
TRANSPARENCY IN ELECTORAL FUNDING: TRACING GLOBAL TRENDS IN COMPARISON TO INDIA

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ABSTRACT

In times of increasing need for electoral accountability in the country, one of the key data points that citizens ought to know is how political parties fund their elections. Funds flowing from numerous sources, sometimes illegal, end up rotting the system due to a lack of transparency. This dilutes democracy, as representation owed to people is corrupted by misinfluence. While this is an overarching factor throughout the world, what this essay intends to argue is the need for transparency in light of the history of political financing and the methods to alter this system in light of the subsisting successful global electoral processes.

Introduction

Globally, democracies thrive in the sole existence of political parties and their vitality boosts the modern polity with regard to political pluralism and expressionism. They perform a variety of functions, most of them furthering the values requisite for the liberal democracy to thrive. They integrate the subjects with the state by socialising and mobilising their needs and wants, especially in the election period, ultimately aggregating various tools of social vehicle such as shaping ideologies, values, political interests and advancement of social welfare, to name a few. But, the foundational basis for politics to even take part in the first place is: Money. Without money, modern elections cannot be contested. The political competitiveness that democracy depends on necessitates staff expenditures and campaigning expenses. However, political party funding frequently inspires suspicion and cynicism – sometimes justifiably so – regarding the motivation of both the givers and receivers of funds.¹

¹ Recommendations on Political Financing For OGP Action Plans available at: https://www.transparency.org/files/content/activity/Rec_on_Political_Integrity_for_OGP_action_plans_-_FINAL.pdf (last visited on 16th May 2022).

Campaign funding is not inherently harmful, because active election campaigns can engage citizens and stimulate democratic discourse between parties and voters. It enhances political parties and candidates by giving them greater opportunities to fight on an equal footing.

Money, on the other hand, can be used by some to attempt to influence the political process; disproportionate access to funds can stifle a fair playing field; unregulated political finance can lead to an infusion of dark money, business interests co-opting politics, and widespread vote buying. Money's distorting effect on the political process necessitates legal restriction as the excessive funding sometimes triggers the need for transparency and accountability, which unfortunately is not found in most politics.

Political finance regulation hence is a tricky problem, but the stakes could not be higher. Governments must improve their frameworks for openness, involvement, and accountability in political funding to ensure that elections are free, fair, and adequately funded. This protects against undue influence and supports political integrity.²

If we take a look at the history of India and its stint with electoral funding regulations, it is not rosy at all. There have been instances of finance scamming yet, interestingly the dependence has stayed constant if not increased. But the faith people have in the system has been diluted, which is exactly the reason for the need for reform, to upkeep the voter's trust to the T. This essay thus seeks to see the models of electoral funding throughout the world, especially the United States of America, study the trends of transparency maintenance and draw a parallel to the Indian Scenario.

Popular Means Of Electoral Funding and the Regulatory Mechanism to Counter Transparency Issues: An Overview

In most modern democracies, the conventional method of party finance, which relies mostly or almost entirely on membership fees, is no longer viable. Other than membership, there are private sources of funding. Fees, whether internal or external to the party, are not without issues. Parliamentarians' contributions to their party are deducted from their salaries. Allowances may be a kind of hidden public support that is difficult to reconcile with their

² Financing political parties and election campaigns – guidelines, available at: https://eos.cartercenter.org/uploads/document_file/path/309/Financing_Political_Parties_en.pdf (last visited on 16th May 2022).

autonomy and constitutional mandate. This is especially true when the payment is a de facto duty. Other personal information Donations, for example, carry the danger of forming inappropriate connections, between monetary donations and certain political moves. Just a plain outward impression may itself be enough to damage the reputation created by the party, undermining democracy.

Private financing methods are generally conventional sources such as membership fees; profits flowing from the businesses owners who are also members of the party as private donations etc. Private donations, in specific, are especially beneficial for the parties as they help in maintenance of linkage between the party and its members and also the party and the common folk. Unlike public funds or membership fees, which are more or less fixed or dependent on a party's electoral performance or parliamentary strength, money raised through donations is more dependent on a party's ability to raise external finances. This provides parties with more freedom to produce their own revenue. Furthermore, private finances are beneficial because they encourage public participation in the political party activities and maintain a connection between political parties and their grassroots supporters. Some regard private fundraising as more desirable and respectable than governmental money, which can lead to highly bureaucratic parties run out from top without a connection to mass supporters.

