Chapter 14

India

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This case study presents the current system of public funding of political parties and campaigns in India. It also discusses the major challenges to electoral and financial transparency.
Introduction

India follows a multi-party democracy. There are some political parties active in the entire country, whereas most of the parties operate only at the regional or state level. While all the political parties are registered with the Election Commission of India (ECI), a few of them are “recognised” as National or State parties on the basis of their electoral performance. This “recognition” entitles them to certain benefits (described later in this chapter).

High election spending and the potential for corruption go hand in hand. When the parties spend a lot of money, they need to collect a lot of money, by all possible means, fair or foul. Besides, large sums of money in politics undermine the level playing field, as all candidates or parties do not have equal access to funds. The ECI is seriously concerned about the growing influence of money in elections. “Big money” used in a non-transparent manner undermines the rule of law and vitiates the electoral process.

Vote buying is the biggest mode of such non-transparent use of money in elections. The excessive use of money much beyond the legal limits has been reported by many parties, candidates, media and civil society organisations. Several parliamentarians have also raised concerns in the House about the use of excessive money in election campaigns and have asked the Commission to take urgent steps to curb such malaise.

In the recent elections, particularly in the 2014 elections to the House of the People (the lower house of Parliament), the ECI took several steps to curb the misuse of money. However, the absence of express legal provisions for enforcement hinders these efforts. The Ministry of Law and Justice, in association with the Election Commission, organised a nationwide consultation on electoral reforms, including reform of political finance rules and transparency norms, but the recommendations have not yet converted into the desired amendment of electoral law.

Political finance and disclosure norms in India

Funding of political parties

There is no state funding of parties in India. However the parties enjoy certain indirect benefits, which include:

- free copies of electoral rolls for candidates and recognised political parties
- free airtime on state-owned radio and television for recognised political parties
- free use of space in state capitals for the offices of recognised political parties (these three limited only to the recognised parties)
- tax exemption on the income of the political parties
- tax exemption on donations to the political parties and electoral trusts, subject to certain restrictions, including prohibitions on donations from foreign sources and state-owned enterprises.

The issue of public funding to political parties has been debated, but political consensus around possible measures to address this has yet to materialise.
Private funding

Individuals or companies can make donations to political parties, subject to certain restrictions:

- Corporate donations are capped at 7.5% of average net profits of three financial years (Section 182 Companies Act, 2013).
- Donations by foreign companies and government companies are prohibited (Section 29B of RP Act 1951). A foreign company is defined in Section 3 of the Foreign Contributions Regulation Act 2010 (FCRA) and includes:
  1. a foreign company under S. 182 of Companies Act, 2013 (a company or body corporate incorporated outside India having a place of business in India, whether by itself or through an agent, physically or through electronic means and conducting any business activity in India in any other manner)
  2. an Indian subsidiary of a foreign company
  3. a multi-national corporation.

Corporate donations

In 1968, the Government banned corporate donations to political parties. However, an amendment to the Companies Act in 1985 allowed corporate donations to political parties under certain conditions. Corporations may contribute up to 7.5% of their average net profit over the previous three years to political parties, subject to approval by the Board of Directors and disclosure in the profit and loss account statement in the audited annual accounts of the company. Further:

- Income tax laws in India allow deductions for donors to political parties (if paid through bank cheque), and the receipts in the hands of the political parties are not taxable.
- Recently, the income tax law was amended, allowing the creation of Electoral Trusts as pass-through entities for the funding of political parties. The receipts of the Electoral Trusts and contributions made to them are exempt from tax. However, corresponding changes have yet to be made in the Representation of the People Act of 1951 (RPA), which governs as the electoral law of India.

