Black Money and Politics in India

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The issue of black money in politics in India is multifaceted. A number of questions about its role in politics, how it is generated, its volume, its ill effects, and how it can be eliminated do not have answers that are always specific or clear-cut, and are often interlinked. A few of the answers can at best be partial or anecdotal and circumstantial. This article is an attempt to clarify some of these issues.

Since 8 November 2016, when the Prime Minister announced that currency notes of ₹1,000 and ₹500 would be taken out of active circulation, with the ostensible objective of removing all "black" money from the economy and society, the issue of use of black money in politics has been part of the public discourse. The bulk of the discussion has centred on money spent during elections but that is only part of the story, though a significant part.

The issue of black money in politics in India is multifaceted. Some of the questions that arise about this are: Why is black money used or required in politics? What role does it play? Where does it come from, or how is it generated? How much money is involved? Is use of black money in politics harmful? If yes, what is the harm or how does it harm, and whom does it harm? Can something be done to eliminate or reduce the use of black money in politics? How can that be done, and who will, or can, do it? Answers to these and similar questions are not always specific or clear-cut, and are often interlinked. A few of the answers can at best be partial and or anecdotal and circumstantial. This article is an attempt to clarify some of these issues.

Black Money

We are talking about "black" money. A white paper on black money[1] issued by the finance ministry in 2012 defines black money as "as assets or resources that have neither been reported to the public authorities at the time of their generation nor disclosed at any point of time during their possession." The same report also admits, "there is no uniform definition of black money in the literature or economic theory."

The Cambridge Dictionary makes it somewhat simpler when it says that black money is "money that is earned illegally, or on which the necessary tax is not paid."[2] This seems more in keeping with the commonly understood concept of black money being unaccounted or undeclared money or income.

Why should "unaccounted or undeclared money" be used in politics? A simple and logical answer is that such money is, and has to be, used when unaccountable and undeclarable activities are undertaken. And if it is used, then it follows that such activities are indeed undertaken, or have to be undertaken, as some will say, while being involved in competitive political and electoral processes. Just in case any reader has the slightest doubt, a former chief election commissioner provides a list of 40 "types of illegal expenses [undertaken] during election."[3] The author goes on to say, "every year more ingenious methods of distributing cash come to light," and refers to these as "ever-evolving."

The views expressed here are personal.

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The Evidence

And if the above are considered random views without any basis, here is some hard data. Every candidate contesting the election to the Lok Sabha is required to submit a statement of the expenditure incurred to the Election Commission of India (ECI) in a sworn affidavit after the election.[4] For the 2009 Lok Sabha election, the limit on expenditure, as laid down under Rule 90 of the Conduct of Election Rules, 1961,[5] was ₹25 lakh.

The Association for Democratic Reforms (ADR),[6] an organisation working on improving governance and democracy in the country, analysed the election expenditure affidavits of 6,753 candidates who contested the 2009 Lok Sabha election. Only four candidates of the 6,753 said that they had exceeded the limit for expenditure and 30 said they had spent around 90% to 95% of the limit. The remaining 6,719, about 99.5% of the candidates, said under oath that they had spent only 45% to 55% of the limit.

The above figures need to be seen in the context of the complaint by candidates and political parties that the limit set for election expenditure is too low and needs to be increased. The limit has been raised from time to time. It started with ₹25,000 in 1951, moved up to ₹1 lakh in 1979, to ₹4.5 lakh in 1994, to ₹15 lakh in 1997, to ₹25 lakh in 2003, and to ₹40 lakh in 2011. It was raised to ₹70 lakh in February 2014.[7]

Incidentally, the late Gopinath Munde at a public meeting, a few months before the 2014 election, said he had spent ₹8 crore on his campaign for the 2009 Lok Sabha election.[8] On being served a notice by the ECI, he explained that his "exclamation that ₹8 crore was spent in the last election has to be read and heard as a figure of speech, a rhetoric and nothing more." He further stated,

> My speech ought to have been read from the aforesaid context. Corruption was the issue at the back of my mind; when I gave the speech. This should have led to a public debate, on the accountability of the political parties, which are the constituents of democratic process.

The fact remains that he did not deny making the statement.

Some indirect evidence comes from the increase in assets of members of Parliament (MPs) and members of legislative assembly (MLAs) obtained from comparing the assets declared by them in their affidavits in consecutive elections. In the 2014 Lok Sabha election, there were four MPs whose assets increased more than 1,000% from 2009 to 2014—the figures, in descending order, are 5,649%, 2,081%, 1,700%, and 1,281%. There were 22 MPs whose increase in assets ranged between 500% and 999%.[9]

The situation involving MLAs is even more revealing. There are four MLAs whose assets have increased from one election to the next by more than 10,000%, repeat 10,000%. The figures, in descending order, are 39,439%, 39,367%, 35,736%, and 13,350%, and the states to which these MLAs belong are Meghalaya, Rajasthan, Arunachal Pradesh, and Bihar. And there are 92 MLAs whose assets increased between 1,000% and 9,999% from one election to the next. The assets of 136 MLAs increased by 500% to 999%.[10]

Some Background

This phenomenon of making wrong declarations in election expenditure affidavits is not new. As far back as 1994, in a Supreme Court judgment written on behalf of himself and Justices N P Singh and N Venkatachala, Justice J S Verma, as he was then, wrote, in a section titled "Background of Political Climate,"[11]

> The prescription of ceiling on expenditure by the candidate is a mere eye-wash and no practical check on election expenses for which it was enacted to attain a meaningful democracy. This lacuna in the law is, of course, for the Parliament to fill lest the impression is reinforced that its retention is deliberate for the convenience of everyone. If this be not feasible, it will be advisable to omit the provision to prevent the resort to indirect methods for its circumvention and subversion of the law, accepting without any qualm the role of money power in the elections. This provision has ceased to be even a fig leaf to hide the reality.