However there is an attached problem with this financing as there are issues of impermissible donors being the powerhouse of the company funding the elections and in some states it has been done away with to an extent owing to the lack of transparency here³. For example in France,⁴ the laws dealing with elections⁵ ⁶ moved towards a rather strict regulation on restricting corporate funding. In 1990, the law authorised donations from corporations but under fixed circumstances such as that fitting with corporate purposes and they could not be paid to the parties directly but via financing institutions and tax incentives were provided. Looking at the increase in corruption, Another amendment was made in 1995, which posed a ban on corporate funding altogether as it jeopardised the voters' rights as such as the 1990 law

³ How French parties and politicians are funded, *available at: <https://www.france24.com/en/20100706-french-parties-politicians-funded-france-government-legislation>* (last visited on 16th May 2022).

⁴ Even in France, Money Rules Politics, *available at: <https://www.ineteconomics.org/perspectives/blog/even-in-france-money-rules-politics>* (last visited on 16th May 2022).

⁵ The Law on Financial Transparency in Political Life, 2016.

⁶ Electoral Code, 2016.

set an upper limit for donations, providing a ground for trading influence and advancement of illicit financing.

There is also the category of anonymous donations and from the idea of advancing socialistic democratic and freedoms, this hinders transparency. As one would observe in the case of Electoral bonds in India, this system devalues democracy as there is no maximum ceiling and the absence of that has to be filled with a regulatory mechanism.

Public Funding, on the other hand, was first initiated by the Republic of Germany in the year 1959⁷, whereby a limited budget allocation was made, later a legislative framework for large governmental subsidies was established in 1967. Several nations adopted Germany's lead and established state funding to political parties, usually starting with parliamentary groups and then moving on to the central party organisation. State support for parties was often introduced on a relatively large scale during or immediately after the transition to democracy in more newly created democracies, like in southern Europe or post-communist eastern Europe. Switzerland is peculiar with regard to this in the west as there are absolutely no public subsidies accessible for major parties or election campaigns on the federal level in European democracies. In the cases of the United Kingdom and Ireland, the central party is omitted in the funding and it is only given to the parliamentary groups.⁸

Laying a greater emphasis on public funding could limit the power of private persons or businesses. The downside is that it increases parties' reliance on the government. This may encourage political parties to rely too much on public funds, thus jeopardizing their ties to and interests of the people they are intended to represent. Furthermore, if public support is available, equal opportunities for political engagement should be granted to both established parties and political newcomers. The arguments towards public financing suppose that it compensates for the incredibly high costs amidst the scarce resources; promote free and fair competition in the political race and eliminate 'interests' in money.

The optimum answer is likely to be a well-balanced combination of income sources, involving

⁷ Olga Khazan, "Why Germany's Politics Are Much Saner, Cheaper and Nicer Than Ours" *The Atlantic*, Sept, 30, 2013.

⁸ Inter-Parliamentary Union (IPU) and United Nations Development Programme (UNDP), *The Representation of Minorities and Indigenous Peoples in Parliament: A Global Overview* (Geneva and New York: IPU and UNDP, 2010), accessed 21 August 2018.

both private and governmental money. Certain sources and amounts of private donations should be restricted, while state financing should be increased. It should be granted on the condition that political party accounts be kept up to date. External audits by specifically authorised public bodies are required. Complete clarity and disclosure in political party funding should be ensured through legislation with the goal of avoiding any negative impact of finance on the party's activities and policies.

Whatever scheme of party finance, as well as the restrictions it places on political parties and their access to financial resources, will only be effective if it is accompanied by strong control systems and punishments for any eventual transgressions. Control and Vigilance boards should therefore be made up of independent members and given appropriate resources (such as investigation powers and financial and technical resources) to carry out their monitoring functions efficiently.

Now, looking at specific cases of countering transparency issues in various states with the help of some regulatory and control mechanisms.

