



The Cost of Democracy

Challenges of Funding an Indian Election

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Disclaimer: The views expressed in this study are solely those of the authors, and do not represent the views of YLAC as an organization.

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1. Introduction

It is a well known fact that money is as much a part of politics as ideology, advocacy, service, and legislation. The development and orchestration of political activities - including but not limited to publicity, campaigning, employing and disseminating local functionaries, policy development, and voter mobilisation - requires substantial capital in order to run efficiently. Wealth, therefore, not only grants access to the tools of democracy but also enables their implementation. Subsequently, the derivation of funds required to establish and sustain political functions takes precedence for party leaders and candidates alike.

An understanding of political funding by the citizens of a democracy is necessitated by the principle that the government is established by and exists for the service of the public. As citizens themselves supply their candidates with the means to administer their campaigns, functions, and policies, there is a crucial need for the public to account for and supervise the flow of money in politics.

1.1 Electoral Funding in India

One can easily ascertain a common trend when it comes to describing elections in India - this festival of democracy is often referred to as being a colossal exercise. India, with a sizable population of 135 crore people with 90 crore eligible voters, stands as the world's largest democracy. Due to the nation's sheer magnitude, electoral spending becomes as vast and expansive as the population itself. In the 2019 Lok Sabha elections, electoral funding amounted to a whopping Rs. 55,000 crore¹ - the cost of 128 missions to Mars, or 18 new Statues of Unity - and this figure excludes the unaccounted funds that came via inconspicuous channels. This sum translates to Rs. 700 per vote²; we can easily conclude that much like most Indian festivals, elections in India also tend to become an extravagant, consumer-based expenditure spree.

The tremendous influx of wealth in Indian elections can be attributed to 5 reasons:

- i) As constituencies increase in population, candidates must appeal to a larger voter base.
- ii) Political competition is at an all-time high, with approximately 14 candidates contesting for one constituency seat on average.³
- iii) Parties must invest heavily in campaigning in order to consolidate their voter outreach. Large scale campaigning thereupon results in employing a large number of party personnel and staff (karyakartas), meaning that parties must also furnish volunteers with salaries in order to ensure effective participation.
- iv) Finally, the introduction of election funding reforms that have opened up new conduits for funding (such as Electoral Bonds or the removal of limitations on corporate donations) have also accounted for a greater inundation of capital into the electoral process.

The massive infusion of wealth into the electoral process is not a cause for concern by itself - increased campaign funding can be seen as a sign of enriching democratic mechanisms and bridging the gap between citizens and their representatives. However, as posited by Milan Vaishnav, Senior Fellow at the Carnegie Endowment for International Peace, "Few advanced democracies legitimize opacity in the way India has done." Political funding in India often exists in a void, rife with anonymity and skepticism. In the 2019 General elections, 53% of political donations came from unknown sources⁴, an unfortunate but telling symptom of a system that relies heavily on capital, skewing the playing field in favour of those with powerful stakes or special interests in policy. With this in mind, it's important to question the system at large.

¹ "A Murky Flood of Money Pours Into the World's Largest Election." Bloomberg.com, Bloomberg, www.bloomberg.com/graphics/2019-india-election-funds/.

² Joy, Santosh Koshy, and Mayank Mohanti. "Elections 2019: Your One Vote Was Worth Rs 700.", Asiaville, 6 June 2019, www.asiavillenews.com/article/in-2019-lok-sabha-polls-expenditure-equals-rs-700-per-vote-6994.

³ "Analysis of the Contesting Candidates in General Election 2019." PRSIndia, 13 May 2019, www.prsindia.org/theprsblog/analysis-contesting-candidates-general-election-2019.

⁴ "A Murky Flood of Money Pours Into the World's Largest Election." Bloomberg.com, Bloomberg, www.bloomberg.com/graphics/2019-india-election-funds/.

1.2 Channels of Sourcing

When analyzing electoral funding in India, the first logical step is dissecting the sources of election funding. As of today, the most common sources are:

- Direct donations to parties and candidates
- Sale of assets by parties and candidates
- Sale of electoral bonds
- Fundraising events by parties and candidates
- Electoral Trusts
- Foreign aid
- Party membership fees

Most candidates tend to exploit almost all of these sources, reaffirming the age-old adage: politics is an expensive business. An exploration of these sources necessitated in order to suggest reforms that will ensure only clean money enters politics.

1.3 Overview of Inefficiencies in Indian Electoral Financing

By now, it has been established that the Indian elections are a gargantuan task and inevitably come with its fair share of flaws. Some issues we have identified are:

- 1) The system lacks transparency; voters can be defrauded effortlessly. The recent electoral bonds make money laundering a simple act. Political parties technically fall under the ambit of the Right To Information (RTI) Act as outlined by a CIC ruling, but parties have not been adhering to said ruling and considering the Supreme Court is currently hearing a case on the same, so it is demarcated as a gray area. Unless the nation knows the reality of the system, we cannot solve these issues.
- 2) There exists a conflict of interest: parliamentarians tasked with reforming the system are those who will be affected by the policies enacted.
- 3) India's election watchdog, the Election Commission of India (ECI), has been caught in the quagmire of dirty politics and its impartiality has been questioned. A body can only be effective if its rulings are a) generally accepted and b) easily enforceable. The current situation contrasts these fundamental characteristics.
- 4) Campaign consultants often exploit loopholes in the system and the ECI can only monitor these activities to a certain extent.

This paper, therefore, aims to examine electoral funding in the Indian context, analysing the procurement and disbursement of funds, the limitations of the system, as well as relevant legislation. Finally, on the basis of a review of primary data, secondary research and a review of electoral policies worldwide, this paper shall put forth recommendations for improvements that aim to make the system more transparent and democratic as well as suggest a larger overarching integrity framework.