This was not the only time that the judiciary has pointed out an anomaly in the laws which distort the electoral process.

Apart from the judiciary, several committees appointed by the government have commented on the adverse impact of the use of money in politics. One of the earliest such observations was made as early as 1990, by what came to be known as the Goswami Committee.[12] This is what the Goswami Committee said,

> The role of money and muscle powers at elections deflecting seriously the well accepted democratic values and ethos and corrupting the process … Urgent corrective measures are the need of the hour lest the system itself should collapse.

This was followed by the Vohra Committee set up in 1993 "to take stock of all available information about the activities of crime Syndicates/Mafia organisations which had developed links with and were being protected by government functionaries and political personalities."[13] One of its significant observations was, "Over time, the money power thus acquired is used for building up contacts with bureaucrats and politicians and expansion of activities with impunity. The money power is used to develop a network of muscle-power which is also used by the politicians during elections."

Subsequently, this found mention in the president's address to the joint session of Parliament at the beginning of the budget session in March 1998.

> One of the causes of corruption and corrosion of values in our polity, as well as criminalisation of politics, stems from the flaws in the electoral process. To ensure free, fair, and fearless elections and to prevent use of money and muscle power, Government will introduce a comprehensive Electoral Reforms Bill for which considerable groundwork has already been done.

The next to come in 1998 was the Committee on State Funding of Elections, which came to be known as the Indrajit Gupta Committee.[14] This committee's recommendations are cited frequently in support of state funding of elections while it is either forgotten or deliberately overlooked that it also asked for "meaningful electoral reforms in other spheres of electoral activity." Its observation on the power of money in elections was, "It goes without saying that money power and muscle power go together to vitiate the electoral process and it is their combined effect which is sullying the purity of electoral contests and effecting free and fair elections."

After this came what is arguably the most comprehensive document on electoral reforms so far, the 170th report of the

Law Commission of India, titled "Reform of the Electoral Laws," submitted to Law Minister Ram Jethmalani, by the chairman of the 15th Law Commission, Justice B P Jeevan Reddy, in May 1999. Its most significant observation on black money is contained in the following paragraph (4.1.6.1).

> In the very scheme of things and as pointed out by the Supreme Court in its various decisions, the bulk of the funds contributed to political parties would come only from business houses, corporate groups and companies. Such a situation sends a clear message from the political parties to big business houses and to powerful corporations that their future financial well-being will depend upon the extent to which they extend financial support to the political party. Indeed most business houses already know where their interest lies and they make their contributions accordingly to that political party which is likely to advance their interest more. Indeed not sure of knowing which party will come to power, they very often contribute to all the major political parties. *Very often these payments are made in black money.* (emphasis added)

It was in the above context that the Law Commission quoted from a 1975 judgment[15] written by Justice M C Chagla, then Chief Justice of Bombay High Court, in a case where a proposal by Tata Iron and Steel Company to make contributions to political parties was being adjudicated. He wrote, "It is a danger which may grow apace and which may ultimately overwhelm and even throttle democracy in the country."

It may be surprising and sad but it is true that despite all this, no government or Parliament has had the time or inclination to do anything significant about even reducing, what to speak of eliminating, the role of money, including black money, in the political and electoral processes of the country.

Identifying Sources of Political Funds

Given that nothing of consequence or significance was done by governments or the political parties, it was left to a civil society group to try and identify where political parties were getting their money from. To this end, the ADR filed a right to information (RTI) application to the Central Board of Direct Taxes (CBDT) on 28 February 2007 seeking the following information.

(i) Whether the political parties mentioned in the RTI application have submitted their Income Tax Returns for the years 2002–03, 2003–04, 2004–05, 2005–06, 2006–07.

(ii) Permanent Account Number (PAN) allotted to these parties.

(iii) Copies of the Income Tax Returns filed by the political parties for the afore-mentioned years along-with the corresponding assessment orders, if any.

The CBDT transferred the application to nine chief commissioners of income tax (CCITs) all over the country. All except two CCITs declined to divulge the information citing various reasons, some of which are summarised below.

(i) Information is exempt under Section 8(1)(d) of the Right to Information Act, 2005 since it contains details and particulars of commercial activities of the political parties. The CPIO, Mumbai stated that information has been submitted by the assessees in commercial confidence.

(ii) The returns are submitted by the assessees in fiduciary capacity and they are confidential in nature and, as such, disclosure thereof is exempted under Section 8(1)(e).

(iii) The disclosure of information has no relationship with public activity and no public interest is involved and, as such, it cannot be disclosed under Section 8(1)(j).

