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**ELECTION LAWS: UNDERSTANDING THE WEB OF POLITICAL CORRUPTION
IN THE AGE OF NEOLIBERALISM**

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ABSTRACT

Electoral reforms and market reforms are usually conceived as non-convoluting spheres, but in a democracy such as India, there's a mutual dependency on markets and politics. This dependence has given rise to a bilateral commitment between the political parties and the business houses. Firms spend more money on erecting barriers to effective competition than on improving themselves, a significant part of accumulated capital by the firms are being used to fund the political parties both legally and illegally to obtain certain political returns in the form of favourable policies and regulations. The authors attempt to link the rising political corruption in India to the social, economic, and political changes that occurred following the 1991 neoliberal reforms and seek to comprehend the causes and other elements that contribute to the growth of illicit financing in elections.

THE IDEA OF CORRUPTION:

While there are other types of corruption, for the sake of this study, we will concentrate on the concept of political corruption or collusive corruption. This sort of corruption involves officials breaching and manipulating rules, laws, and institutions for the advantage of the briber at the expense of the general public.³ The reason to focus on this aspect of corruption is that it has been suggested that this institutionalised corruption at the top is the one that creates and sustains petty corruption at the lower levels.⁴ We attempt to link the rising political corruption in India to the socio-economic and political changes that occurred following the 1991 neoliberal reforms, and seek to critically look at the legal framework within which political corruption plays out in India.⁵

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³ Sukhtankar, Sandip & Vaishnav, Milan, 2015. "Corruption in India: Bridging Research Evidence and Policy Options," India Policy Forum, National Council of Applied Economic Research, vol. 11(1), pages 193-276.

⁴ Ram, N. 2017. 'Why scams are here to stay?', Aleph Book Company: Aleph Book Company, 2017.

⁵ Bratsis, Peter. 2003. 'The Construction of Corruption, or Rules of Separation and Illusions of Purity in Bourgeois Societies', *Social Text* 21 (4 (77)): 9–33.

IS POLITICAL CORRUPTION INHERENT IN NEOLIBERALISM?

According to Raghuram Rajan and Luigi Zingales, an ideal free market competition benefits everyone while benefiting no one in particular.⁶ As a result, they claim that no one would have a vested interest in defending and promoting free markets. Marx also discusses how enterprises must constantly innovate themselves in order to achieve profits in a competitive market environment in *Wage, Labour, and Capital*.⁷ He says that if the firms don't innovate, they'll find that their investment yields diminishing returns over time. As a result, at some point they may find it more beneficial to use state authority to defend themselves and their products from free and fair competition. Rather than investing in research and development or improved business strategies, they often spend money on patents, lobbying, attorneys, political clout, and other hurdles to competition. Olson's thesis found in *Rise and Decline of Nations* also supports this claim. He argues that free market capitalism will become sclerotic due to the gradual accretion of "protective arrangements" formed by restricted particular groups. And that the political stability that goes hand in hand with the development of free-market economies itself creates fertile ground for the creation of these organisations.⁸ He further contends that this is why free-market economies and stable democracies are experiencing poor growth.

POLITICAL CORRUPTION AND THE NATURE OF THE POLITY

Susan Ackerman-Rose argues that Westminster-style parliamentary systems have the greatest probability to encourage legislators seeking re-election to focus on and provide broad-based public services rather than narrow-focused benefits to restricted groups. This is due to the fact that party-based and coalition-based governments may focus on the country's wider concerns rather than specific narrow interest groups.⁹

There are some faults with this hypothesis. In a Westminster model, if a coalition is formed by a number of small parties, the parties will be more concerned with serving their limited interest groups than with broad-based national gains. There is also the prospect of a weak opposition and a powerful ruling party. In such a situation, the opposition will be powerless to control the ruling party.¹⁰ Kanta Murali claims that narrow-capitalist coalitions made up of rich core

⁶ Rajan, Raghuram. And Zingales, Luigi. 2004. 'Saving Capitalism from the capitalists: Unleashing the power of Financial Markets to create wealth and spread opportunity'. Princeton, N.J: Princeton University Press.

⁷ Marx, Karl, and J. L. Joynes. 1893. *Wage-labour and capital*. London: Printed by the Twentieth Century Press.

⁸ Olson, Mancur. 1982. *The Rise and Decline of Nations: Economic Growth, Stagflation, and Social Rigidities*. New Haven, Conn.: Yale University Press.

⁹ Karat, Prakash. 2014. 'The Rise of Narendra Modi: A Joint Enterprise of Hindutva and Big Business', *The Marxist* 30(1): 3-15.

