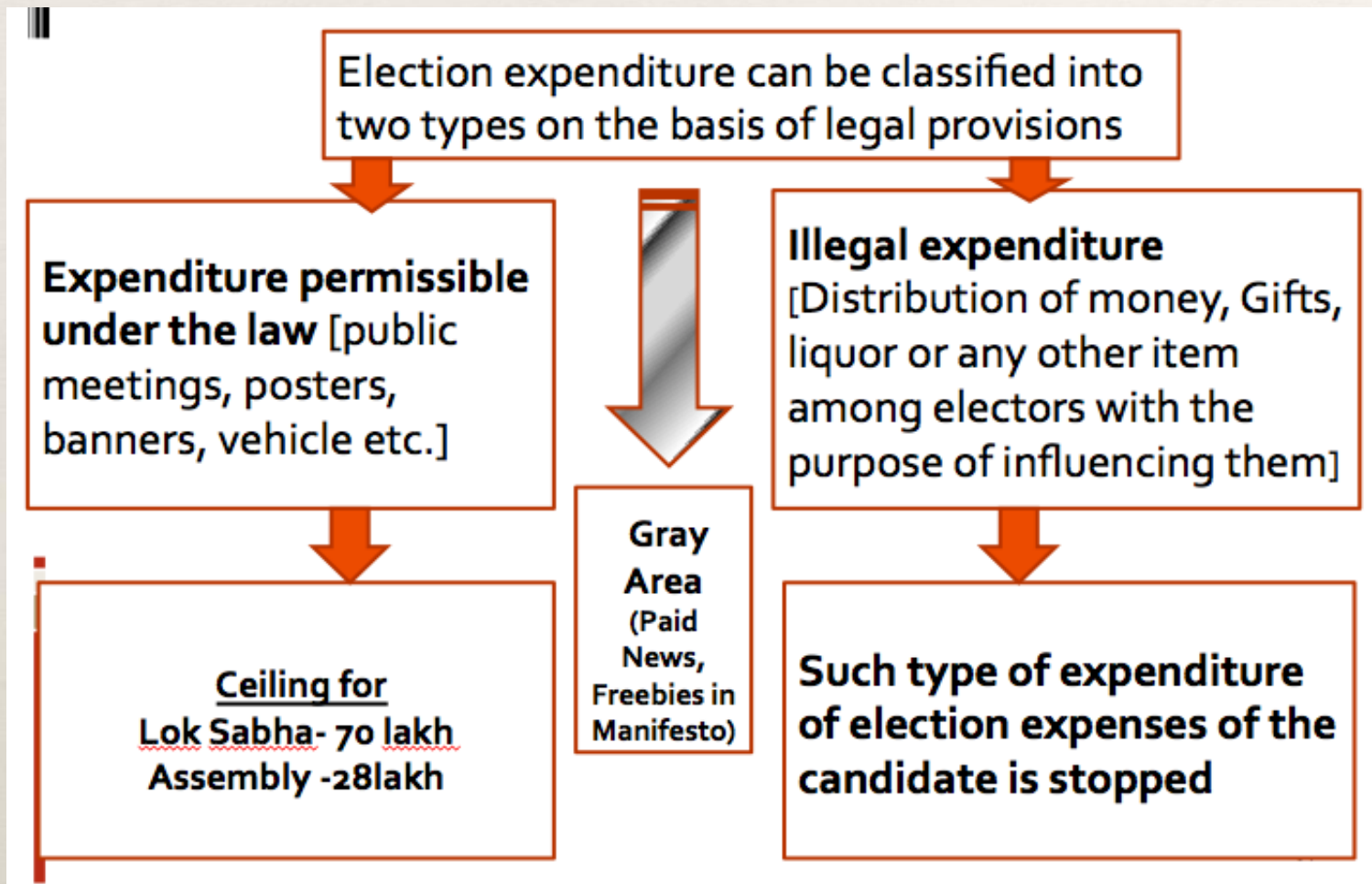


**Pervasive Role of Money
Power in Elections and
Measures taken by Election
Commission of India**

★ Two kinds of Political Finance:

- Party Finance – Political party finance unrelated to elections
- Campaign Finance – Election-related finance of party and candidates

★ 2 Kinds of Election Expenditure



Kinds of Political Expenditure

- Advertisement and Publicity (print, electronic and social media)
- Hidden Advertisements (paid news)
- Non advertising expenditure, including:
 - i. Operational and administrative costs like Polling agents, Campaign agents, Kiosks
 - ii. Polling, market research, and campaign design and management, Spin Doctors
 - iii. Rallies, events, and direct contact with voters
 - iv. Distribution of money and other direct benefits to voters, including vote buying

Corrosive Effects of Money in Elections

- Uneven playing field
- Manipulation of electoral politics by moneyed interests and political exclusion of marginal players
- Post-election effect on governance and policy
- Inflow of illicit money into the system and
- Vote buying