(iv) PAN is a statutory number which functions as an unique identification of each taxpayer. Making PAN public can result in misuse of this information by other persons and could compromise the privacy of the financial transactions linked with PAN.

(v) Information relates to third parties who have objected to the disclosure of this information.

(vi) Information is subject to confidentiality under Section 138 of the Income Tax Act, 1961.

(vii) Sections 8(1)(g), 8(1)(h) and 8(1)(j) of the Right to Information Act, 2005 make it amply clear that there is no obligation to give any information which had been tendered in confidence for law enforcement or information which would impede the process of investigation or prosecution of offenders or information the disclosure of which would cause unwarranted invasion of the privacy of the individual.[16]

Because of the denial of information for reasons that were considered frivolous, the ADR filed nine "first appeals" to the appropriate appellate authorities at the nine cities. All the first appeals were rejected.

The ADR then filed nine "second appeals" to the Central Information Commission (CIC) as provided in Section 19(3) of the RTI Act on 31 July 2007. These appeals were heard over several hearings. The CIC also issued notices to all 19 political parties about whom information had been sought. All the major political parties were represented by senior advocates and they submitted written responses opposing the disclosure of their income tax returns. The CIC considered all the written responses as also the oral arguments, and finally gave a decision on 29 April 2008.[17]

> The Commission directs that the public authorities holding such information shall, within a period of six weeks of this order, provide the following information to the appellant:
> Income Tax Returns of the political parties filed with the public authorities and the Assessment Orders for the period mentioned by the appellant in her RTI-application dated 28 February 2007.

Before the decision, the CIC provided the following rationale for it.

> 48 Political financing and its potentiality for distorting the functioning of the government, has been the subject of wide public debate in contemporary democracies. It is recognised that political parties do need large financial resources to discharge their myriad functions. But this recognition is tinged with the apprehension that non-transparent political funding could, by exposing political parties, and through it the organs of State which come under the control or its influence, to the corrupting influence of undisclosed money, can inflict irreversible harm on the institutions of government. There is public purpose in preventing such harm to the body-politic.
>
> 49 Democratic States, the world over, are engaged in finding solutions to the problem of transparency in political funding. Several methodologies are being tried such as State subsidy for parties, regulation of funding, voluntary disclosure by donors at least large donors—and so on. The German Basic Law contains very elaborate provisions regarding political funding. Section 21 of the Basic Law enjoins that political parties shall publicly account for the sources and the use of their

funds and for their assets. The German Federal Constitutional Court has in its decisions strengthened the trend towards transparency in the functioning of political parties. It follows that transparency in funding of political parties in a democracy is the norm and must be promoted in public interest. In the present case, that promotion is being effected through the disclosure of the income tax returns of the political parties.

This is how copies of income tax returns (ITRs) came to be in the public domain.

Scrutiny of copies of ITRs revealed that political parties declare even crores as income in the ITRs but do not pay any income tax. A search for the reason for this led to Section 13A of Income Tax Act, which makes "Special provision relating to incomes of political parties."[18]

13A Any income of a political party which is chargeable under the head 'Income from house property' or 'Income from other sources' or 'Capital gains' or any income by way of voluntary contributions received by a political party from any person shall not be included in the total income of the previous year of such political party:
Provided that—
(*a*) such political party keeps and maintains such books of account and other documents as would enable the Assessing Officer to properly deduce its income therefrom;
(*b*) in respect of each such voluntary contribution in excess of twenty thousand rupees, such political party keeps and maintains a record of such contribution and the name and address of the person who has made such contribution; and
(*c*) the accounts of such political party are audited by an accountant as defined in the *Explanation* below sub-section (2) of Section 288:
Provided further that if the treasurer of such political party or any other person authorised by that political party in this behalf fails to submit a report under sub-section (3) of Section 29C of the Representation of the People Act, 1951 (43 of 1951) for a financial year, no exemption under this section shall be available for that political party for such financial year.
Explanation—For the purposes of this section, 'political party' means a political party registered under Section 29A of the Representation of the People Act, 1951 (43 of 1951).

What is important in the above is the second proviso which, when read in conjunction with Section 29C of the Representation of the People Act 1951, in effect says that if a political party does not submit a statement of donations of more than ₹20,000 each to the ECI, it will not get the 100% exemption from income tax that Section 13A of the Income Tax Act permits.

This proviso led the ADR to file an RTI application to the ECI seeking copies of the lists of donations of more than ₹20,000 submitted by political parties. Once these lists were available, the total amount of donations of more than ₹20,000 received by a political party in a specific year were compared with the total income declared by the same political party for the same year in its income tax return.

The above comparison revealed that on an average across all political parties, the donations of more than ₹20,000 each explained only 20% to 25% of the total income of the political parties. What this meant was that around 75% to 80% of the declared income of political parties, on an average, is from unknown sources.