2. Who Are We Electing?

2.1 The Role of Wealth

It is no surprise that aggregate party incomes have demonstrated a drastic increase over the past election cycles, but it is interesting to note that 72% of states in India have more than 50% MLAs who are crorepatists.⁵ **There is a marked correlation between the value of a parliamentary candidate's personal assets and final electoral win.** Of the 21,000 candidates who contested the last three general elections, the wealthiest 20% were more than twenty times more likely to win the election than the poorest 20%.⁶ In states like West Bengal, Odisha, and Madhya Pradesh, the count of MLA crorepatists has more than doubled between 2014 and 2019. Finally, in the 2014 election, candidates' self-reported median income was close to 27 times the nominal per capita income of India, significantly greater than that of the general population.⁷ One of our stakeholders who worked at I-PAC as a political consultant claims, "Being rich does not guarantee you a win, but being poor guarantees you a loss".

There are several consequences of this. Firstly, the Parliament loses representation of all socio-economic groups and the quality of this representation falls (because selection is based on wealth rather than skill or worthiness). Moreover, elections are seen as an economic investment. This gives rise to all forms of corruption, resulting in quid pro quo once the electoral results are declared as political candidates aim to recoup their heavy spending. Additionally, the Indian system suggests that even after party members win an election, they have very little freedom to control their decisions as these are made by the party elites (low "intra party democracy"). This further reduces the incentive among candidates to become "good" representatives.

This loss of freedom also ties in with why parties are so dependent on individual candidates to fund their elections and why there is a rise in self-financed candidates: it's because big donors such as corporates have a tendency to donate to the party as a whole directly as they are the ones who ultimately control policy decisions. Another factor is the unfair allocation of indirect campaigning benefits to certain parties which skews the electoral playing field, such as administrative resources available for campaigning only to ruling governments. This means there are heavy barriers for aspiring candidates from other underrepresented backgrounds to enter the electoral field.

2.2 Crime in Politics

In India, the Supreme Court has ruled that any potential candidate must file a judicial affidavit disclosing his/her assets, liabilities, qualifications, and more importantly, criminal cases.⁸ The Supreme Court also delineates that any candidate standing for election can be disqualified on the grounds of conviction for certain crimes.⁹ However, the problem is that criminal cases in India drag along for several years, which gives way to politicians to continue contesting until, and if, they are convicted.

Statistics indicate that approximately 1 in 5 candidates running for Parliament have an outstanding criminal case against them.¹⁰ As for panchayats, the systematic analysis by the Association of Democratic Reforms shows that 17% and 21% of municipal corporations in Mumbai and Delhi respectively are embroiled in criminal cases. **The primary reason for this is**

⁵ Qrius. (2018, May 08). The increasing power of money in Indian elections. Retrieved June 08, 2020, from <https://qrius.com/the-increasing-power-of-money-in-indian-elections/>

⁶ Samarth Bansal. "DisFact #25: Why Money Power Still Rules Indian Elections." Samarth Bansal, Samarth Bansal, 24 Mar. 2019, bansalsamarth.substack.com/p/disfact-25-why-money-power-still.

⁷ "Money Matters in Indian Elections: Why Parties Depend on Wealthy Candidates." Hindustan Times, 26 July 2018, www.hindustantimes.com/india-news/money-matters-in-indian-elections-why-parties-depend-on-wealthy-candidates/story-z81zpqywh7yA1rx3dLzVrN.html.

⁸ Gome, Shraddha. "Non-Disclosure of Information and Filing of Falsities in Election Affidavits Can't Be Treated Equally." The Indian Express, 11 May 2019, indianexpress.com/article/opinion/columns/lies-and-loopholes-election-affidavit-narendra-modi-supreme-court-candidates-5722134

⁹ "Report 244." Law Commission of India.

¹⁰ "The Figures behind the Faces." Reuters, Thomson Reuters, graphics.reuters.com/INDIA-ELECTION-CRIMINAL-CANDIDATES/0100925031T/index.html.

that criminal candidates tend to possess higher value of financial assets mostly in the form of cold, hard cash.¹¹ Drawing data from the last 2 parliamentary elections, a mere 6% candidates in the lower quintile of wealth were subject to criminal charges as opposed to 20% in the top quintile. This is a significant advantage in a country where the cost of elections is only growing with each election cycle (as highlighted above).

Another rather interesting piece of data shows that the chances of a “tainted” wealthy candidate winning election is higher relative to a “clean” one (possessing the same wealth) with increasing charges of severity, albeit with slightly diminishing returns. The reason that can be extrapolated here is that criminal reputation is often touted as a medal of honour by these candidates. These candidates reinforce the logic, while contesting, that they are willing to do what it takes, and this ideology resonates even with the most informed, rational voters in the country. Hence, lack of awareness about the biographies of the party candidates is not the only issue of concern.

According to the Representation of People Act 1951 (RPA 1951), contesting candidates are obligated to lodge an account of his/her expenses within 30 days of declaration of results and parties within 70 and 90 days for Assembly and Lok Sabha elections respectively. These are subject to scrutiny by the District Election Officer (DEO). Reported spending levels are far less in comparison to actual spending incurred owing to large magnitudes of illegal expenditure. In fact, according to the ADR, the **actual campaign expenditure** is almost twenty to thirty times beyond the limits placed, which has been attributed to legal lacunae, poor implementation of laws and widespread black money. Moreover, this gap is prevalent because the ECI does not hold the power to take any legal action against the parties for illegal expenditure.

A criticism of the expenditure ceilings implemented by the ECI is that they are not up to date with the realistic cost of election campaigning today and this creates another incentive for parties to overspend. The ECI’s defence states that the purpose for the proposed limits is twofold: to ensure political equitability for all new and existing candidates and to eliminate influence from big corporates. But the evidence clearly argues against this, which signals an urgent need to re-examine the pertinent laws and regulations.