Table 1: Result of ECI Enforcement in 2014

Cash Seizure	Rs. 3038 million
Liquor Seizure	Rs. 65.94 lakh litres (worth Rs.918 million/ \$14.34 mn)
Drugs Seized	Drugs seized Rs. 48,004 kg (worth Rs.8045 million/ \$125 mn)

Cash Flows during Elections

- * Cash in envelopes in morning newspapers pushed beneath the door of the voter.
- * Through Self Help Groups (SHG) for onward distribution among women voters.
- * Cash given in advance before notification of election to the local leaders for distribution among voters.
- * Cash given to Leaders of rival political parties, rival candidates not to seriously campaign in elections
- * Distributing Cash for those who come to attend public rally arranged by party or candidate.
- * Cash given to journalists or media men to write positively about the candidate or to write pessimistic news of rivals
- * Giving cash for constructing toilets, tube wells or mobile phone with top up cards or laptops to the voters or local leaders.
- * Organizing mass marriage functions during election process and bearing the entire cost of marriage.
- * Distribution of liquor, drugs, poppy husks among the voters.
- * Distributing two wheelers SUVs or Luxury vehicles to appease local party leaders.

Challenges in Regulating Election Finance

No law regulating Political Parties

No ceiling on Party campaign expenditure

Anonymous donations received by political parties

No laws regulating media and social media during elections

Cash economy and no laws relating to cash transactions

No pre-candidature accounting of expenditure by candidate

Low level of awareness of voters and giving/acceptance of bribes with impunity

Legal Framework

- * Section 77(1) of the RPA requires every candidate to keep a separate and correct account of all expenditure in connection with the election, incurred or authorised by him or by his election agent from the date of filing nomination and till the date of declaration of result.
- * Travel expenses of specified leaders (star campaigners) of the political party of the candidate, for propagating programme of the political party - are exempt from being booked to the candidate's account
- * Section-78 of RPA requires every candidate to file a true copy of election expenses before the DEO within 30 days of the date of declaration of election results.
- * Section 10A authorizes disqualification of a candidate if the ECI is satisfied that the candidate has failed to file the account of election expenses in the time and manner
- * Rule 90 of the CE Rules, 1961, prescribes the ceiling of election expenses for individual candidate.
- * Section 171H of the IPC prescribes fine of Rs. 500 as punishment for unauthorized campaign expenses incurred on behalf of a candidate.

Legislative Handicap

- * The Law which should form the basic framework for EC action in such matters, is seriously wanting - EC action to curb money power during elections, is purely executive action, under Article 324.
- * Certain court judgments have attempted to fill these gaps by empowering the EC to take action in a legal vacuum, while others have curbed EC power.
- * For instance, in a recent PIL the Madras HC called for more rigour of the EC's seizures of unaccounted cash to check money power during elections.
- * However, certain judgments such as of Gujarat HC in *Election Commissioner v. Bhagyoday Janparishad*, found that the EC's search and seizures were violative of the right to privacy and the RPA did not confer such powers on the EC. An appeal against the Gujarat High Court judgment is currently sub-judice at the Supreme Court.
- * Ultimately, much of the enforcement action taken by the EC is handicapped without either legislative backing or clear and consistent legal sanction.
- * With no hope of legislative back up, EC looks to the Supreme Court for a clear and categorical adjudication of its role during elections, and support for executive action taken to curb money power.

Political Party Expenditure

- * While expenditure ceilings exist vis-à-vis individual candidates, parties are free to spend without limit in the name of 'general party propaganda'.
- * Prior to the amendment of section 77(1) in 2002, candidates often misused the absence of a limit on party expenses, by simply shifting their expenditure to the party's account.
- * *Amarnath Chawla v. Kanwarlal Gupta*, a 1975 SC judgment came down heavily on this practice, holding that where expenditure could be "identified with the election of a particular candidate" it would be liable to be added to his expenses account as being impliedly authorized by him".
- * The judgment further held: "*The reasonable interpretation of the provision... [is]... that the legislature could never have intended that what the individual candidate cannot do the political parties sponsoring him, or his friends and supporters, should be free to do.*"

Political Party Expenditure

- * The law was later amended in 2002, to provide that the only expenditure exempted from being booked to the account of the candidate is the travel expenses of specified leaders (“star campaigners”) of the political party of the candidate, spent on “general party propaganda” of the party.
- * This amendment, ostensibly by way of clarification, has in fact compounded matters – it has in practice, enabled candidates to shift major items of expenditure to party accounts in the name of ‘general party propaganda’.
- * Thus, practically, it enables candidates to do indirectly, what the law prohibits them from doing directly.
- * In many cases, the average expenditure by parties on candidates exceeds the permissible candidate spending cap - as evident from Table 2.

