

Dark Finance and Democratic Decay: A Judicial Perspective on Political Black Money in India

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Abstract- The hidden money moving through electoral veins is not a peripheral irritant in Indian democracy — it sits at the core of how power is actually won, held, and deployed. When wealthy corporate houses, organised crime figures, or foreign-linked investors bankroll a party’s rise to office without any public record of that transaction, something more serious than a regulatory violation has occurred. The voters who cast ballots on polling day are exercising a formal right while lacking the material knowledge that genuine electoral choice requires. Informed consent — which is what democratic participation ought to mean — is hollowed out well before the ballot is printed.

This research takes the Indian Supreme Court’s decades-long engagement with these questions as its central subject. Using data from regulatory bodies including the Election Commission, the Enforcement Directorate and the Income Tax Department, supplemented by civil society monitoring from the Association for Democratic Reforms and investigative journalism produced since 2014, the paper traces a recurring institutional drama: a court that reaches for constitutional principle and a legislature that reaches, just as quickly, for the nearest workaround. The ruling in February 2024 striking down the Electoral Bond Scheme represents the most recent and most significant chapter of that drama, though hardly the concluding one.

The argument advanced here is that judicial intervention, however skilful, is structurally insufficient to the problem at hand. Transparency in electoral finance will not become durable until it is grounded in public funding mechanisms, a near-universal disclosure obligation, and an enforcement authority that owes nothing of its institutional existence to the parties it is supposed to regulate. India has none of those things today. Building them is a political challenge, not a legal one, and the courts cannot do it alone.

Keywords: *Political black money, dark finance, Electoral Bond Scheme, democratic decay, PMLA 2002, Association for Democratic Reforms, judicial review, constitutional democracy, political finance, illicit financial flows.*

I. INTRODUCTION

Governing a country of India’s size and complexity costs money. That is not a scandal; it is a fact of democratic life. With nearly a billion registered electors spread across 543 parliamentary constituencies and multiple tiers of government below them, the resource demands of any serious political organisation are genuinely enormous. Ground-level mobilisation, voter outreach, advertising, staff, and infrastructure all carry price tags that cannot be wished away by setting them at zero in legislation. The question has never really been whether Indian politics requires large-scale private financing. The question is whether that financing can be subjected to meaningful accountability, or whether the public must simply accept that the people making decisions about their lives are financially obligated to actors whose identities remain permanently undisclosed.

The phenomenon scholars and practitioners label “political black money” is best understood as three interlocking dysfunctions. The first involves donations that never enter any official ledger — money paid to parties or candidates that is illegal in origin, anonymously given to purchase future favours, or simply above the statutory ceiling and therefore declared in disaggregated form to evade detection.¹ The second dysfunction is systematic expenditure falsification: since the legal ceiling on parliamentary

¹Representation of the People Act, 1951, §§ 77–79 (India) [hereinafter RPA].

campaign spending (Rs. 70–77 lakh per constituency) bears no resemblance to what a competitive campaign actually costs, candidates routinely submit fabricated accounts while deploying far larger sums through unrecorded channels. The third involves the integration of organised-crime proceeds — money generated through extortion, narcotics, land fraud and similar activities — into electoral financing networks that provide both a legitimate-seeming destination for dirty capital and a layer of political immunity for its custodians.

Independent estimates of aggregate electoral spending in recent cycles put the numbers in uncomfortable perspective. The Centre for Media Studies assessed total expenditure in the 2019 Lok Sabha elections, combining disclosed and undisclosed flows, at approximately Rs. 55,000 crore — a figure that would rank the exercise among the most financially intensive democratic events in recorded history.² The officially submitted expenditure figures for those same elections amount to a sliver of that total. The distance between the two is not a measurement error. It is the operating space of dark finance.

What this research examines is the judiciary's response to this condition over more than two decades. That response has been more substantial than popular commentary tends to acknowledge — a series of constitutional interventions that extracted genuine disclosure obligations from the text of Article 19(1)(a) and, most recently, pulled down an entire statutory scheme designed to institutionalise anonymous corporate giving. Yet the courts have also, repeatedly, found their advances blunted by legislative manoeuvres that technically comply with constitutional requirements while gutting their practical effect. Understanding how that cycle works, and why it keeps repeating, is the analytical task this paper undertakes. Part II frames the research questions. Parts III and IV cover the scholarly literature and methodology. Part V contains the main doctrinal and institutional analysis. Parts VI and VII record the findings and advance reform proposals.

