

## **Impact of Black Money in Elections and Political Activities**

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### **Abstract**

This paper analyses the influence of black money in elections and politics and vice versa in the context of several recent far reaching judgments of the Supreme Court and the Central Information Commission (CIC). Based on publicly available data of candidates who contested National and State Assembly elections, we show that money plays an important role in winning elections. Politics in India has become increasingly competitive and recently we have seen massive election campaigns being held which require significant resources to be effective. This has given rise to an influx of people who are willing and able to use black money to dominate politics. The current laws regarding election expenditure, political party financing, declaration of assets have been ineffective and unable to check the influence of black money. We conclude with some possible recommendations on a strong and appropriate legislative framework as well as the role civil society and voters can play for improving the situation. An in-depth debate and discussion is needed to try and evolve a reasonable consensus and hopefully this paper would contribute to an informed approach on this issue as we move forward in this context.

**Keywords: Election, Politics, Democracy, Black Money**

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## I. Introduction

The 2014 Lok Sabha elections witnessed a very capital intensive campaign by most of the political parties. According to a study by the Centre for Media Studies, a whopping Rs. 30,000 crores was projected to be spent by the government, political parties and candidates in the 2014 general election, making it the most expensive election in Indian history. Of the estimated Rs. 30,000 crores, official spending by the ECI and the Government of India was around Rs. 7,000 – Rs. 8,000 crores<sup>2</sup>.

Most of the election campaigns were centred on the issues of black money abroad and corruption in India<sup>3</sup>. The political discourse, however, did not address the issues regarding black money generated in India, especially during elections and in the functioning of political parties. While the political community seems united in the intent to combat this menace, this issue has not been effectively resolved as yet. The ECI reported that during Lok Sabha 2014 elections, around Rs.300 crores of unaccounted cash and more than 17,000 kg of drugs and huge amount of liquor, arms etc. were seized<sup>4</sup>. This, some claim, is a conservative estimate of the actual amount of illegal and illicit funds utilised during the elections.

Black money usually refers to any income on which the taxes imposed by government or public authorities have not been paid. Such wealth may consist of undisclosed income generated from legitimate and permissible economic activities or those which are illegitimate per se, like smuggling, illicit trade in banned substances, counterfeit currency, arms trafficking, terrorism, and corruption<sup>5</sup>.

The estimation of black money in electoral politics is fraught with methodological difficulties and hence cannot be computed. This paper scrutinises the affidavits submitted by candidates contesting elections and the financial accounts of political parties submitted to the Election Commission of

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<sup>2</sup> Rs. 30000 crore to be spent on Lok Sabha polls: Study, NDTV, March 16, 2014, (<http://www.ndtv.com/elections-news/rs-30-000-crore-to-be-spent-on-lok-sabha-polls-study-554110>)

<sup>3</sup> 2014 Lok Sabha election manifestos: BJP, Congress and AAP's stand on key issues, IBN Live, April 07, 2014, (<http://ibnlive.in.com/news/2014-lok-sabha-election-manifestos-bjp-congress-and-aaps-stand-on-key-issues/463263-81.html>)

<sup>4</sup> Election Commission of India (<http://eci.nic.in/eci/eci.html>)

<sup>5</sup> White Paper on Black Money, Finance Ministry, May 2012 ([http://www.finmin.nic.in/reports/WhitePaper\\_BackMoney2012.pdf](http://www.finmin.nic.in/reports/WhitePaper_BackMoney2012.pdf))

India (ECI) and the Income Tax (IT) Department indicating the pervasiveness of this issue. Black money, while difficult to trace, can be determined from what remains undisclosed in the financial accounts of the candidate and political parties and the discrepancies found in these submissions.

## II. Black Money in Political Activities

### *Election Expenditure by Candidates and Political Parties*

Election expenditure and the substantial influx of black money in electoral polls have been a topic of concern over the past few elections. Over the years, the limits imposed on the expenditure of candidates has been hotly contested by the political community on the grounds that the limits were too low and unrealistic. Despite these claims by the candidates, the expenditure declared by them has been consistently well below the cap on the expenditure imposed.

