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**ELECTORS' ACCESS TO INFORMATION REGARDING THE FINANCES OF
POLITICAL PARTIES- A MATTER OF RIGHT?**- Smriti Kumari & Udit Bajpai¹**Abstract**

The veil over information about political finance is a matter of grave concern for a democratic country like India. It is a huge boulder in the path of achieving transparency for the conduction of free and fair elections. Article 19 (1)(a) confers upon citizens of India the fundamental right to know. Yet, the citizens do not have access to information about the funding of the political parties. Reforms like electoral bonds add to the opacity of the already present problems. This paper analyzes this problem in light of various case laws and legislations present in the country. It addresses the issue of whether it is a matter of right for the electors to have access to information regarding political finance. The paper also provides some suggestions that can be implemented for achieving transparency in the election process.

Introduction

The news of income tax raids begins circulating as the election is around the corner. The cases of money laundering and tax fraud by different political parties come into the limelight and one question that arises every time is why is there no transparency and accountability in political funding. There is no doubt that funding is an essential component for the functioning of political parties in a democracy. It helps in organising political campaigns thus engaging citizens in a dialogue between them and those who seek their votes. It is also one of the biggest strengths of the political parties and the candidates.

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However, this funding in an unregulated form has also become a source of undue influence by the political parties and results in a huge influx of black money thus becoming a major problem for the people of the country.

The lack of proper legislation regulating the disclosure of sources of political funding aids corruption and generates quid pro quo between big donors and politicians.

Transparency in political funding is a matter of concern for every country but in the case of India, it is even more serious. The transparency of political donations in India today is essentially non-existent. It is virtually impossible to determine who donated money to a politician or political party or to ascertain the source of a politician's campaign funding. Due to their fear of being punished if their favoured party does not win an election, very few donors are ready to reveal their political contributions². Political parties in India do not come under the ambit of the Right to information act as they are not recognised as 'public authorities because they are not created by the Parliament. Therefore, information regarding the finance of these political parties is also not made available to the public under the RTI act thus posing a serious threat to the conduction of free and fair elections. This paper focuses on the grave question of *whether it is a matter of right for the electors to have access to information regarding the finances of political parties.*

Past and Modern-day legislations concerned with political finance

Representation of people's act, 1951 - Section 29B of Representation of people's act states that any political party is free to accept any amount of donation that is offered of one's own accord by any individual or a company except a Government company. It is also restricted from accepting any funding from a foreign source as is defined under section 2(e) of the Foreign Contribution (Regulation) Act, 1976. Moreover, Section 29C of the representation of people's act mandates the treasurer, or any other person so authorised, of a political party to prepare a report of every contribution exceeding rupees twenty thousand for every financial year. Furthermore, it also mandates the political parties to submit a

²Milan Vaishnav, *Political Finance in India: Deja Vu All Over Again*, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE (Oct. 29, 2022, 4:00 pm), <https://carnegieendowment.org/2019/01/31/political-finance-in-india-d-j-vu-all-over-again-pub-78280>.

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list of donations over rupees twenty thousand to the election commission, failing to comply would result in the exclusion of the political party to be entitled to any tax relief under the act. ³

Company's Act, 1956 - Section 293A of the company's Act prohibits any government company or a company which is in existence for less than three financial years to give a donation to any political party or to any person for any political purpose either directly or indirectly. Section 293A also laid down that any company affiliated under the company's Act can contribute only up to five per cent of its profit in a financial year to a political party through a resolution passed by the board of directors and the company should disclose the contribution in its profit and loss account. Any donation made in contravention of this section would be punishable with a fine which could amount to three times of the sum donated while also resulting in imprisonment which may exceed three years for all the officers of the company who is in default. Section 293A (1)(a) of the Companies Act makes it clear that a political party cannot receive any donations from a government company.

Income tax act, 1961 - Section 80GGC of the Income Tax Act makes any contribution made by any individual to a political party (under Section 29A of representation of people's act) fully deductible while under section 80GGB it is made deductible in case of the contributions by companies. Furthermore, under section 13A of the income tax act recognized political parties are granted tax exemption for income from real estate, income from voluntary contributions, income from capital gains, and income from other sources. In other words, political parties in India are only subject to taxation on revenue under the head salary and income from a business or profession.