It is useful to consider the reasons and avenues for expenditure of a political party during elections. Political campaigns are involved with a varied list of direct and indirect expenses: more than half is expended over publicity and lump sum transfers to candidates and their travel expenditures. A significant proportion is put into media advertisement. In addition, marked structural differences such as rising sizes of individual constituencies, emergence of campaign managers and requirement for large scale campaigns has all added to these expenditure amounts.

2.3 Culture of Voter Bribing

The ECI has proposed that charges be pressed against candidates for offences of bribery and undue influence on voters. However, a concerning component of expenditure is on illegal items distributed to incentivize the public to vote for a particular party. For instance, according to the Centre for Media Studies, 25% of total election spending by a party is accounted for by direct cash transfers to the voters¹². Meanwhile, two thirds of polled voters in Andhra Pradesh admitted to being bribed in some form¹³. Additionally, bribes are also administered indirectly, such as when a local liquor shop is paid a lump sum and locals within the area can enjoy free drinks provided for by the contesting party via special “coupons”. When carrying out this process, party candidates face the “Prisoner’s Dilemma” as their extent of vote buying depends upon the opposition party’s actions.

Generally, this contributes to the undermining of accountability of elected party officials, particularly to the poorer demographic (as they are the primary targets of vote buying), which can lead to the under provision of essential public goods for them once these parties get elected. Studies are divided on the effectiveness of this practice; social studies do outline a cultural explanation of cash bribes creating a sense of reciprocity. Although, it is very likely that a voter could

¹¹ “Decoding 2019: Criminals Can Contest Elections, but Cannot Vote - Dissecting Crime in Politics.” Moneycontrol, MoneyControl, www.moneycontrol.com/news/podcast/decoding-2019-criminals-can-contest-elections-but-cannot-vote-dissecting-crime-in-politics-3793031.html.

¹² <http://cmsindia.org/sites/default/files/2019-05/Poll-Expenditure-the-2019-elections-cms-report.pdf>

¹³ *ibid*

receive gifts from more than a single party and opt to vote independently (due to the secret ballot system) hence influencing the election outcome marginally.

With India's elections being proclaimed as one of the most expensive in the world, it is also necessary to analyze whether such large magnitudes of expenditure are something a \$3 trillion dollar economy can afford. The chief issue with money becoming such an important part of elections is that it creates a vicious cycle in which public policy and income inequality tend to interlock and a system is created where the rich favour the rich.

3. Analysis of Indian Legislation

The last decade has witnessed massive policy changes with regards to electoral funding. There have been a series of amendments via the Finance Bills of 2016 to 2018 changing key policies in legislation, affecting the volume and flow of corporate donations, foreign contributions, anonymity in individual donations, and the extent of ECI oversight. The government has introduced new caps on funding, new sources of funding, and new barriers to the transparency of the system. This section discusses the legislation, dispute between the ECI and the government, plutocracy in politics and its implications on the democratic ideals of India.

3.1 The Representation of People Act

The Representation of the People Act 1951 (RPA 1951) is primarily concerned with the qualification and disqualification of candidates, and through this subsection, we hope to analyze specific facets of this act that have become conducive to institutional opacity in electoral funding.

Section 29C Declaration of the Donations Received by Political Parties

This section states that all donations above Rs. 20,000 must be reported to the ECI. However, the 2017 Finance Bill amended this section to exempt donations made through electoral bonds from this requirement. Section 13A of the Income Tax Act was amended by the Bill as well, which has now made it mandatory for any donations above Rs. 2000 to not be in cash and be reported to the Income Tax Department. This creates a discrepancy in the amounts reported to both the ECI and ITD as ECI will only receive reports of income greater than Rs. 20,000 (and electoral bonds will not be reported at all) whereas the ITD will receive reports of income greater than Rs. 2000. Furthermore, as there is no limit on the number of times an individual can make an anonymous donation below the limit, a loophole is created which is then exploited relentlessly, further compromising the transparency of the system.

Section 77 (3) read with Rule 90 of Conduct of Election Rules, 1961

This section imposes a **legally enforceable ceiling on an individual candidate's expenditure**. The actual expenditure by each party, however, is often monument and this is not a prosecutable offence, as there is no limit on how much ***a party as a whole can monetarily expend***. In one of our stakeholder interactions with an ex-IPAC campaign manager, it was revealed that although the limit for State Assembly elections is Rs. 20 Lakh to Rs. 28 Lakh per candidate, the actual expenditure incurred reflected amounts akin to Rs. 8 Crore to Rs. 24 Crore.

Section 123 Corrupt Practices

Bribery is deemed a punishable offence under this section, insofar as the candidate or the election manager can be directly connected to the bribe. This is a habitual practice, and in the aforementioned interview with the stakeholder, he states, “So first of all you try to pay the opposition...they go through the entire voter's list to find someone with the same name as the opposing candidate, and pay them to stand for the election... This is one of the textbook moves”. Paying voters off is yet another common tactic, according to the stakeholder, where in Mumbai, on average, a party pays around Rs 500 to Rs 1000 per vote. Most transactions occur through means of cash, leaving no money trail to trace. Due to the untraceable nature of these bribes, candidates are often not prosecuted as they cannot be directly linked to the bribe.

3.2 Electoral Bonds

An electoral bond is a **bearer instrument** similar to a bank note that can be bought by any Indian citizen or company from select branches of State Bank of India in denominations of ₹1,000, ₹1 lakh, ₹10 lakh or ₹1 crore, which are donated to political parties to finance their campaigns and functions.

Why are they a problem?