Attempt to Communicate with Political Parties

Once it was discovered that the bulk of the declared income of political parties was from unknown sources, the ADR sent RTI applications to the six national parties (Bharatiya Janata Party [BJP], Congress, Bahujan Samaj Party [BSP], Nationalist Congress Party [NCP], Communist Party of India [CPI], and [CPI Marxist]) requesting them for the following information.
(i) (a) Sources of the 10 maximum voluntary contributions received by your party from financial year 2004–05 to financial year 2009–10.
(b) The modes of these donations (cheque, cash, DD, etc).
(c) The amounts of these donations.
(d) The financial years in which these contributions were made.
(ii) Sources/names of all voluntary contributors along with their addresses who have made single contributions of more than ₹1 lakh to your party from financial year 2004–05 to financial year 2009–10.

The parties declined to give the information saying they were not under the purview of the RTI Act and therefore did not need to respond to RTI applications.

The ADR then approached the CIC requesting that the six national political parties be declared public authorities under the RTI Act. The CIC initially declined, saying that there was not enough data and asked the ADR to provide more data if it could gather that. The ADR spent almost two years, collecting data about the six national political parties by filing around 2,000 RTI applications to various government authorities seeking information about how much of public funds were spent on services and facilities provided to political parties. All these data were presented to the CIC.

A full bench of the CIC conducted a number of hearings where the political parties were represented by senior lawyers. Some of the hearings were also attended by senior leaders of political parties. The lawyers and leaders both opposed the ADR's request. After all the hearings, the CIC finally declared on 3 June 2013 "that AICC/INC, BJP, CPI(M), CPI, NCP and BSP are public authorities under Section 2(h) of the RTI Act."[19]

The CIC, in its decision of 3 June 2013, also said:

The Presidents, General/Secretaries of these Political Parties are hereby directed to designate CPIOs and the Appellate Authorities at their headquarters in 06 weeks time. The CPIOs so appointed will respond to the RTI applications extracted in this order in 04 weeks time. Besides, the Presidents/General Secretaries of the above mentioned Political Parties are also directed to comply with the provisions of Section 4(1) (b) of the RTI Act by way of making voluntary disclosures on the subjects mentioned in the said clause.

None of the six political parties complied with the decision of the CIC. They neither designated CPIOs nor Appellate Authorities, nor did they supply the information that had been sought in the original RTI applications. The ADR then filed a complaint of non-compliance of its decision to the CIC. The complaint was heard by a fresh full bench of the CIC. In the first hearing, the CIC decided to issue notices to the political parties asking them for reasons for non-compliance. Once again, none of the six parties responded to the notice of the CIC.

In the next hearing, the CIC decided to send show-cause notices to all the six political parties and asked them to be present to explain not complying with the CIC's decision of 3 June 2013. All the six parties ignored the show-cause notice of the CIC. They neither attended the next hearing nor responded to the notice. After repeated hearings and notices, the CIC, in a decision announced on 16 March 2015,[20] finally expressed its inability to get its own order implemented, saying,

> The Commission's order of 3 June 2013 is binding and final. It has not been affected by any judicial or legislative intervention. The respondents have been declared public authorities, but they have not taken the steps prescribed for implementation. The impediment has come because the respondents have not appointed the CPIOs as directed, hence the RTI applications referred to in the order of 3 June 2013 are still pending.
>
> The Commission is not geared to handling situations such as the present instance where the respondents have disengaged from the process. The Commission, having declared the respondents to be public authorities, is unable to get them to function so. … An obvious conclusion is that … the Commission is bereft of the tools to get its orders complied with.

The CIC further said:

> We have arrived at the conclusions above taking into account that the Commission's order of 3 June 2013 was not challenged in any court. As per the Commission's order, which is final and binding, the respondent national political parties are public authorities under the RTI Act.
>
> It is clear that the respondents have not implemented, as public authorities, the directions contained in the Commission's order.

The following is decided:

> (a) the respondents are not in compliance with the Commission's order of 3 June 2013 and the RTI Act. The respondents, as public authorities, have *not implemented the directions contained in the Commission's order and there is no evidence of any intention to do so* (emphasis added); …
>
> (e) the complainants are at liberty, in view of the facts and circumstances of this case, to approach the higher courts for appropriate relief and redressal.

It was after this that the ADR and Subhash Chandra Agrawal, who has also submitted similar but independent applications and complaints to the CIC, filed a public interest litigation (PIL) in the Supreme Court requesting it to get the CIC's lawful order implemented.[21] The PIL named the Union of India, the ECI, and the six national political parties as respondents.

Interestingly, but not perhaps surprisingly, the very first response filed in response to the petition was by the Union of India,[22] even before any of the six political parties responded. Once again, not surprisingly, the union said in its affidavit that political parties should not be under the RTI Act. The matter is still under consideration of the Supreme Court.

What Does This Indicate?

This effort "to identify the sources of political funds" started in February 2007 and it is now 2017, but the end is not yet in sight.

The end may not be in sight but we, as a society, can and must learn from the experience of 10 years. The foremost inference is that political parties do have something to hide. The lengths that the *entire* political establishment, which means *all* political parties, have gone to prevent disclosure of the sources of their income makes it obvious that there is something that political parties do not want the people at large to know. What could that be? One possibility is clearly and strongly hinted at eloquently by Justice Chagla in the *Jayantilal Ranchhoddas Koticha* judgment mentioned above. The hint is hard to miss and deserves to be reproduced in full.

