

## IMPACT OF LEGAL REFORMS ON THE SUBMISSION OF ASSETS AND LIABILITIES BY CANDIDATES AND POLITICAL PARTIES

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### ABSTRACT

The researcher analyses the impact of legal reforms on the submission of assets and liabilities by political parties and candidates as part of political finance in a holistic way. A comparative analysis is utilized using both qualitative and quantitative methods among multiple countries which leads to positive self-selection, improved pools, signal relevance, and inclusive democracy. The overall research target area lies within Asia owing to a similar status as a part of a developing country regime. A special case for Pakistan is presented by comparing it with other Asian countries with a particular interest in the impact of legal reforms on the submission of assets and liabilities by political parties and candidates. This comparative methodology helps the researcher to present multiple ways forwards to improve legal reforms on the submission of assets and liabilities by political parties and candidates.

### 1. INTRODUCTION

The role of political parties and political candidates for the promotion of democracy is a recognized fact; however, the confidence of people in political parties and candidates is waning owing to uncertainties in political finance. Among multiple facts, election expenses and assets/liabilities are major particulars in the concept of political finance. Not only are these aforementioned factors correlated but also affect one another. Multiple research questions are addressed with qualitative and quantitative analysis in this research like what are the rules and legal status of assets and liabilities in multiple countries? What should be declared in assets and liabilities? When should these assets and liabilities be declared? How should this regime be monitored? What should be the appropriate sanctions to improve the regime of political finance? Should this information be open to the public or not? All of the questions are discussed with a special indication for the submission of assets and liabilities by candidates and political parties. It is observed with a comparative analysis that legal reforms on submission of assets and liabilities result in multiple benefits for instance

positive self-selection in which candidates and political parties themselves lead the purging process. Similarly, it ensues into an improved pool of politicians because the asset declaration regime discourages the corrupt political elite to contest elections again. Likewise, inclusive democracy and an increase in people's confidence along with GDP growth are some of the other crucial impacts of legal reforms on the submission of assets and liabilities of candidates and political parties. Afterward, multiple challenges are highlighted and recommendations are provided to cope with these challenges about the declaration of assets and liability regime. Undeniably, legal provisions on the submission of assets and liability lead to multiple benefits as discussed above; moreover, comparative analysis not only helps the researchers to identify multiple lacunas in the legal systems around Asia but also provides insight to improve legal reforms on the submission of assets and liabilities in Asia in general and particularly in Pakistan.

## 2. Statement of Problem:

This paper examines how legal reforms regarding the disclosure of assets and liabilities by candidates and political parties lead to the elimination of the political elite, promote positive self-selection, and expand the pool of candidates eligible to participate in elections. It, moreover, improve inclusive democracy and increase the confidence of people in the political elite.

## 3. Literature review:

In this paper Pakistan is considered at a central stage, thereby, relevant provisions in the Constitution of Pakistan, 1973, are studied. Articles 62 and 63 elaborate qualification and disqualification of candidates which also incorporates the legal standing on the submission of assets and liability. Article 62 uses the words “non-profligate” and “honest” which is relevant to the concept of assets and liabilities, for example, if a candidate is habitual of bank default, it questions his qualification, similarly, if a political party is not declaring its assets properly, it questions its honesty. Likewise, Article 63(1)(n) states that condition for disqualification in case of loan, it also includes family of candidate.<sup>1</sup>

Likewise, Election Act, 2017, also elucidates legal framework on the submission of assets and liabilities by candidates and political parties. Section 60(2)(d) states that statement of assets and liabilities by a candidate along with his spouse must accompany the nomination name of a candidate on Form B- in case of National Assembly and Provincial Assemblies. Section 110, in the similar way, demands statements of assets and liabilities for Senate election. Sections 62 and 112 deals with scrutiny of nomination papers for Assemblies and Senate respectively and both of these sections asserts fulfilments of conditions mentions in sections 60 and 110. Section 132 put a ceiling on election expenses, it is relevant considering the fact that assets has a direct correlation with election expenses. Section 137 addresses the submission of statements regarding assets and liabilities. It states that each assembly member must submit their statement of assets and liabilities, and those of their spouse and children, using Form B before December 31st. The Election

Commission of Pakistan has the authority to suspend the membership of any Assembly or Senate member who fails to submit this statement. Besides, there is a provision that allows for a relaxation period of 120 days in cases of falsely submitting material particulars. Section 173 outlines the conditions for being found guilty of providing a false statement of assets or declarations. This includes responsibilities related to loan payments, taxes, government dues, and utility expenses. Section 210 ensures that all the political parties submit their annual income, expense, assets and liability statement on Form D after a proper audit by a Chartered Accountant. Section 211 deals with campaign finance with details of donations and these details should be submitted to ECP if it is more than one hundred thousand rupees. Last but not the least, section 212 states that a political party stand dissolved in case of foreign funded political party or it is prejudicial to the sovereignty of Pakistan.<sup>2</sup>

Moreover, Election Rules, 2017, rule 159 on submission of consolidated statement of accounts to the commission further provide details on the expenses, sources, declaration of assets and liabilities on Form D which should be audited by a chartered accountant.<sup>3</sup> Likewise, ECP annual reports of 2018, 2019 and 2020 mentions of legal provisions on the submission of assets and liabilities of candidates and political parties. ECO annual report, 2020, explicitly mentions of this part of political finance and also recommend digitalization of these details. The details of about 1190 parliamentarians have submitted their statements on assets and liabilities which have been digitalized by ECP for comparative analysis with their previous submissions. It also put emphasizes on the scrutiny of the statement submitted by candidates and political parties.

