

India

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India is regularly celebrated as the world's largest democracy, with an electorate of nearly 850 million people. Its elections are thought to be among the world's most competitive; for instance, the country's 2014 general election featured 8,251 candidates from 464 political parties.¹ That same year, there were more young Indians eligible to vote in their first general election (almost 150 million) than there were total voters in the 2012 US presidential election. In 2014, voter turnout reached an all-time high, with over 66% of eligible voters casting their ballots.² In addition to its status as the world's largest democracy, India is also one of the world's most expensive: candidates, parties, and their supporters spent an estimated \$5 billion USD in 2014, second only to the sum expended on the 2012 presidential election in the United States (Gottipati and Singh 2014).

Despite the vibrancy of its democracy, India has struggled mightily to regulate political finance in ways that would both contain the costs of elections and curb impropriety in their funding.³ India does not suffer a dearth of reform ideas; innumerable government-sponsored commissions and independent analyses have outlined potential solutions that would improve the credibility of India's system of regulation. Rather, India's political finance reform has been stymied by two major factors: a lack of political will for reform, and an economy in which the state exerts a heavy hand, thus incentivizing illicit funding.

According to the Perceptions of Electoral Integrity data set, India's electoral authorities are very well regarded when it comes to issues of integrity, transparency, and impartiality.⁴ Out of 125 countries, India's Election Commission (ECI) is ranked thirty-eighth overall, and fourth (out of 35) for countries in its income bracket.⁵ Similarly, on overall confidence in national election authorities, India performs very well—twenty-fifth of 125 in the world.⁶ Where India fares less well is in the realm of political finance. On the summary measure of the strength of a country's campaign finance regime, India falls to 51 of 125 and is in the middle of the pack when compared to countries in the region, or countries with the same

level of democracy (as measured by Freedom House). Compared to other lower-middle income countries, however, India's political finance regulation rates relatively better (7 out of 35).⁷

This chapter outlines the evolution of India's political finance regime over the past several decades, with a focus on the key developments that have shaped the system as it currently exists. For the purposes of this analysis, political finance encompasses both election campaign finance and the finances needed by parties to run their organizations between elections.

Very broadly speaking, we argue that India has had two distinct political finance regimes: (1) the regime of 1947–2003, characterized by candidate expenditure ceilings, party funding through private donations, and lack of transparency; and (2) the regime since 2003, marked by a partial strengthening of transparency through the Right to Information Act, coupled with civil society and media pressures buttressed by supportive judicial rulings. Despite admirable steps intended to clean up political finance, especially after 2003, our primary finding is that India's political finance regime remains deeply problematic. While the transparency underlying political finance has improved in the past decade, the majority of political funding is still largely opaque and the ECI, the chief regulatory actor, remains hamstrung by inadequate authority to fulfill its mandate. These inefficiencies are compounded by the fact that, more than two decades after economic liberalization, the state retains vast discretionary authority in the Indian economy. Until the Indian state retreats from major sectors of the economy and gives way to market forces, the incentive will remain for politicians and business to perpetuate a system of trading policy and regulatory favors for monetary payments and campaign "donations."

The remainder of this chapter is divided into seven parts. The next section outlines the overall political and legal climate in India that sets the context for the political finance regime. The third describes the history of the political finance regime before the 2000s. The fourth section focuses on changes to the disclosure regime in the 2000s, and the fifth describes the current state of play in Indian political finance. In the sixth section, we reflect on the larger consequences for India's democracy before offering our conclusions and a discussion of the implications for both India's future and for similarly placed countries in the final section.

4.1. Political and Economic Climate in India

India achieved its independence from Great Britain in 1947 and has enjoyed a virtually uninterrupted record of democratic governance for more than six and a half decades, with the possible exception of a brief period of emergency rule under Prime Minister Indira Gandhi between 1975 and 1977. Since independence, the country has experienced massive changes in its political and economic dynamics.

This section briefly reviews these changes, beginning with politics and then moving to economics, focusing on critical junctures of relevance to the country's political finance regime.

4.1.1. India's Political Transformation

India adopted a federal, secular, republican, parliamentary system in its 1950 constitution, granting universal franchise to all adult men and women. This far-sighted decision by the country's constitutional framers initiated an unprecedented experiment for a country as impoverished as India was at the time. Under the constitution, India adopted a single-member district, plurality (SMP) or first-past-the-post (FPTP) electoral design.

Scholars have typically divided India's postindependence political trajectory into three distinct phases (Yadav 1999).

The first phase, ranging from the first general election in 1952 until 1967, was marked by Congress Party dominance. The first three general elections, in 1952, 1957, and 1962, saw the Congress winning large majorities to the Lok Sabha (lower house of parliament) on the basis of an approximately 40% plurality of votes. The "Congress system" featured a dominant umbrella party with support in all parts of the country surrounded by a variety of smaller parties, espousing a range of ideological proclivities, but with regionally limited bases (Kothari 1964).

The 1967 election, in which the Congress won only a slim majority in parliament and lost power in the assemblies of 8 of India's then 16 major states, marked the end of the first electoral system and the dawn of the second phase. The second stage was marked by a gradual decline of the Congress as a hegemonic, catch-all party. In 1969, a split within the Congress leadership led to the departure of most of the party's internally elected officials, known as the "Syndicate," and strengthened top-down control of the dominant postsplit faction, known as Congress (I), by the charismatic and increasingly authoritarian Indira Gandhi. Under Gandhi's firm grip, the Congress suffered organizational decay, internal elections were suspended, and office bearers were handpicked by Gandhi on the basis of political fealty rather than partisan ideology or party service (Chandra, Mukherjee, and Mukherjee 2000, chap. 17).

Nevertheless, the Congress continued to win majorities in parliament until 1989. The only exception was the brief period between 1977 and 1979, when the Janata Party led a unified opposition to power in the aftermath of the controversial period of emergency rule under Mrs. Gandhi.⁸ Despite large Congress majorities in New Delhi between 1980 and 1989, a diverse collection of regional and caste-based parties mounted an effective opposition to the Congress in the states. In the 1980s, most elections were essentially bipolar contests at the state level between the Congress and the local leading opposition party or coalition.