Foreign Contributions (Regulation) Act (FCRA), 1976 - Sections 3 & 4 of Foreign Contributions (Regulation) Act (FCRA), 1976 forbids political parties to accept donations from foreign companies or companies located in India but controlled by foreign companies.

The BhartiyaJantaParty-led government made several changes in the union budget regarding rules regulating political finance to enhance transparency in political funding. The first change was that the limit on cash donations which was earlier rupees twenty thousand was reduced to rupees two thousand.

³ASSOCIATION FOR DEMOCRATIC REFORMS, <https://adrindia.org/sites/default/files/Legalities%20of%20donations.pdf> (last visited Oct 30, 2022).

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This reform when looked closely does little to ensure the envisioned goal of transparency as it will result in a greater number of donations by breaking down bigger cash donations. The cap on the number of donors rather than the number of donations would serve a better purpose. The second reform was the introduction of anonymous electoral bonds which facilitated a donor to conceal his political preference. This reform would also facilitate corruption to a great extent and hence of very little help in bringing transparency. The third reform was the removal of the earlier present cap on corporate funding which was 5% of the annual profit of a company for the preceding three years. This reform clearly gives rise to more chances of extortion of companies by political parties and also increases the power of big companies to influence public policies.⁴

Although there are legislations present to monitor the donations made to the political parties, none of them talks about making that information available to the citizens who cast their votes in the elections. The provisions which talk about submitting a report for donations above a certain amount, do not make the report available to the electors but to the election commission of India which, although published on the official website of the election commission for the public to view, is not usually complied to. Now the question arises is whether electors should have the right to access information regarding political finance.

Political Finance and an elector's right to know

Articles 19 and 21 of the constitution of India vests in the citizens the right to know as was held in the case of *Reliance Petrochemicals Ltd v. Proprietors Of Indian Express*.⁵ Article 19 (1)(a) guarantees the fundamental right of freedom of speech and expression to all citizens of India. The right to information derives its roots from this very fundamental right. This concept of the right to information under the right to freedom of speech and expression was highlighted first in the landmark case of *Bennett Coleman and Co. v. Union of India*.⁶ The idea behind the inculcation of the right to information was to help the citizens to form their opinion after having proper knowledge of the working of public bureaucracies. The key element for the proper functioning of a democracy is the citizens' access to information because it is this information that helps the citizens form an opinion on who should be their representative. The government should only command after obtaining the free and fair consent of the

⁴Jagdeep S. Chhokar, *How to curb 'invisible money'*, THE HINDU (Oct. 30, 2022, 5:00 pm), <https://www.thehindu.com/opinion/op-ed/how-to-curb-invisible-money/article19409913.ece>.

⁵ *Reliance Petrochemicals Ltd v. Proprietors of Indian Express*, (1989) AIR 190.

⁶ *Bennett Coleman and Co. v. Union of India* AIR 1973 SC 106.

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citizens. This can only be achieved if there is transparency and electors have access to information on who funds the political parties that will potentially govern them. Determining the swing in principles and potential powerful individuals or corporations the parties might support in the future requires knowledge of political funding. For citizens to make informed decisions, this data is essential.

In the case of *C. Narayanaswamy v. CK. Jaffar Sharief and Ors*⁷ which dealt with the validity of an election of a candidate who was alleged to have been involved in corrupt practices, the court held that the information on political funding and expenditures cannot be kept hidden from the public. Even so, the advocate general representing the government in the petition filed against electoral bonds in 2019 argued in the Supreme Court that voters do not have a right to know about political funding as it would disrupt the right to privacy of the parties.⁸ This contention on the part of the government is clearly in opposition to the judgement in the *C. Narayanaswamy* case. In another landmark case of *Union of India v. Association for Democratic Reforms*,⁹ it was held by the Supreme Court that “the candidate’s criminal record, Assets and liabilities they and educational qualifications should be revealed before contesting in an election”. On similar grounds and for the same reasons, the source of funding of the political parties. The government's introduction of the Electoral Bond Scheme in 2017 encourages opaqueness rather than transparency, allowing only the State Bank of India, contributors, and the party receiving the gift to know how much money has been given by the companies to that political party.