The candidates and political parties are required to submit their expenditure statements to the ECI after the poll results are announced. In the 2014 Lok Sabha elections, the average election expenditure declared by the candidates was only Rs. 40.30 lakhs i.e. 59% of the limit imposed. 108 (20%) MPs declared that they had incurred no expenses on campaigning through electronic/print media<sup>6</sup>. The underreporting of expenses by candidates during elections warrants scrutiny of their election expenditure statements.

Further, candidates usually do not disclose the sources of funds from individuals, corporations or others i.e. they do not submit the address of the donor, along with his/her PAN details, mode of payment etc. This information is crucial in view of full disclosure and as of now there is no strict penalty in the nondisclosure of such information in the election expenditure statements.

In case of election expenditure disclosed by political parties, even after several notices by the ECI, the statements are submitted woefully late<sup>7</sup>. Investigation into these statements are crucial in the period right after the elections and the more delayed the submission by the political parties are, the more difficult it becomes to question its veracity. Upon comparing the election expenditure statements submitted by political parties and candidates for the Lok Sabha elections in 2009, it was found that while national parties declared giving 138 MPs more than Rs. 14.19 crores, only

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<sup>6</sup> Lok Sabha Election Watch 2014, Association for Democratic Reforms, ([http://adrindia.org/sites/default/files/Lok\\_Sabha\\_Report\\_2014\\_compressed.pdf](http://adrindia.org/sites/default/files/Lok_Sabha_Report_2014_compressed.pdf))

<sup>7</sup> Election Commission of India, ([http://eci.nic.in/eci\\_main/mis-Political\\_Parties/Election\\_Expenses/ConsolidatedStatementofDefaulters\\_18062014.pdf](http://eci.nic.in/eci_main/mis-Political_Parties/Election_Expenses/ConsolidatedStatementofDefaulters_18062014.pdf))

75 MPs declared having received any amount from their parties. These MPs declared in their statements only a total of Rs. 7.46 crores received from the political parties<sup>8</sup>.

The elections conducted in the recent past have witnessed a massive investment of money from various industry giants, big corporations, as well as individual donors. Out of the funds collected during Lok Sabha elections, 2014, the national political parties declared in their election expenditure statements that Rs 408.75 crores (35.28% of total funds collected) was by cash. As the parties are not required to provide details of the donors who donated specifically during election period, these donations in cash will remain unknown<sup>9</sup>.

### *Growth of assets and disclosure by candidates*

Of the 3,452 candidates who contested more than one election (including all state assembly elections and the Lok Sabha and Rajya Sabha elections) from 2004 to 2013, 2,967 showed an increase in wealth. The average declared wealth of such re-contesting candidates in 2004 was Rs 1.74 crore, and Rs 4.08 crore in 2013, an increase of 134%. For winners, the average assets went up from Rs 1.8 crore to Rs 5.81 crore, an increase of 222%. Winners were able to increase their wealth much faster than other candidates<sup>10</sup>. Extraordinary growth can be observed in the assets of re-elected MPs in the Lok Sabha 2014 elections. 32 (out of 165 re-elected) MPs had shown an increase in total assets worth more than Rs.10 crores in five years<sup>11</sup>.

There are no provisions for the scrutiny of affidavits or the election expenditure of candidates. While efforts have been made by the ECI to involve the IT department in the scrutiny of affidavits of candidates and MPs who show a high growth in assets<sup>12</sup>, there has been little progress in this regard. As per media reports, many candidates reportedly pay exorbitant amounts of money to get tickets from political parties<sup>13</sup>. This expenditure is neither accounted for in the expenditure statements of the candidates, nor do they reflect in the financial accounts of the political party.