The defeat of the Congress by a broad opposition alliance in the 1989 general election marked the start of the third electoral system. This landmark election was the first time that a Congress plurality of votes failed to translate into a majority of seats in the Lok Sabha. It also marked the beginning of the coalition era in Indian politics during which the Congress was no longer the singular pole around which the country's politics revolved. In the seven elections from 1989 to 2009, no single party enjoyed a majority in parliament, and nearly all governments were minority coalitions themselves dependent on external supporting parties.⁹ The post-1989 period was an era of intense political contestation in which the primary locus of electoral competition shifted from the national theater to the states (Yadav and Palshikar 2009).

Starting in 1999, the national-level framework of contestation featured two loose coalitions with the Congress and the Hindu nationalist Bharatiya Janata Party (BJP) as their nuclei. In this context of a weakened national government and a fragmented, multiparty system with more assertive federal states, India's institutions of horizontal accountability—such as the judiciary and the ECI—became more assertive vis-à-vis the executive branch (Rudolph and Rudolph 2001).¹⁰

In hindsight, the 2014 general election may have ushered in India's fourth electoral phase. In May 2014, the voters of India presented the Congress with its worst-ever electoral defeat and resoundingly brought the BJP to power. This was the first time in three decades that a single party won a majority in parliament and the first time in India's postindependence history that a non-Congress party obtained an outright majority. Whereas India's third electoral system had been marked by rising rates of political competition, plummeting margins of victory, stagnant turnout (in national elections), and an overriding federal color to national polls, the 2014 election saw a partial reversal of many of these key trends (Vaishnav and Smogard 2014). Of course, whether the 2014 general election represents a true break with the past or is instead a one-time aberration remains to be seen and will depend, in part, on how the BJP makes use of its historic mandate.

4.1.2. India's Economic Transformation

Much like India's political trajectory following independence, the country's economic evolution has also witnessed several distinct phases (Panagariya 2008). At the outset, under the leadership of India's inaugural prime minister, Jawaharlal Nehru, and in tune with the prevailing wisdom in development economics, India adopted a mixed economic model with a large role for state regulation and public enterprise in order to fast-track industrialization in what was then a poor, agrarian economy. On the foreign policy front, the newly independent India adopted non-alignment between the West and the communist bloc as its overarching foreign policy paradigm.

The period 1965–1980, characterized by increasing political competition and a declining Congress, was marked by an industrial slowdown, growing unemployment, and, in the 1970s, high inflation. Prime Minister Indira Gandhi’s response to the industrial slowdown of the late 1960s was an import-substitution industrialization (ISI) drive led by nationalization of the banking, insurance, coal, and petroleum sectors. State regulation of the private sector, and along with it corruption and kickbacks for various state permissions, increased markedly during the 1970s (Kochanek 1986).

The 1980s saw the beginnings of economic liberalization, particularly Rajiv Gandhi’s deregulatory moves in 1985, which were marked by largely incremental measures, often enacted by stealth. In contrast to the reforms that were ushered in during the early 1990s, scholars have referred to the changes in 1980 as being “probusiness” rather than “promarket” in nature (Rodrik and Subramanian 2004; Kohli 2012). The reforms were directed at making it easier for domestic firms to operate free of public sector impediments like industrial licensing, as opposed to opening the economy to global capital markets.

In contrast, the period since 1991 has seen a process of gradual economic liberalization and growing embrace of globalization. This opening has been characterized by much higher gross domestic product (GDP) growth rates, higher trade-to-GDP ratios, the growth of large-scale private enterprises, considerable increases in inward foreign direct and portfolio investment, and, in the past decade, a shift of economic decision-making to the states (Bhagwati and Panagariya 2013). As we shall see in the next section, India’s economic and political developments greatly influenced the changing contours of the political finance regime.

4.2. India’s Political Finance Regime, 1947–2003

Because India’s political finance regime has evolved in a highly path-dependent fashion, it is difficult to trace its evolution in terms of clear-cut phases or distinct political finance regimes (see Sridharan 2006a, 2006b; and Gowda and Sridharan 2012, for details of the evolution of the system). While the constitution laid a sound initial foundation for the conduct and regulation of elections, regulatory and economic shocks in the late 1960s and early 1970s effectively subverted the regulation of political finance. The corruption in electoral politics that we observe today, and the shift toward illicit political funds, can be traced directly back to these shocks. On the continuum from strictly regulated to *laissez-faire*, Indian political finance has long been skewed towards the latter, with few formal spending limits, no public funding, no contribution limits, and minimal reporting and disclosure requirements. Only since 2003 has India begun to tighten regulation, by setting contribution and expenditure limits, providing public funding, and requiring reporting and disclosure.

4.2.1. Initial Postindependence Period

Under India's constitution, an independent Election Commission is charged with executing nearly all aspects of state and national elections, from preparing the electoral rolls to regulating campaign activity and counting votes. While the broad constitutional framework provides the commission's overall mandate, the mechanics of managing elections were actually spelled out by the Representation of the People Acts (RPA) of 1950 and 1951, passed just before the first elections of 1952 (Sridharan and Vaishnav, forthcoming).

RPA (1951) imposed strict limits on candidate spending. While candidates risked disqualification for exceeding limits on paper, legal ambiguities and the absence of effective monitoring capacity undermined these restrictions. Furthermore, the law did not require that third-party expenditures on behalf of candidates be reported, opening up a major loophole that was blatantly and regularly exploited.

In the early years of the republic, the dominant Congress was largely funded by party membership dues. As the Congress organization began to atrophy and opposition parties mounted more serious electoral challenges, campaign costs grew exponentially, with membership dues (which were in any case relatively small sums in such a poor country) accounting for a decreasing share of the overall expenditure (Malik 1989). To pick up the slack, politicians turned with greater frequency and intensity to big business donors. The shift to corporate funding took place as economic regulation was increasing, with firms accumulating and donating large quantities of "black money" in order to evade cumbersome tax regulations. In fact, two government-sponsored committees, the Santhanam Committee on Prevention of Corruption (1964) and the Wanchoo Direct Taxes Enquiry Committee (1971), directed their attention to the nexus between black money and political funding.