Expenditures

At present, there is a statutory limit on the amount that can be spent on a candidate’s election campaigns. Recently, the ceiling of the expenditure incurred by a candidate on a campaign was increased from EUR 22 400 to EUR 39 200 for elections to the State Assembly, and from EUR 56 000 to EUR 98 000 for elections to Lok Sabha (Lower House of Parliament). Further:

- There is no ceiling, however, on election expenditures by political parties. The expenditures made by political parties in favour of their candidates do not count in election expenses incurred by a candidate for the purpose of the ceiling. This effectively renders the limit on expenditures irrelevant.
- The candidates are also not required to disclose their pre-nomination campaign expenditures, nor are those expenditures considered within the ceilings.
The electoral expenditures reported by major national political parties in India in the 2014 general elections are set out in Table 14.1.

Table 14.1. **Electoral expenditures, by category and party, in the 2014 Indian general elections**

In EUR thousands

<table>
<thead>
<tr>
<th>Political party</th>
<th>Travel expenses on star campaigners</th>
<th>Travel expenditure on leaders other than star campaigners</th>
<th>Expenditure on media advertisements</th>
<th>Expenditure on publicity material</th>
<th>Expenditure on public meetings</th>
<th>Any other expenditure</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bahujan Samaj Party</td>
<td>2 423</td>
<td>0</td>
<td>546</td>
<td>923</td>
<td>315</td>
<td>0</td>
<td>4 207</td>
</tr>
<tr>
<td>Bharatiya Janata Party</td>
<td>19 761</td>
<td>2 520</td>
<td>47 931</td>
<td>4 389</td>
<td>12 524</td>
<td>12 621</td>
<td>99 746</td>
</tr>
<tr>
<td>Communist Party of India</td>
<td>8</td>
<td>13</td>
<td>.8</td>
<td>54</td>
<td>21</td>
<td>216</td>
<td>312.8</td>
</tr>
<tr>
<td>Communist Party of India (Marxist)</td>
<td>47</td>
<td>209</td>
<td>124</td>
<td>351</td>
<td>166</td>
<td>205</td>
<td>1 102</td>
</tr>
<tr>
<td>Indian National Congress</td>
<td>17 559</td>
<td>57</td>
<td>40 490</td>
<td>3 376</td>
<td>4 631</td>
<td>1 442</td>
<td>68 068</td>
</tr>
<tr>
<td>Nationalist Congress Party</td>
<td>465</td>
<td>57</td>
<td>3 479</td>
<td>766</td>
<td>92</td>
<td>50</td>
<td>4 909</td>
</tr>
</tbody>
</table>

*Source: Election Commission of India.*

**Public funding contributed to political parties and candidates**

1. Indirect funding by way of tax exemption on the donations made by individual or companies to political parties above EUR 280 from a single entity (on disclosure of the contributions in a prescribed format to the Commission [ECI]).

2. The national political parties have submitted to the Commission their Annual Contribution reports regarding receipt of donations in excess of EUR 280 in a financial year under Sec 29C of the RPA (Table 14.2).

Table 14.2. **Donations received in excess of EUR 280 by political parties in India, 2010-14**

In crore rupees

<table>
<thead>
<tr>
<th>Political party</th>
<th>2010-11</th>
<th>2011-12</th>
<th>2012-13</th>
<th>2013-14</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bahujan Samaj Party</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Bhartiya Janata Party</td>
<td>14.51</td>
<td>37.33</td>
<td>83</td>
<td>166.77</td>
</tr>
<tr>
<td>Communist Party of India</td>
<td>1.18</td>
<td>0.60</td>
<td>0.34</td>
<td>1.28</td>
</tr>
<tr>
<td>Communist Party of India (Marxist)</td>
<td>1.566</td>
<td>2.26</td>
<td>4</td>
<td>2.09</td>
</tr>
<tr>
<td>Indian National Congress</td>
<td>7.41</td>
<td>10.93</td>
<td>101.75</td>
<td>66.47</td>
</tr>
<tr>
<td>Nationalist Congress Party</td>
<td>0.14</td>
<td>2.55</td>
<td>0.05</td>
<td>14.02</td>
</tr>
</tbody>
</table>