²Centre for Media Studies, *CMS India Corruption Study 2023* (New Delhi: CMS, 2023).

II. RESEARCH QUESTION

At the centre of this inquiry sits one overriding question:

In what ways has the Indian judiciary, and the Supreme Court in particular, confronted the systemic problem of political black money and clandestine electoral finance, and how effectively have those judicial interventions checked the democratic erosion that flows from such concealment?

Answering it demands attention to several subsidiary questions that are no less important. Through which mechanisms does illicit political money actually move, and how have those mechanisms evolved in response to legal pressure? Where precisely do India's existing statutory and constitutional instruments fail to deliver the regulation they promise? And what would credible, durable reform require — not in theory, but given the institutional and political realities of the country as it actually exists?

These questions matter beyond the academic. Who finances Indian elections determines, in no small measure, who governs India and whose interests that governance serves. If the accountability linkages that elections are supposed to create are severed by hidden financial relationships, the machinery of representative government continues to operate formally while failing substantively. That gap between form and function is precisely what the democratic decay framework, explored further in Part IV, is designed to capture.

III. LITERATURE REVIEW

Scholarship on Indian electoral finance has grown considerably more rigorous over the past two decades. The expansion of ADR's disclosure-based data infrastructure and a parallel deepening of empirical political science have together moved the field beyond impressionistic accounts of cash-and-candidate relationships toward something more analytically tractable.

A. Empirical Political Economy

The foundational text for this inquiry is Milan Vaishnav's monograph on the criminality-money nexus in Indian elections.³ Its distinguishing contribution is statistical demonstration, rather than mere assertion, that candidates carrying declared criminal cases outperform their law-abiding counterparts electorally across a substantial cross-section of constituencies. Vaishnav's causal account traces this advantage primarily through the financial infrastructure that criminal networks provide: not simply the ability to purchase advertising but the capacity to fund the entire logistical apparatus of a competitive constituency campaign. The implication is that cleaning up electoral finance and reducing criminal penetration of legislatures are not separate policy projects — they are the same project.

The collected volume on political finance edited by Kapur and Vaishnav extends and complicates that analysis.⁴ By gathering contributions examining both the demand side of political money — why political actors need as much as they do — and the supply side — who provides it and on what implicit terms — the collection situates the compliance crisis within a structural account. The core observation, which this paper's own analysis corroborates, is that the widening chasm between statutory expenditure limits and the actual cost of competitive parliamentary politics creates a system in which operating outside the official regulatory framework is not an aberration but a necessity for any candidate who intends to win.

B. Institutional and Legal Scholarship

Chhokar's sustained engagement with India's electoral institutional design offers the most detailed treatment of how the enforcement architecture fails in practice.⁵ His diagnosis of an election management

body that is perpetually underfunded, inadequately staffed, and legally disarmed relative to the complexity of the violations it is supposed to address provides essential context for understanding why the statutory framework's formal provisions produce so little practical accountability.

The Law Commission's 255th Report on electoral reform occupies a particular place in this literature as the most comprehensive official attempt to confront the structural deficiencies of Indian political finance law systematically.⁶ The reform architecture it outlined — state-subsidised party funding, a meaningfully reduced disclosure threshold, a genuinely independent regulatory authority with investigative capacity — remains, nearly a decade on, almost entirely unimplemented. The Report's fate is itself instructive: its recommendations were sufficiently well-reasoned to survive continued academic citation, and sufficiently threatening to entrenched political interests to survive nothing else.

C. Judicial and Transparency Studies

Academic treatment of the disclosure jurisprudence originating in the *ADR*⁷ and *PUCL*⁸ decisions has concentrated heavily on the doctrinal innovation involved in deriving voter information rights from a free speech guarantee. That analytical focus is understandable but ultimately incomplete. The more pressing question — why those rights proved so difficult to enforce against legislative resistance over the two decades following the decisions — receives comparatively little sustained attention in the existing literature, and it is that question which motivates much of the analysis in Part V below.