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<sup>8</sup> Comparison of declaration of election expenses of political parties and their MPs, Lok Sabha 2009, Association for Democratic Reforms, (<http://adrindia.org/research-and-report/political-party-watch/combined-reports/2014/comparison-declaration-election-expe>)

<sup>9</sup> Analysis of Funds Collected and Expenditure Incurred by National Political Parties - Lok Sabha 2004, 2009 & 2014, Association for Democratic Reforms, (<http://adrindia.org/research-and-report/political-party-watch/combined-reports/2015/analysis-funds-collected-and>)

<sup>10</sup> Trilochan Sastry, 'Decriminalisation of Elections and Politics', Economic and Political Weekly, January 4, 2014

<sup>11</sup> Lok Sabha Election Watch 2014, Association for Democratic Reforms, ([http://adrindia.org/sites/default/files/Lok\\_Sabha\\_Report\\_2014\\_compressed.pdf](http://adrindia.org/sites/default/files/Lok_Sabha_Report_2014_compressed.pdf))

<sup>12</sup> Taxman sits on EC request for scrutiny of candidates' returns, Indian Express, February 25, 2014, (<http://indianexpress.com/article/india/india-others/taxman-sits-on-ec-request-for-scrutiny-of-candidates-returns/>)

<sup>13</sup> Andhra Pradesh, the state where money talks in politics, The Economic Times, April 22, 2014, ([http://articles.economictimes.indiatimes.com/2014-04-22/news/49318750\\_1\\_telangana-rashtra-samiti-seemandhra-jagan-mohan-reddy](http://articles.economictimes.indiatimes.com/2014-04-22/news/49318750_1_telangana-rashtra-samiti-seemandhra-jagan-mohan-reddy))

Further, candidates often disclose the purchase amount of their immovable assets, like agricultural land, commercial and residential buildings etc instead of their market value. There is no provision in the affidavits of the candidates to disclose their sources of income. The lack of any kind of scrutiny in discrepancies such as these in the financial accounts of political parties and the candidates give way to the amassing and transfer of wealth that remains undisclosed to public authorities.

### *Political Party Finances and Disclosure*

The past decade has seen a growing hegemony of money over elections. The analysis of IT Returns of National Parties between FY 2004-05 and 2011-12 shows that the total income of the parties from unknown sources of income amounted to Rs.3,677.97 crores (75.1% of total income of national parties)<sup>14</sup>. The nondisclosure of sources of income of political parties for donations that amount to less than Rs. 20,000 leads to a wide gap in the transparency of funds.

While BSP declared a total income of Rs.585.07 crores between FY 2004-05 and 2012-13 of which Rs.307.31 crores were from voluntary contributions, the names and other particulars of these ‘voluntary’ contributors are not known. While the party has maintained that no donations above Rs.20,000 was received thereby not declaring the names any donor in 8 years<sup>15</sup>, BSP declared total assets worth Rs. 400.72 crores in the FY 2012-13 out of which they declared immovable assets worth Rs.82.89 crores<sup>16</sup>.

INC and BJP were found guilty of taking donations from foreign sources by the Delhi High court<sup>17</sup>. This came into light upon the scrutiny of the contribution reports of the two parties. In view of this, it becomes even more important to have greater disclosure of the income of political parties to ascertain any vested interest that might influence the party and the candidates who win the elections.

Many cases of bogus companies donating huge sums of money to political parties have also been uncovered. A recent case refers to the contribution reports of the All India Trinamool Congress

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<sup>14</sup> Sources of Funding of National Political Parties: FY 2004-05 to 2011-12, Association for Democratic Reforms, (<http://adrindia.org/research-and-report/political-party-watch/combined-reports/sources-funding-national-political-partie> )

<sup>15</sup> Analysis of Income Tax Returns Filed and Donations Received by National Parties, Association for Democratic Reforms (<http://adrindia.org/research-and-report/political-party-watch/combined-reports/2014/analysis-income-expenditure-and-dona> )