In Georgia, the state promised in 2014 to release political party reports and statistics on the State Audit Office website (SAO). The Georgian Government met its commitment more than a year early; the SAO released regular reports showing party incomes and expenses and contributor names and ID numbers. Transparency International Georgia has developed a platform to track all donations to Georgian political parties since 2012. Transparency International and the Institute for Development of Freedom of Information use SAO data to monitor political party financing for law violations and to promote reforms.⁹

In the case of Chile, after the Lobbying Law went into effect in 2014, the government adopted efficient implementation mechanisms. The government organised public meetings where citizens may provide suggestions on how the law should be implemented and taught government personnel across the nation on the technical facets of the law. In addition, a new computer system was implemented to document lobbying activity and provides government employees with support and information. These provisions enable the Lobbying Law to serve

⁹ Political Finance Transparency, available at: <https://www.idea.int/sites/default/files/publications/political-finance-transparency.pdf> (last visited on 16th May 2022).

as an effective deterrent against conflicts of interest in public-private partnerships.¹⁰

Further, in Spain, Not just the central election body but the local self government elections' funding were also made transparent in the city of Madrid in 2017 where it served as a role model for local governments by instituting a registry requiring lobbyists to declare any meetings with Madrid City Council officials. Citizens can subscribe to get alerts on topics of interest, access officials' calendars, and request appointments with their representatives using the online registry. Within the first six months of the site's existence, over 200 lobbyists had registered.¹¹

Viewing the History of Transparency of Electoral Funding in India

Highlighting the Regimes

The growth of the regime of political finance is quite interesting as its gradual evolution can be demarcated with their slow yet steady progression.

The first and the foremost phase could be said to be from 1947 to 1990 whereby the shift from the party fees only setup moved to corporate funding, wherein most private companies constantly gave money to the parties they favoured, expecting favours in return. Raising alarm about the increasing black money and the allied corruption, the Santhanam Committee Report¹² alongside the Wanchoo Direct Taxes Inquiry Committee¹³ highlighted this prevailing problem of electoral funding money seeping into the economy as black money. The then prime minister Ms. Indira Gandhi prohibited corporate funding in totality, making the black money actually thrive majestically as the idea was in full action with underground financing still in place. The initial foundation was laid down by *Kanwar Lal Gupta vs Amar Nath Chawla*, 1975 wherein the court held that the spending, must be thoroughly disclosed in the calculations of the party's election expenditure and in the chance that the expense limits have been violated, it could be determined so as to the integrity of the party's success¹⁴. However, modifications to the Representation of the People Act (RPA), 1951¹⁵, passed by Parliament in 1975 negated this.

¹⁰ *ibid*

¹¹ Jones S, Digital Solutions for Political Finance Reporting and Disclosure: A Practical Guide (International IDEA, Stockholm, 1st edn., 2017).

¹² Government of India, Ministry of Home Affairs, "Report of the Committee on Prevention of Corruption, 1964" (April, 1964).

¹³ Government of India, Ministry of Finance, "Report on Direct Taxes Inquiry, 1971" (December, 1971).

¹⁴ *Kanwar Lal Gupta vs Amar Nath Chawla*, 1975 SCR (2) 269.

¹⁵ Representation of the People Act, 1951 (Act 43 of 1951).

Following that, in 1979, the exemption of political parties from income and wealth taxes on the condition that they file annual tax returns was implemented, followed by the introduction of a 5 percent limit on corporate donations to political parties under the Companies Act in 1985 (then increased to 7.5 percent in the version of 2013).

Several electoral reforms were implemented in the second phase, which ran from 1990 to 2003, including recommendations from the Dinesh Goswami Committee¹⁶, such as state funding in the form of limited in-kind support (transportation fuel, speaker and mic rental fees, voter registration slips, and electoral rolls) in 1990, as well as suggesting a ban on corporate political donations. In 1993, the Confederation of Indian Industry (CII) established a Task Force. It was proposed that corporate contributions be made tax-deductible, and that board decisions about political contributions be subject to shareholder approval. It also advocated that elections be funded by the government. The most important development during this time was the Supreme Court's decision in the 1996 Common Cause case¹⁷, which required political parties to file returns by February 20, 1996. Following this ruling, election expenses incurred by a political party would only be considered in evaluating compliance with the expenditure ceiling if the party has produced audited financial statements. This compelled parties to explicitly report their annual income, giving some transparency to the process.

In the advice of the Indrajit Gupta Committee¹⁸, the ruling government starting the provision of state subsidy in allotment of 'free time' for all the participating political nation and state parties over the media- radio and television. The report also emphasised on the judicious quantity and usage of fuel, paper, communication facilities, speakers etc. and suggested they be included in the disclosure means. In this period, the ADR vs. Union of India¹⁹ case which mandated that all the candidates had to necessarily show their history of crimes, educational qualifications and the assets they possessed prior to the elections in lieu of placing an affidavit before the Election Commission of India.

The third phase was the period post 2003 till 2017 wherein transparency was greatly prioritised. The Election and Other Related Laws (Amendment) Act of 2003²⁰ made corporate and

¹⁶ Government of India, Ministry of Law and Justice, Legislative Department, "Report Of The Committee On Electoral Reforms" (May, 1990).