> Now, democracy is a political system which ensures decisions by discussion and debate, but the discussion and debate must be conducted honestly and objectively and decisions must be arrived at on merits without being influenced or actuated by any extraneous considerations. On first impression it would appear that any attempt on the part of anyone to finance a political party is likely to contaminate the very springs of democracy. Democracy would be vitiated if results are to be arrived at not on their merits but because money played a part in the bringing about of those decisions. The form and trappings of democracy may continue, but the spirit underlying democratic institutions will disappear. History of democracy has proved that in other countries democracy has been smothered by big business and money bags playing an important part in the working of democratic institutions and it is the duty not only of politicians, not only of citizens, but even of a court of law, to the extent that it has got the power, to prevent any influence being exercised upon the voter which is an improper influence or which may be looked at from any point of view as a corrupt influence. The very basis of democracy is the voter and when in India we are dealing with adult suffrage it is even more important than elsewhere that not only the integrity of the representative who is ultimately elected to Parliament is safeguarded, but that the integrity of the voter is also safeguarded, and it may be said that it is difficult to accept the position that the integrity of the voter and of the representative is safeguarded if large industrial concerns are permitted to contribute to political funds to bring about a particular result.

If the sources of money received by political parties are not known and political parties move heaven and earth to prevent these from being known, it raises dark fears, the possibility of some of which was clearly brought out in the Vohra Committee report. The references of the Vohra Committee to "crime Syndicates/Mafia organisations which had developed links with and were being protected by Government functionaries and political personalities" and "money power is used to develop a network of muscle-power which is also used by the politicians during elections" are ominous.

That the nexus between the political class, political parties, and politicians continues despite the findings of the Vohra Committee is clear. Despite the media highlighting persons with criminal cases pending against them being elected to Parliament, political parties continue to give tickets to such persons in every election. The ADR has been tracking this as part of its Election Watch project since the Supreme Court judgments of 2 May 2002,[23] and 13 March 2003.[24] All political parties give tickets to persons who have themselves declared that criminal cases are pending against them. This is despite the ADR writing letters to the presidents of all major parties, listing sitting MPs and MLAs from their parties who have criminal cases pending against them and requesting them not to give tickets to those persons.

The result is that while there were 125 such MPs in the 2004 Lok Sabha, and this increased to 162 in the 2009 Lok Sabha. To confirm the trend, this number is now 186 in the 2014 Lok Sabha.[25] While political parties put forward myriad reasons

for giving tickets to such persons, it is very hard, almost impossible, to wish away the ominous findings of the Vohra Committee report.

Additional Evidence

Much against the solemn protestations of political parties that they do not do anything wrong, there is at least one example where the wrong-doing has been pronounced judicially.

Having discovered that an electoral trust had made significantly large donations to both the BJP and Congress, the ADR decided to find out more about that particular trust. The trust had been set up jointly by three companies registered in India. Attempts to find out what could be the reasons for three companies in different sectors to set up an electoral trust jointly revealed that all the three companies were 100% fully owned subsidiaries of a company registered in the United Kingdom (UK). This meant that the money donated by the electoral trust and accepted by the BJP and Congress was, following the legal principle of "lifting the corporate veil," actually controlled by a foreign entity.

This had a serious problem. The Foreign Contribution (Regulation) Act (FCRA) was enacted in 1976 to regulate receipt of foreign funds by Indian entities. Section 4(1)(e) of the FCRA specifically prohibits political parties from accepting any foreign contributions,[26] saying, "(1) No foreign contribution shall be accepted by any—(e) political party or office-bearer thereof." This act was replaced in 2010 by the FCRA, 2010. Section 3(1)(e) of it also read as follows: "No foreign contribution shall be accepted by any … (e) political party or office-bearer thereof."[27] In view of the above, the acceptance of funds that were controlled by a company registered in a foreign country was a clear violation of the FCRA.

The ADR and another petitioner filed a PIL in the Delhi High Court, asking for action to be taken against both the parties for having violated the FCRA. The defence put forward by the BJP and Congress was that the majority shareholder of the British entity was an Indian citizen. The high court was not persuaded by this argument in view of the well-established principle of law that a company is a legal entity different from the owner or promoter.[28]

After hearing arguments from all sides, the Delhi High Court said in its judgment of 28 March 2014,[29]

> For the reasons extensively highlighted in the preceding paragraphs, we have no hesitation in arriving at the view that prima-facie the acts of the respondents inter-se, as highlighted in the present petition, clearly fall foul of the ban imposed under the Foreign Contribution (Regulation) Act, 1976 as the donations accepted by the political parties from Sterlite and Sesa accrue from 'Foreign Sources' within the meaning of law.

The Delhi High Court also ordered that the directions "shall be complied within a period of six months from date of receipt of certified copy of the present decision."

