties are not only on the same starting line, but have equal access to, and availability of resources to run the race. I am referring this to as the ‘synergized transparency lens’ (“SLT”). But does the current scheme comply with the international electoral standards, and more fundamentally with the constitutional spirit when viewed from the synergized transparency lens? If not, what are the possible reasons for non-compliance?

III. ELECTION BONDS SCHEME: A BEDROCK OF OPAQUENESS

All the equities of level playing field were breached on 2nd January, 2018 when the Department of Economic Affairs, Government of India, notified Electoral Bonds Scheme, 2018. In this segment, I would analyse the provisions of the scheme including its treatment by the Supreme Court, and explore reasons for its sustenance.

A. Election Bonds

The bonds are issued in the nature of anonymous promissory notes, and could be issued to any person, natural or juristic. The person has to be an Indian citizen, or incorporated in India.³ Interestingly, only select political parties can raise funds using the scheme. A party that is registered under section 29A of the RP Act, 1951 and has polled at least one percent of the votes in the previous Lok Sabha elections or legislative assembly elections are eligible to receive funding by the bond route.⁴ The bonds range from one thousand rupees to one crore rupees in denominations divisible by 10.⁵ There is no upper limit on roping in the funds by way of bonds. The prescribed encashment period is fifteen days. If not availed within the said period, the amount would be transferred to Prime Minister Relief Fund.⁶ The bonds enjoy tax immunities under section 13A of the Income Tax Act, 1961 for being voluntary contributions.⁷ As also, disclosure requirements under section 29C of the RP Act, 1951 to avail tax exemptions are made inapplicable to the sums raised by the bond selling.⁸

The SLT framework allows us to view the scheme as a retrogressive step for a couple of apprehensive, and actual reasons. First, it is presumed that an independent candidate as a non-serious actor in the political process. No process is prescribed for the individual to receive contributions under the scheme. An individual, and political parties are legally to be considered on equal moral pedestal for the contest of elections. The SLT framework has repeatedly emphasized on individual and party. The scheme betrays this commitment. Second, the political party which has polled at least one percent of votes in the preceding general or state legislative assembly elections is troublesome. There are no reasons prescribed, and discernible to this ‘exclusive’ criteria. It points towards the arbitrariness spilt in the scheme. Third, the scheme has been accommodated by amending the laws suitably. Finance Act, 2017 has removed the cap on corporate donations to the political parties and the obligation to report such donations under its profit and loss account.⁹ The anonymity can lead to concealed political patronage promises.

Are these normative critiques substantial or an attempt to hold a rope of sand? The data for the fifteen phases between March 2018 to January 2021 collected by Association for Democratic Reforms informs it is substantial. 6,415.50 crores acquired through bonds. 55.43% were bought within a frame of two months- March to April, 2019, the period of general elections. Recall, the bonds have a fifteen days redemption life. A whopping 92.046% was in denomination of one crore indicating more likely than not, the presence of corporate hand in elections. The reports for financial years 2017-18 and 2018-19 indicate the biggest beneficiary of the scheme was the ruling government receiving 60.17% of the total voluntary contributions. National parties received more than 52% of its annual income from the bonds, and the regional parties accounted for 53.83% of their income to the scheme for the year 2018-19. Alarming, in the absence of the scheme 2012-13, to the year 218-19 in which it was introduced, corporate contributions to national parties witnessed an upshot by 974%.¹⁰ The trend is further skewed in favour of the ruling party. The data available with the Election Commission of India registers the fact that around 76% of the total electoral bonds were sold to it. The next in line party is congress, rubbing hands with a mere 9% of the total share.¹¹

The constitutionality of the scheme generally, and the amendments made to different legislations to accommodate the scheme through Finance Act, 2017 were assailed before the Supreme Court as being unconstitutional.¹² The Supreme Court only countenanced with the former in its interim order, and left the latter for a detailed hearing. The arguments of the government, which are largely accepted by the Court in its interim order are flawed. The Court stated, the scheme is laudable in so far it seeks to prevent presence of pelf in the election play. It does so by formalizing the entire process through the baking networks, which demands compliance with Know Your Customer norms. The risk of channelling of funds through companies or

¹ PUCL v. Union of India, (2003) 4 SCC 399.