<sup>16</sup> IT Returns of BSP for the year 2012-13, ([http://docs.myneta.info/party/2013/2/Income\\_Expenditure\\_BSP\\_FY\\_2012-2013.pdf](http://docs.myneta.info/party/2013/2/Income_Expenditure_BSP_FY_2012-2013.pdf) )

<sup>17</sup> Petition in WP(C) No. 131 of 2013; Association of Democratic Reforms & another vs. Union of India, (<http://www.adrindia.org/sites/default/files/ADR%20vs.%20UOI%20%28Delhi%20High%20Court%20judgment%20on%20foreign%20%20funding%20received%20by%20INC%20and%20BJP%29.pdf> )

(AITC). A prominent media report<sup>18</sup> stated that the only contribution to AITC in the year financial year 2013-2014 was made by a company whose legitimacy was questionable.

According to Section 182 of the Companies Act, 2013, no company in existence for less than three financial years can make a donation and the maximum amount that a company can contribute to a political party in a year should not exceed 7.5% of its average net profits during the three preceding financial years. But the media report states that M/s Trinetra Consultant Pvt. Ltd. which contributed to AITC in 2013-14, was registered on April 25, 2011. So, when the company made the contribution on March 31, 2014, it was still 25 days short of the three-year mark.

Further, the media report analysed that in order to be able to make a contribution of Rs 1.40 crore, the company would have had to make profits of at least Rs 28 crores annually for three preceding fiscal years. During the 2012-13 financial year, the company had registered a loss of Rs 4,121. The performance improved the following year (2013-14) but the net profit was not more than Rs 13,589.

There is a lack of frequent and complete scrutiny of financial disclosures of political parties, i.e. of IT Returns and contributions reports containing details of donors who have contributed more than Rs. 20,000 to a party, by either the IT Department or by the ECI.

### **III. The Way Forward**

#### *Political Parties under the RTI Act*

In a landmark judgment on the 3<sup>rd</sup> of June, 2013 by the CIC<sup>19</sup>, it ruled that Political Parties fall under the definition of ‘Public Authority’ in the Right to Information Act and directed the six National Parties to appoint CPIOs. Even after the passage of 23 months of the CIC’s order, none of the six political parties have complied with the CIC’s order. The commission issued show-cause notices to the political parties for non-compliance of its order and held hearings on November 21, 2014 and on January 7, 2015, but all the parties were conspicuously absent from both the hearings. In the final hearing on March 16, 2015, the CIC<sup>20</sup> abrogating its own power and responsibility

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<sup>18</sup> Trinetra Trove: Behind the 1.4 crore that flowed to Trinamool lies a humble room, The Telegraph, January 17, 2015 ([http://www.telegraphindia.com/1150117/jsp/frontpage/story\\_8884.jsp#.VUhtmlCGqqkp](http://www.telegraphindia.com/1150117/jsp/frontpage/story_8884.jsp#.VUhtmlCGqqkp) )

<sup>19</sup> Judgment of the CIC which brought Political Parties under the RTI, June 3<sup>rd</sup>, 2013, ([http://www.rti.india.gov.in/cic\\_decisions/CIC\\_SM\\_C\\_2011\\_000838\\_M\\_111223.pdf](http://www.rti.india.gov.in/cic_decisions/CIC_SM_C_2011_000838_M_111223.pdf) )

<sup>20</sup> Judgment of the CIC on the 16<sup>th</sup> of March on the noncompliance of political parties of the June 3<sup>rd</sup>, 2013 order, ([http://www.rti.india.gov.in/cic\\_decisions/CIC\\_CC\\_C\\_2015\\_000182\\_M\\_149924.pdf](http://www.rti.india.gov.in/cic_decisions/CIC_CC_C_2015_000182_M_149924.pdf) )

stated that the RTI Act does not give it the requisite authority to get its order of June 03, 2013 implemented by political parties.