There are two fundamental flaws with this system: one, the layer of opacity it introduces, and two, the fact that donor information is not entirely protected, but rather, is only available to the incumbent party should they require it. In order for a party to be eligible to receive Electoral Bonds, it must be registered under section 29A of the RPA and must have secured

at least one percent of the votes in the most recent General Elections. This, however, does not account for individual candidates and new parties, thus resulting in a gross skewing of distribution of electoral funds in favour of those already in power. The opposition for the electoral bonds scheme was fortified after a series of articles based on documents accessed by transparency activist Commodore Lokesh Batra (Retd.), revealed that not only did the government overlook the Reserve Bank of India's serious objections to the scheme, it also misled Election Commission officials on key features of these bonds.¹⁴ The RBI expressed great concern regarding the use of electoral bonds as they are bearer instruments, which, to quote them, "are transferable by delivery. Hence who finally and actually "contributes the bond to the political party will not be known." Prior to a bill being passed, ministries and government entities pertinent to the outcome of the bill are generally consulted, and their views accounted for. With electoral bonds, however, this procedure was not followed and these concerns were blatantly overlooked, and the bill was passed.¹⁵ In a two-page note, the law ministry said this illegal step was an exception and urged the Modi government to "avoid considering this practice as a precedent" when debating future amendments.

SC has passed an interim order for directing all political parties to submit the details of all bonds received until 15 May, 2019 following a case being filed for repealing of the amendment facilitating issuance of these bonds. Association for Democratic Reforms (ADR), a non-governmental organization, is one of the petitioners in the case. It has said that amendments carried out in the relevant Acts have "opened the floodgates to unlimited corporate donations to political parties and anonymous financing by Indian as well as foreign companies, which can have serious repercussions on Indian democracy." The ECI's opposition to this amendment is structured primarily around the fact that parties are not required to disclose donations received through electoral bonds in their Contribution Reports, with regards to the proviso that amended Section 29C of the RPA 1951.

Electoral bonds are issued with specific serial numbers, and the records of these are traceable by the SBI when a bond is purchased. This information can be made accessible to the incumbent party in power should they wish to know it, as provisions exist for the same to occur. When introducing the bonds, the Finance Minister's justification was that people were concerned about political victimization and hence the anonymity was proposed.

3.3 Amendment to Companies Act, 2013

The Companies Act, 2013 amended in 2017 by Section 154 of the Finance Act, **eliminates the previous cap on corporate donations** (earlier adjusted at 7.5% of a company's net profits of last 3 years) as well as **exempts companies from disclosing which parties they are donating to**. This amendment, enacted in order to reduce unaccounted funding, cash circulation, and inaccessibility cannot be faulted in isolation. However, paired with the historic quid pro quo culture and cronyism in Indian politics, the policy is seriously concerning for advocates of integrity.

This act is a counterproductive move, given the existing anonymity in the system. Since companies are not mandated to limit or disclose the amount or recipients of their donations, there is greater leeway for the furthering of corporate interests in public policy and an expectation of returns in terms of grants, land, infrastructure, or tenders.

While such exchanges are almost impossible to track and question by the Parliamentary Ethics Committee or a CAG audit, there does exist a paper trail as these donations are conducted via issuing account payee checks, bank drafts, and e-clearing systems. This information, only accessible by the ruling party, allows for the scrutiny and even persecution of companies who favour the opposition, forcing them to resort to illegal methods of donation.

This legislation also mandates that such contributions need to be authorized by a company's Board of Directors (rather than shareholders, as was the case previously), insulating funding from personal agendas and ensuring accountability with regards to illegal transactions, the presence of which is punishable by a fine and jail term. Though viewed as a deterrent to corruption, the policy still makes it difficult to regulate transactions given its inherently anonymous nature, lowering chances of conviction and increasing motivations to engage in unethical funding, perpetuating a cycle of corruption.

¹⁴ Hrishikesh, Sharanya. "Electoral Bonds: The Documents That Reveal The Lies Told By The Modi Govt." HuffPost India, HuffPost India, 26 Nov. 2019, www.huffingtonpost.in/entry/electoral-bonds-rti-documents-bjp-narendra-modi_in_5ddb5f47e4b0913e6f6ea94d.

¹⁵ Sethi, Nitin. "Law Ministry Said Modi Govt's Route To Pass Electoral Bonds Was Illegal But Signed Off Anyway." HuffPost India, HuffPost India, 28 Jan. 2020, www.huffingtonpost.in/entry/electoral-bonds-rti-arun-jaitley-law-ministry_in_5e2eccb1c5b6d6767fd8733f.

While taking a closer look into the policy developments in India such as the privatization of Public Sector Units (PSUs), and the plutocratic bias seen in the metric of the Consumer's Price Index (which attaches a greater weight to expenditure items consumed by higher income groups), one can question whether these policies are actually a result of a quid pro quo culture perpetuated by the ruling alliance to favor its corporate donors. The nexus of business and policy further proliferates the gaping economic inequality in Indian society - Credit Suisse's Global Wealth Report reveals that India's top 1% owns close to 58% of the nation's wealth - as policies are made to benefit the rich rather than the public, endangering the people's welfare.

3.4 Political Parties and RTI

The political parties falling within the ambit of the Right to Information Act, 2005 has been deeply contested and has not been resolved despite a CIC directive issued on June 3, 2013 which calls for the 6 national political parties to comply with RTI. Political parties have vehemently opposed this move on the ground that they do not fall in the category of "public authority" as prescribed in the RTI Act.

A few reasons cited by the political parties for their non-compliance with CIC directives include that political rivals may misuse the act with malicious intent, and that information that would be of most interest to the public is already accessible through the Electoral Commission website. Some other grievances levelled included how making a political party a public authority would disrupt its internal functioning.¹⁶

The main premise of dispute arises from the role played by political parties in our democratic setup - as representatives of their populace who give legitimate expression to their concerns and demands. Advocates who want political parties to be brought under the RTI further cite the "indirect funding" received by the political parties which thereby qualifies them under RTI Act section 2(h)¹⁷.