² Id.

³ The Electoral Bonds Scheme, 2018, ¶ 2(a) and (d)

⁴ Id. at ¶ 3(2)

⁵ Id. at ¶ 5

⁶ Id. at ¶ 12

⁷ Id. at ¶ 13

⁸ Finance Act, 2017, § 137, No. 7, Acts of Parliament, 2017 (India).

⁹ Finance Act, 2017, § 154, No. 7, Acts of Parliament, 2017 (India).

¹⁰ ADR, *Electoral Bonds and Opacity in Political Funding*, ADR https://adrindia.org/sites/default/files/Electoral_Bonds_And_Opacity_In_Political_Funding_English.pdf

¹¹ <https://www.hindustantimes.com/india-news/bjp-got-over-75-of-electoral-bonds-sold-congress-9-in-201920-101628569879182.html>

¹² Association for Democratic Reforms v. Union of India, I.A. No. 36653 of 2021 (SC Pending).

individuals is still present. The immediate source of money may be known, but the origin of the money may be dubious. Non-disclosure requirements do little to none to cleanse the electoral funding process.

On the opacity of the scheme, the court recommended a “match the following” exercise. The Court noted that accounts of political parties, and of the companies can be compared to see which company donated what amount to which party. Therefore, the scheme “is not as though the operations under the Scheme are behind iron curtains incapable of being pierced.” The order falters on key legal points and factual assumptions. Taking these judicial errors in turns, the court skipped the provisions of the amended laws which credits discretion to the companies on disclosure of purchase of the bonds in its accounting. A likewise immunity is available to the political parties. The ad hoc arrangement of details furnishment of donors and amounts to the Election Commission set up by the judicial order does not serve the desired proper purpose, since the enforcement could conceivably be through contempt jurisdiction. Tersely put, it is too little. It is not a proportionate penalty, given the stakes involved in winning elections. Of course, the court may invoke Article 142 to come down heavily on the political parties but chances for that are again too little considering the reasonings of the interim order.

Factually, the court seems to be perturbed by the corporate donations, and rightly so, but the individual donors’ names are required as a norm and not an interim arrangement. Needless to say, individuals do not maintain profit and loss account, and neither their account statements are available for public scrutiny for privacy considerations. The “match the following” fails here. The corporate can set up individuals to make donations in small amounts, and evade disclosure. This is not hard to believe given the record-breaking documented electoral malpractices after each election, and funds involved in the entire electoral process.

The spirit of this interim order seems to be comprised with previous judicial pronouncements where the Court was deeply disturbed by conversion of economic advantage to political advantage. In fact, the court missed out the opportunity to bring about swift transparency in this case by omitting to consider deeper democratic norms.

There are other broader normative considerations that add fuel to the counter-opaquing of the scheme which strike at the root of the democratic chord. Article 19(1)(a) takes within its multifield, “right to know” the preferences of his representative. As Devadasan¹ has optimally pointed out in this context, that the free speech and expression right includes a negative right to not to interfere with from receiving generally available information, but secludes gathering of information by exercise of a positive right by an unwilling speaker. But the right to know about the prospective legislature is of vital importance so much such that the Court has constructed a positive right under Article 19(1)(a) umbrella. In *Union of India v. Association of Democratic Reforms*², the court thundered, “There is no reason to that freedom of speech and expression would not cover a right to get material information with regard to a candidate who is contesting elections for a post which is of utmost importance in the country.” The availability of minimum information is necessary to enable the electorate to make an informed choice of their representative. To this extant, the court continued, “Casting of a vote by a misinformed and non-informed voter or a voter having one-sided information only is bound to affect democracy seriously”.³ The identity of the donor is pertinent to the vote casting decision. In case, a particular political party panders to the wishes or background of a particular donor without *sans* public interest, such behaviour can be easily registered.⁴ The Court in another case⁵ observed, “There can be little doubt that exposure to the public gaze and scrutiny is one of the surest means to cleanse our democratic governing system and to have competent legislatures”.

