

MONEY IN POLITICS

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ABSTRACT

The greatest obstacle political reformers, judiciary and the electorate have to face is that the factual source of the political financing still remains unknown and unrevealed. It has been successfully guarded by corrupt politicians as well as officials who benefit from the corporate financing of the parties. The system of political financing around the world is extremely non-transparent and shady, and India is not an exception. The use of funds and influencing voters to elect a certain candidate becomes a major problem for the democratic process. However, this continues to tarnish the political process. The 'big donors' buy their way in stifling the political process and influence and control the process for their benefits thus undermining the contribution and power of the electorate. This questions the legitimacy of the political parties in serving the citizens of the nation and their welfare. Various laws and regulations have been put in place to somehow soften the power of political funding through illegitimate sources and ways, however, the various loopholes in law come to the rescue of these shady donors and contributors, who, unfortunately have become a part of the political process and aid them in skirting and finding their way around the various legislations. Weak enforcement of these stipulations is what ails the democratic process. This paper provides an insight to the political financing regime in India and also throws light on the current situation, legal framework and how the legal vacuum aids in opacity of the whole process. It also mentions the probable measures to carve out and develop transparency, integrity and absence of corruption in the political process. This paper is an original and honest assignment and solely written out of individual research and knowledge.

INTRODUCTION

“Democracy is a rule of the people, for the people and by the people.”

-Abraham Lincoln.

The only means of smooth, peaceful and effective transfer of power with the consent and choice of the majority is elections. Elections offer a system and structure into the hands of the electorate, whereby, the people choose and vote for the party or the candidate which they

think falls in line with their expectations, interests and aspirations of a representative in the parliament and also who would work for them with honesty, integrity and impartiality as the cornerstone imbedded in the character. When elections are held without risking the corruption of integrity, the democratic principle of political equality is established. However, in the modern democracies this very basic structure or system is sometimes seen to be tarnished or rigged. The reasons are various and, although, this contamination of the system discredits the whole ideology behind democracy and that is, unconditional equality.

Political parties are a very central fragment of the electoral and democratic functioning. These parties require access to funds in order to be a participant of the large political process with numerous parties crusading to establish their political dominance. However, at the same time money in politics proves to be arguably the biggest peril to democratic systems all over the world. The ever so frequent and augmenting political scams and electoral cons add to the already discovered evidences which suggest that the increasing corporate and unregulated financing of the political parties are imposing unfair and unjustified pressure on politics and further enfeebling the sanctity and integrity of the electoral functioning. In some nations, the money flows from organized crimes into these political and electoral systems to clinch hegemony over the parties in power and their elected candidates. This sacrifices transparency and openness in the financing of the political parties. Many times, lack of disclosure of the sources of party funds lead to corruption and cronyism and potential reparations between the donors and the receivers. The need to regulate uncontrolled, undisclosed and opaque political finance was identified by the Global Commission on Elections, Democracy and Security⁴⁹⁵. This leads to the abrasion and eventual perishing of the balanced playing field as one party has access to large, almost unassailable mines of monetary funds.

The link between politics, business houses and embezzlements has a brief and comprehensive history all around the world and India has not been an exception to this chain. While the success of democracy in a complex and large country with widespread poverty and illiteracy has earned India global respect and applause⁴⁹⁶, unaccountability, opaqueness in political financing and corruption have haunted India's democratic and political process. The most

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⁴⁹⁵The Commission's 2012 report, *Deepening Democracy: A Strategy for Improving the Integrity of Elections Worldwide*, can be downloaded at <http://www.globalcommission.org/report>

⁴⁹⁶AshutoshVarshney, "India Defies the Odds: why democracy Survives," *Journal of Democracy* 9 (July 1998). <https://www.journalofdemocracy.org/article/india-defies-odds-why-democracy-survives>, RamachandraGuha, *India After Gandhi: The History of the World's Largest Democracy* (New York: HarperCollins, 2007).

worrisome issue in India's democratic process has been the increasing role of money from private individuals as well as companies. In 2012 US presidential elections, according to a study conducted by the Centre for Media Studies, the figure was a mammoth INR 30,000 crore (approximately US\$5.5 billion).⁴⁹⁷ To comply with the increasing need of money, most of the political parties choose only those candidates who are wealthy enough and can finance themselves and their election campaigns. The honest, talented, efficient and hardworking candidates who don't bring a bag of money with them to the party are neglected. This has led to the rise of wealthy candidates and in certain cases, even criminals 17 contesting elections⁴⁹⁸.