The ECI wrote to the Ministry of Home Affairs (MHA) saying that since the MHA was the administering authority under the FCRA, it should take action against the two parties under law. The MHA wrote letters to the Ministry of Corporate Affairs, who also responded, but all this correspondence did not lead to any action.[30]

Meanwhile, as the end of six months approached, both the BJP and Congress filed appeals in the Supreme Court against the judgment of the Delhi High Court. It is worth noting that the Supreme Court did not stay the judgment of the high court, and that a stay was not asked for. While this was going on, the Government of India made two attempts to amend the FCRA, both of which did not succeed. Finally, it brought in a "surreptitious" amendment by slipping in a paragraph in the Finance Bill of 2016.[31]

Something very peculiar transpired in the next hearing of the appeals in the Supreme Court on 22 November 2016. The lawyers for the BJP and Congress said that they would like to withdraw their appeals because in the light of the amendment of the FCRA, the Delhi High Court judgment, and consequently the appeals, had become infructuous. It was pointed out to the court that the "surreptitious" amendment brought in through the Finance Bill amended the FCRA 2010 and that the Delhi High Court had stated:

> Since the writ petition drew attention to donations made to political parties for the period up to the year 2009, we record at the outset that our concern is not with the Foreign Contribution (Regulation) Act, 2010, which has come into force on 26 September 2010. Our discussion of the legal position would be with respect to the Foreign Contribution (Regulation) Act, 1976.

In view of this observation, the "surreptitious" amendment of the FCRA 2010 did not have any effect on the violation of the FCRA 1976 declared by it. On learning about this, the lawyers for the BJP and the Congress sought time to seek instructions from their clients about the next course of action. At the next hearing, both the BJP and Congress withdrew their petitions and the Supreme Court decided the appeals to be "dismissed as withdrawn."[32]

Both the petitioners, the ADR and E A S Sarma, have written to the MHA to take action now that the Delhi High Court judgment has been reaffirmed, in a way, by the Supreme Court with the legal challenge to that judgment being "withdrawn."[33] At the time of writing this, there was no information in the public domain about the MHA having taken or even initiated any action.

Conclusions

What the above shows is the following.

(i) Political parties are not willing to disclose sources of their funds.

(ii) They will go to any lengths, including using Parliament and the entire bureaucracy, to prevent disclosure of the sources of their funds.

(iii) They are even ready to blatantly defy legitimate, legal, and constitutional decisions of the highest statutory authority in the land (the CIC).

(iv) It is not beyond them to violate the law of the land (the FCRA) and then use both the legislative and the executive authority to amend the law of the land, surreptitiously if necessary, to prevent the law taking its course.

With these conclusions, the inescapable inference seems to be that political parties use black money, and in all likelihood, are dependent on it. The reason for this was brought out by the

Law Commission in its 170th report when it said, "There has been mounting corruption in all walks of public life. People are generally lured to enter politics or contest elections for getting rich overnight."[34]

So long as people keep entering "politics or contest elections for getting rich overnight," this debasement of politics and the use of black money will continue. Justice Chagla had this to say about Indian democracy way back in 1957.

> Democracy in this country is nascent and it is necessary that democracy should be looked after, tended and nurtured so that it should rise to its full and proper stature. Therefore any proposal that or suggestion which is likely to strangle that democracy almost in its cradle must be looked at not only with considerable hesitation but with a great deal of suspicion.[35]

In 1957, Indian democracy was actually nascent but is it any better in 2017? Can democracy ever be mature and unassailable? Justice Felix Frankfurter, a former judge of the US Supreme Court, provides the answer.

> Democracy involves hardship—the hardship of the unceasing responsibility of every citizen. Where the entire people do not take a continuous and considered part in public life, there can be no democracy in any meaningful sense of the term. *Democracy is always a beckoning goal, not a safe harbor. For freedom is an unremitting endeavor, never a final achievement*. That is why no office in the land is more important than that of being a citizen.[36] (emphasis added)

What this tells us is that political parties will not give up the use of black money on their own, notwithstanding the pious statements that accompany the announcement of making currency notes of ₹500 and ₹1,000 illegal. The public statement by the revenue secretary on 16 December 2016 was revealing. The highest bureaucrat in the finance ministry said publicly that while common citizens will be questioned about the source of banned higher denomination currency notes, more so if they deposited more than ₹2.5 lakh, political parties were free to deposit any amount of cash in old currency notes and no questions would be asked of them. When questions were raised about this undue favour being extended to political parties, none less than the finance minister stepped in to clarify that the government had not changed any rules related to political party finance and everything was being done according to existing rules.

What the finance minister seems to have conveniently overlooked is that "existing rules" still have only these provisions—filing of annual income tax returns by political parties and 100% exemption from income tax under Section 13A of the Income Tax Act, and submitting a list of donations above ₹20,000 to the ECI under Section 29C of the Representation of the People Act, 1951. The existing law has no provisions for old and new currency.[37] The statement of the revenue secretary seemed to be an open invitation to political parties to convert their, possibly unaccounted, cash stored in old currency notes into new currency without any adverse impact, with which people at large were threatened.

Budget and After

Just as this article was being written came the news of the 2017–18 budget of the central government. The following two paragraphs in the budget speech that the finance minister made in the Lok Sabha[38] created quite a stir.