4.2.2. Ban on Corporate Donations

In 1969, Prime Minister Gandhi succeeded in getting parliament to enact an outright ban of corporate donations to political parties. Although Gandhi justified this move as an effort to curb cronyism, she was more likely motivated by the swell of corporate support for right-wing opposition parties like the Swatantra and Jana Sangh (especially the former, which was seen as close to big business) as well as the right-of-center opposition within the Congress Party to her leadership (Jha 1993, 39). The ban on corporate donations went hand in hand with a leftward regulatory shift in which the government nationalized banks in 1969 and insurance companies in 1973, and regulated domestic big business (Monopolies and Restrictive Trade Practices Act 1969) and foreign investors (Foreign Exchange Regulation Act 1973) more tightly.

The 1969 ban on corporate donations to parties represented a critical juncture in the evolution of India's political finance regime because the government imposed it without providing an alternative avenue for legitimate funding. Unlike the many European democracies that outlawed corporate funding during the same period, the government of India did not institute state funding of elections or party expenses to replace the lost donations. Thus, the net effect of the ban was creation of a vacuum that could only be filled by tapping black money and perpetuating a corrupt equilibrium in which bureaucrats and politicians took kickbacks in exchange for the licenses and permits necessary to operate in an increasingly dirigiste economy. Inflation, coupled with intensifying political competition, led to an arms race in election expenditures and the consolidation of an opaque, corrupt political finance regime in which ruling parties at the central and state levels that controlled the regulatory levers of power had the advantage in fundraising. The biggest beneficiary was, of course, the Congress Party (Kochanek 1987).

4.2.3. The 1970s and 1980s

The next major development in India's political finance evolution was the 1974 Supreme Court ruling in *Kanwar Lal Gupta v. Amar Nath Chawla*, which held that party expenditures in support of a candidate would count toward the candidate expenditure ceiling. This ruling effectively plugged a major loophole, which candidates had repeatedly exploited to circumvent strict expenditure limits. The Congress government wasted no time in amending the RPA in 1975, effectively overriding the Court's decision. In short order, parliament appended Explanation 1 to Section 77(1) of the RPA, stipulating that party and independent supporter expenditures not authorized by the candidate would no longer count against the candidate spending limit. The amendment effectively rendered all spending limits (once again) farcical and further fueled party spending arms races.¹¹

In 1979, political parties were exempted from income and wealth taxes provided they filed returns (which were, like all other returns, not subject to disclosure). In 1985, Rajiv Gandhi's pro-business Congress government amended the Companies Act, relegalizing corporate donations to parties after a gap of 16 years. Under Section 293A of the amended act, companies could legally contribute up to 5% of their average net profit (over the prior three years), subject to approval by the board of directors and disclosure in their profit-and-loss accounts.¹²

Unfortunately, Rajiv Gandhi's attempt to bring political finance out into the open did not succeed in bringing corporate contributions above board. By the mid-1980s, the institutionalized nexus of corruption in which political favors were traded for donations largely in unaccounted-for cash—a quid pro quo that Kochanek referred to as “briefcase politics”—had become so deeply entrenched across the political spectrum that relegalization found no takers (Kochanek 1987). Given the discretionary powers wielded by the state over the economy and

the secrecy that prevailed under the status quo, companies had little incentive to be transparent at the possible cost of retribution by politicians or parties that had not received funds.

4.2.4. The 1990s

In 1996, three important developments took place with respect to political finance. The first was the Supreme Court's January directive to political parties to file returns under the Income and Wealth Tax Acts by 20 February, which no party had done on an annual basis since 1979, when they were first exempted from these taxes. This ruling came in response to parties' routine ignoring of notices from the Income Tax Department.

The second noteworthy development was the Court's order of 4 April, just before the general election that year, interpreting Explanation 1 to Section 77(1) of the RPA such that party and candidate expenditure would both count toward the candidate spending limit *unless* parties filed audited accounts of income and expenditures. Taken together, these two measures compelled parties to actually file annual tax returns including audited statements of income and expenditure. In practice, of course, the returns were invariably doctored. In the short run, these changes—coupled with stepped-up enforcement initiated by charismatic Chief Election Commissioner T. N. Seshan—resulted in relative restraint in campaign spending by parties on behalf of candidates in the 1996 election.¹³

The third and final worthwhile development from 1996 was the RPA Amendment Act of July, which limited the election campaign to 14 days from 21 days and raised the candidate spending limit to somewhat more realistic levels, although still far below estimates of actual spending. Two years later, a partial state subsidy in the form of free airtime for seven national and 34 state parties on state-owned television and radio was introduced.¹⁴

4.2.5. Unheeded Reform Blueprints

Under the coalition governments of the 1990s, successive electoral reform committees made a series of recommendations for bringing about political finance reform (Sridharan 2006b; Gowda and Sridharan 2012, for more detailed accounts).

In 1990, the National Front government set up the Dinesh Goswami Committee of Electoral Reform. On political finance, it unfortunately advocated reinstating the ban on company donations to parties without advocating state funding as a substitute, repeating the same mistake Indira Gandhi made in 1969.¹⁵ The bill was introduced in May 1990 but lapsed, and an attempt at passing fresh legislation in 1994 failed because of strong opposition.

In 1993, the Confederation of Indian Industry (CII) began to advocate for political finance reform because of the increasing demands politicians placed on member companies. The CII recommended that campaign contributions be made tax deductible and that public funding be made available in order to lift the burden on industry. After some debate, the proposal ultimately failed to gain traction among key political leaders.