Political Parties have much to gain in paving the way towards transparency and accountability in their functioning. The loss of public trust in the political establishment has a lot to do with the inaccessibility of political parties other than during election campaigns, their opaque finances, and their tendency to allot party tickets to candidates with serious criminal cases. The seriousness that the political community displayed in their election campaigns towards combating the issue of black money and corruption needs to be extended to their own finances.

### *Increasing Transparency in the disclosure of Political Party Finances*

The present scenario belies any intent or effort by the political community to embrace transparency and accountability in their finances. Even under the present rules for transparency and disclosure of financial accounts, political parties often display a certain lack of seriousness in their submissions. During FY 2013-14, INC did not follow the format prescribed by the ECI in declaring the PAN details of the donors in their contribution report<sup>21</sup> and BJP did not declare the addresses of the donors in their submission<sup>22</sup>. It is difficult to trace the money that is donated to political parties without such information.

Political Parties rarely change their auditors over the years and the financial accounts of political parties are not submitted in any standard format. It is imperative that all political parties conform to the guidance note<sup>23</sup> on Accounting and Auditing of political parties, issued by the Institute of Chartered Accountants of India (ICAI), and the Annual Accounts are audited and certified by a qualified practicing Chartered Accountant from a panel approved by the ECI or the CAG.

The political parties should follow transparency guidelines issued by the ECI<sup>24</sup> on August 29, 2014 which require parties to file annual audited accounts with the Commission; maintain the names and addresses of individuals, companies and other donors irrespective of the amount; deposit cash received by political parties in its bank accounts within 10 working days, except the amount

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<sup>21</sup> Analysis of donations received by national Parties during FY 2013-14, Association for Democratic Reforms, (<http://adrindia.org/research-and-report/political-party-watch/combined-reports/2014/analysis-donations-received-national> )

<sup>22</sup> Analysis of Donations Received by Bharatiya Janata Party for FY 2013-14, Association for Democratic Reforms, (<http://adrindia.org/research-and-report/political-party-watch/combined-reports/2015/analysis-donations-received> )

<sup>23</sup> Transparency Guidelines issued by the ECI, August 29, 2014 ([http://eci.nic.in/eci\\_main1/PolPar/Transparency/Guidelines\\_29082014.pdf](http://eci.nic.in/eci_main1/PolPar/Transparency/Guidelines_29082014.pdf) )

<sup>24</sup> Guidance note on Accounting and Auditing of political parties, issued by the Institute of Chartered Accountants of India (ICAI), ([http://www.adrindia.org/sites/default/files/Guidance\\_Note\\_on\\_Accounting\\_Auditing\\_of\\_Political\\_Parties.pdf](http://www.adrindia.org/sites/default/files/Guidance_Note_on_Accounting_Auditing_of_Political_Parties.pdf) )

required to defray its day-to-day expenses; and make payments exceeding Rs.20,000 only by account payee cheque/draft.

### *Legislation for regulation and functioning of Political Parties*

The need for a comprehensive Bill to strengthen political parties has been felt for some time. The Law Commission headed by Justice Jeevan Reddy and the Working Committee to Review the Constitution<sup>25</sup> headed by former Chief Justice, M.N. Venkatachaliah have addressed this issue. A draft bill<sup>26</sup> was drafted by a committee Chaired by Justice M.N. Venkatachaliah, former Chief Justice of India. The other members of the committee included Mr. Sudhish Pai, Advocate, Sri Kuriya Chamayya, former Law Secretary, Karnataka, Mr. Arakere Jayaram, Journalist, Sri B. Somashekara, former Minister, and Prof Trilochan Sastry, founder member, ADR. Currently there is no comprehensive law regulating the functioning of political parties and the adoption of this bill would be a step forward in that direction.