> 164. India is the world's largest democracy. Political parties are an essential ingredient of a multi-party Parliamentary democracy. Even 70 years after Independence, the country has not been able to evolve a transparent method of funding political parties which is vital to the system of free and fair elections. An attempt was made in the past by amending the provisions of the Representation of Peoples Act, the Companies Act and the Income Tax Act to incentivise donations by individuals, partnership firms, HUFs and companies to political parties. Both the donor and the donee were granted exemption from payment of tax if the accounts were transparently maintained and returns were filed with the competent authorities. Additionally, a list of donors who contributed more than ₹20,000 to any party in cash or cheque is required to be maintained. The situation has only marginally improved since these provisions were brought into force. Political parties continue to receive most of their funds through anonymous donations which are shown in cash.
>
> 165. An effort, therefore, requires to be made to cleanse the system of political funding in India. Donors have also expressed reluctance in donating by cheque or other transparent methods as it would disclose their identity and entail adverse consequences. I, therefore, propose the following scheme as an effort to cleanse the system of funding of political parties:
>
> (a) In accordance with the suggestion made by the Election Commission, the maximum amount of cash donation that a political party can receive will be ₹2000 from one person.
>
> (b) Political parties will be entitled to receive donations by cheque or digital mode from their donors.
>
> (c) As an additional step, an amendment is being proposed to the Reserve Bank of India Act to enable the issuance of electoral bonds in accordance with a scheme that the Government of India would frame in this regard. Under this scheme, a donor could purchase bonds from authorised banks against cheque and digital payments only. They shall be redeemable only in the designated account of a registered political party. These bonds will be redeemable within the prescribed time limit from issuance of bond.
>
> (d) Every political party would have to file its return within the time prescribed in accordance with the provision of the Income-tax Act. Needless to say that the existing exemption to the political parties from payment of income-tax would be available only subject to the fulfilment of these conditions. This reform will bring about greater transparency and accountability in political funding, while preventing future generation of black money.

The constitutional and legal method of operationalising the announcements made in the budget speech is enactment of laws through the Finance Bill which is presented to Parliament for approval. A scrutiny of the Finance Bill 2017[39] tells a very different story.

What is being claimed to be a reduction from ₹20,000 to ₹2,000 is completely untrue.[40] There was no law limiting cash donations to ₹20,000. The political parties only had to declare donations above ₹20,000. This limit of ₹20,000 still remains the same even after the budget. A new provision has been introduced to put a limit of ₹2,000 of cash contributions which do not necessarily have to be declared.

The other supposedly big announcement is about "electoral bonds." How effective these bonds might be in ensuring transparency in political funding can be seen from the following statement of the finance minister in a post-budget media interaction:[41]

> "[T]here is a provision of electoral bonds which requires an amendment to the RBI Act. A notified bank will be issuing those bonds. Any donor can buy those bonds using cheque or digital money. These bonds can be given to the political party. Every recognised political party will have to notify one bank account in advance to the Election Commission and these can be redeemed in only that account in a very short time. These bonds will be bearer in character to keep the donor anonymous. (emphasis added)

Statement (b) above "political parties will be entitled to receive donations by cheque or digital mode from their donors" is very surprising. Does it mean that political parties were earlier *not* "entitled to receive donations by cheque or digital mode from their donors"?

Similarly statement (d) above is a mere reiteration of what has already existed in law for some time now. The disparities between what the budget speech says and what the Finance Bill show unambiguously that the government of the day does not have any intentions to bring transparency in political funding.

Can Anything Be Done?

Yes, but it is far from easy, as the above narratives testify. The entire political edifice will not do anything about it, and exhortations to them in the interest of the nation or in the interest of democracy are, and will be, of no use. The only ones who suffer the ill-effects of the use of black money in politics are the people at large, which is a much diffused category. The only solution seems to be for civil society, the media, and the judiciary to work in synchrony to achieve this. All these three are also dispersed in themselves and there is no formal way for them to work together.

This leaves only one possible avenue, which is for all stakeholders to ensure that a healthy democracy stays on and gets stronger. They have to keep working on it in "an unremitting endeavour" towards the "beckoning goal" so eloquently advised by Justice Frankfurter. The onus rests on us "We, the People" who hold the most important office in the land.