*Source: Election Commission of India.*

The above reports are uploaded to the Commission website for public viewing. It is important to note that in reality there is a lot of under-reporting, and the contributions disclosed to the Commission are reported to be only a small fraction of the actual total contributions received by some of the parties.
Mechanism to regulate media spending by political parties and candidates

More than one-third of campaign expenditure is generally incurred on media and is increasing with its vast expansion. However, the Election Commission of India has no regulatory power over the media. Nevertheless, Media Certification and Monitoring Committees (MCMC) are established in each district per instructions from the Election Commission to monitor the content of political advertising and to keep a watch on suspected paid news, whereby media does surrogate publicity for a party or candidate in the guise of news – a new scourge.

The Election Commission does not have sufficient capacity to undertake pre-censorship of all advertisements on the various cable networks and television channels. Instead, it has delegated its powers to the respective District Magistrates (DMs) of the States or Union Territories by a general order.

These officers act under the supervision of the Election Commission. Appeals against DM orders can be made to the Chief Electoral Officer of each State. The Chief Electoral Officer may appoint a committee for hearing the complaints or grievances of any political party, candidate or any other person in regard to the decision to grant or to refuse certification of an advertisement. Decisions of the committee are binding. Orders for modification or deletion of the advertisements must be complied with within 24 hours of receipt of the decision, and the modified advertisement may then be resubmitted for re-evaluation. The committee also communicates its decision to the Election Commission.

Provisions of Section 126 of RPA apply allowing any political party, candidate or any other person to appeal a decision of the committee, the Designated Officer or Election Commission. The appeal may be heard by the court for clarification or appropriate orders. No other court, tribunal or authority may hear any petitions in regard to a complaint against such advertisement.

Under Section 127A of the RPA no person shall print, publish, or cause to be printed or published any election pamphlet or poster, handbill or other document without mentioning the name and address of the printer and the publisher. It is the responsibility of such press to deliver a copy of the declaration along with a copy of the document to the DEO/CEO within a reasonable time after printing the document.

Transparency and accountability

Funding disclosure

With regard to the funding of parties:

- Political parties are required to disclose to the Commission annually, prior to the income tax return filing date, the names and addresses of persons donating more than INR 20,000 (or EUR 280) (Sec 29C of the RPA) at a time. If they fail to submit the report to the Commission in time, the tax exemption on the contributions will not be allowed by the Income Tax Department, as per provisions of the RPA. The Commission forwards these reports to the Income Tax Department for necessary action, and to the Ministry of Home Affairs for verification of contributions from foreign sources, and to the Ministry of Corporate Affairs for verification of the corporate donations under the Companies Law.
However, the parties are neither required to maintain the details, nor required to disclose to the Commission, if the one time contribution made by a person is not more than EUR 280. They are also not required to disclose total contributions received, and, therefore, anonymous donations are not restricted or prohibited. Similarly, there is no penal provision if political parties accept or receive donations from prohibited companies or sources, in violation of Section 29B of the RPA. The parties exploit this – over 75% of the total funds received do not disclose the source.

With regard to funds received by candidates:

- Candidates may raise funds from any source, as there are no restrictions on fundraising by candidates, nor is there any requirement to maintain and disclose the names and addresses of the persons from whom they receive the funds.

- On the direction of the Election Commission, the Institute of Chartered Accountants of India (ICAI) has issued guidelines prescribing accounting and audit standard for the parties. However, there is no penal provision for the violation of such guidelines by the candidate or the party. Theoretically though, the ICAI can revoke the licence of the chartered accountant.

- During the election period, the Commission appoints independent Expenditure Observers, who work as the eyes and ears of the Commission. During the election campaign period, the candidates are required to submit their day-to-day election expenditure statements three times to the Expenditure Observer for inspection. The final accounts with bills and vouchers must be submitted to the Designated Election Officer within 30 days of the end of elections. Failure to submit this statement to the DEO within the timeframe and manner prescribed may result in the candidate’s disqualification by the Commission for a period of three years.