¹⁰ Kannan, K.P. and Raveendaran, G.. 2019. 'From Jobless to Job-loss Growth', *Economic and Political Weekly* 54(44): 38-44.

groups with significant business interests are the most favourable to a pro-business climate, and that the narrow-capitalist coalition's pro-business posture has a high risk of devolving into crony capitalism in the long run.¹¹ This is because the government's decision-making process becomes more arbitrary and discretionary as it has to focus more on capital accumulation and has to pander to narrow interest groups.¹²

Hence, this creates an environment conducive to the growth of political corruption. With this theoretical foundation in place, we will now attempt to assess the Indian situation.

SITUATING INDIA

The state's influence in India's economy shrank dramatically during the 1980s "pro-business" reforms and the early 1990s "pro-market" reforms.¹³ Although the economy was opened after the LPG reforms of the 1990s, only a few enterprises were ready to compete with the external competition. Many up-and-coming businesses were stifled as a result, and just a few grew at an exponential rate. 15 of the top 25 corporate groups in 2005 were also in the top 25 list before the liberalisation measures, according to Mazumdar.¹⁴ This indicates that there was little competition, and the major players remained in their positions. Figure 1 shows that the income inequality between the top 1 percent and the bottom 50 percent has grown manifold post the 1991 reforms. Complementarity, in the last 25 years, the concentration of earnings earned by India's top 10 corporations has also increased manifold. In 1993-94, the top ten profit-making corporations accounted for a third of the total profits earned of the largest 500. In Financial Year 2018, that percentage grew to 45 percent.¹⁵ So, where does this accumulated capital go?¹⁶

¹¹ Murali, Kanta. 2017. 'Caste, class and capital: The social and political origins of economic policy in India', Cambridge: Cambridge University Press, 2017.

¹² Munger C., Michael and Villareal-Diaz, Mario. 2019. 'The Road to Crony Capitalism', *The Independent Review*, 23(3): 1086-1653.

¹³ Kolhi, Atul. 2006. 'Politics of Growth in India, 1980-2005', (in 2 parts), *Economic and Political Weekly*, April 1 and April 8, (Volume 41).

¹⁴ Mazumdar, Surajit. 2008. 'Crony Capitalism and India: Before and After Liberalization', Working paper, *Institute for Studies in Industrial Development*, New Delhi.

¹⁵ Somvanshi, Kiran. 2018. 'The 2% of India Inc', Dec 1, 2018. <https://economictimes.indiatimes.com/the-2-of-india-inc/articleshow/66892530.cms> (accessed on June 13, 2021).

¹⁶ Sukhtankar, Sandip & Vaishnav, Milan, 2015. "Corruption in India: Bridging Research Evidence and Policy Options," *India Policy Forum*, National Council of Applied Economic Research, vol. 11(1), pages 193-276.