Five years later, the Committee of State Funding of Elections (Indrajit Gupta Committee) of 1998, set up by the multiparty United Front government, weighed in with a fresh set of reform proposals. The committee did not advocate closing the third-party spending loophole, but did recommend partial, in-kind state funding conditional on parties submitting audited accounts and income tax returns. The Gupta Committee also recommended a separate election fund to which central and state governments should together contribute Rs 6,000 million (then \$152 million) annually, but the proposals again languished.¹⁶

Finally, the 1999–2002 period saw three concrete reform proposals put forward. In 1999 Lok Satta, a nongovernmental organization (NGO), proposed introducing tax deductibility of corporate and individual donations. Also in 1999, the 170th Report of the Law Commission recommended the deletion of Explanation 1 (the third-party spending loophole), and making adherence to minimum standards of internal democracy and transparency, a condition for receiving state funding. And in 2002, the National Commission to Review the Working of the Constitution recommended (1) deletion of Explanation 1; and (2) comprehensive transparency measures including the disclosure of financial assets and liabilities by candidates. The commission held that state funding should be deferred until the functioning of political parties is regulated to ensure internal democracy and transparency.

While these efforts did not usher in immediate reform, they laid the groundwork for important (albeit partial) reforms enacted in the 2000s.

4.3. Changes to the Disclosure Regime Post-2003

The political finance regime in the early 2000s was highly path dependent—still shaped in large measure by the developments of the late 1960s and 1970s. In large measure, political finance remained an unreformed free-for-all. Of course, it would be inaccurate to say that the system had gone unchanged for the better part of three decades; to the contrary, the system was tweaked in numerous ways: company donations were relegalized, parties were required to submit their tax returns, the campaign period was shortened, expenditure reporting requirements for candidates were enhanced—the list of minor alterations goes on.

Yet these various tweaks were truly minor: tinkering around the edges of a largely ineffectual system. Despite the recommendations of several reform

committees, third-party expenditures remained unregulated; state funding was largely absent; company donations were not tax deductible; and intraparty transparency and democracy were still largely voluntary attributes. Compounding the absence of credible political finance regulation, the state continued to enjoy wide discretionary powers over the economy, cementing a situation in which business wanted to both stay on the right side of the parties in power and preserve its anonymity.

The 2000s, particularly the period since 2003, witnessed a major push to increase the level of transparency in electoral politics. In this section, we focus on the major changes made to the disclosure regime over this period. These changes were part of a broader “Right to Information” (RTI) movement pioneered by Indian civil society, which sought to improve the level of transparency in politics and government (Jenkins and Goetz 1999). The biggest breakthrough in this regard was the landmark 2005 RTI Act, inspired by the Freedom of Information Act (FOIA) in the United States, among others. Under the provisions of the RTI legislation, any Indian citizen can request information from any “public authority,” and the relevant government entity is required to respond within 30 days. To incentivize compliance, the act created financial penalties for government officers who failed to respond expeditiously to requests (Roberts 2010).

4.3.1. Candidate Affidavit Disclosures

In response to public interest litigation filed by the Association for Democratic Reforms (ADR), a nongovernmental watchdog organization, in November 2002 the Supreme Court directed the ECI to collect data on the criminal records of candidates contesting state and national elections. The Court also directed that candidates disclose their educational qualifications and financial assets and liabilities (including those of their spouses and dependents) prior to elections. While all parties predictably resisted this new mandate, the Court reaffirmed its decision in March 2003. After that point, all candidates seeking higher office were required to submit judicial affidavits disclosing their criminal, educational, and financial details at the time of their nomination. This new affidavit regime opened a new flow of information on candidates, and brought a new level of scrutiny to the previously private details of politicians (Sen 2012; Sridharan and Vaishnav, forthcoming). This new mandate, like most electoral regulation before it, emerged as a result of a judicial ruling on public interest litigation brought by civil society.

The new candidate affidavit regime provided unique insight into the nexus of money and politics. Access to data on candidate’s personal wealth, for example, allowed researchers to empirically corroborate the hypothesized correlation between candidate wealth and electoral success. Although candidate wealth is not equivalent to election expenditure, the privatized nature of political finance in India and the increasing reliance of parties on self-financing candidates

(Vaishnav, forthcoming) makes it a reasonable proxy for candidates' spending capacity. Using data on the universe of candidates standing for parliamentary election in 2004, 2009, and 2014, Vaishnav (2014) finds that the poorest quintile of candidates, in terms of personal financial assets, had a 1% chance of winning parliamentary elections. The richest quintile, in contrast, had a greater than 23% chance.

The affidavit data also provide evidence of the growing criminalization of politics, which is a symptom of the opaque political finance regime. While political parties in India have contracted with thugs, strongmen, and criminal elements since the early years of the republic, the electoral influence of criminals grew rapidly in the 1960s and 1970s as the costs of elections and the extent of competition steadily increased. Strapped for cash, parties turned with increasing frequency to individuals associated with criminal activity either to finance elections or to stand as candidates themselves (Vaishnav, forthcoming). The inception of the affidavit regime in 2003 was the first time a detailed picture of the criminal records of politicians was presented to the general public. The picture, it turns out, was not a pretty one. In 2004, 24% of sitting members of parliament (MPs) faced criminal cases (12% faced serious charges); this share grew to 30% in 2009 (15% serious) and 34% (21% serious) in 2014. The proportions at the state level are similar.¹⁷

The data also reveal a close connection between money and criminality, demonstrating one perverse consequence of the proliferation of illicit political finance. In the parliamentary elections of 2004, 2009, and 2014, roughly 4% of candidates in the lowest quintile of candidate wealth faced criminal cases compared to nearly 15% of candidates in the top quintile (Vaishnav 2014). Indeed, an analysis of all candidates—at the state and national levels—contesting elections between 2004 and 2013 suggests a linear correspondence between wealth and criminality. According to Sastry (2014), the average wealth of winning candidates was Rs 30.8 million (\$566,000) for winners, whereas the average wealth among winners with a criminal record was Rs 42.7 million (\$786,000), and Rs 44 million (\$809,000) for winners with serious criminal records.

4.3.2. Election and Other Related Laws (Amendment) Act, 2003

Beyond new disclosure regulations, the most significant change in political funding regulation was the Election and Other Related Laws (Amendment) Act passed in September 2003, the final year of the BJP-led National Democratic Alliance government. This act gave individuals and companies new incentives to bring donations above board by making all contributions to parties 100% tax-deductible. To receive the tax credit, however, corporations had to make contributions by check (verified by valid receipts) and disclose their giving in their annual accounts. While the limits on contributions by companies remained in

place (retained in Section 182 of the new Companies Act, 2013), the legislation made it mandatory for both companies and parties to disclose political contributions in excess of Rs 20,000 (then \$420) under Section 29-C of the RPA.¹⁸ Thus, the act both incentivized transparency for corporate donors and made disclosure mandatory for large contributions.