Global Financial Integrity's quantitative work on illicit outflows supplies an essential corrective to any tendency to treat dark electoral finance as a domestic

³Milan Vaishnav, *When Crime Pays: Money and Muscle in Indian Politics* (New Haven: Yale University Press, 2017).

⁴Devesh Kapur & Milan Vaishnav eds., *Costs of Democracy: Political Finance in India* (New Delhi: Oxford University Press, 2018).

⁵Jagdeep Chhokar, *India's Electoral System: Through the Lens of Social Science* (New Delhi: Academic Foundation, 2019).

⁶Law Commission of India, Report No. 255, *Electoral Reforms* (New Delhi: Government of India, 2015) [hereinafter Law Commission Report No. 255].

⁷*Ass'n for Democratic Reforms v. Union of India*, AIR 2002 SC 2112 (India) [hereinafter *ADR I*].

⁸*People's Union for Civil Liberties v. Union of India*, AIR 2003 SC 2363 (India) [hereinafter *PUCL*].

matter.⁹ Their estimate placing cumulative illicit capital outflows from India at approximately USD 770 billion over the decade ending in 2013 establishes that the international dimension — including round-tripped foreign money re-entering the political financing ecosystem as ostensibly legitimate investment — is too substantial to be treated as a secondary concern.

IV. METHODOLOGY

The approach taken in this research is primarily doctrinal. That means subjecting the constitutional text, the relevant statutory instruments, and the major judicial decisions to close interpretive analysis, with the aim of understanding not merely their formal content but their operational consequences. The ADR jurisprudence, for instance, is examined not just as an episode of constitutional reasoning but as a set of institutional directives, and the question asked of it is what those directives actually produced — and what they failed to produce — over the years that followed.

That doctrinal analysis is embedded within a broader theoretical frame borrowed from comparative democratic studies. The “democratic decay” literature, associated especially with the work of Levitsky and Way on competitive authoritarianism,¹⁰ is particularly useful here because it directs attention precisely to the mechanisms by which democratic institutions can be formally preserved while being substantially emptied of content. The Electoral Bond Scheme is a near-perfect illustration of that dynamic. Conceived by lawyers, enacted by Parliament, administered by a public sector bank, and technically subject to judicial oversight, it nonetheless operated to channel large and undisclosed sums from regulated industries to political parties in exchange for regulatory forbearance. That is not an accidental corruption of democratic institutions. It is their systematic reorganisation around the logic of private benefit.

⁹Global Financial Integrity, *Illicit Financial Flows from Developing Countries: 2004–2013* (Washington D.C.: GFI, 2015).

¹⁰Steven Levitsky & Lucan Way, *Competitive Authoritarianism: Hybrid Regimes after the Cold War* (Cambridge: Cambridge University Press, 2010).

The paper draws comparatively on the political finance frameworks of other major democracies only in a limited and specific way: to identify design features that have addressed particular regulatory vulnerabilities rather than to propose wholesale institutional transplant. The institutional, cultural, and political contexts of the United States, Germany, or the United Kingdom differ from India’s in ways that make simple borrowing unreliable. Where comparative examples appear, their function is illustrative rather than prescriptive.

V. MAIN ANALYSIS

A. *The Architecture of Political Black Money in India*

Any quantitative account of undisclosed political finance begins with an admission of methodological limitation: the very opacity that defines the phenomenon makes precise measurement impossible. The available data nevertheless tells a revealing story. In the financial year 2022–23, ADR documented declared income across national parties of approximately Rs. 3,582 crore.¹¹ Of that declared total, over half — roughly Rs. 1,900 crore, representing 53 per cent of disclosed receipts — was attributed by the parties themselves to what Section 29C of the RPA classifies as undisclosed sources, meaning individual contributions below the Rs. 20,000 threshold that triggers mandatory reporting.¹² The picture this data produces is of a political finance system in which even the declared numbers contain a majority component that is legally invisible.