Income Inequality between top 1% and bottom 50%

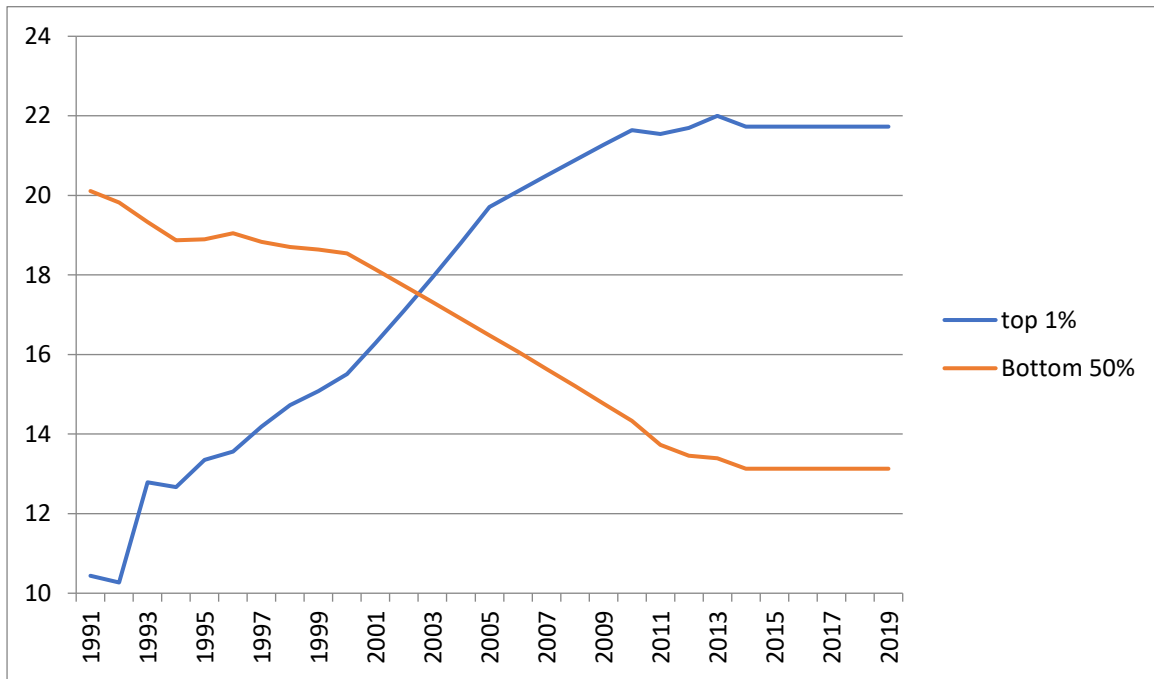


Figure 1: Income Inequality between top 1% and bottom 50% of the population. Source: World Inequality Database