¹⁷ *Common Cause vs. Union Of India*, 1996 SCC (4) 33.

¹⁸ Government of India, Ministry of Law and Justice, Legislative Department, "Report On the State Funding of Elections" (June, 1998).

¹⁹ *Association for Democratic Reforms vs. Union of India*, AIR 2001 Delhi 126.

²⁰ The Election and Other Related Laws (Amendment) Act, 2003 (Act 24. Of 2003).

individual contributions to political parties 100 percent tax-deductible, encouraging businesses and individuals to pay publicly through the means of DD or cheque. All contributions above Rs 20,000 (\$290) must now be reported to the ECI on an annual basis. In response to ADR's appeal, India's Central Information Commission (CIC) ruled in 2008 that parties' income tax returns be made public, requiring parties to divulge their income and expenditures dating back to 2004-05. In response to ADR's submission, CIC determined in a 2013 judgement that political parties are now "public authorities" and that they fall under the scope of the Right to Information Act. CIC requested that parties provide information of any voluntary financial contributions they had received. Parties, however, refused to follow the instruction. Following that, the ECI adopted Transparency Guidelines in 2014²¹, requiring parties to name all donors and amounts. These guidelines, however, do not seem to have legal backing.

Era Of Electoral Bonds: Viewing Transparency from the Right to Information Purview

India, as the world's largest democracy is renowned for its eclectic range of parties, with its diversities, representation and statuses. All these parties, regardless of their composition, need finances for funding their election campaigns among other election activities. Monetary help flows from those who would like to associate themselves with the party such as business conglomerates, independent industrialists, individuals etc. These indubitably go unaccounted for, ultimately veiling transparency and being eclipsed in the disclosure requirements. These donors enjoy a quantifiable influence in the winning parties' politics. In order to counter all of these ramifications, the Union Government in 2017-18 Annual Budget introduced the Electoral Bonds Scheme (EBS).

Electoral Bonds are a monetary instrument that is issued to donate to political parties given in denominations of Rs.1,000, Rs. 10,000, Rs. 1 Lakh, Rs. 10 Lakhs and Rs. 1 crore and this does not have an upper limit. They are valid for a period of 15 days and can be redeemed in the political party's account. However, here is the catch- These bonds are anonymous, therefore the donor's name is not known. The secrecy surrounding the money donated and received using electoral bonds is a gross breach of a citizen's right to information, which in turn infringes a citizen's freedom of speech and expression. The major problem here hence, is the anonymity attached to the EBS.

²¹ Correspondent, "EC new Transparency Guidelines For Parties" *Hindustan Times*, Aug. 24, 2014.

In the case of an appeal by Mr. Vihar Durve²², seeking the transparency and release of data with regard to electoral bonds, The Central Information Commission headed by Mr. Suresh Chandra in 2020, has ruled that publishing the identities of the donors to the electoral bond system is not in the public interest in the words: *"there appears to be no broader public interest overriding the right of privacy of the donors and donees concerned."* and that the *"disclosure of names of donors and donees may be in violation of provisions contained in section 8 (1) (e) (j) of the RTI Act itself, which exempts a public authority from providing a citizen information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants such disclosure."*²³

This order is rather "unreasonable" because it does not address concerns from the Election Commission, Reserve Bank of India, or the Ministry of Law. After being dissatisfied with the CPIO's response, he went to the bank's First Appellate Authority (FAA), who also ruled that the information possessed qualifies to be third party information and could not be disclosed as the bank held them in the capacity of a fiduciary²⁴ It is notable how the FAA made similar judgments about his refusal to reveal party-by-party data of beneficiaries while giving information on the total amount of bonds issued in the 2018-20 period.

Electoral Bond Schemes has obviously 'big money' games involved as we evidence in the Bihar Assembly elections revealed 279 bonds of Rs. 1 crore being sold or the Delhi Assembly elections revealing 139 bonds of the value 81. 67 being sold. Although the Election Commission of India has starkly criticised the bond scheme, the scheme was just a performative addition to distract the executive decision to remove limits on corporate funding, both ultimately causing damage to the democratic process as a whole.

Invoking Transparency Lessons for India from the Global Super Power: Drawing a Parallel to The United States

A Brief History into the Federal Laws on Electoral Funding

²² Sandeep A Ashar, "Electoral bonds: CIC says revealing names of donors not in public interest, violates RTI" *The Indian Express*, December 23, 2020.