The need to regulate uncontrolled, undisclosed and opaque political finance was identified by the Global Commission on Elections, Democracy and Security⁴⁹⁹ as a major problem to the sanctity and integrity of elections all around the world. People all over the world want the parties, candidates and the government to work for their welfare and well-being. They want parties and candidates whom they can trust and who care enough about them to give their needs a priority. However, parties are only concerned with the corporations and specific individuals who finance them. As a result of this, citizens might lose faith in the political process which could lead to absence of participation in the democratic process of elections and other severe problems. For example, recent research shows that more than two-thirds of Americans trust government less because of the influence of big donors.⁵⁰⁰

A. POLITICAL FINANCING

A.1 BACKGROUND

Democracy is a costly affair. Yes, not only expensive, costly too. Funding of political parties by the corporate giants and also aiding the parties with election expenditure has its roots deeply embedded in the early 20th century or the freedom movement. The Birlas were one of the leading donors of the Indian National Congress and the business class as a whole secured some leverage over the shaping of the Congress government's policy on regulation of the

⁴⁹⁷Nilanjana Bhowmick, "The 2014 Elections Are the Most Expensive Ever Held in India," Time, 11 April 2014, <http://time.com/33062/india-electionsexpenditure>.

⁴⁹⁸Eswaran Sridharan and Milan Vaishnav, "India, in Checkbook Elections: Political Finance in Comparative Perspective", eds. (London: Oxford University Press 2016).

⁴⁹⁹The Commission's 2012 report, *Deepening Democracy: A Strategy for Improving the Integrity of Elections Worldwide*, can be downloaded at <http://www.globalcommission.org/report>.

⁵⁰⁰Report of Global Commission on Democracy, *Elections and Security* (2012, p. 34).

economy after Independence.⁵⁰¹In the 1960s, the Congress and the Swatantra Party—the latter started by C. Rajagopalachari as a party advocating free enterprise—were the main beneficiaries of donations from big conglomerates such as the Tatas and the Birlas, who together accounted for 34 percent of total 4 company contributions between 1962 and 1968. In practice, direct contributions to parties from business companies remain a significant source of financing. Party membership fees, ostensible funding from the state, donations and contributions from the candidates, their friends, relatives and other well-wishers, in addition to levy on parliamentary income manage to raise only a diminutive amount of funds for contesting and actively trying to win the elections. Hence, the idea of corporate help as a leverage over the other parties was left behind and corporate funding became a desideratum for contesting elections. In the post-independence era, the business community has contributed the majority of donations towards poll spending even as the cost of fighting elections has seen an exponential rise. However, hefty corporate political donations and contributions became the ruling incentive for increasing cronyism and corruption in the whole nation. In 1969, Indira Gandhi, then Prime Minister, banned corporate funding to the political parties to break the nexus between politics and business, the vacuum so created pushed the donations and aid of political campaigns underground and assisted the flow of black money. The Supreme Court in the case *KanwarLal v. Amar Nath Chawla*⁵⁰² stated that, “part spending on behalf of a candidate should be included in calculating that candidate’s election expenses”. In the context of this judgment the erstwhile Parliament amended Representation of People Act, 1951 in 1975 that, “party and supporter expenditures not authorized by the candidate did not count towards the calculation of candidate’s election expenses. In 1985, the process of electoral moved full cycle when the Company Act was amended and corporate donations were allowed to political parties thus abrogating the ban imposed in 1969. The post liberalization period has witnessed a massive increase in corporate funding of elections through both the traditional route of contributing directly to political parties and through other institutional 5 innovations like electoral trusts.

A. 2 POLITICAL FINANCE: CURRENT LEGAL FRAMEWORK

⁵⁰¹Venkatesan, V., Chequered, “Relations”, Frontline, available at <http://www.frontline.in/navigation/?type=static&page=flonnet&rdurl=fl1616/16160100.html>, Volume 16, 1999,

⁵⁰²*KanwarLal Gupta vs Amar Nath Chawla &Ors.* 1975, AIR 308.