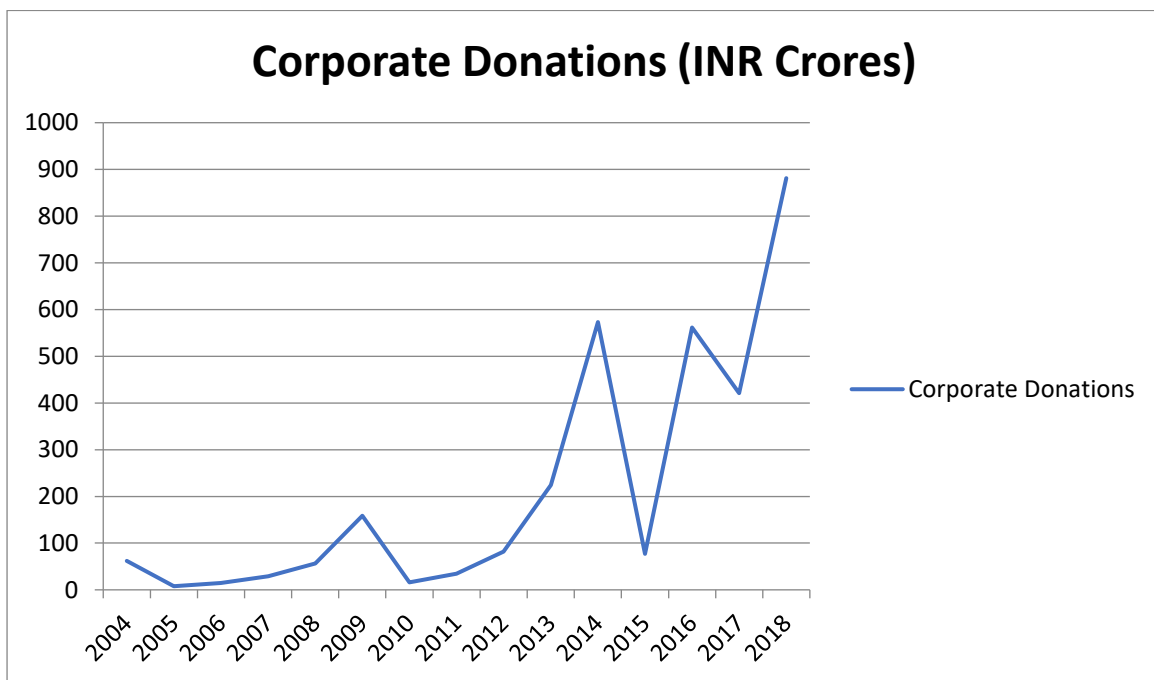


Figure 2: Rise in Corporate Donations. Source: Association of Democratic Reforms

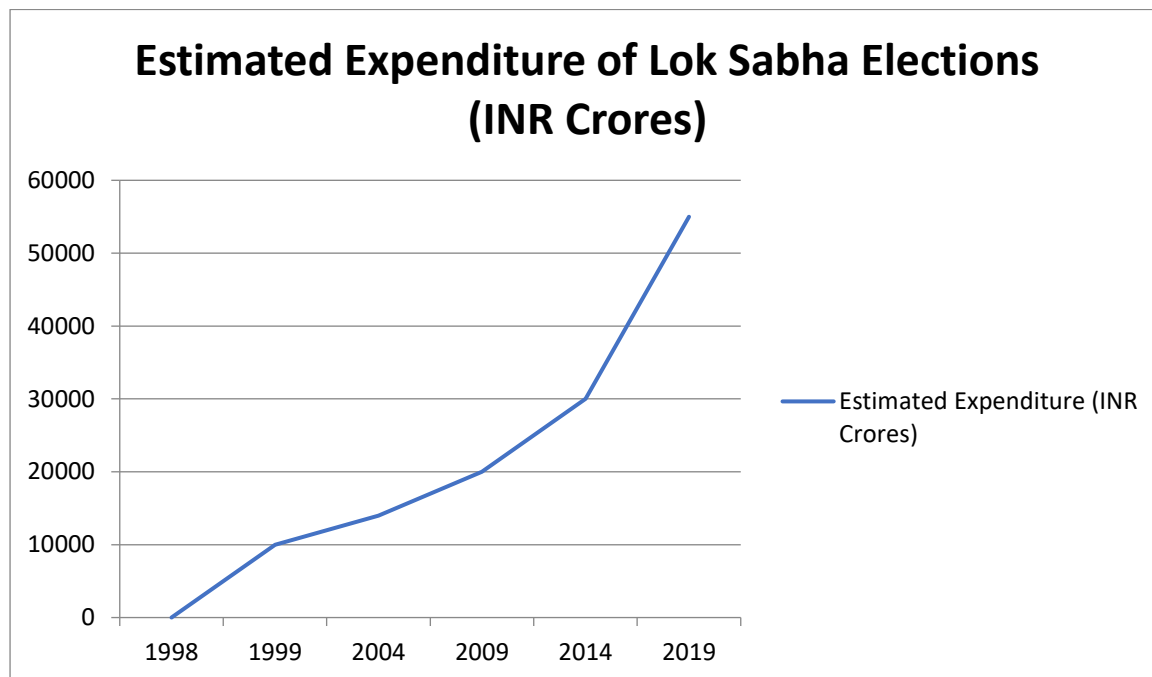


Figure 3: Rise in Election Expenditure. Source: Association of Democratic Reforms.

Mazumdar's analysis also reveals that the biggest Indian business conglomerates spend very little percentage of their profits on research and development. And Michael Walton states that rent-rich industries were the principal source of wealth for 43 percent of billionaires, accounting for 60 percent of billionaire wealth.¹⁷ As Kannan and Raveendran postulate, not only is India suffering from a lack of job creation, but it is also experiencing a decrease in job availability.¹⁸ This demonstrates that not much of the accumulated capital has been spent in improvement of capacity of the entities.

Rising Cost of Elections and Populism induced by Cronyism

But, India has seen a significant increase in election expenditure and corporate donations to parties as represented in Figure 2 and 3. The rising cost of elections due to the increased use of technology, media, and social media in electoral campaigns, has produced a demand among the political parties for corporate sponsorship.¹⁹ The costs of elections are also associated with the rise in populism and populist schemes in the country. India has experienced a significant

¹⁷ Walton, Michael. 2012. 'Where do India's Billionaires get their Wealth?', *Economic and Political Weekly*, 57(40): 10-14.

¹⁸ Kannan, K.P. and Raveendran, G.. 2019. 'From Jobless to Job-loss Growth', *Economic and Political Weekly* 54(44): 38-44.

¹⁹ The Economic Times. 2020. 'EC sets up committee for review of candidate expenditure limit', Oct 21, 2020. <https://economictimes.indiatimes.com/news/politics-and-nation/ec-sets-up-committee-for-review-of-candidate-expenditure-limit/articleshow/78795746.cms?from=mdr>.

rise in inequality (attributed to business – state nexus at the expense of larger public good) while simultaneously experiencing tremendous growth.

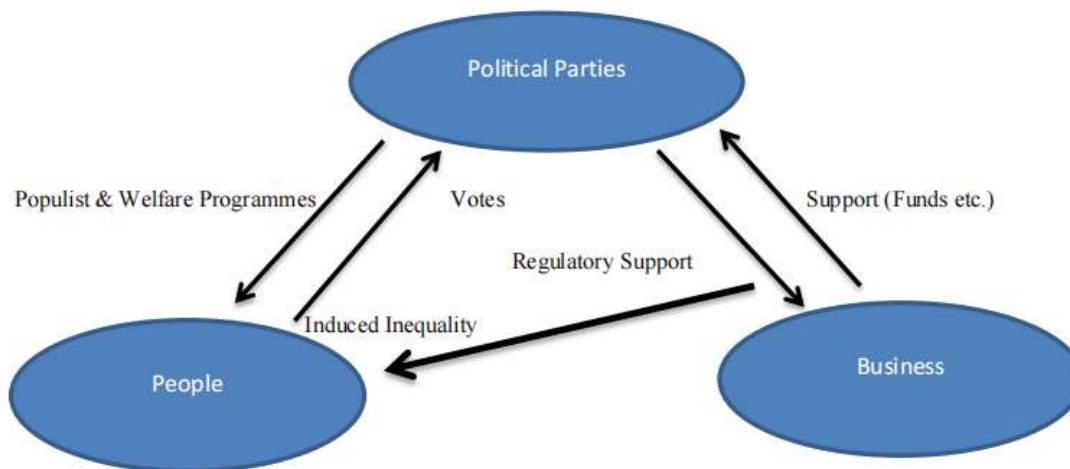


Figure 4: Web of populism, welfare schemes and political corruption (Cronyism)