Although these changes are steps in the right direction, the net effect is debatable, since contributions larger than Rs 20,000 constitute only a small part of the income reported by most parties, including the two biggest—the Congress and the BJP. In our view, large contributions make up a small fraction of reported donations because people continue to donate illicitly, and *not* because parties really do raise most of their money from small contributors. Research suggests that, in India's peculiar political economy, donors continue to prize their anonymity. Furthermore, tax deductibility applies only to contributions to parties, not candidates, so donors have no guarantee that contributions to parties will be passed on to their favorite candidates, or even that their preferred candidates will receive party nominations.

The 2003 act also amended, for the first time, Explanation 1 to Section 77(1) of the RPA, to require that candidates declare party and supporter expenditures for their campaigns and stipulating that such expenditures would count toward the candidate expenditure ceiling. However, the act left huge loopholes that made this amendment largely ineffective: exempting the travel of the top leaders of parties on behalf of a candidate's campaign, as well as all party and supporter expenditure exclusively for propagating the party program so long as funded activities did not overtly favor any particular candidate. Political parties have interpreted this loophole to mean that rallies—a major campaign expense—by party leaders in a candidate's constituency, even with the candidate standing beside the leader, have been exempted from the expenditure ceiling. In practice, the spending free-for-all continues, as was clearly made evident by the cost of the 2014 elections.¹⁹

4.3.3. Political Party Income Tax Returns

The third and final step in improving the transparency of political finance came as a direct result of the RTI law. Using RTI, ADR petitioned the Central Information Commission (CIC) to publicly release the income tax returns of political parties, arguing that these disclosures (unlike personal income tax returns) were a matter of public interest and should be available to average citizens. Once again, all major parties resisted this move. However, in 2008 the CIC ruled in favor of ADR, compelling parties to publish their incomes and expenditures dating back to 2004–2005.

Notwithstanding the fact that these “audited” returns are likely incomplete or doctored (after all, they are audited by party-chosen auditors and not the comptroller and auditor-general of India, as recommended by the ECI), the release of

party expenditure data represents a significant opening up of information on political finance. These changes at least expose the shadowy nature of party finances and shed light on the fact that the sources of nearly 75% of income declared by the six national parties, for instance, remain unknown (ADR 2013).²⁰

In sum, the developments between 2003 and 2008 on the transparency/disclosure front—although partial and undermined by larger political economy shortcomings in important ways—represent the most significant reforms of political finance India has seen since the system took shape between 1969 and 1975. Civil society, aided by India's free media and independent courts, played a major role in instituting reforms, often in the face of resistance by all major parties, with private corporate sector donors largely content to live with the status quo, and thus remaining largely passive.

4.4. Electoral Trusts and New Transparency Guidelines

There have been two significant developments in the regulation of political finance since 2003. The first is the emergence of 100% tax-exempt electoral trusts that can be set up by companies under the 2013 Electoral Trusts Scheme. These trusts enjoy tax exemption provided they disburse 95% of their annual receipts (including surplus brought forward) to political parties. Furthermore, contribution limits on companies rose from 5% of average net profit to 7.5% (averaged over the prior three financial years).

The second major development is the promulgation of the ECI's new transparency guidelines of 29 August 2014.²¹ The most important feature of these new guidelines is that parties have to identify all donors and amounts, except for petty sums in cash raised at rallies, effectively removing the "protection" of the Rs 20,000 floor below which donors and amounts are anonymous. These payments will also be tax deductible, if made by check with corresponding receipts kept on file.

While this is a positive step, the step is an incremental one. The ECI guidelines do not have the full force of law because—other than derecognition of the party's symbol—the ECI has no power to fine or deregister a party violating the new guidelines.²² Absent such punitive power, it remains difficult for the ECI to enforce election expenditure rules issued under Article 324.

Given the handicaps on the ECI's enforcement power, it remains to be seen whether parties and donors will comply with these new guidelines or whether the guidelines will simply drive fundraising further underground as previous reform efforts have. New rules, created in the name of transparency, are not accompanied by incentives like increased tax deductibility or public funding. In what remains a highly regulated economy, donors likely consider anonymity to be worth more than the benefits of compliance. There is also the larger problem of self-interest;

why would donors contribute significantly to parties out of sheer altruism? The larger question, and one that makes the issue of public funding important, is whether transparent private contributions can be a sustainable basis of political finance in a low-income, regulated economic environment.

4.5. Current State of Play

The previous section documented how the disclosure reforms in the 2000s helped open political finance in India up to greater scrutiny. Unfortunately, the impact of these changes was limited by larger structural constraints at play. However, many reformers and civil society campaigners have used these reforms as a springboard to advocate for deeper change. Many of these controversies are ongoing, but we briefly touch on them below in addition to discussing several pending reform proposals.

4.5.1. Ongoing Challenges

For many years, reformers made the case that political parties—as public entities—could be compelled to make disclosures under the RTI act. To justify their case, reformers pointed out that the central government provides substantial financial assistance to parties; that parties play important public functions in India’s democracy; and that parties are regularly subject to any number of regulations governing their internal functioning. Political parties had adamantly insisted the RTI act did not apply to them since they were private, not public, entities. In June 2013, the CIC sided with the reformers, holding that India’s six national political parties were indeed “public entities” subject to disclosures under the RTI act.