3.5 Foreign Contribution (Regulation) Act

Section 29B of the RPA prohibits any political parties from receiving foreign donations to finance campaigning, and Section 3 of the new Foreign Contribution (Regulation) Act, 2010 (FCRA) bars candidates, legislative members, political parties and party officeholders from accepting foreign contributions. However, after a 2014 Delhi High Court Judgment found both the ruling Bharatiya Janata Party and the opposition Indian National Congress guilty of violating the FCRA by accepting contributions from local companies that were majorly owned by a foreign London-listed mining group Vedanta Resources Plc. between 2004-2012. To circumvent the Delhi High Court judgment, a retrospective amendment was passed by the Parliament. This amendment:

1. **amended the definition of a "foreign source."** The modified definition created an intersection of the FEMA (Foreign Exchange Management Act) and the FCRA, which allows a company that complies with the foreign direct investment sectoral caps prescribed by the Department for Promotion of Industry and Internal Trade and the RBI to freely contribute to any political party in India without adhering to the restrictions.
2. came into effect **retrospectively** from September 2010, meaning that any cases of violations from this date of the previous legislation would not come under scrutiny if they adhered to the new legislation.

In 2018, a new amendment was passed by the parliament: Finance Bill, 2018 substituted "the 26th September, 2010" in Section 236 of Finance Act, 2016 to "the 5th August, 1976." This policy essentially protects all political parties from being convicted of illegal foreign transactions for the past 42 years (since 1976, when the FCRA was first enacted).

¹⁶ Nag, Shravani. "Nexus Between Political Parties and RTI Law." SHOULD POLITICAL PARTIES COME WITHIN THE AMBIT OF THE RIGHT TO INFORMATION ACT?, cic.gov.in/sites/default/files/MAIN%20DRAFT%20%281%29.pdf.

¹⁷ "Why Should Political Parties Come under RTI Act?" Association of Democratic Reforms, [adrindia.org/sites/default/files/Why Political Parties should come under RTI Act\(English\).pdf](http://adrindia.org/sites/default/files/Why Political Parties should come under RTI Act(English).pdf).

These amendments together perpetuate a cycle of **systemic opaqueness and corruption** by disregarding previous violations, and allowing room for more to take place, evidenced by the fact that the ECI told the Supreme Court¹⁸ that both the electoral bonds and new foreign funding policy will have “*serious repercussions on the transparency aspect of political funding of political parties.*” The anonymity offered by electoral bonds makes it almost impossible for the ECI to track whether foreign companies are contributing, hence making foreign interference in Indian elections easier. This impacts the integrity of both the political parties and the Indian democracy as a whole.

3.6. Clash between ECI guidelines and Legislature

The Model Code of Conduct (MCC) is a consolidation of all the core ethical guidelines a party is required to adhere to whilst contesting an election. The MCC, however, is not legally enforceable. Hence, provisions made within the MCC about intimidation, corruption, inciting communal tensions and more are frequently flouted by parties and candidates with impunity. Although provisions for the prevention of these exist within the RPA and are legally enforceable, as the ECI directly oversees elections, the fact that it does not fall within their mandate to take legal punitive action often results in these rules being circumvented with ease. During the interview with the aforementioned stakeholder it was elucidated that although these tenets are not legally enforceable, most parties adhere to some of these codes of conduct, and that there is general reverence observed for the ECI by parties. The ECI regularly surveils candidates to keep track of individual expenditure, but as previously stated, due to there being no ceiling on expenditure for the party in its entirety, candidates often deflect significant expenditures from being recorded in their accounts.

Although numerous provisions exist within the RPA 1951 to make the ECI an independent body, it is still dependent on the Union for financial matters. This means that the party in power has control over the ECI's decision making regarding matters of electoral financing, which creates a significant conflict of interest. The ruling party may be able to influence financial decisions made by the ECI to suit their needs, such as overlooking any instances of overdrawn expenditure, disclosing all sources of income, to name a few, which would further compromise transparency, and also result in an unequal playing field. Other than the Chief Election Commissioner, the other two Election commissioners do not have the security of tenure, and can hence be removed at the incumbent party's discretion without sufficient oversight. Additionally, most senior officers of ECI are on deputation from the Union, further decreasing its independence. To conclude, the legislation concerning electoral funding **allows systemic opacity and corruption to persist**, making it easier to conduct unethical practices such as returning corporate favours and accepting foreign aid.

¹⁸ Aashish Aryan, Election Commission Expresses Reservations on Donations via Electoral Bonds, Bus. Standard (Mar. 28, 2019), https://www.business-standard.com/article/current-affairs/election-commission-expresses-reservations-on-donations-via-electoral-bonds-119032701069_1.html, archived at <https://perma.cc/W93X-95RS/>.

4. Reforming the Indian Electoral Funding System

4.1 International Best Practices

It is safe to say that there has been a global effort undertaken in order to pursue transparent, accountable measures for electoral financing. Models analyzing corruption and democratic trends internationally include the **disclosure of electoral funding** as well as the **free and fair conduction of elections** as a measure of good governance, and subsequently, democracies around the world accordingly have undertaken steps to ensure the transparency of their electoral financing systems. Our team analyzed the electoral funding systems of all democracies across all 6 continents (barring Antarctica). After this, we filtered out those with unique and robust practices and further applied strenuous criteria to narrow down to those which could be applied to India. Here are a few such international best practices, and the method of their implementation in India:

Estonia

Electoral finance oversight in Estonia comes under the purview of the Estonian Party Funding Supervision Committee (the EPFSC), an autonomous regulation body that is solely mandated to enforce political finance regulation and ensure electoral funding practices adhere to standards of transparency and credibility. Parties in Estonia are required to submit a report of income as well as expenses incurred **quarterly** in elaborate detail. Since this report accounts for administrative costs, donations, wages, policy making, and campaign expenses, parties in Estonia are essentially subject to constant scrutiny by the EPFSC.¹⁹

Campaign expenditure currently audited by the ECI only includes the period between the announcement of the election schedule and declaration of the polling results, leaving out massive spending by parties that occurs throughout the year for their promotion. A similar quarterly report, detailing income and expenditure, maintained by each party would allow for the ECI to **maintain continuous oversight and verification of a political party's financial activity**, acting as a deterrent for under-the-table funding as well as the misappropriation of expenditure accounts.