Michael Walton says that this has given rise to the phenomenon Populism induced by cronyism.²⁰ Populist politicians who gain power frequently declare themselves to be "anti-establishment," "nativist," and "protectionist." In return, they have the obligation to serve the people and the usual way is through mass welfare programmes which could win them elections and broaden their party base. To fund these mass welfare schemes, the political parties have to depend on the narrow capitalists.²¹

This relationship of mutual dependence has given rise to a bilateral commitment between the political parties and the business houses. Consistent with the discussion made in the preceding sections that firms spend more money on erecting barriers to effective competition than on improving themselves, we hypothesize that a significant part of this accumulated capital by the firms are being used to fund the political parties both legally and illegally in order to obtain certain political returns in the form of favourable policies and regulations.

²⁰ Walton, Michael and Crabtree, J. 2018. 'Crony Populism'. Talk at the Centre for Policy Research and Trivedi Centre for Political Data, Ashoka University, streamed online at <https://www.youtube.com/watch?v=QGL-A5yHJVE&t=563s> (accessed on June 13, 2021).

²¹ Sen, Chiranjib. 2017. 'Curbing crony capitalism in India'. Working Paper. Azim Premji University, Bengaluru.

Effects of Cronyism induced Populism

But this has certain other social and political ramifications for our democracy too. First, People are diverted from larger public goods to immediate individual benefits. This leads to an individualization of social capital, spreads cynicism and undermines civic morals. Second, In order to thrive in this environment, socially and economically disadvantaged parties rely on the dominating parties. Third, Political parties are hence put in position to recruit criminals as they could be efficient agents in this larger machinery of political corruption. Fourth, this environment has been detrimental to women participation in politics as economic isolation, lack of property access and societal constraints all contribute to women being left behind. Hence, it becomes crucial to regulate political funding to save the ethos of democracy.

LEGAL REFORMS

The Election Commission of India has been doing an excellent job in conducting parliamentary and state elections over the years. But it has not fared well in curbing the illegal spending of candidates and political parties in violation of the limits put under law. The changes made by the Finance Act 2017 removed the '7.5% of average net profits of three years' limit on the total amount that a business entity could contribute for political funding.²² Further, it mandates the donor company to disclose only the total amount that has been contributed to political parties and does not require them to provide particulars of the beneficiaries and the corresponding amount donated to them which were required according to the previous law. This could lead to creation of a lot of shell companies to facilitate political funding.

Electoral bonds were a good means to streamline and bring much of the political funding under a legal framework. But in its current form it is detrimental to democracy as it allows companies and businesses to contribute huge amounts of money to political parties with due opacity and protection. Though the changes have brought a proportion of political funding under legality (though under-the-table transactions are still prevalent), journalists like N.Ram fear that it would lead to legal legitimization of quid pro quo deals and bribery.

Regarding regulation of electoral spending, though the ECI sets limits for the expenditure done by a candidate during elections, the expenditures done by the political parties do not have any. It is this gate through which spending on advertisements, media and social media propaganda, helicopters, etc., are being made. Thus, there is a necessity to keep a check on political party finances. In this context, disclosure of information becomes very crucial. Transparency should

²² Ram, N. 2017. 'Why scams are here to stay?', Aleph Book Company: Aleph Book Company, 2017.

be brought to different levels. On the one hand, the companies donating through electoral bonds should disclose the information of the beneficiary and the corresponding amount donated for every financial year. And on the other hand, political parties' accounts should be audited by an independent third party and a limit should be set on their expenditure. Transparency in financial affairs of the party will help the voters to make an informed and rational decision during elections, and also aid in promotion of intra-party democracy and decrease the tendency of the leaders to become authoritative. This will help in curbing discretion in decision making which is an important enabler of political corruption.

A percentage of large political donations should be taken as tax and should be diverted to a state electoral funding mechanism. This body should provide funding to deserving but economically disadvantaged candidates and parties and thus work in creating a level playing field. Banning corporate and business funding to political parties and bringing in complete state funding is not a feasible move.