As a result, this plan violates the "Right to Know."¹⁰ It was also held in the case of *Dinesh Trivedi M.P v. Union of India*¹¹ that the sanctity of democracy is threatened by the criminalization of politics. The Court observed that there is an increase in the relationship between politicians, bureaucrats, and criminal elements in Indian society and that this has a negative impact on free and fair electioneering. Therefore, it follows that in contemporary constitutional democracies, it is a given that citizens have a right to be informed about the business of the government, which, having been chosen by them, aims to create effective laws for the benefit of the people.

⁷ *C. Narayanaswamy vs Ck. Jaffar Sharief & Ors.* 1994 SUPPL. (2) SCR 463.

⁸ THE WIRE, <https://thewire.in/government/electoral-bonds-supreme-court> (last visited April 11, 2019)

⁹ *Union of India v. Association for Democratic Reforms*, AIR 2002 SC 2112.

¹⁰ Balakrishnan C, Nagarjun S, *Electoral Bond Scheme – The Paragon of Paradox*, INDIA LAW JOURNAL (Oct 30, 2022, 2:05 am), <https://www.indialawjournal.org/electoral-bond-scheme-the-paragon-of-paradox.php>.

¹¹ (1997) 4 SCC306.

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Apart from the right to know about political funding being a fundamental right of electors under Article 19(1)(a), it is also in favour of the larger public interest. While the right to information act does not define what is a "larger public interest" nor it prescribes any parameters to determine the same, it was held in CPIO v. Subhash Chandra case held that competent authority under the RTI Act may disclose the information if a 'larger public interest exists. The supreme court also cited the judgement delivered in Union of India vs Associate of democratic reforms stating that in the case despite the fact that this information is private and secret, legal orders have been granted requiring its disclosure regarding the personal assets, educational background, and criminal history of election candidates. The Court had ruled that such disclosure was appropriate given the "greater public interest" of having an informed electorate, free elections, and a dialectical democracy. Moreover, the amendments to the RPA and the ITA put an

embargo upon the information regarding the donations received by political parties and this not only violates Article 19(1)(a) of the Constitution but also derogates the Basic Structure of the Constitution. The basic structure of India also includes the conduction of free and fair elections which was held in the case of KihotoHollohan v. Zachillhu&Ors.¹² Furthermore, in the case of People's Union of Civil Liberties &Anr. v. Union of India,¹³ the court stated that for the healthy growth of democracy, free and fair elections should be contested and the best available person should be chosen to govern the people and to find out the best person, information about political funding is necessary to be made available to electors. The nature of electoral bonds brought by the amendment in 2017, is violative of the basic structure of the constitution of India as it hinders the access of information about political funding to the citizens thus resulting in hindrance to free and fair elections.

A comparison to the other democracies

USA: - The United States of America is considered the oldest democracy in the world and most of the provisions of the Indian constitution have been derived from the constitution of the USA. But unlike India, the USA has a far more standardized and systematic statute to govern political finance to ensure transparency. There are clear guidelines for the disclosure of the donations received. The Federal Election Campaign (FEC) gives precise instructions on how the campaigns should record the various

¹²KihotoHollohan v. Zachillhu&Ors., AIR 1993 SC 412.

¹³ People's Union of Civil Liberties &Anr. v. Union of India, (2013) 10 SCC 1.

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types of donations they have received. The details cover the reporting forms to be utilised, the details of what needs to be reported, how to submit the report of contributions received, etc. The FEC keeps track of the database containing all of this data and makes it available to the public on its website along with details about the campaigns and donors. On the website, data regarding the overall sum raised and spent by candidates, by various election & party committees, etc. may be gathered.¹⁴

United Kingdom: - United Kingdom is considered to have the most transparent system when it comes to political finance. In accordance with election law, political parties and candidates must register and disclose their financial interests, including loans and donations. Political legislation (such as the Political Parties, Elections and Referendums Act (PPERA) and the Representation of the People Act 1983 (RPA)) and the operation of the MPs' Code of Conduct in regard to the RMFI restricts private funding of political parties and politicians. Depending on the amount of the donation and the donee's position, donations may need to be disclosed.¹⁵ One of the provisions mandates the political parties to provide an invoice from the supplier if they spend over GBP 200 on election campaigns and that invoice along with other expenditure details is released on the Electoral Commission's political finance database which is publicly available.¹⁶

Ireland: - There are no restrictions on political parties to avail funding from corporations, trade unions or anonymous donors. But there are restrictions on the acceptance of donations from foreign entities. Parties are required to maintain accounts if they receive more donations than a specific level. Where donations exceed a certain amount, these must be made public and show the names of the donors. The Standards Commission is responsible for reporting. Law violations are subject to penalties, including fines, loss of public money, and other sanctions under the criminal code.¹⁷