A.2.i Indian Scenario⁵⁰³

1. Representation of the People Act (RPA), 1951, Companies act, 2013 and the FCRA 2010 governed the caps on contributions or donations to political parties. One person cannot donate more than rupees two thousand in cash to the parties. However, there are no limits on individual contributions.
2. Ban on foreign donations to Indian political parties. However, now, candidates or the parties can receive contributions from foreign companies registered within the physical boundaries of the nation. This becomes possible, after an amendment to FCRA, 2010 which modified and reconstructed the definition of the term “foreign source”.
3. Stipulations of the new Companies Act, 2013, suggested that, corporate funding of the political parties shall not exceed 7.5 percent (contrary to the earlier limit of 5 percent) of the net average profits earned in the antedating three years. It further provides that the contribution should be authorized by a resolution passed by the Board of Directors⁵⁰⁴.
4. The treasurer appointed by a political party or any other person working on their behalf should report, in each financial year, all the contributions exceeding the value of rupees twenty thousand by individuals as well as companies other than government companies to the Election Commission Of India (ECI).⁵⁰⁵
5. The political party or parties shall forward its election expenditure in prescribed format along with scanned soft copy to the Election Commission within 75 days of Assembly poll or 90 days of Lok Sabha poll.⁵⁰⁶
6. Stipulations of the RPA Act state that a candidate may be disqualified up to three years if convicted of corrupt practices or defaults to furnish election expenses. Defiance by the parties of these provisions results in loss of tax relief under Section 13A of Income Tax Act, 2011.

⁵⁰³ 255th Law Commission of India Report, March 2015
(<http://lawcommissionofindia.nic.in/reports/Report255.pdf>)

⁵⁰⁴ Indian Companies Act, 2013, Section 182

⁵⁰⁵ Representation of People's Act, 1951. Section 29C

⁵⁰⁶ Election Commission Of India, *Compendium of Instructions on Election Expenditure Monitoring* (January - 2015)

7. Elected candidates in parliamentary constituency are prescribed to present the details of their assets and liabilities to the Lok Sabha (lower house) speaker, Rajya Sabha (upper house) chairperson, within 90 days of taking oath.
8. There are restrictions on election expenditure with respect to only the candidates under Section 77 of Representation of People Act, 1951 and Conduct of Election Rules, 1961. A candidate contesting elections in a parliamentary constituency can spend a maximum amount of rupees 70 lakhs and a candidate contesting elections in assembly constituencies can go as far as spending rupees 28 lakhs only. However, such limits are lacking in the case of political parties spending on elections.

A.3 LEGAL LACUNAE

1. The laws associated with election expenditure, corporate financing and funding, disclosure and contribution are characterized with various ambiguities. First and foremost, notwithstanding the Election and Other Related Laws (Amendment) Act 2003, Section 77 of the Representation of The People Act (RPA), only covers the aspect of 'individual candidates' and not that of political party or parties. This is evident from the stipulation requiring "every candidate" (or his electoral agent) to keep a separate account of the expenditure which has been "incurred or authorized by him" between the date of nomination and declaration. Consequently, political parties and candidate supporters are allowed unlimited expenditure in propagating the party program, as long as no specific candidate is favored.⁵⁰⁷
2. The transparency guidelines of the ECI (Election Commission of India) have no statutory authority and the non-compliance to the set rules has no legal consequences.
3. It is observed that information regarding the source of funds from individuals, corporations, companies and/or other credentials like name, address, PAN number, mode of payment, time and date of the payment received is not fully presented by the political parties. There have been several instances where political parties have been late or have filed wrong annual audit/ contribution

⁵⁰⁷ M.V. Rajeev Gowda and E. Sridharan, Reforming India's Party Financing and Election Expenditure Laws, 11(2) Election L.J. 226, 232-235 (2012)

reports. Recent example to the above statement is when Bhartiya Janata Party and Indian National Congress were the only two parties that did not submit audit reports of election expenditure till February 7 creating a delay of 99 days, said a report by the Association of Democratic Reforms (ADR). However, as of now, there is no categorical schedule for incomplete or non-disclosure of such reports or if there is a delayed submission of the report.

4. Moreover, the scope of the Section 77 of the Representation of the People Act, 1951 is narrow as the prescribed limit on expenditure by the parties is only effective from the date of nomination of candidature to date of declaration of poll results.
5. Vote-buying is a common practice that many advanced democracies experience.⁵⁰⁸
6. Cunning and ingenious accounting can allow parties to allocate huge expenditure to their leaders and claim the exception in the section 77 of the RPA Act, 1951.

A. 4 METHODS IN POLITICAL FINANCING

The adaptation of the German model of political funding, wherein, business houses, contribute funds to their favored political parties on partisan basis is a bold and rather captivating model accepted by India with respect to political financing. This formula-based model of contribution to campaign spending is known as electoral trusts. During the general elections of 2009, over 36 corporate donors contributed more than Rs. 1 crore each to political parties across the spectrum, with at least three corporate donors contributing more than 10 crores to the principal political parties.⁵⁰⁹ In 1996, the Tatas were one of the first corporate houses to begin using this model which was later adopted on the similar lines by other corporations. Since then, the Aditya Birla Group and the Bharati Group have made significant monetary as well as other contributions. The reasons for growth in favorability of the model of electoral trusts are the confidentiality and the discretion that it offers. Any

⁵⁰⁸ Magnus Ohman, "Getting the Political Finance System Right," (Stockholm: International IDEA); (London: Oxford university Press 2016, 17 and 30.