- The Commission has issued instructions that each candidate should open a separate bank account for election expenses, and incur all expenses from that account by cheque, excluding small payments below INR 20 000 (or EUR 280). But there is no penal provision to enforce this.

**Disclosure of election expenditures by candidates**

Disclosures measures are designed to make political parties and candidates observe the campaign expenditure ceilings, as well as prevent illegal, prohibited or otherwise restricted expenditures. Candidates must also file an affidavit providing details of their assets, liabilities and any pending criminal cases against them.

**Accounting and reporting procedures**

With regard to maintenance of day-to-day accounts of election expenses, cash and bank registers:

- Candidates are required to maintain books and registers of their election expenditures, e.g. register of day-to-day accounts, cash register and bank register.

- Every candidate may appoint an additional agent for assisting the candidate in various expenditure-related matters.

- The candidate is required to submit the register to the Expenditure Observer/designated officer for inspection at least three times during the
campaign period, as per the schedule of inspection prepared by the Returning Officer.

- In the case of non-production of the election expenditure register for inspection on the day fixed for this purpose, a notice is issued by the Returning Officer.

- If the candidate does not produce the register within three days of service of the notice, the candidate’s permission for use of vehicles during election may be withdrawn. The withdrawal of permission for use of vehicles is made known to all Surveillance Teams and Flying Squads deployed in the constituency, and vehicles may be impounded. If the candidate still does not produce the register of election expenditures for inspection, a complaint under Section 171-I of the IPC shall be filed in the competent court.

**Disclosure of expenditures by political parties**

Political parties are required to disclose a partial statement to the Commission within 30 days of the declaration of election results detailing funding given to candidates, as well as a full disclosure within 75 days of the state assembly elections, and 90 days of Parliament (Lok Sabha) elections, the total amount of election expenses incurred. But there is no penal provision should the parties decline to submit the report or submit an incomplete or incorrect report. The Commission has issued instruction in its transparency guidelines for the political parties that the report should be verified by a chartered accountant, but there is no penal provision to ensure this. The Commission makes these reports publicly available on its website. The contribution reports and the annual audit reports submitted by the political parties are also posted on the Commission’s website for public viewing.

In the Election Expenditure Statements, political parties are required to provide details of expenditures made under different categories (e.g. travel expenses, expenditures on media advertisements, expenditures on publicity materials, lump sum amounts paid to each candidate for campaigning purposes, etc.). These statements filed by political parties are made publicly available on the Commission website.

The Commission has issued transparency guidelines directing the parties to file the Annual Audited Accounts with the Commission within seven months of the end of financial year. It has also issued guidelines that the parties should not incur any expenditure above INR 20,000 in cash to a single person in a day (excluding the transactions in areas not having banking facilities). In the absence of penal provisions, some parties do not comply with these requirements.

**Scrutiny/audit of the information submitted by political parties and candidates**

According to the transparency guidelines of the Commission, accounts maintained by political parties should conform to the guidance note on Accounting and Auditing of political parties circulated by the Institute of Chartered Accountants of India. Annual accounts are required to be audited and certified by qualified practising Chartered Accountants. In addition, all political parties are expected to submit to the Commission copies of their audited annual accounts, along with the Auditor’s report for each financial year (i.e. April to March), before 31 October of each year. Annual audit reports submitted by the political parties are sent to ICAI for further examination. Apart from posting the contribution reports on the website for public scrutiny, the reports submitted by the
political parties are also sent to the Income Tax Department, the Ministry of Corporate Affairs and the Ministry of Home Affairs for further scrutiny.

Format in which the information is made available to the public

Scanned copies of all financial reports of the political parties (contribution reports, annual audit reports and election expenditure reports) are made publicly available on the Commission’s website within seven days of submission.