Three distinct channels carry this undisclosed money. Corporate donations, particularly from firms operating in sectors where government approvals and discretionary licensing decisions create substantial rent-seeking opportunities — extractive industries, real estate, pharmaceuticals, construction — represent the largest volume channel. The transactional logic is well-documented: regulatory latitude is extended or

¹¹Ass’n for Democratic Reforms & National Election Watch, *Analysis of Source of Funds and Expenditure of National Political Parties: 2022–23* (New Delhi: ADR, 2024) [hereinafter ADR Finance Analysis 2022–23].

¹²RPA, supra note 1, § 29C (requiring disclosure of contributions above Rs. 20,000).

withheld in ways that correlate with financial contribution flows. Electoral bonds were the most recent and most formally sophisticated vehicle for this exchange. Their predecessors — fictitious advertising agreements, inflated consultancy invoices, shell company distributions — remain in use alongside them.

The second channel connects electoral financing to organised criminal networks. Politicians with pending criminal cases, who represent an alarmingly high share of sitting legislators, typically entered public life with financial backing from criminal enterprises whose interests they subsequently protected through legislative and executive intervention. The arrangement has a self-reinforcing quality: the money buys political access, and political access protects the money.

The third and least visible channel involves foreign illicit capital cycling back into Indian electoral politics through round-tripping arrangements. Funds generated domestically through illegal activity or aggressive tax structuring move offshore via hawala networks, mispriced trade invoices, or opaque corporate structures, and return as foreign investment through jurisdictions with weak beneficial ownership transparency. The 2016 and 2020 amendments to the Foreign Contribution Regulation Act, which extended political party exemptions in ways that relaxed precisely the barriers this channel requires, substantially widened rather than narrowed this pathway.

B. The Constitutional and Statutory Framework

India's regulatory framework for political money rests on two primary statutory foundations: the Representation of the People Act 1951 and the Income Tax Act 1961.¹³ Under the RPA, per-candidate spending caps apply during election periods, parties must disclose contributions above the statutory threshold, and donations from government entities and foreign sources are prohibited. The Income Tax Act

completes the framework by exempting parties from taxation on all income, including donations, provided they maintain audited financial records — a condition that, in practice, yields audits that confirm the existence of accounts rather than the accuracy of their contents.¹⁴

The regime's most conspicuous deficiency is the absence of any enforcement body that is both adequately equipped and structurally independent. The Election Commission's expenditure monitoring is a genuine activity, not a fiction, but it is confined to the formal campaign period, operates through observer teams whose capacity is finite, and cannot conduct the forensic financial investigations that would be necessary to pierce the veil of structured sub-threshold transactions. The tax authorities and the Enforcement Directorate have investigative resources that the ECI lacks, but both are executive agencies appointed by and ultimately accountable to the executive branch that benefits most from the opacity they are nominally charged with penetrating.

The constitutional dimension of political finance regulation acquired its present shape through a doctrine of voter information rights that the Supreme Court built gradually from the free expression guarantee of Article 19(1)(a). Starting from the proposition that genuine democratic participation requires not merely the mechanical act of voting but the substantive capacity to make an informed choice, the Court moved progressively toward the position that the State cannot constitutionally withhold from voters material information about the candidates and parties seeking their mandate. That doctrinal foundation underpins the transparency interventions discussed in the following section.

C. Landmark Judicial Decisions

The trajectory of judicial intervention in political finance begins with *Association for Democratic Reforms v. Union of India* in 2002¹⁵ and its sequel, *People's Union for Civil Liberties v. Union of India* in

¹³RPA, supra note 1, §§ 77–79, 29C.

¹⁴Income Tax Act, 1961, § 13A (India) (providing blanket tax exemption for political parties in exchange for maintenance of audited accounts).

¹⁵*ADR I*, AIR 2002 SC 2112, ¶¶ 14–17 (India) (holding that voters possess a fundamental right under Art. 19(1)(a) to know the antecedents, assets, and liabilities of candidates).

2003.¹⁶ The *ADR* judgment is remarkable as an exercise in constitutional construction: asked whether the ECI could require candidates to disclose criminal records, declared assets, and educational qualifications on nomination papers, the Court held affirmatively that the voter’s right to such information derived directly from Article 19(1)(a)’s free speech protection. The reasoning required the Court to move beyond the text’s literal scope to articulate a theory of expressive democracy in which meaningful communication between candidates and constituents is constitutionally protected on both the sending and the receiving end.