⁵⁰⁹ Report by National Election Watch and Association for Democratic Reforms *Analysis of Income Tax Return Filed and Donations received by political parties*, available at <http://adrindia.org/sites/default/files/Report%20donations.pdf>, last visited on March 27, 2013

company registered under the Section 25 of the Companies Act, 1956 can make an application for approval as an electoral trust.⁵¹⁰ The donors are not burdened with the responsibility of disclosing the name of the party to which they have donated or amount of the contributions made. This becomes a source of trouble if the party a particular business house is funding, loses the election. Parties having certain representation in the parliament and legislative assemblies are eligible for this style of funding. No voluntary contributions received by an electoral trust shall be included in the total revenue of the previous year of such electoral trust, if— (a) such electoral trust disburses to any political party, registered under section 29A of the Representation of the People Act, 1951 (43 of 1951), during the said antecedent year, ninety-five per cent of the total donations received by it during the said previous year along with the excess, if any, brought forward from any earlier year; and (b) such electoral trust operates in lines with the rules made by the Central Government.]⁵¹¹ The Political parties having no less than three percent seats in the Lok Sabha are financed by the electoral trusts regulated by the Tata Group. The main intent of the electoral trusts is to grant money to political parties in a non-opaque, non-discretionary and an impartial manner. Administration of the fund is generally handled and managed by two or three eminent figures, judges and lawyers of the High court and the Supreme Court.

A. 5 INTERNATIONAL COMPARISON

It will prove to be beneficial to compare and weigh India's structure of electoral and political finance ordinances with other leading international democracies in the world. The United States system does not have any limitations whatsoever on spending but does on donations, in contrast of India. The United States Supreme Court's decision in the *Buckley v. Valeo*⁵¹², struck down the Federal Election Campaign Act's individual expenditure limits as violative of free speech under the First Amendment, reasoning that expenditure limits would restrict the quantity of free speech. More recently, in *Citizens United v. FEC*⁵¹³, the Supreme Court of the United States declared limits on corporate independent expenditures. However, the United States has limits on donations to contestants and political parties, as well as total

⁵¹⁰ Income Tax Notification No-09/2013, Dated: January 31, 2013 *Electoral Trusts Scheme*, 2013 notified by CBDT

⁵¹¹ Indian Income Tax Act, 1961, Section 13b.

⁵¹² *Buckley v. Valeo*, 424 U.S. 1, 96 S. Ct. 612 (1976)

⁵¹³ *Citizens United v. FEC*, 557 U.S. 932, 129 S. Ct. 2893 (2009)

contribution limits. Further, since 1947 corporations and labor unions have not been able to contribute directly to candidates. In contrast, India has candidate expenditure limits (and since 2003 these have included party and supporter spending in support of a candidate's election), while corporate and union contributions to parties are legal. In terms of furnishing and divulgence requirements, the U.S. system is more limpid, in that all donations above certain low limits have to be disclosed by recipients and donors.

European model of the political finance also contradicts with the Indian structure. The difference lies in the state funding of the political parties for elections as well as general purposes. Free air time on state-owned electronic media since 1996, tax deductions for donations to parties since 2003, preparation and updating of electoral rolls and orderly carrying out of elections are some of the indirect subsidies provided by the government to the parties. However, instead of this assistance, no direct subsidies to the parties are provided by the government. Notwithstanding, in most of the Europe, aside from the UK, the state or the government lends both direct and indirect subsidies to the parties. Reporting and disclosure requirements are stringent and the general plunge has been to move away from corporate contributions to small-sum donations by large numbers of party supporters, i.e., towards grassroots financing⁵¹⁴

Political contributions in France, including from the legal entities, is prohibited. The decision was taken keeping in mind the principle of providing a fair ground for all the political parties to contest the elections, and as a result, the enormous expenditure incurred in contesting elections has been cut short. For example, France's two 2007 presidential finalists spent a collective \$54 million (out of a maximum legal limit of \$49 million each).⁵¹⁵

Germany has the system where the political donations are recognized by categories that are, individuals and corporations. Donations from the corporates and corporations are not tax deductible. Onus of complying with the disclosure provisions lies on the treasurer of the political party. Speaker of the federal parliament is provided with the financial report of every party which is then published in a parliamentary paper. Apart from individual countries,

⁵¹⁴Nassmacher, K. (2003), Party Funding in Continental Western Europe. In International IDEA, Funding of Political Parties and Election Campaigns (pp. 117–138).