Table 2: Candidate expenditure by National Parties in the Lok Sabha election, 2014

Party Name	Total Expenditure (Rs crore)	Number of Candidates	Average Expenditure per Candidate	Total contributions shown in 2013-14 (Rs. Crore)
BSP	30.05	503	0.06	0
BJP	714.28	428	1.6	166.7
CPI	11.73	67	0.1	1.28
CPI(M)	18.69	93	0.2	2.09
INC	516.02	464	1.11	66.47
NCP	51.34	36	1.42	14.02

Political Party Expenditure

- ★ In *Common Cause v. Union of India* in 1996, SC held that purity of elections were fundamental to democracy and “superintendence and control” vested in the ECI by the constitution under Article 324 included scrutiny over expenses incurred by a political party, candidate or other association of persons
- ★ In pursuance of the Common Cause judgment, the ECI issued instructions requiring political parties to submit a statement of accounts within 75 days of an Assembly election and 90 days of a general election.
- ★ However, most parties delay reporting their election expenses; for the Lok Sabha Elections of 2014, as on the due date i.e. 26th August 2014, only three national parties filed their statement of election expenditure.
- ★ Parties are required by Section 29C of the RPA to submit annual contribution reports, an account of all donations in excess of Rs. 20,000, received by the party. Failure to submit these reports merely results in the party losing its income tax exemption, but invites no penal consequences.
- ★ Furthermore, most parties bypass the rule on disclosure of donations above Rs. 20,000 by breaking the donations into smaller contributions of amounts less than Rs. 20,000.

Political Party Expenditure in 2014

Table 3: *Total Expenditure of National parties in Lok Sabha election, 2014*

Party Name	Total Expenditure in Lok Sabha election 2009 (Rs in crore)	Total Expenditure in Lok Sabha election 2014 (Rs in crore)
BSP	21.23	30.05
BJP	280.67	714.28
CPI	5.70	11.73
CPI(M)	10.26	18.69
INC	380.04	516.02
NCP	26.16	51.34

Political Party funding: Reality

Table 4: *Contribution reports of political parties*

Party	INC	BJP	BSP	NCP	CPM
Percentage of unknown funds	82.5%	73%	61.8%	91.58%	53.8%
Sum in Rupees Crore	1951.07	952.58	307.31	181.48	280.59
Number of unknown donors	9,75,535	4,76,290	1,53,655	90,740	1,40,295

Nearly 75% of parties' sources are unknown, while donations over Rs. 20,000 comprise only 9% of parties' funding.

Illicit Income and Cash Transactions during Elections

- * It is necessary to check cash payments and contributions in political finance as these can be illicit income
- * In the absence of statutory provision, EC (Transparency) **Guidelines 2014** specify the following:
 - Transactions between parties and candidates should be by account transfer only and not by cash.
 - All campaign expenses to be incurred from a single bank account, opened for the purpose.
 - Cash payment by parties exceeding Rs. 20,000 prohibited
 - Cash donations to be deposited in bank account within 10 days and Restriction on huge amount of cash in hand
 - Name and address of all donors to be maintained
 - Copy of audited account to be sent to Commission

Third Party Expenditure

- * Non-party or 'third-party' campaigners are individuals or organisations that campaign for particular candidates or parties in the run up to elections.
- * As noted in *Amarnath Chawla v. Kanwarlal Gupta*, (1975 SC) such campaigning may often incur expenditure for the benefit of the candidate in question. The court went on to hold that the candidate should specifically disavow such expenditure, in order for it to be excluded from his own account.
- * However, a later judgment, *Indira Gandhi v. Raj Narain*, (1975 SC) dispensed with the need for such disavowal. Since proving authorization by a candidate is difficult, and the penalty for unauthorized expenditure by third parties on behalf of a particular candidate is extremely low (Section 171H of the IPC sets this at Rs. 500), the purpose of expenditure caps on candidates can easily be frustrated, by simply routing expenditure through third party entities.

Bribery of Voters / Vote Buying

- * Bribery of voters is not a cognizable offence under IPC; should be made cognizable by amending CrPC re. 171B/171E of the IPC.
- * This will permit arrest and search without warrant, and allow investigations to be started without the permission of the court.
- * Currently, bribery of voters is a bailable offence attracting minimal punishment (one year imprisonment and/or fine) and premises cannot be searched without warrant.
- * Recommendation to amend the CrPC still pending with MHA.

Summary of ECI Measures to Regulate Campaign Finance

* Preventive Measures

- * Campaign for ethical Voting through Media
- * Village/ Ward level Awareness Group
- * Involving schools/colleges/ CSOs
- * Signing pledge for ethical voting

* Enforcement

- * Complaint Monitoring cell at District level
- * Flying Squads to act on complaints
- * Static surveillance Teams to put check-post
- * Video Surveillance Team to photograph all events, hoardings
- * Media certifying and monitoring committee to certify electronic advertisement and to monitor Paid News
- * Shadow Observation Register for each candidate

Summary of ECI Measures to Regulate Campaign Finance

* Enforcement

- * Expenditure Observer from outside the state
- * Inspection of accounts of the candidates by the Observers
- * Putting accounts of candidates on EC website for public viewing, after each inspection
- * Monitoring cash withdrawal from banks
- * Associating Income tax to keep surveillance on cash transport in airports and the constituency
- * Monitoring the production, distribution and sale of liquor during election campaign
- * Monitoring community feasts during election campaign
- * Candidate to disclose election expense account to ECI after election
- * ECI can disqualify a candidate in case of incorrect disclosure