Legislative pushback came swiftly. Parliament enacted an amendment specifically targeting the disclosure requirement the Court had just mandated,¹⁷ and the Court was equally swift in striking it down. In *PUCCL*, the constitutional invalidity of the legislative override was affirmed, and the disclosure framework was reinstated.¹⁸ The episode established a template — judicial expansion, legislative contraction, judicial correction — that has repeated itself with variations across subsequent decades.

Ram Jethmalani v. Union of India (2011) shifted the focus to foreign black money, with the Court directing the establishment of a Special Investigation Team charged with investigating illegal overseas assets.¹⁹ The SIT’s subsequent reports made detailed operational recommendations — cash transaction ceilings, mandatory PAN linkage for significant financial transfers, strengthened banking oversight — that, although technically serious, encountered the familiar fate of Court-generated reform proposals: acknowledgment without implementation.²⁰ *Manoj Narula v. Union of India* (2014) introduced the concept of “constitutional morality” as an independent

constraint on executive conduct, adding an ethical dimension to the transparency framework that had until then been expressed primarily in information-rights terms.²¹

D. The Electoral Bond Scheme and Its Judicial Demise

The Electoral Bond Scheme that took effect in January 2018 occupied genuinely novel ground in the history of Indian political finance regulation.²² By creating a bearer-instrument mechanism through which any citizen or company could acquire SBI-issued bonds redeemable as party donations without any contemporaneous public disclosure of the purchaser’s identity, the scheme achieved something previous arrangements had managed only informally: a legally regularised system of anonymous corporate giving. The government’s stated rationale — that donor anonymity would protect contributors from political retaliation — was not without some surface plausibility. What it obscured was that the scheme created an asymmetry of information in which the incumbent party had access, through the SBI, to donor identities that were simultaneously concealed from every opposition party, every journalist, and every voter.

The evidentiary record that emerged from post-judgment disclosures is striking.²³ Rs. 16,518 crore in bonds changed hands between the scheme’s inception and its judicial termination in March 2024. The Bharatiya Janata Party captured approximately Rs. 6,061 crore of that total, amounting to close to half of all encashments. Investigative analysis of the disclosed data documented recurring patterns in which significant bond purchases by specific corporate

¹⁶*PUCCL*, AIR 2003 SC 2363 (India).

¹⁷Representation of the People (Third Amendment) Act, 2002, No. 72 of 2002, § 3 (India) (purporting to negate the affidavit requirement mandated in *ADR I*).

¹⁸*PUCCL*, AIR 2003 SC 2363, ¶ 18 (India) (striking down the legislative override as unconstitutional).

¹⁹*Ram Jethmalani v. Union of India*, (2011) 8 SCC 1 (India) (directing establishment of SIT on illegal foreign assets).

²⁰Special Investigation Team on Black Money, *Fourth Report to the Supreme Court of India* (New Delhi: SIT, 2014) [hereinafter SIT Fourth Report].

²¹*Manoj Narula v. Union of India*, (2014) 9 SCC 1, ¶ 73 (India) (articulating the principle of constitutional morality as a constraint on executive appointments).

²²Electoral Bond Scheme, 2018, ¶ 7(3) (India) (notified Jan. 2, 2018) (providing that the identity of the bond purchaser shall not be disclosed to any authority other than a competent court).

²³Election Commission of India, Electoral Bond Data (disclosed Mar. 2024) (on file with ECI website).

groups coincided temporally with regulatory decisions benefiting those same groups — favourable licensing outcomes, closed enforcement proceedings, public contract awards.²⁴ The coincidences were numerous enough to suggest a transactional logic operating beneath the scheme’s formal structure.