Canada

Currently, electoral spending limits in India only apply to individual candidates, and have been contested on the premise that they are unrealistic and do not account for increasing population sizes as well as inflation. Moreover, as detailed in section 77(3) of the RPA 1951, campaign expenditure limits, though varied by state, are not established on any specific premise other than the general size of the state. This incentivizes candidates to easily circumvent expenditure limits as provisions in place are vague and untargeted. Additionally, the absence of a limit on party expenditure allows for massive unaccounted spending to occur on the premise that it was not associated with any specific candidate even if it furthered their campaign. In this context, Canada's practices are pertinent: expenditure limits apply to candidates as well as political parties, calculated considering:

- A \$0.735 CAD limit per eligible voter in each electoral district, multiplied by the inflation adjustment factor for that year
- The duration of the campaigning period²⁰

Establishing dynamic **party expenditure limits** in India, calculated as per a certain amount spent per voter in every constituency that a party hosts a candidate in, adjusted for inflation, would solidify an incentive for candidates as well as parties to comply with spending guidelines as they cannot be disputed on the basis of not reflecting ground realities. Moreover, party spending limits (first proposed by the ECI in 2013, still pending legislative action) are the need of the hour

¹⁹ "Financing Democracy." *OECD Public Governance Reviews*, Apr. 2016, doi:10.1787/9789264249455-en.

²⁰ Legislative Services Branch. "Consolidated Federal Laws of Canada, Canada Elections Act." Canada Elections Act, 28 May 2020, laws-lois.justice.gc.ca/eng/acts/e-2.01/page-64.html#h-207826.

as they reduce the flow of money into campaigning and allow for it to be diverted towards policy measures and social infrastructure.

The 2004 report of the Election Commission argued that political parties should be required to publish their accounts, or at least an abridged version, annually for information and scrutiny of the general public and all concerned, for which purpose the maintenance of such accounts and their auditing is crucial. However, one limitation to consider is that constituencies in India vary in size, so a strict limitation merely on the basis of number of voters would not account for variance in geographical expenditure (such as more billboards, increased transportation costs etc.).

Brazil

The continent of South America has shown remarkable reform when it comes to election funding, and Brazil is a prime example. Starting in 2016, Brazil's election reforms included introducing a limit on individual funding: any individual is allowed to contribute a maximum of 10% of their annual income to a political party. While the mammoth problem in India is corporate funding and not individual funding, we believe the introduction of such a limit in India would **control the influx of large amounts of personal money** into elections, and ensure lower-budget politics with reduced room for personal patronage. Brazil has also banned all corporate funding - while this is a brave move, it may not be feasible to implement in India owing to the lack of culture of the state funding elections. However, a positive trend in politics was observed in Brazil with the removal of corporate funding; while this may be illogical to implement in India, a limit on corporate donations can surely be enforced (as it was earlier, at 7.5% of the company's profits, until it was removed in 2017 via an amendment to the Companies Act of 2013), again to **reduce the inordinate amount of money flowing into Indian elections** and to weed out the tumor in Indian elections- patronage.

4.2 Recommendations for Improvement

i) Establishing a National Election Corpus:

There is a concerning influx of corporate wealth into current electoral expenditure, more so as it is usually anonymous, allowing for corporate interests to take precedence over general welfare. Most corporate funding is funneled through the 26 electoral trusts²¹ registered under the CBDT, 6 of which did not submit audit reports to the ECI, consolidating transparency within the system. This leads to speculations that such trusts are formed only to gain tax exemptions or to launder money. Therefore, we strongly recommend abolishing all current trusts and replacing them with a singular Election Corpus overseen by the ECI. The Corpus functions as the sole trust, where corporations can choose how much to donate and who the beneficiaries must be, with the exception that this information must be made public.

Oversight by the ECI as well as the public would enable the accountability of political parties to general welfare, as any policies believed to further any private interests would be subject to scrutiny. Moreover, mandating all corporate donations to be public would allow for consumers and corporates alike to contribute to a culture of political preferential transparency, as elaborated in section 4.3. This would also eliminate the possibility of shell companies funneling wealth into election funding. The possible limitation to this paradigm of possible political victimization of the donor is also addressed in section 4.3.

ii) Regulating third party expenditure:

With the rise of non-governmental institutions involved in advancing party agendas during election campaigning, third-party regulation would establish a more accountable and traceable system in place. A third-party, in this case, refers to any group, institution, organization, foundation, or body other than a registered political party that is involved in the advertising, fundraising, promotion or opposition of any contesting candidate, party, or any of their specific policies.

²¹ ADR Report: India Inc Donated ₹985 Crore to Political Parties between 2016-2018, 93% Went to BJP: Association for Democratic Reforms.” ADR Report: India Inc Donated ₹985 Crore to Political Parties between 2016-2018, 93% Went to BJP | Association for Democratic Reforms, adrindia.org/content/adr-report-india-inc-donated-%E2%82%B9985-crore-political-parties-between-2016-2018-93-went-bjp.