The Congress-led United Progressive Alliance government, scrambling to mount a response to the CIC’s decision, introduced a bill in parliament (The Right to Information (Amendment) Bill, 2013) that would retrospectively amend the RTI act such that political parties would be explicitly listed as “private” authorities and remain outside of the reach of the act.²³ Many parties across the political spectrum supported the bill, fearing that the CIC’s ruling encroached on their private deliberations (Press Trust of India 2013). Although the bill was not passed before the 2014 election, the views of the new BJP-led government have not differed from those of its predecessor. Faced with complete opposition across the political spectrum, the CIC had no choice but to throw its hands in the air, remarking that it lacked the tools to compel the parties to comply with its orders. In the aftermath of the CIC’s admission of defeat, the Supreme Court has taken up the matter, asking the government, the ECI, and the six national parties to clarify their positions.²⁴

A second ongoing controversy relates to the ability of the ECI to take action against candidates who file false or misleading information in their required disclosures. There are currently no clear guidelines for the commission to punish candidates suspected of filing false financial disclosures.

In 2009, the ECI pursued a major legal case against Ashok Chavan, the former Congress Party chief minister of Maharashtra, for filing false election expenditure statements, accusing him of omitting payments he made to journalists in exchange for positive news articles about him in advance of the 2009 general election. The government questioned the commission's power to disqualify a candidate for falsifying election-related filings, claiming the commission has the power to sanction candidates who fail to file disclosures but not necessarily those who file incorrect ones (*The Hindu* 2013). Questions of jurisdiction notwithstanding, the ECI ruled against Chavan, on the grounds that he failed to properly account for election expenses and recommended that he be disqualified from his position as member of parliament and be prosecuted for violating the law (Press Trust of India 2014).

In September 2014, the Delhi High Court cleared Chavan in the paid news case before the announcement of the state assembly elections in Maharashtra.²⁵ In its ruling, the court stated that Chavan had no knowledge of the advertisements in question when he filed his election expenditure statement. Unless the ECI's enforcement powers are strengthened, it will continue to struggle with reining in illicit spending.

The upshot of this misalignment between mandate and enforcement authority is that the spending free-for-all continues and actual expenditures vastly exceed candidate spending limits. The 1999 National Election Audit estimated that the Congress and the BJP's actual spending in that year's general election was four to six times the candidate limit (CSDS 2002). Former Chief Election Commissioner S. Y. Quraishi has gone on record to state that he estimates actual spending by winners in 2009 was Rs 50–100 million (\$981,000–\$1.96 million then) on average. The limit at the time was a mere Rs 4 million (\$78,500).²⁶ The late Gopinath Munde, a BJP MP from Maharashtra, inadvertently corroborated this conjecture when, in 2013, he admitted (before hastily retracting his statement) that he had spent Rs 80 million (\$1.57 million) on his 2009 parliamentary election.²⁷ During the 2014 campaign, the ECI revealed that it seized Rs 3 billion (\$50 million) in cash, 16 million liters of alcohol, and 17,000 kilograms of drugs allegedly to be used for vote-buying.²⁸ In a private conversation (with one of the authors) before the 2014 elections in Andhra Pradesh, one candidate admitted to spending as much as Rs 120 million (\$1.99 million) for a *state* election. Parliamentary candidates in the area, local candidates revealed, were spending sums orders of magnitude greater than this already extraordinary sum.²⁹

4.5.2. Reform Proposals

A number of proposals to reform India's political finance regime suggest strengthening disclosure reforms instituted in the 2000s. The Ashok Chavan case and others demonstrate that the ECI requires additional authorities to give disclosure requirements teeth.

For instance, existing law does not include a provision for the ECI to take follow-up action against candidates caught filing false or misleading affidavits. Without the credible threat of punishment, candidates often lie on their declarations. The same is true for candidate expenditure statements, which are supposed to be filed within 30 days of the election. Although politicians regularly complain that the spending limits imposed by the commission are laughably low, they consistently report spending—on average—under half the prescribed limit (ADR 2014a).

In fact, candidate spending limits have been increased three times since 2003. In the same period, the ECI has implemented stricter enforcement measures. In 2003 the spending limit for the typical Lok Sabha constituency was raised to Rs 2.5 million (then \$52,600); in February 2011 to Rs 4 million (\$89,600), and in early 2014 to Rs 7 million (\$116,600). Despite these changes and despite the fact that nearly Rs 3,000 million in unaccounted cash was seized by the commission during the 2014 election, victorious MPs reported spending just 58% of the allotted limit, on average (ADR 2014a). Candidates, the ECI, and the public all know these disclosures vastly underreport campaign spending, but the government still challenges the EC's authority to disqualify candidates who knowingly file false statements.

One new trend in Indian politics is "paid news," or paying media for positive stories, as Ashok Chavan is alleged to have done (Press Council of India 2010). The ECI has asked the government to amend the RPA to make paid news an electoral offense because the law is silent on this phenomenon. Furthermore, regulation of candidate expenditure will likely have limited impact unless an effort is made to close the loophole on third-party expenditure "on behalf of the party's programme." The net effect of this loophole is, as ADR has argued, that there can be never be any violation of expenditure limits (ADR 2011).

In terms of the bigger picture, it is clear that both candidate spending and party finances remain highly opaque. While political parties regularly publicize their income tax returns, these returns are audited internally rather than by an independent, third-party auditor. The ECI recently joined forces with the Institute of Chartered Accountants of India (ICAI) to create guidelines for the audit and maintenance of party financial accounts. While this is a positive step, the impact of suggestive guidelines is likely to be limited unless they are made mandatory and the commission is empowered to take action against those who fail to comply.

With regard to parties (as opposed to candidates) that defy even existing regulations, the ECI has very little legal recourse. This is primarily because the ECI has no power to *deregister* parties. As a result, many parties are electorally inactive yet are still able to avail themselves of the tax benefits given to parties under law. Such dormant parties make convenient conduits for money laundering (Dash 2012).

4.6. Consequences for India's Democracy

The continuation of India's broken system of political finance promises several negative consequences for the quality of India's democracy.

First, the cost of elections and the unending search for private sources of political finance are having an effect on the nature of political selection and the marketplace for politicians. Evidence suggests that access to money is fast becoming a requirement for those seeking to get a party nomination and, of course, for actually winning elections. In the 2014 national election, 79% of the Congress Party's candidates and 73% of the BJP's candidates had declared assets greater than Rs 10 million (\$166,500) (ADR 2014b).