The unanimous Constitution Bench judgment delivered on 15 February 2024 dismantled the scheme on Article 19(1)(a) grounds.²⁵ Chief Justice Chandrachud’s opinion reasoned that the scheme’s deliberate anonymity structure — concealing donor identities from the public while leaving them accessible to the executive — destroyed the informational conditions necessary for accountable democratic governance.²⁶ The SBI was directed to transfer all bond transaction data to the ECI, which was required to publish it. The resulting public record provided, for the first time, concrete evidence of the scheme’s transactional dynamics — evidence that has not, as of this writing, produced a single criminal prosecution.

E. The Prevention of Money Laundering Act as an Enforcement Instrument

The Prevention of Money Laundering Act 2002 is, viewed through the lens of its statutory text and the powers it confers on the Enforcement Directorate, a formidable enforcement instrument.²⁷ The ED’s authority to search, seize, and attach property suspected of constituting or representing the proceeds of scheduled offences is broad and has been used extensively: by the close of the financial year 2023–24, the value of properties cumulatively attached under the Act had reached Rs. 1,23,820 crore.²⁸ Those

figures are real. The question they leave unanswered is whether the attachment record reflects the neutral application of statutory criteria or a politically calibrated enforcement strategy.

The bail jurisprudence surrounding Section 45 illustrates the PMLA’s contested institutional character. In *Nikesh Tarachand Shah v. Union of India* (2018), the Supreme Court invalidated the Act’s twin-conditions bail provision on the ground that its effective presumption of guilt violated the Articles 14 and 21 guarantees.²⁹ Parliament’s response — the near-immediate reinstatement of the invalidated conditions through Finance (No. 2) Act 2019³⁰ — was validated by a subsequent Constitution Bench in *Vijay Madanlal Choudhary v. Union of India* (2022).³¹ The ED emerged from that sequence with its powers substantially confirmed. Whether those powers serve their anti-money-laundering mandate or function primarily as instruments of political pressure is a question the legal texts cannot answer; only enforcement data across political cycles can begin to do so.

The pattern that emerges from an analysis of PMLA prosecutorial activity over the past decade is one in which political affiliation correlates with enforcement attention in ways that are difficult to explain by reference to objective criteria alone. Opposition politicians and business figures whose financial relationships are with parties outside the ruling alliance face disproportionate investigative and prosecutorial action, particularly in electoral seasons. That observation does not exonerate anyone who may genuinely have laundered money. But it does raise a structural question about whether an enforcement body whose senior appointments are controlled by the

²⁴Nitin Sethi, “The Electoral Bond Bazaar,” *The Wire*, Feb. 26, 2024.

²⁵Ass’n for Democratic Reforms v. Union of India (Electoral Bond Case), (2024) SCC OnLine SC 280 (India) [hereinafter *Electoral Bond Case*].

²⁶*Electoral Bond Case*, (2024) SCC OnLine SC 280, ¶¶ 97–102 (India) (holding unanimously that the scheme violated Art. 19(1)(a) and directing SBI to disclose all purchaser and encashment data to ECI).

²⁷Prevention of Money Laundering Act, 2002, as amended by Finance (No. 2) Act, 2019, § 45 (India) [hereinafter PMLA].

²⁸Enforcement Directorate, *Annual Report 2023–24* (Government of India), table 3.1 (reporting cumulative attachment of Rs. 1,23,820 crore).

²⁹*Nikesh Tarachand Shah v. Union of India*, (2018) 11 SCC 1 (India) (striking down PMLA § 45 twin-conditions as violative of Arts. 14 and 21).

³⁰Finance (No. 2) Act, 2019, § 236 (India) (reinstating twin conditions under PMLA § 45 following *Nikesh Tarachand Shah*).

³¹*Vijay Madanlal Choudhary v. Union of India*, (2022) 9 SCC 321 (India) (upholding reinstated twin conditions and broad ED attachment powers).

executive branch can credibly investigate the financial conduct of the political actors who make those appointments.

F. Structural Sources of Regulatory Failure

The Rs. 20,000 reporting threshold built into Section 29C of the RPA is the single most consequential architectural defect in India's political finance disclosure regime.³² Its practical effect is to establish a perfectly legal mechanism for large-scale anonymous donation: any sum, however large, can be contributed without disclosure simply by distributing it across a sufficient number of sub-threshold transactions. This is not a regulatory loophole that requires sophisticated exploitation. It is an open invitation that every major party has accepted for decades. What makes the threshold particularly indefensible is that the statutory anti-money-laundering framework governing the banking sector specifically prohibits the transaction-structuring behaviour that the RPA's threshold implicitly authorises in the political finance context.