²³ *Vihar Durve vs CBI*, CIC/CBRUI/A/2019/100528.

²⁴ Electoral Bonds: 'No Public Interest' in Revealing Details of Political Donors, Says Top RTI Body, *available at*: <https://thewire.in/government/electoral-bonds-central-information-commission> (last visited on 16th May 2022).

Ever since the dawn of the nineteenth century, there had been efforts to mobilise electoral funding reforms in the United States. Marking the need for them, in 1905 the then president Roosevelt mentioned the mandate behind banning corporate funding and as a result, throughout the years 1907 to 1966 acts were passed in this regard. He was also the pioneer that passed the primary campaign financing regulatory act the 'Publicity Act of 1910'²⁵.

These acts were comprehensively tied together and made as the Federal Election Campaign Act²⁶ and this was intended to bring in a rather more strict disclosure provisions for electoral candidates pervasively- federal persons, parties, action committees etc. everybody. FECA was later tweaked to by an amendment in 1974 to set limits on those such funding provided to candidates, political parties and action groups.

This is where the constitutional challenge came up. The landmark *Buckley vs. Valeo*²⁷ was the case where this act was challenged. The Supreme Court of the US upheld this act and was flag bearing the idea that disclosure was everything that was required to curb corruption. It was held in the decision that disclosure requirements told the voters the categorical information about the source of money, expenditure details and also put out to whose or what interests the candidate stands for. It also exposes large sums of contribution made by bodies to assume a probable influence. Also, reporting of the sum of money collected was a practice essential to detect violations of the limits laid on contributions.

This per curiam agreement paved the way for nullifying certain other provisions of the act that put methods of appointment of members to the FEC, limitations on expenditure of candidates, except for those presidential candidates who accept public funding, etc. So, the court did not oppose money per se but just that it raised the stakes of accountability.

The FEC Guidelines²⁸

The Federal Election Commission has a list of those who can and cannot contribute in the election campaign financing and even those who are contributing are categorically limited.

²⁵ Publicity Act, 1910.

²⁶ Federal Election Campaign Act, 1971.

²⁷ *Buckley vs. Valeo*, 424 U.S 1 (1976).

²⁸ Transparency in Political Funding: India has much to learn from the USA, available at: <https://factly.in/transparency-in-political-funding-india-has-much-to-learn-from-the-usa/> (last visited on 16th May 2022).

To name those who can contribute: Individual persons, specific Limited Liability Companies, Limited Liability Partnerships, Partnerships, Party Committees, Political Action Groups and Committees both who are mainstream and non-connected, Self financing candidates.

To name those who cannot contribute: Corporate companies, Labour Organisations and Unions, Contractors at the federal government, Foreign Nationals, Religious groups, Funds of candidates earned by Illicit means, an anonymous contribution in the category of 'others'.

FEC also mandates filing of disclosure reports by all those people who get the donations periodically. There is a deadline for these report filing with regard to the corresponding campaign dates and the information submitted, either physically or electronically goes straight to the database maintained by FEC and this database is published on its website for the public perusal, making information readily available.

Conclusion: What Can India Do Differently?

The US requires candidates and parties to submit and disclose contribution reports regularly. Periodical updates or real-time bulletins by electoral campaigns provide the information. The FEC releases this information and gives up-to-date campaign financing patterns. The disclosures provide transparent and holistic information by individual contribution, by candidate, by PAC, by election campaign, etc. This information is easily accessible.

India's political fundraising regulations are different. The Election Commission of India (ECI) has led measures to increase transparency to how political parties acquire finance, but more remains to be done.

The annual Audit, Contribution & Expenditure reports provided by political parties are the only public statistics on political funding and expenditure. These reports are rarely on time, however. Factly has covered this extensively. Even though the typical deadline is 31 October, only two state parties and none of the National parties have completed their contribution reports for 2019-20. No party has submitted its 2019-20 audit. Political parties received most of their election money in April and May 2019. Citizens don't know who donated to political parties 18 months later.

Even timely reporting does not have a full knowledge of political party funding because the information is released after an election. In a previous report, we emphasised the difficulty in

determining the magnitude of opaque electoral bond funding and contributors. Even with anonymity thresholds, there remain transparency issues.

It's time for Parliament to change existing legislation to increase political fundraising transparency and ban anonymous donations larger than Rs. 1000. Instead of only posting scanned reports from political parties, the ECI should create a platform with more timely and easily accessible information on political contributions and expenditures.

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