Some parties openly endorse the idea of taking money from candidates in exchange for nominations. The Bahujan Samaj Party (BSP), for instance, has an intricate payment system beginning with mandatory initial payments from aspiring nominees for sending their names to the party president, to a final payment of more than Rs 5 million for an actual nomination (Farooqui and Sridharan 2014, 87). The BSP president, Mayawati, once famously defended the practice, saying: "Since many rich persons were keen to contest on our party ticket, I see nothing wrong in taking some contribution from them" in order to subsidize candidates from lower-caste communities.³⁰ The growing necessity of personal wealth for political success is, of course, not unique to India, but it nonetheless has consequences. The premium that parties place on self-financing candidates has contributed to the influx of candidates with criminal connections into politics, growing links between businessmen and politics, and the perpetuation—and deepening—of dynastic (or family) politics (Vaishnav 2014).

Second, the blatant disregard for political finance regulations carries with it consequences for faith in democracy as well as the belief in the rule of law. When the government itself argues that politicians who have knowingly lied on their personal disclosures should face no consequences, there is the possibility of negative fallout in popular perceptions of the sanctity of the rule of law.

Finally, the continued role the state plays in India's economy is not only a cause of India's warped political finance regime, it is also a consequence of it (Sukhtankar and Vaishnav 2015). The heavy-handed role of the public sector in the economy not only feeds collusion between business and politicians, but the very transmission belts of political finance serve to further entrench those

patterns. The regulatory intensity of the state with respect to land, for instance, creates incentives for politicians to extract rents from private sector firms in exchange for permits, licenses, clearances, and so on. Once formed, this equilibrium is hard to break; neither side perceives it is in their best interest to defect from the collusive status quo (Kapur and Vaishnav 2013).³¹

A question that logically follows from the generally large role of state regulation in India's economy, and from the fact that among established democracies only India and Switzerland have not introduced some form of public funding for parties, is the question of why public funding of parties for elections or broader purposes is not on the current reform agenda after briefly making an appearance during the 1990s.³²

The answer to this question seems to be that reform is a collective action problem primarily among political parties, and secondarily among parties and donors. For example, while state funding to provide a financial floor for parties (subject to eligibility criteria and internal transparency, democracy, and accountability regulations) would mitigate incentives for corruption, ruling parties perceive themselves to be at a fundraising advantage under the current system. Any attempt at deepening regulation is perceived as aiding the opposition. Winners benefit from the status quo and are loath to disturb it. Rational choice theories suggest that the status quo will prevail given the self-interest of incumbent parties.

Despite the fact that a major industry lobby, CII, proposed public funding as far back as 1993, private donors seem content to execute private deals under the existing system. As noted, whatever reforms have transpired have been largely due to the efforts of civil society rather than parties or private donors, except possibly for the 2003 law. Besides, public funding, if it were to be introduced, would have to be complemented by regulations to ensure intraparty transparency and accountability, or else it will mean handing over public funds to unaccountable leaders or oligarchies. At this stage, none of the leading political parties are prepared to accept regulation of their affairs or to enforce intraparty democracy in exchange for public financing.

The collective action problem of public funding in India has yet to be surmounted. Both politicians and business are entrenched in a way that disincentivizes further reforms, like a move toward transparent public funding. Their entrenchment is a direct consequence of a heavy-handed regulatory state and the historical absence of public funding.

4.7. Conclusion

This chapter has provided an overview of India's political finance regime, with a special emphasis on the transparency and disclosure reforms enacted in the mid-2000s. While the reforms have helped to shed badly needed light on the finances

of political parties and candidates alike, they have been limited by several key factors.

For starters, the public sector continues to play an outsized role in India's economy. Large-scale economic reforms in the 1990s have left many areas untouched; it is exactly these areas that have become a source of lucrative rents for politicians and bureaucrats. In these sectors, such as land, natural resources, real estate, mining, and defense, politicians are easily able to trade policy and regulatory favors in exchange for monetary payments or in-kind assistance from firms. In fact, in many of these sectors, state-owned enterprises continue to occupy a dominant position in the marketplace—internalizing many of the transaction costs inherent in transactions between the state and business (Rajan 2012). Until politicians demonstrate a willingness to enact reforms that would limit the discretionary power of the state in these domains, no amount of political finance regulation is likely to have much impact.

The economy notwithstanding, many of the regulations that have been crafted to govern political finance contain large loopholes that give political actors wide berth to circumvent the rules. For instance, Explanation 1—which first opened the floodgates to undisclosed, third-party spending on candidates—continues to the present day.

Finally, the ECI needs greater enforcement authority, most of which can only come from legislative change, to take action against parties and candidates that defy its orders. The ongoing legal battles discussed in section 4.5 are illustrative of the battles the commission is being forced to wage to enforce the simplest of regulations on false or misleading disclosures.

These gaps in ECI's enforcement powers, if left unaddressed, will stymie any future attempts at reform. The ECI possesses constitutional independence and is widely perceived to be one of the more autonomous election agencies in the world. It is only accountable, at the end of the day, to the judiciary; the government in power does not dictate its mandate, and commissioners can only be removed from their positions via an impeachment process similar to the impeachment process for a justice Supreme Court. The downside to this situation is that the commission's constitutional mandate and enforcement powers, which have been outlined by subsequent statute, must be revised by the very institution the ECI seeks to control if it gains the power to punish malfeasant candidates. The media, civil society, and the judiciary can play a catalytic role, but, at the end of the day, the commission is bound by the shortcomings in its legislatively enumerated enforcement powers.

Last, the primary lesson that other countries—particularly countries in which there are either no or lax regulations (Malaysia, South Africa) or nonenforcement of rules (much of Latin America)—can draw from India's experience is that civil society activism supported by a free media and independent courts is the best shot at instituting transparency that might in turn foment more substantive

reform. These reforms within political parties are vital in establishing any kind of grand bargain between election authorities and political actors, which could then pave the way for public funding. Without intraparty reforms, public financing of elections is likely to do more harm than good.