NOTES

1 http://www.finmin.niccin/reports/WhitePaper_BackMoney2012.pdf, accessed on 11 January 2017.
2 http://dictionary.cambridge.org/dictionary/english/black-money, accessed on 11 January 2017.
3 S Y Quraishi (2014); *An Undocumented Wonder: The Making of the Great Indian Election*, New Delhi: Rupa, pp 265–27.
4 Section 77(1) of the Representation of the People Act, 1951, prescribes this. Sub-section (3) of the same Act reads "(3) The total of the said expenditure shall not exceed such amount as may be prescribed." The act can be seen at http://lawmin.nic.in/legislative/election/volume%201/representation%20of%20the%20people%20act,%201951.pdf, accessed on 11 January 2017.
5 http://lawmin.nic.in/legislative/election/volume%202/conduct%20of%20election%20rules,%201961.pdf, accessed on 11 January 2017.
6 ADR (www.adrindia.org) works on improving democracy and governance in the country, focusing on electoral and political reforms.
7 http://timesofindia.indiatimes.com/india/Govt-clears-Election-Commission-proposal-candidates-can-spend-more-on-campaign/articleshow/31161333.cms, accessed on 11 January 11, 2017.
8 http://indiatoday.intoday.in/story/gopinath-munde-rs-8-crore-lok-sabha-polls-election-commission/1/297738.html, accessed on 11 January 2017.
9 Compiled from ADR reports.
10 Compiled from ADR reports.
11 *Gadakh Yashwantrao Kanakarrao v E V Alias Balasaheb Vikhe Patil & Others*, (1994) 1, SCC, 682, para 16; Civil appeals no.2115, 2116, and 2444 of 1993.
12 http://adrindia.org/sites/default/files/Dinesh%20Goswami%20Report%20on%20Electoral%20Reforms.pdf, accessed on 13 January 2017.
13 http://adrindia.org/sites/default/files/VOHRA%20COMMITTEE%20REPORT_0.pdf, accessed on 13 January 2017.
14 http://adrindia.org/sites/default/files/Indrajit_Gupta_Committe_on_State_funding_of_Elections.pdf.
15 *Jayantilal Ranchhoddas Koticha & Others v Tata Iron and Steel Company Limited* (1957) SCC OnLine Bom 82; AIR 1958 Bom 155; Appeal no 15 of 1957 and IC no 199 of 1956.
16 Summarised and cited in CIC's decision http://ciconline.nic.in//rti/docs/cic_decisions/AT-29042008-01.pdf, accessed on 14 January 2017.
17 http://ciconline.nic.in//rti/docs/cic_decisions/AT-29042008-01.pdf, accessed on December 25, 2016.
18 http://www.incometaxindia.gov.in/pages/acts/income-tax-act.aspx, accessed on 14 January 2017.
19 http://www.rti.india.gov.in/cic_decisions/CIC_SM_C_2011_000838_M_111223.pdf, accessed on 25 December 2016.
20 http://adrindia.org/sites/default/files/CIC%20order%20dated%2016th%20March%2C%202015.pdf, accessed on 25 December 2016.
21 http://adrindia.org/sites/default/files/PIL%20filed%20by%20ADR%20in%20the%20Supreme%20Court%20to%20bring%20Political%20Parites%20Under%20RTI.pdf, accessed on 27 December 2016.
22 http://adrindia.org/sites/default/files/UOI_reply_on_PPPA.pdf, accessed on 27 December 2016.
23 http://www.adrindia.org/sites/default/files/Supreme_Court's_judgement_2nd_May_2002.pdf, (2002) 5 SCC 294, AIR 2002 SC 2112, accessed on January 15, 2017.
24 http://www.adrindia.org/sites/default/files/Supreme_Court's_judgement_13th_March_2003.pdf, AIR 2003 SC 2363, (2003)2 SCR 1136, accessed on J15 anuary 2017.
25 Compiled from ADR reports.
26 http://jhpolice.gov.in/sites/default/files/ForeignContributionRegulationAct_1976.pdf, accessed on 16 January 2017.
27 http://lawmin.nic.in/ld/regionallanguages/THE%20FOREIGN%20CONTRIBUTION%20(REGULATION)%20ACT,2010.%20(42%20OF%202010).pdf, accessed on 16 January 2017.
28 *Salomon v Salomon & Co Ltd* [1896] UKHL 1.
29 http://lobis.nic.in/dhc/PNJ/judgement/27-03-2014/PNJ28032014CW1312013.pdf, accessed on 16 January 2017.
30 http://www.firstpost.com/politics/government-wants-to-amend-fcra-act-rather-than-punish-congress-bjp-for-violating-it-2560368.html, accessed on 16 January 2017.
31 https://thewire.in/28670/surreptitious-fcra-amendment-the-empire-attempts-to-push-back/, accessed on 16 January 2017.
32 https://thewire.in/28670/surreptitious-fcra-amendment-the-empire-attempts-to-push-back/, accessed on 16 January 2017.
33 https://thewire.in/85646/time-get-real-foreign-money-black-money-politics/, accessed on 16 January 2017.
34 http://www.firstpost.com/india/fcra-are-political-parties-unique-organisations-and-thus-above-the-law-3151662.html, accessed on 16 January 2017.
35 *Jayantilal Ranchhoddas Koticha & Others v Tata Iron and Steel Company Limited* (1957) SCC OnLine Bom 82; AIR 1958 Bom 155; Appeal no 15 of 1957 and IC no 199 of 1956.
36 Felix Frankfurter, *The Public and Its Government*, New Haven: Yale University Press, 1931.
37 http://www.catchnews.com/politics-news/ec-should-have-said-zero-instead-of-rs-2000-jagdeep-chhokar-on-funding-for-parties-1482170220.html?seq=2, accessed on 17 January 2017.
38 http://timesofindia.indiatimes.com/business/india-business/union-budget-2017-full-speech-of-finance-minister-arun-jaitley/articleshow/56913593.cms, accessed on 7 February 2017.
39 http://indiabudget.nic.in/ub2017-18/fb/bill.pdf, accessed on 7 February 2017.
40 http://www.firstpost.com/politics/union-budget-2017-18-why-arun-jaitleys-big-political-funding-reform-is-just-an-eye-wash-3269382.html, accessed on 7 February 2017.
41 http://indianexpress.com/article/business/budget/present-system-has-failed-we-are-experimenting-with-a-new-system-says-arun-jaitley-4503411/.