An argument of privacy may be made in favour of anonymity of donors is to further their right to privacy. The claim is valid, but a blanket non-disclosure solution is far from the cry. It is grossly disproportionate. The court should, if such an agreement springs up, resort to a proportionality analysis, and a narrow tailoring of the restriction is required. The court may narrowly tailor the requirement of non-disclosure only to the extent of some danger involved to the identity of the donor. For instance, if the donor is donating to a party (or a candidate, if allowed in future) which guarantees protection of minority. In such a situation, only identity of the minority community should be afforded with anonymity cloak. It would be achieving the objective of privacy protection, and ensure transparency in the process.

The larger question of probative reasons for the scheme in such a structure remains unanswered.

B. *The Law of Democracy and The Bonds Scheme*

In order to appreciate the reasons for opaqueness and exclusivity of the scheme to political parties, a probing of the Indian law of democracy, that is, RP Act, 1951 is mandatory. I suggest, the RP Act, 1951 is modelled more around candidates, and leaving out the political parties so as far as finances are concerned. The loophole in the parent enactment may serve as an incentive to craft such a scheme. If the RP Act would have been vocal on party finance disclosures, and dealt seriously with party expenditures, then such a scheme would have been difficult to introduce for longing compliance with the law. A seminal question arises, why the RP Act is unconcerned with finances of the political party? The answer to that is I propose lies in the Constitutionalisation process of India.

The details of the constitutional choices are beyond the scope of this paper. A concise presentation of Khosla’s⁶ understanding of India’s founding moment suffices the proposition. India’s independence marked a snap from the colonial dawn. There were several choices of government organization, and representation thereof. The pre-independent colony of India has littered

¹ Vasudev Devadasan, *Financing the General Elections: Electoral Bonds and Disclosure Requirements under the Constitution*, INDCONLAWPHIL (Apr. 19, 2019), <https://indconlawphil.wordpress.com/2019/04/19/financing-the-general-elections-electoral-bonds-and-disclosure-requirements-under-the-constitution/>.

² *Union of India v. Association of Democratic Reforms*, (2002) 5 SCC 294.

³ *Id.*

⁴ *Supra* note 26.

⁵ *People’s Union of Civil Liberties v. Union of India*, (2003) 2 SCR 1136

⁶ *See generally*, Madhav Khosla, *India’s founding Moment: The Constitution of a Most Surprising Democracy* (Harvard University Press, 2020).

history of communal representation. The Indian Councils Act, 1909, or the later Government of India Act, 1919 or 1935 gave prominence of individual's group bondages. An individual could not be back then viewed as a sperate independent political unit. This in turn ran contrary to the epithets of modern democracy. Authenticity of modern democratic process lies in construction of political universe by the individual. It is not presumed to be natural or inherited. There are no pre-ordered representations based on common, and shared characteristics. For example, a Hindu need not mandatorily represent Hindu, a Muslim may represent a Hindu or Christian etc. Running in the opposite direction would lead to denial of individual agency. The entire premise of majoritarian decision-making lies in the idea of offering all citizens an opportunity to construct the majority through a *neutral process* where each co-participant citizen has an equal say. There is an authorization by the individual before another can speak on his behalf.¹ It is submitted that, the framers according to this chose individual divested of his preordained characteristics as unit of attention. An alike subconscious logic perhaps was at play when the RP Act, 1951 was drafted a date not very from the date of drafting of the Constitution.