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for the “short” campaign remained fixed: £7,140 plus 5p per parliamentary elector in a borough/burg constituency and 7p per parliamentary elector in a county constituency. Most significantly for this election, it created some very generous spending limits overall. Given that Parliament was dissolved after 10 April, a candidate could spend around £40,000 from 1 January until polling day in 2010. Previously, regulated candidate spending had been limited to around £12,500 (though, of course, this only covered the period following dissolution). This complex legislation has now effectively been standardized by the UK move to fixed parliaments, though would be reactivated should a future government fall before the full parliamentary term.

Chapter 4

1. Election statistics from India’s 2014 general election are available through the Press Information Bureau of the Government of India: <http://pib.nic.in/elections2014/e-main.aspx> (accessed 8 September 2014).
2. Voter turnout in the 2014 general election was a record for India, but is considered low relative to turnout in most established democracies.
3. Although one has to take officially reported figures with a grain of salt, India’s six national parties have themselves reported a 418% increase in funds collected during parliamentary elections between 2004 and 2014 (ADR 2015).
4. See Pippa Norris, Ferran Martinez i Coma, Max Gromping, and Alessandro Nai, 2015, “Perceptions of Electoral Integrity (PEI-3.5),” <http://dx.doi.org/10.7910/DVN/UO9ABD>, Harvard Dataverse, V3.
5. Data on quality of the ECI is drawn from the PEI-3.5 variable “EMBs,” which is an index measuring the quality of electoral authorities.
6. Confidence in electoral authorities is measured by PEI-3.5 variable “electoralauth.”
7. Freedom House score, region, and income level are measured by PEI-3.5 variables “fhcategory,” “region9,” and “development,” respectively.
8. During the emergency, the constitution was suspended, civil and political liberties were significantly curbed, and many of the most prominent opposition leaders were placed behind bars.
9. During this period, the Congress served in the opposition from 1989 to 1991 and again from 1996 to 2004.
10. For the concept of horizontal accountability see Diamond and Morlino 2004.
11. In 1979, political parties were exempted from income and wealth taxes. although they had to file annual tax returns including audited accounts of party income and expenditure.
12. Although company donations were relegalized, these donations were not made tax deductible.
13. For more on the role T. N. Seshan played in reforming election in India, see Gilmartin 2009.
14. The free airtime totaled 61 hours on each of the two media and was allocated on the basis of a formula based on a certain minimum time supplemented by additional time slabs proportionate to vote share in the last elections.
15. There was an exception for state funding to cover some in-kind expenses such as the cost of vehicle fuel, at the time considered one of the largest campaign expenses.
16. Throughout this chapter, we convert all monetary values in rupees to U.S. dollars using historical exchange rates to reflect the dollar equivalent at that particular time.
17. As of early 2014, 31% of elected state legislators (members of the Legislative Assembly or MLAs) faced pending cases, 15% of which were of a serious nature.
18. The act also made it mandatory, under Section 13-A of the Income Tax Act, for parties to declare all contributions over Rs 20,000 in their tax returns. The donors of contributions in excess of this amount have to be identified both to the ECI and to income tax authorities.

19. Interview with senior ECI official, 5 November 2014. The 2003 act also mandated free airtime on all electronic media for recognized parties and candidates, potentially lowering costs and increasing reach, but in practice this remains limited to the state-owned electronic media, since the rules for operationalizing it in the private media have not been framed. In the meantime, US-style paid political advertising on private television and the Internet has taken off, most noticeably in the 2014 election.
20. As of 2012–2013, the Bahujan Samaj Party (BSP) claimed it had not received a single donation above Rs. 20,000 dating back to 2004–2005. Since that amount represents the threshold for disclosure, the party has not had to identify a single contributor of funds in eight years.
21. These new guidelines came into force as of 1 October 2014.
22. Interview, senior ECI official, 5 November 2014.
23. A summary of the bill can be found here: <http://www.prsindia.org/billtrack/the-right-to-information-amendment-bill-2013-2854/> (accessed 6 September 2014).
24. “Parties Under RTI: SC Sends Notice to Election Commission, Centre,” *Indian Express*, 8 July 2015 (accessed 10 December 2015).
25. See “HC dismisses Ashok Chavan ‘Paid News’ Case,” by Abhinav Garg, in *Times of India*, 13 September 2014 (accessed 17 September 2014).
26. Centre for Study of Developing Societies, 2002: Executive Summary. Former Chief Election Commissioner S.Y. Quraishi quoted in Sarika Malhotra, “Economy vs Democracy,” *Business Today*, 27 April 2014 (accessed 16 November 2014).
27. “Munde Admits Spending Rs.8 Crores in 2009 polls,” *The Hindu*, 28 June 2013 (accessed 16 November 2014).
28. Election Commission of India, Search and Seizure Information, http://eci.nic.in/eci_main1/GE2014/RptConsolidatedsearchseizure_Statewise%20-%20for%20merge.htm (accessed 16 November 2014).
29. Milan Vaishnav, “Votes for Crooks and Cricket Stars,” *New York Times*, 6 May 2014 (accessed 10 December 2015).
30. Sharat Pradhan, “I Take Money for Party Tickets: Mayawati,” *Rediff*, 5 June 2006 (accessed 10 December 2015).
31. Kapur and Vaishnav (2013) illustrate this equilibrium through an examination of the connections that exist between politicians in India and the construction sector. The authors argue that the former provide policy and regulatory favors in exchange for election finance, an exchange they empirically document through an analysis of business cycles in the demand for cement.
32. Kevin Casas-Zamora (2005, 30–31) for the observation on India and Switzerland being exceptions.

Chapter 5

1. Author interview, 25 October 2005.
2. Data provided by Perludem.
3. Author interview with NGO activists involved in campaign finance monitoring, 27 May 2014.
4. Author interview with a senior government bureaucrat, 10 December 2013.
5. Author interview, 13 December 2013.
6. Author interview, 14 February 2012.
7. Author interview, 10 September 2013.
8. Author interview, 15 July 2014.

Chapter 6

1. The law was sometimes known as the “Corrupt Practices Act” because it was modeled on the US Federal Corrupt Practices Act of 1910 and 1925.
2. There are other laws related to campaign finance that include the Public Offices Law that governs the rules regarding the official campaign period and the use of campaign period