The candidate expenditure ceiling problem has a related but distinct character.³³ When the statutory limit for Lok Sabha campaign spending is set at a figure that every practitioner, regulator, and observer knows to be a fraction of what a genuinely competitive constituency campaign requires, the ceiling performs no regulatory function. It does not reduce spending; it simply converts honest reporting of spending into a route to disqualification. The predictable consequence is a universal culture of financial misrepresentation in which the first official act many legislators commit is filing a false expenditure return.

India's deepest regulatory failure in this domain is architectural: the country has never built a political finance enforcement authority that combines adequate investigative capacity with genuine independence from the executive branch. The ECI's expenditure oversight is real but structurally limited. The income tax authorities and the ED are capable but compromised by their executive accountability. No comparable democracy has successfully managed its political finance challenges without an institution that is both well-resourced and structurally insulated —

³²RPA, supra note 1, § 29C; see also ADR Finance Analysis 2022–23, supra note 11, at 4–6.

appointed through processes that the parties being regulated cannot control and exercising powers that they cannot easily override.

VI. FINDINGS

Five principal conclusions emerge from the foregoing analysis. Each is supported by the evidentiary and doctrinal record reviewed in Part V, and each carries direct implications for the reform agenda addressed in Part VII.

Finding 1 — Magnitude of the Dark Finance Problem: The distance between officially declared political expenditure and credible independent estimates of actual spending is too large to be attributable to measurement error or definitional disagreement. An estimated Rs. 55,000 crore in total electoral spending during the 2019 general elections, set against declared figures representing a small fraction of that sum, reflects a system in which undisclosed financing is not incidental but constitutive. The additional finding that over half of declared national party income originates from legally unattributable sources confirms that opacity is the systemic norm, not an occasional deviation from it.

Finding 2 — The Judicial-Legislative Cycle: The Supreme Court has constructed, across successive decisions from 2002 to 2024, a coherent constitutional doctrine requiring transparency in the financial underpinnings of electoral competition. Each doctrinal advance has been met with legislative or executive responses calibrated to preserve the formal architecture of the court's holding while eliminating its practical effect. This cycle is not a series of isolated incidents. It is a structural feature of a system in which those who must enact transparency laws are the primary beneficiaries of the opacity those laws would displace.

Finding 3 — The Electoral Bond Architecture: The Electoral Bond Scheme was not a transparency measure that failed through poor design. It was an opacity mechanism that succeeded through deliberate design. Its structure — publicly anonymous but administratively traceable to the executive — gave the incumbent political formation informational

³³RPA, supra note 1, § 77 (setting expenditure ceiling at Rs. 70–77 lakh per Lok Sabha constituency).

advantages over opponents and the public while maintaining a legal facade of regulated giving. The correlations between bond purchase patterns and regulatory outcomes documented by investigative journalism are consistent with systematic transactional relationships, not coincidental timing.

Finding 4 — PMLA and Enforcement Selectivity: The Enforcement Directorate's impressive aggregate attachment statistics do not, on closer examination, reflect neutral enforcement of the money laundering statute. The observable correlation between enforcement activity and political alignment — with opposition-affiliated figures facing disproportionate investigative attention, particularly before electoral contests — indicates that the PMLA functions at least partly as an instrument of political competition rather than exclusively as a tool for suppressing illicit finance flows. This is an institutional independence problem, not a statutory one.

Finding 5 — Structural Incompleteness: India's political finance regulatory architecture has three structural gaps that the available evidence identifies clearly: the absence of an independent enforcement authority with genuine investigative capacity; a candidate expenditure ceiling that incentivises falsification rather than constraining spending; and a donation disclosure threshold broad enough to render the majority of party financing effectively invisible. Closing any one of these gaps through legislative intervention is politically difficult. Closing all three would be transformative — which is precisely why it has not happened.