¹⁴BharathKancharla, *Transparency in Political Funding: India has much to learn from the USA*, FACTLY (Oct. 29, 2022, 5:30 pm), <https://factly.in/transparency-in-political-funding-india-has-much-to-learn-from-the-usa/>

¹⁵Bates Wells, *In brief: political finance in United Kingdom*, LEXOLOGY (Oct. 29, 2022, 6:30 pm), <https://www.lexology.com/library/detail.aspx?g=9a216afe-d133-4483-9d13-17688c30e55f>.

¹⁶Yukihiko H, Kate D, Sam P, *What did political parties really spend on?: Political Finance Transparency in the UK*, INTERNATIONAL INSTITUTE FOR DEMOCRACY AND ELECTORAL ASSISTANCE (Oct. 29, 2022, 7:00 pm), <https://www.idea.int/news-media/news/what-did-political-parties-really-spend-political-finance-transparency-uk>

¹⁷EUROPEAN PUBLIC ACCOUNTABILITY MECHANISMS, <https://europam.eu/?module=country-profile&country=Ireland> (last visited Oct. 29, 2022)

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France: - The National Commission for Campaign Accounts and Political Funding (CNCCFP) is mandated by Law No. 88-227, 1988 to annually publish the consolidated balance sheet and profit and loss accounts of political parties in the Official Gazette. The Official Gazette also publishes a shortened list of candidates' election expenses. The Official Gazette is accessible online in both printed and electronic forms. Subject to restrictions, the State and private donors fund political parties.¹⁸

Japan: - Political parties must file a statement of accounts to the Ministry of General Affairs and Local Elections Management Council in accordance with the Political Fund Control Act of 1948. (Depending on whether elections are to Parliament or local bodies). These organisations allow anyone to view these records for free. The Official Gazette and the websites of these agencies also disseminate the information.¹⁹

Conclusion and Suggestions

Transparency and accountability are key components of a healthy democracy. Citizens should have trust in the representative they elect to govern them and this trust can only be earned by transparency in the entire process of election which also consists of political funding as an integral part. Access to information about political funding enables the electors to form a clear opinion about the individual candidates as well as the party which could form a potential government. However, the failure to enact strict legislation for the disclosure of the political finance of the parties acts as a barrier towards the goal of achieving transparency. Moreover, the introduction of anonymous electoral bonds further enhanced the opacity of the political finance system. The constitution guarantees the citizens' fundamental right to know under the ambit of article 19(1)(a). But the right to know about a political party's finance is still a goal to be achieved. To make the matters worse, the government still is of the contention that voters do not need to know about the funds of the political parties as it breaches their right to privacy. This was argued on the behalf of the government by the advocate general during the hearing of a petition filed against anonymous electoral bonds in the Supreme Court in 2019. Time and again, various judgements have highlighted the importance of transparency in elections and directed candidates to disclose information regarding their education, assets, liabilities, criminal records etc. but to date, there is no step

¹⁸Vinita Deshmukh, *In 40 countries, it's mandatory for political parties to put their finances in public domain*, MONEYLIFE (Oct. 29 2022, 7:45 pm), <https://www.moneylife.in/article/in-40-countries-its-mandatory-for-political-parties-to-put-their-finances-in-public-domain/34376.html>

¹⁹*Ibid.*

taken to make information available about political parties' funding. This opaque nature facilitates corruption, the influx of black money, money laundering etc. It is high time that certain reforms are brought into Indian legislation and strict regulations are imposed to make the information regarding political parties' finance accessible to electors. Some of the steps that can be taken in this direction are:

- Political parties must be brought under the ambit of the Right to information act by recognising them as public authorities.
- The amount to be received in cash should either be banned completely or a certain amount that can be received in cash in total should be fixed.
- Value of electoral bonds should also be fixed and proper legislation for disclosure of information about the electoral bonds after that value should be enacted.
- Proper legislation is also required to monitor the corporate funding to parties so that elections do not become a mere game played by the big powerhouses.

The spirit of democracy lies in free and fair elections to a great extent and to achieve this fairness, transparency in the political finance of parties is necessary. Thus, the electors should have the access to information about political parties funding.

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