Section 77 of the 1951 Act does not obligate a political party to disclose the expenses incurred, all responsibilities are for the candidate or his agent. The limits of expenditures prescribed by the Election Commission are for the candidates, and political parties can spend lavishly for canvassing votes. The leeway to political parties has proved to be fatal for the electoral fair play, and the 2018 bonds scheme just maxes up this loophole. A fundamental drawback is this: a candidate once joins a political party he thickly constructed his political imagination, and freely espouses the political party's propaganda of which he is a member. Canvassing of the party directly translates into better quantity of votes for the candidate since the candidate is associated with a particular political grouping. Taking cognisance of this fact, the law ought to be suitably amended. Not only it is non-compliant with the SLT framework, but also divorced from ground reality. Analysis of 2013 election, shows that the elections were won on charismatic positioning of the Prime Minister in the campaign.² Consequently, any candidate belonging to the BJP would have received the benefit of the party advertisements that appealed to the *en-masse*. The 2018 scheme as seen increased the party expenditures which has translated into political mileage. The fears of yesterday have become the truth of today.

Another meriting consideration for the amendment of the 2018 scheme (may well be for the RP Act too) is that it slides off the concept of legal constitutionalism. India follows a legal constitutionalism model where there is subordination of politics to a high law, that is, constitution.³ The Constitutional spirit has been harped constitutently by the Supreme Court which warn against translation of money into political victory. The 2018 scheme is an orientation towards political constitutionalism, a constitutional imaginary where the popular politics is maximized, and the Constitutions are viewed as enabling devices to further popular politics.⁴ It is gleaned from the lengthy and codified Indian Constitution that the Indian trajectory is path dependent on sorts of legal constitutionalism.⁵ The electoral battlefield must thus be constrained by constitutional values etched in the SLT framework.

IV. AN APPEAL FOR LEVELLING TRANSPARENCY

Fairness in elections is necessary for a brooding, and popular democracy. The election bond scheme is a blot on the fairness, and accountability. Any political fund-raising scheme should be near to the SLT framework where by finances should not equate victors, economics strength should not translate into political strength. Such is the misery geared by the scheme. A study of the election campaign emphasizes the rooted vitality of money.⁶ Be it traditional posters and sloganeering or a techniques as modern as sophisticated analysis of the electorate by hiring experts, all of it requires money. The big brothers win, and the small ones are trounced by cash-strapped pocket conditions. The scheme as shown only benefits the big brothers without causing a measurable difference to the little players. The scheme could be worked if it is compliant with the SLT framework.

This could be ensured by taking note of five points. First, the eligibility criteria for raising funds should be liberalized to include all the political parties, and candidates who have filed nomination papers. It would ensure equality of opportunity for raising funds is available to all the concerned prospective candidates. The current distinction between political party's polling certain percentage, and other small political parties, and individual candidates is devoid of explanation, and is arbitrary. Second, the administration of the scheme should be transferred to the Election Commission or a body constituted under it. The current system introduces the risk of political patronage offers. Third, the identity of donors as a general rule should be available in the reports of finances filed by the political parties or candidates. Anonymity should be tailored to the needs of the circumstances after due approval of the Election Commission. Article 324(1) is broad enough to permit the commission to carry out the needful in the interest of fair supervision of the elections. Fourth, political parties should also comply with the disclosure requirements of Section 77 in interests of transparency. Fifth, the overall expenses in any election be it individual or by the political parties should be capped otherwise it erodes the equality and fair play in the competition.

To strengthen the democracy, all counter-transparent measures must be revoked, and duly modified. The ball is rolling in the 'Supreme' Court. Careful consideration of constitutional values should lead to a positive impact by modification of the scheme. The strength of democracy lies in its transparency, more than in its numbers.

¹ Id. at p. 138-139

² Guardian, *The real reasons behind Narendra Modi's victory*, GUARDIAN (May 21, 2014), <https://www.theguardian.com/world/2014/may/21/real-reasons-behind-narendra-modi-victory>.

³ Alexander Latham-Gambi, *Political Constitutionalism and Legal Constitutionalism—An Imaginary Opposition?*, 40(4), OXF. J. LEG. STUD 1, 7-8 (2020).

⁴ Id.

⁵ *Supra* note 31 at pp. 35-37

⁶ *See generally*, Shivam Shankar Singh, *HOW TO WIN AN INDIAN ELECTION WHAT POLITICAL PARTIES DON'T WANT YOU TO KNOW* (Penguin Random House, 2019).