- A universal limit shall be established on third-party expenditure to limit the excessive flow of capital into campaigning.
- Any and all donors prohibited under Section 29B of RPA, including foreign companies, must be banned from campaigning in the name of any political party. Any non-governmental entity found to be propagating or advertising partisan agendas during campaign season shall be required to register with the ECI.²²
- Such entities would be mandated to establish a separate bank account for expenses related to campaign activity, and all such expenses will be subject to supervision and auditing by the ECI.
- As such, regulation of such third parties would allow for the ECI to monitor expenditure, regulate collusion between parties and other institutions, and tackle the spread of fake news or other divisive agendas that violate ECI guidelines.

iii) Strengthening the ECI:

We recommend absolute financial freedom of the ECI from the Law Ministry. The ECI should have its budget ‘charged’ to the Consolidated Fund as opposed to the current practice of being voted and approved by Parliament. The ECI has also proposed an independent secretariat for itself with which it will not have to depend on the Department of Personnel and Training to appoint its officers.²³ Strengthening the ECI is mandated by the principle that it is the watchdog of India’s greatest mechanism of democracy, and as such, should have greater power to enforce its guidelines to ensure that elections are free and fair.

iv) Revoking the provision amended and added through the Finance Bill, 2017 and Amendments made to the FCRA, 2014:

1. As discussed in section 3, the Finance Bill, establishing Electoral Bonds as a means of political funding, was passed by fraudulent means and violates the formal procedures. Thus, we strongly recommend this policy be scrapped as it consolidates the opacity of a system already rife with obscurity. Recognizing that court proceedings take time, we further recommend that while the Supreme Court deliberates on entirely repealing Electoral Bonds, the purchase of bonds in denominations higher than ₹1 Lakh be disallowed, provisionally limiting plutocracy and the influx of anonymous donations made in excessively large sums.
2. Referring to section 3, it has already been explained how a retrospective amendment was made to the FCRA to nullify the allegations levelled against BJP and Congress with regards to foreign funding. Thus, we recommend that the earlier definition be reinstated.

4.3 Long Term Social Recommendations

The legislation specified above cannot, in isolation, heal the system. To support it, and impact long term change, we have designed an **integrity framework** which will act as another fold of the system to minimize bribery, reduce opacity and increase public investment and involvement in the electoral funding process.

These social recommendations have been supplemented by a survey gauging public sensitization to political transparency and accountability, garnering 120 responses in total. The survey targets eligible voters and emerging voters (16-17 years of age). Sensitive information like income was not inquired about, because not only would that discourage potential respondents from answering the survey, respondents are also likely to provide inaccurate answers which could skew the results. It is important to note that the survey was only partaken by a restricted segment of society (the urban city population) due to limitations in mobility and online outreach, and reflects overall societal tendencies to a limited extent. The authors of this report hereby disclose that the unadulterated information received from the primary sources are their views only and may include some inherent biases that do not reflect the opinions of said authors.

²² ECI. “Draft Outcome Paper- National Consultation on ‘Political Finance and Law Commission Recommendations’ Organised by ECI on 30th March, 2015.” Election Commission of India, 31 July 2018, eci.gov.in/files/file/965-draft-outcome-paper-national-consultation-on-political-finance-and-law-commission-recommendations-organised-by-eci-on-30th-march-2015/.

²³ “EC Seeks Full Independence from Govt Control.” The Indian Express, 7 Jan. 2016, indianexpress.com/article/india/india-news-india/ec-seeks-full-independence-from-govt-control/.

i) ECI Facilitated Programs (EFPs):

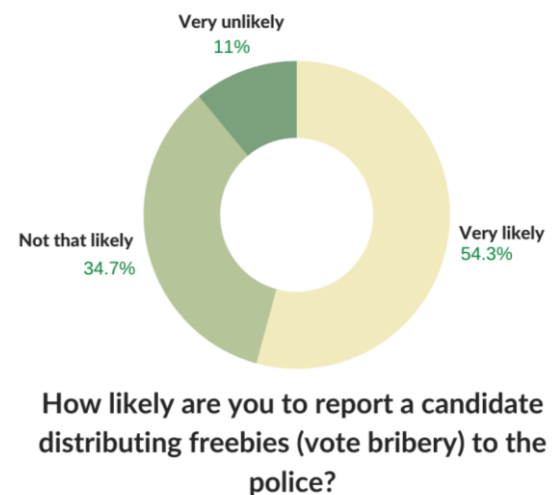
- 1) We recommend that the Electoral Commission of India take initiatives to regularly highlight its guidelines (Model Code of Conduct) on social media platforms and report to the public and media when they are breached. **Increasing public knowledge** of unethical funding practices and loopholes in the system is imperative, as this will increase public scrutiny of funding, hence not only making it harder for political parties to get away with it but also cost them valuable votes. Increased awareness of breaches will also spark conversation and reduce apathy towards unethical behavior. 45.7% of survey respondents answered that they were “Not that likely” or “Very Unlikely” when asked whether they would report the distribution of freebies to the police, showing that **bystanderism** is a prevalent problem in India.
- 2) The ECI should also work with parties to come up with **low budget campaign methods**, and share these methods with the public. In fact, low budget campaigning is especially a viable option at the local and panchayat level. Investing time and effort in providing services and addressing grievances can be rewarding for the welfare of the people overall and the multiplier effect ensures recognition too, as seen in Mr. Challa Dharma Reddy’s 2014 campaign where he arranged 625 computers from Infosys for 125 government schools in his constituency. Moreover, they must work to work with nonprofits and social enterprises (such as YLAC’s citizen awareness program) to publicize these methods in an effort to increase appreciation for low budget campaigning by parties. Parties shall be encouraged to realize that saving money will attract voters, hence eliminating the need to funnel unreported black money through grey channels, foreign investors etc. As the need for extravagant expenditure decreases, the funds can instead be used for policy development and social infrastructure.

It is noteworthy that cVigil, an app made by the ECI to allow citizens to report violations of the Model Code of Conduct and Expenditure Violations, is quite easy to use (as determined by authors) and has more than 500,000 downloads as of June 2020. However, although it has a rating of 4.0, the reviews (on Google PlayStore) suggest that the app needs significant changes; as user complaints quote “[the app] should provide to upload photos and videos in non-live mode, because, there may be many problems like, low or non-network coverage, law and order situation on the spot of the situations, and much more.” This refers to the fact that one cannot send photos from their galleries in the ECI’s efforts to limit photoshopped, or pre-recorded pictures or videos to save valuable ECI resources from pursuing misleading reports.