VII. CONCLUSIONS AND SUGGESTIONS

A. Summary

The Supreme Court's record in this domain is one of principled and persistent constitutional engagement with a problem whose full resolution lies beyond judicial reach. From the initial disclosure mandates of 2002 and 2003 through the invalidation of the Electoral Bond Scheme in 2024, the Court has consistently held that voters are constitutionally entitled to the financial information necessary for

genuine democratic participation, and has consistently refused to accept that the legislature's formal compliance with its orders satisfies that entitlement when the practical effect of that compliance is nil. That record deserves acknowledgment.

What it does not and cannot deliver is an enforcement infrastructure. Courts issue directions; they do not conduct audits, analyse transaction records, or maintain real-time financial disclosure portals. The institutions equipped to do those things are executive agencies, and executive agencies in a democracy are ultimately controlled by the elected officials whose financial conduct those agencies are supposed to scrutinise. That circular dependency is the fundamental structural problem this paper has sought to diagnose. Resolving it requires institutional reform of a kind that judicial decisions can recommend but not compel.

B. Legislative Reform Suggestions

The core legislative reforms required are well-established in the literature and have been formally recommended by the Law Commission.³⁴ The existing donation disclosure threshold should be replaced with an obligation covering all contributions above a genuinely minimal amount — Rs. 2,000 represents a reasonable calibration point — transmitted exclusively through auditable digital channels and published on a real-time public portal. The per-candidate expenditure ceiling requires recalibration against actual competitive campaign costs, combined with an enforcement mechanism — mandatory forensic audit by an independent body — that removes the option of self-certified false reporting. A state electoral funding programme, scoped to provide meaningful support for parties that meet verified representation thresholds while reducing their dependence on large private donors, should be introduced along the lines recommended in Report No. 255 and the earlier Goswami Committee proposals.

The foreign contribution amendments deserve priority attention.³⁵ The 2016 and 2020 modifications to the

³⁴Law Commission Report No. 255, *supra* note 6, at 83–89 (recommending state funding of elections and elimination of sub-threshold donation anonymity).

³⁵Foreign Contribution (Regulation) Act, 2010, as amended by Foreign Contribution (Regulation) Amendment Act, 2020, §§ 2(1)(j), 7 (India)

FCRA, which effectively created new pathways for foreign-sourced money to enter Indian political financing under regularised conditions, moved regulatory policy in the opposite direction from the one the evidence supports. Reversing them, and tightening the definition of foreign source to close the round-tripping pathways that offshore-India-offshore capital movements create, should be treated as a matter of some urgency.

C. Institutional Reform Suggestions

A National Political Finance Authority — established by statute, appointed through a process that the regulated parties cannot individually control, endowed with powers of financial investigation that include compulsory production of records and witness examination, and authorised to impose penalties on parties and candidates proportionate to the seriousness of violations — is the reform on which all other reforms ultimately depend.³⁶ Disclosure rules without an independent enforcer are advisory. Expenditure ceilings without forensic audit capacity are nominal. The disqualification provisions of the RPA should additionally be extended to cover candidates facing charges relating to specified financial offences, a recommendation the Law Commission has made and the legislature has consistently declined to adopt.

The problem of dark electoral finance will not be resolved through incremental adjustment.³⁷ The forces maintaining the current system — the financial interests of regulated industries, the competitive advantages incumbents enjoy under opacity, the institutional inertia of agencies habituated to working within the existing framework — are substantial and self-reinforcing. What can shift them is a combination of sustained civil society pressure, informed public engagement with the connection between anonymous political money and captured governance outcomes, and, eventually, a legislative coalition willing to accept short-term political costs in exchange for a finance system that serves the constitutional principle

(expanding the definition of ‘foreign source’ and inserting retrospective exemption for political parties).

³⁶Lily Thomas v. Union of India, (2013) 7 SCC 653 (India) (extending disqualification provisions to

of government accountable to its citizens rather than to its donors. The judicial record surveyed in this paper demonstrates that courts can keep that principle alive through periods of determined legislative resistance. The work of making it operational belongs to everyone else.

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³⁷Transparency International, *Corruption Perceptions Index 2023* (Berlin: Transparency International, 2024) (ranking India 93rd of 180 countries).

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