



"Read in the name of Thy Lord."

UNITY P.G. & LAW COLLEGE, LUCKNOW

**6<sup>th</sup> JUSTICE MURTAZA HUSAIN MEMORIAL NATIONAL  
MOOT COURT COMPETITION**

**(20<sup>th</sup> to 22<sup>nd</sup> September, 2019)**

**MOOT PROPOSITION**

**Disclaimer:** All the names used and events described in this proposition are fictitious. Resemblance of any kind and magnitude to any name, person, organization or event whatsoever is purely co-incidental.

**Facts of the case are as follows:**

Indiana is a federal country with a multiparty system consisting of 29 states; and has adopted bicameral nature of Parliament. Free and fair election is held to be the 'basic structure of the Indiana Constitution' by the Indiana Supreme Court, rendering it incapable of being amended. The Constitution of Indiana is based on the principles of equality, liberty, fraternity, transparency and accountability of the state and freedom of religion as its core values. Republic of Indiana has its independent and autonomous Election Commission, Judiciary of Indiana is completely independent.

1. For cleaning and improving the process of political funding in Indiana and for making Indiana's economy cashless, the Union Finance Minister on 2<sup>nd</sup> of January 2018, elaborated the facets of **electoral bonds scheme**, the ambitious project of

Government of Indiana. The scheme related to electoral bonds was announced during the 2017-2018 financial budget.

2. An electoral bond is a financial instrument similar to a Promissory Note. In effect, it is like a bank note that is payable to the bearer on demand, and being free of interest it can be purchased by any citizen of Indiana, body incorporated in Indiana, foreign companies and a firm registered in Indiana including all private companies & one-person companies.
3. For keeping the donor's detail confidential, electoral bonds will not bear the name of the donor or the name of the political party to which the donation is made. But all the details regarding donor and political parties receiving the electoral bonds will be available with bank whereas the political parties might not be aware about the identity of the donor. This whole procedure is just for ensuring that all the donations made to a party should be accounted for in the balance sheets without disclosing the donor details to the public.
4. These bonds will be available in denominations of ₹1,000, ₹10,000, ₹1 lakh, ₹10 lakh and ₹1 crore at some specific branches of State Bank of Indiana. Donors can buy the bond with a KYC-compliant account.
5. For en-cashing an electoral bond, party must be registered under a section 29A of the Representation of the People Act, 1951 (43 of 1951) and must have secured at least 1% of the votes polled in the most recent Lok Sabha or State election. The Election Commission of Indiana will allot a verified account to an eligible party so that electoral bond transaction can be made only via this account. Electoral bond will be redeemable by an eligible political party for a particular period of time i.e. within 15 days in the pre-allotted account by Election Commission.
6. 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.

7. Prior to this new scheme of electoral bonds, source of funding was not necessary to be disclosed by the political parties if the donor has made the donation less than ₹20,000. Under the old system of funding, the political parties used to claim that they received 90% of their political funds in the denominations of less than ₹20,000 in order to avoid disclosure of their sources of funding. In this way political parties misused the rule. Through this, political parties were able to generate huge amount of black money for using in election campaigning.
8. On the recommendation of Election Commission, the Indian government reduced the limit of anonymous donation during the Budget presentation in February 2017, and had proposed that the maximum amount of cash donation that a political party can receive be capped at ₹2,000; and that parties be entitled to receive donations by cheque or digital mode, in addition to electoral bonds. In a press conference the Finance Minister had observed that donations would be tax deductible in the following words, “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”.
9. Section 236 of the Finance Act, 2016 amended the definition of ‘foreign source’ provided in Foreign Contribution (Regulation) Act, 2010. This amendment allowed a company, having a nominal value of share capital within the limits specified for foreign investment under the Foreign Exchange Management Act (FEMA), 1999, not to be considered as a foreign source. One of major implications of this modification is that the change in the definition allows foreign corporations to donate not only uncapped but also anonymous donations to political parties in India.
10. That there is provision in the Constitution of India that ‘Money Bill’ need not to be introduced in the Rajya Sabha, the Upper House of the Parliament and the amendments introduced through the new Finance Act, 2017 by the Ministry of Finance, passed as a money bill thereby bypassing the Rajya Sabha.
11. That the relevant points of Finance Act, 2017 are as follows:
  - The Finance Act, 2017 was introduced in Lok Sabha, the lower house of the Parliament, as Bill. No. 12 of 2017 on February 1, 2017.

- The above Act gives effect to the financial proposals of the Union Government for the Financial Year 2017- 18.
- The Act of 2017 introduced the system of electoral bonds to be issued by any scheduled bank for the purpose of electoral funding.

12. That the Finance Act, 2017 amended the provisions of the Companies Act, 2013, which removed the cap for companies to make political donations. Earlier the cap was 7.5% of net profits of the last three years for the company. The companies are no longer required to disclose name or even break up contributions made to the political parties.

13. That the government of India claims that primary aim of the Finance Act, 2017 is to curb malpractices in the political funding. The government intends to make political funding more transparent.

14. The Action for Democratic Reforms (ADR) is an India's non-partisan, non-governmental organization, which works in the area of electoral and political reforms. ADR aims at bringing transparency and accountability in Indian political system and reducing the influence of money and muscle power in elections. It challenged the electoral bond scheme in the Supreme Court of India.

15. ADR contended in its Petition that the amendments made via Finance Act, 2017 are not only unconstitutional but also violate citizen's fundamental right to information. It is also argued that the aforesaid amendments are against the transparency in public life by providing for non-disclosure of the donor's name and source of funding. In this way transparency in the political funding will be severely compromised. After the said amendments loss making companies have started making donations and in turn ask for favour from the political parties. There lead to high possibilities of creation of shell companies, rampant corruption; the rise of benami transactions and use of black money during the electoral process.

16. The Petitioner argued that these changes may alter the nature of interaction between state and citizens.

17. That the amendments to the Reserve Bank of Indiana Act, 1934, Representation of the People Act, 1951 and Income Tax Act, 1961 have affected transparency in political funding. This will have a major implication on transparency in political funding as now the political parties are free not to file contributions received through electoral bonds. One important issue which arises after these amendments is that Election Commission of Indiana will no longer be able to make a report on political funding that till now were made available for citizens to examine and take informed decisions.
18. That the Petition filed under the provisions of Constitution of Indiana primarily hinges on citizen's fundamental right under Article 19 (1) (a). The petitioner challenged the amendments introduced by the Finance Act, 2017. The amendments made by the Finance Act 2017 are as follows:
- i. Section 31, the Reserve Bank of Indiana Act, 1934 through Part III, Section 135 of the Finance Act, 2017,
  - ii. Section 29C, the Representation of the People Act, 1951 through Part IV, Section 137 of the Finance Act, 2017
  - iii. Section 13A, the Income Tax Act, 1961 through Chapter III, Section 11 of the Finance Act, 2017
  - iv. Section 182 of the Companies Act, 2013 through Part XII, Section 154 of the Finance Act, 2017

**Note: The Constitution and other laws of Union of Indiana are same as those of Union of India. Arguments should be strictly framed on the facts provided in the moot problem. Facts not mentioned in the problem won't be appreciated.**

**Taking into account various aspects of the case matrix, Participants are at liberty to draft and frame the issues and arguments are to be put forward from the side of both the Petitioner & the Respondent. The arguments can be made on creative lines. Pleas in addition to those set out above will be appreciated.**