Transparency guidelines

In the interest of conducting free and fair elections, maintaining the purity of the election process, and providing guidelines to encourage transparency and accountability with regard to political party funds, the Commission has issued transparency guidelines that apply to all political parties. The main features of the transparency guidelines are as follows.

To maintain such books of accounts and other documents that conform to the guidance note on Accounting and Auditing of political parties, issued by the Institute of Chartered Accountants of India. The Annual Accounts shall be audited and certified by qualified, practicing Chartered Accountants.

Political parties are required to submit to the Commission a copy of the audited Annual Accounts with the Auditor’s report for each financial year, before 31 October of each year.

For this, they shall maintain the names and addresses of all individuals, companies or entities making a donation, except petty sums, donated by the public only during its public rallies. Further, any amounts/donations received in cash shall be duly accounted for in relevant account books, and deposited in the party’s bank account within a week of its receipt. However, the party can retain a reasonable amount of cash required for the day-to-day functioning of the party and for defraying cash expenses.

If a party incurs any expenditure, it shall ensure that no payment in excess of INR 20,000 is made in a day to any person or company or entity in cash, except where:

i) the payment is made in a village or town, which is not served by a bank; or

ii) the payment is made to any employee or party functionary towards salary, pension or for reimbursement of his/her expenses; or

iii) cash payment is required under any statute.

Section 77(3) of the RPA provides a ceiling of election expenditure for a candidate irrespective of the source of the funds. Therefore, if the party desires to provide any financial assistance to its candidates for their election expenses, such assistance shall not exceed the prescribed ceiling. Any payment in this regard by the party shall be made only through crossed account payee cheque or draft or through bank account transfer, and not in cash.

Integrity

During the last elections, a 24/7 call centre was set up in each district, allowing voters to make toll-free calls to register complaints of any suspected violations or other corrupt practices. All complaints received were recorded and forwarded to the relevant “flying squad” (mobile enforcement team). Phone numbers of the local expenditure observers were also made public with invitations to the public to register any complaints of electoral code violations. Complainants were informed of follow-up action taken. In
addition, between 1 March (announcement of elections) and 15 May, the Election Commission received 3,159 calls from voters to report suspected misconduct.

**Fostering a culture of integrity within the public sector, among political parties and private donors**

The Election Commission supports campaigns propagating ethical voting, engaging non-governmental organisations (NGOs), village level/ward level awareness groups (VAGs/WAGs), civil societies, and by announcements on legal provisions, uploading facility of photo/audio/video of corrupt practices. It has also begun engaging in booth-level awareness groups (BAGs).

**Compliance and oversight**

In India various measures are taken to ensure effective compliance, as described below.

For effective compliance of the Commission’s instructions in connection with the expenditure by candidates and political parties, various teams are formed:

1. **Flying Squad:** Dedicated Flying Squads under each Assembly Constituency/Segment for tracking illegal cash transactions or any distribution of liquor or any other items suspected of being used for bribing the voters.

2. **Static Surveillance Team (SST):** These teams put check posts and watch for movement of large quantities of cash, illegal liquor, any suspicious item or arms being carried in their area. The entire process of checking is video-recorded to prevent harassment or bribery.

3. **Video Surveillance Teams:** Capture all the expenditure-related events and evidence for any future reference as proof. Expenditure-related events and evidence are reviewed by the Video Viewing Teams and Accounting Teams to prepare Shadow Observation Registers for each candidate.

4. **Media Certification and Monitoring Committee (MCMC):** This district-level committee is set up for the certification of campaign advertisements, and to also monitor both print and electronic media including cable networks, and record either in CD or DVD. They maintain photocopies of all advertisements/paid news/election-related news of the contesting candidates/political parties.

A scanned copy of the Abstract of expenditure statements of all the candidates along with copies of all notices issued by the RO, and the replies thereto must be posted on the website of the CEO within three days of lodging the account of election expenses by the candidate.

Accounts maintained by the candidates are scrutinised by the Observers and other district-level teams during the election process, as elaborated above.