### *Election expenditure of Political Parties and Candidates*

One of the important requirements to curb the influx of black money in the election process is to have a ceiling on the election expenditure. The availability of disproportionately large resources is likely to lend itself to misuse or abuse by political parties or individuals who possess such resources and thus an undue advantage over others. A PIL<sup>27</sup> filed by ADR on the regulation of election expenditure of political parties is currently pending in the Delhi High Court.

The election expenditure statements of the candidates as well the political parties should be filed on time and strictly as per the prescribed format. Candidates should clearly state their sources of funds with the name of the donor, the address, PAN details and mode of payment. Severe action should be taken by the ECI in case of non-compliance. Election expenditure statements submitted by each party should be subjected to CAG audit.

### *Disclosure of Sources of Income of Candidates contesting elections*

Re-contesting and re-elected candidates have shown huge increase in their assets. For ensuring that this increase is through legal and known sources, the candidate should declare their sources

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<sup>25</sup> Report of the National Commission to Review the Working of the Constitution, (<http://lawmin.nic.in/ncrwc/finalreport.htm> )

<sup>26</sup> The Political Parties (Registration and Regulation of Affairs, etc.) Draft Bill, 2011, ([http://adrindia.org/sites/default/files/Political%20Parties%20Bill%202011%20Draft%20Booklet\\_0.pdf](http://adrindia.org/sites/default/files/Political%20Parties%20Bill%202011%20Draft%20Booklet_0.pdf) )

<sup>27</sup> Writ Petition on Election Expenditure pending in the Delhi High Court, ([http://www.adrindia.org/sites/default/files/ADR\\_Writ\\_Election\\_Expenditure.pdf](http://www.adrindia.org/sites/default/files/ADR_Writ_Election_Expenditure.pdf) )



of income. MPs should declare their IT returns in the public domain for complete transparency and scrutiny. Candidates' affidavit should be scrutinized for under-reporting and under-valuing of their assets.

#### **IV. Conclusion**

In modern societies very little gets accomplished without the transfer of money. The incidence of crime, petty and grand, like any other social phenomena is often linked to the transfer of money, small or large. Money, in that sense, can both power, and also reward, crime<sup>28</sup>. In this scenario, the influence of money and crime on the election of a representative who leads, reforms and directly influences policies undertaken at the state or central level needs to be thoroughly investigated.

The Law Commission in its 255<sup>th</sup> Report on Electoral Reforms<sup>29</sup> stated that, disclosure is at the heart of public supervision of political finance. Ensuring disclosure requires strict implementation of the provisions of the RPA, the IT Act, the Company Act, and the ECI transparency guidelines, which need to be given statutory backing. In addition, the evasion or dilution of disclosure has to be tackled through a stricter implementation of the anti-corruption laws, RTI and improved disclosure norms.

Among the recommendations made by the Commission, it stated that public funding has the potential to reduce the influence of black money in politics and level the playing field during elections. However, the Commission asserted that this would be contingent upon resolving the fundamental issues of transparency and disclosure of finances by the candidates and political parties first.

The Supreme Court in PUCL v Union of India<sup>30</sup> stated that the sources of some of the election funds are believed to be unaccounted criminal money in return for protection, unaccounted funds from business groups who expect a high return on this investment, kickbacks or commissions on contracts etc.

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<sup>28</sup> Justice B Sudershan Reddy and Justice S S Nijjar, Supreme Court of India, Order for the formation of an SIT. 4<sup>th</sup> July 2011

<sup>29</sup> Report on Electoral Reforms, Law Commission, Report No. 255, March 2015, (<http://lawcommissionofindia.nic.in/reports/Report255.pdf>)

<sup>30</sup> (2003) 4 SCC 399, ([http://adrindia.org/sites/default/files/Supreme\\_Court's\\_judgement\\_13th\\_March\\_2003.pdf](http://adrindia.org/sites/default/files/Supreme_Court's_judgement_13th_March_2003.pdf))

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Black money in India cannot be tackled without a firm stance by the political community and such a stance would only hold true weight and power if the finances of the political parties and candidates are open to greater norms of transparency and accountability.