⁵¹⁵Crumley, Bruce, "France's Stringent Election Laws: Lessons for the America's Free-for-All Campaigns", available at <http://world.time.com/2012/04/20/frances-stringent-election-laws-lessons-for-theamericas-free-for-all-campaigns/>

multilateral organizations like the Council of Europe have framed a series of guidelines and measures for governing the corporate funding of elections.

A. 6 SUGGESTIONS

1. The mainstream reform in electoral finance sector in the last few decades has been public funding of political parties, whether full or partial. Most democracies have adopted the development of public funding of the political parties sometimes, candidates very recently; however, this is an age- old concept. As many as 116 countries (68 percent) have introduced direct public funding to political parties. A majority of the European countries (86 percent) provide state subsidies to political parties, with Germany and the United Kingdom being the lead examples.⁵¹⁶ Political philosophers and democracy scholars, such as John Rawls, Robert Dahl and Ronald Dworkin, call for public funding to preserve equal political influence and prevent well-heeled candidates from using the advantage of wealth to defeat poorly financed opponent⁵¹⁷. International experiences suggest that the system of public funding cannot be the panacea for all ill political finance regimes, however, it has promised better and corruption free working of the political finance regime in some democracies of the world while it has failed to do the same for others. For state funding to be successful and effective, countries must adopt the dual method of reducing the dependency on corporate and private funding by stringent and effective laws and regulations and at the same time pump the finance system with white money by means of public funding.
2. Political donations should be subject to transparency. A cap should be set, the donations above which should be disclosed and should be made available to the electorate along with the name, and amount contributed of the donor. This will put a check on both donors and candidates or parties. Further, more transparency is required in terms of making the list of donors and donations irrespective of whether the donations come from the public or companies.
3. Setting up of a political party fund under the auspices of the Election Commission of India to which all the interested companies and corporations can contribute can be seen as

⁵¹⁶ . Magnus Ohman, Political Finance Regulations around the World: An Overview of the International IDEA Database, (Stockholm: International IDEA, 2012).

⁵¹⁷KeenaLipsitz, Democratic Theory and Political Campaigns, the Journal of Political Philosophy 12, no. 2 (2004).

a good alternative to corporate political funding. The political parties can avail this amount for specified purposes such as research and organizational reforms, assisted by an advisory committee of representatives of political parties and a few eminent persons. This kind of a system can put to rest the allegations and debates that the corporate houses fund the political parties to secure the smooth and uninterrupted functioning of their business affairs and other aspirations, rather than to commit to the working of a healthy, biased and a transparent democracy which is the very bedrock principle of democracy.

CONCLUSION

Money and Politics go hand in hand. However, the route through which these funds are procured can have a substantial impact on the integrity of political, democratic and electoral functions and systems. It is a known and established fact that money plays a major part in the smooth functioning of the democracy. It also aids the democracy to prosper and progress provided the funds are acquired, allocated and spent in legitimate, moral and appropriate manners. However, history suggests that the same apparatus that facilitates functioning of the democracy has proved to be its greatest and the most dangerous peril. Corruption and cronyism have crawled their way into the political and democratic structure which slanders the reputation of parties and the candidates. Findings from Transparency International's 2013 Global Barometer reveal that political parties are perceived to be the most corrupt institution of those surveyed, ahead, for example, of the police, public officials, parliament and the judiciary. Surveys such as the Latino- and Afro-barometers reveal a similarly bleak picture, with low levels of trust in political parties. Losing trust in the political process means that the people are distancing themselves from the very functioning which empowers them to select and elect their representatives whom they think comply in line with their political and social views. 'Big money' is being continuously pumped into the democratic functioning which is a reason for the increasing worries of the people around the world. One reason for the robust amount of money invested can be appropriated to increasing professionalism in the candidates and parties which help them reach the 'soft nerves' of the masses. To compete in the large-funds arena parties have to attain funds from various sources some of which might be shady as well. In turn, these parties depend upon large corporations for their funding which poses a risk of these wealthy white collared sharks influencing the political process for their own benefit and undermine the core principles of democracy. The augmenting corporate

financing of politics leads to inequality in the political field as well. In the case of India, section 77 of the Representation of People Act, 1951 regulates individual candidates' expenditure and not that of political parties. There is no cap on the expenditure of the parties. As a result of this, the overall spending can be higher than the individual limits, as these limits do not directly apply to spending by political parties or that by other actors on behalf of a candidate.