Most of the information in connection with the funding and expenditure of the political parties and candidates are posted on line for public scrutiny. Anyone can also ask for the information under Right to Information Act 2005. There are many NGOs like the Association of Democratic Reforms (ADR), National Election Watch, etc., who are doing commendable jobs by doing research on electoral reforms and even filing Public Interest Litigations (PILs)s to cleanse the political system in India.
Conducting investigations, referral of cases for prosecution

In addition to the district authorities, the ECI takes assistance from various law enforcement agencies like state excises, the Income Tax Department, the Central Police Force, etc. to conduct investigations.

Sanctions applied following the breach of political finance regulations - disqualification

Candidates are issued notices to date for failure to submit election expenditure accounts within the prescribed time limit. Out of the five returned candidates who were issued notice, one was unseated and disqualified.

The list of other persons (non-returned candidates) disqualified for three years under Section 10A of the RPA is posted on the Commission’s website (www.eci.nic.in).

Helping political parties and candidates comply with regulations

The Commission has introduced e-filing of certain forms and statements, by candidates and political parties and launched a new “Election Commission Return Preparer (ECRP) Scheme” to assist them in online filing of the forms, affidavits, etc.

The Election Commission of India set up the India International Institute of Democracy and Election Management in 2011 in order to provide training on electoral practices to meet domestic and international requirements of election managers. The institute also organises training and orientation programmes for political parties.

Challenges

Challenges and emerging risks in relation to a level playing field

1. In view of the high costs of election campaigning in terms of media advertisements and public rallies, use of “big money” in politics is a major concern today. The Commission is open to the idea of expanding the in-kind subsidy for election campaigns, with simultaneous reforms for transparency and accountability of parties and candidates.

2. Vote buying is another challenge. Political parties often indulge in distributing cash, liquor and gifts to buy the support of voters.

3. The policy of financing of political campaigns but not political parties results in continued distrust of government and major economic actors. Political parties’ main source of fundraising, namely donations from undisclosed sources, perpetuates the idea that these donations result in crony capitalism – that is preferential policies, favours, or other rewards to criminals, corporations, and government contractors. State funding for political parties could help resolve this problem. One possible way to implement this would be through a party funding system which allocates funding to parties according the number of votes received. This system would be further complemented by a ban on corporate and anonymous donations, thereby minimising the appearance of quid pro quo arrangements.
Challenges and emerging risks in relation to transparency and accountability

1. There is no uniform method of accounting by the political parties and no ceiling for expenditure by political parties.
2. There is no requirement of disclosure of campaign-expenditure by a third-party campaigner, i.e. a person not authorised to campaign by either the party or the candidate.
3. The cash economy in India encourages the use of black money and vote buying.
4. There is a new phenomenon of “paid news” – advertisements masquerading as news and hence expenditure not accounted for.

Challenges and emerging risks in relation to compliance and oversight

1. There is no penalty for non-compliance by parties. The Commission has recommended having legislation authorising sanctions for non-compliance.
2. There is no law regulating the parties, as the Election Commission of India is not a regulator of political parties under current law. In addition, the Commission does not have the authority to deregister or impose civil penalty on political parties.

Plans to reform political finance regulations

1. The Law Commission in its 255th Report has dealt with electoral reforms and made detailed recommendations.
2. The Election Commission held a national consultation to discuss the issues in context with the Law Commission’s report, which was attended by various recognised political parties, senior election officials, journalists, academics, NGOs, students, legal experts, etc. The outcome of the consultation has been forwarded to the Government for consideration.
3. The Commission has made various recommendations on electoral reforms in the past as well.

Conclusion

The money power in elections continues to evade solutions. While India is not the only country grappling with the problem, it is no consolation. It underlines the need for the world community to put their heads together to come up with workable solutions. Without further delay, OECD and International IDEA can lead this effort as they have indeed begun to do. Let 2016 be the year for clinching the issue at last.

Note