When a reputed governmental body such as the ECI will begin taking initiative to combat social evils like bystanderism, bribery and corruption, and push for the better allocation of resources, it will undoubtedly spark a wave of conversation that can instigate public pressure on legislators to reform the system (as recommended in section 4.2).

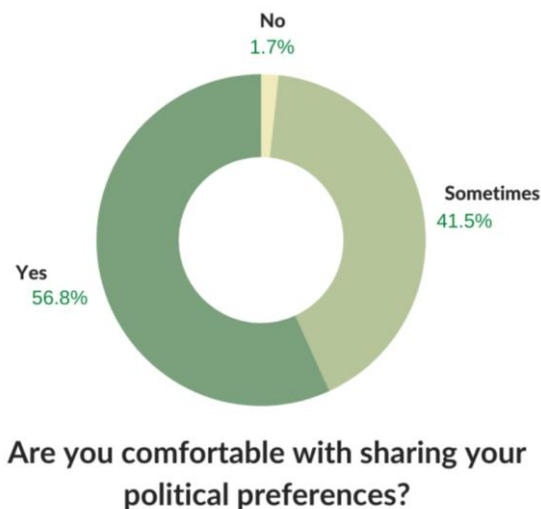
ii) Sensitization drives:

The target audience of these drives should be those from poor socio-economic strata, and those living in areas susceptible to mass freebie distribution. They should be conducted vigorously 6 months before the elections, to sensitize people towards the long-term consequences of unethical behaviour such as distributing freebies (for example, they should be made aware that freebies are short term gains, whereas a “good” candidate will work towards increasing their overall standard of living in the long term). They should be taught to easily use ECI-made apps like cVigil to report unethical behaviour and be rewarded for participation. This would help reduce bystanderism, decrease freebie distribution and help create a sustainable, healthy political culture.



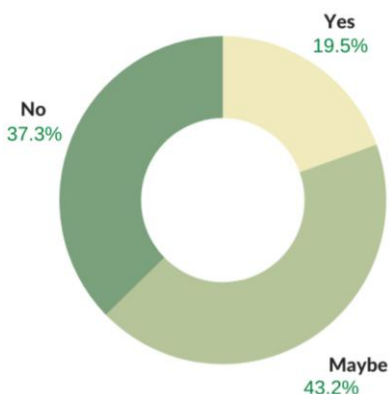
iii) Social media campaigns:

- 1) These campaigns, especially targeted for the youth, must shine light on ECI provided low budget campaigning alternatives, and increase voter awareness and *preference* for those methods, by highlighting the opportunity cost of extravagant electoral campaigns as well as the consequences of large, corporate-funded campaigns. Both influencers and mainstream media should partake in, and drive these campaigns.
- 2) A culture of political preferential transparency from corporations should be encouraged. The recurring argument for electoral bonds stems from the need for donor anonymity - although contested by the ECI. Yet, 56.8% of survey respondents stated that they are comfortable sharing their political preferences, 41.5% answered “sometimes” and only 1.7% said they were not comfortable. When asked whether corporations’ political preference would affect their consumer habits, 69% replied that they were still likely-to-neutral to buy their products. Moreover, only 18.1% definitely said they would unsubscribe to the media sources on the other side of the political spectrum. These statistics suggest that although a majority of people are comfortable with the expression of their own and others’ political preferences, there is still room for improvement. This trend of the normalization of discourse would also prevent the political victimization of employees who may not identify with their company’s preferences, and reduce contention between those on different sides of the political spectrum.

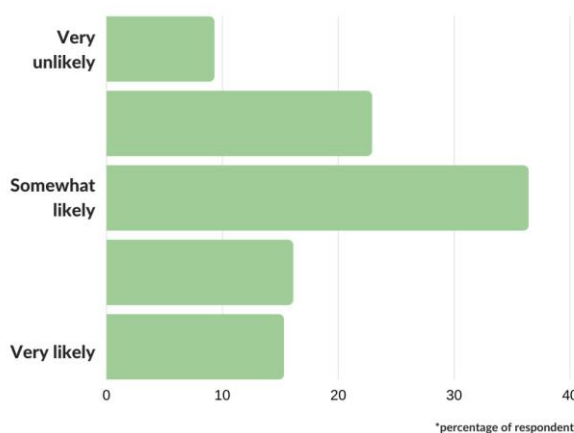


In fact, in many western countries, corporate political preferences are very normalized and a part of everyday life. Corporates may donate to or speak in favour of/against any political party without fearing widespread losses (to an extent). In the United States, for example, prominent news outlets are widely recognized and accepted as Republican or Democratic. As such, it is important to ensure that corporations, like individuals in India, can openly speak and act upon their political preferences while being rest assured that there will be no far reaching implications for their bottom line.

Therefore, it is important to promote the expression of political beliefs, and social media campaigns are a great way to reach multitudes of people at relatively low costs. Both non-profits, influencers, and civil actors must take initiatives to achieve the normalization of political preferences, thus eliminating the need for secrecy.



Would you stop subscribing to a news outlet if they declared their political preferences to be different than your own?



If a corporation's political preferences were different from yours, how likely are you to buy their products/services?

5. Conclusion and Way Forward

As a nation whose strongest democratic tool is free and fair elections based on universal adult suffrage, the need of the hour is adopting reforms that contribute towards designing a level playing field for candidates as well as parties. The exorbitant costs of the 2019 General Elections should serve not just as a concern but also as a lesson - a country like India, with a massively poverty-stricken population, would benefit more from policy intensive governance than from extravagant campaigns. The flow of money must be utilized, such that it benefits the citizens directly instead of corporates or the wealthy.

It is paramount that representative politics in the world's largest democracy caters to the needs, welfare, and concerns of its vast and diverse population, and this can only be a reality when the influx of big-money into politics is curtailed. Implementing definite, meticulous legislation in tandem with a strong social integrity framework will pave the way for a more transparent electoral funding system, while shaping the political culture to be more accountability-centric.