There are multiple case laws which elaborates legal ambit of the Election Act, 2017, for example, in the case of Speaker National Assembly of Pakistan v. Habib Akram the Hon'ble Supreme Court set the mechanism wherein it was clarified that failure to file affidavit on assets and liability details before the Returning Officer would render nomination paper incomplete and liable to rejection.<sup>4</sup> Similarly, The Hon'ble Supreme Court ruled in Khawaja

<sup>1</sup> The Constitution of the Islamic Republic of Pakistan

<sup>2</sup> The Election Act, 2017

<sup>3</sup> The Election Rules, 2017

<sup>4</sup> PLD 2018 SC 678

Muhammad Asif v. Muhammad Usman Dar that a legitimately acquired asset should not be used to disqualify a candidate when considering a dishonesty case in a judicial proceeding. When considering the case of dishonesty in judicial proceedings, this is something that should not be forgotten or overlooked. Non-disclosure would certainly depend upon subject assets, the nature of the assets, the mode and the method on the basis of which it was acquired. A candidate may opt bonafidely not to disclose an asset as he may have felt that he was never a beneficial owner but the test that is being undertaken here is the intention of the candidate which would make him an honest or dishonest person.<sup>5</sup> Likewise, In the case of Muhammad Hanif Abbasi v. Imran Khan Niazi <sup>6</sup> and judgment in the case of Rai Hassan Nawaz Vs. Haji Muhammad Ayub <sup>7</sup>, SCP asserts that The law does not envisage that every non-disclosure of asset would end up in an ultimate disqualification unless the mala fides are attributed and source to acquire such assets are not transparent and vague reasons were assigned as to the non-disclosure of such assets. In view of above facts and circumstances. Last but not the least, in Nida Khusru and Mozzam Ali Khan case, justice Mr. Muhammad Shafi Siddiqui is of the view that the alleged non-disclosure is not the one that may ultimately lead to invalidation of nomination papers or disqualification as being member of the Assembly, hence these issues are answered in “negative”.

Moreover, Marcin Walecki, in a paper, published by Transparency International (TI) explores the venues of corruption in the political finance, mentioned of funding from infamous sources and personal enrichments as the two major corrupt practices by candidates and political practices. He is of the opinion that the legal framework for political finance ought to be extensive, include provisions for funding sources, permitted expenses, disclosure, reporting, enforcement, and sanctions, be straightforward, objective, and based on political consensus. He cited positive development in countries like Brazil, Costa Rica

and Canada; mixed development in Kenya and Uganda; and negative development in Azerbaijan and Zambia. He also talks about how businessmen's vested interests directly affect policy outcomes through legal political donations.<sup>8</sup>

Similarly, a research paper by TI conducts a comparative analysis of multiple countries in Asia including Pakistan, Nepal, India, Bangladesh, Afghanistan and Tajikistan. While doing comparative analysis, author addresses various segments of the asset/liability regime that what should be declared and how it should be declared along with frequency of declaration and its disclosure to the general public. It also brings to the fore light sanctions and some recommendation to improve the legal framework.<sup>9</sup> In another research paper, researcher argues that strong legal framework for the submission of assets and liabilities along with its public disclosure leads to positive reselection of politicians, it also explains this concept by furnishing example of Panama leaks and its repercussion around the globe. With particular reference of India, researcher asserts that Supreme Court of India's ruling on Right to Information Act, 2003 results into new blood in India politics. The author asserts that disclosure primarily discouraged candidates from running for office due to privacy concerns, as suggested by some of the consequences of the Panama Papers. On the other hand, we would anticipate at least some immediate effects and an elect on candidates not running for office. Our findings raise suspicions of corruption because incumbents self-select out of office rather than reveal asset accumulation while in office. It also concludes that legal provisions for declaration of assets and liabilities leads towards good governance and high GDP growth rate.<sup>10</sup>

In yet another research paper, published by National Democratic Institute for International Affairs, researchers put a comparative analysis of eight countries, named as, Cambodia, Indonesia, Malaysia, South Korea, Nepal, Philippine, Thailand and Taiwan. A complete picture of

<sup>5</sup> 2018 SCMR 2128

<sup>6</sup> PLD 2018 SC 189

<sup>7</sup> PLD 2017 SC 70

<sup>8</sup> Marcin Walecki is the adviser for political finance at the International Foundation for

Election Systems, or IFES.

<sup>9</sup> Asset declaration regime in selected Asian countries by U4 Experts answer on Transparency International.

<sup>10</sup> Financial disclosure and political selection: Evidence from India, 2018

existing legal provisions related to political finance of these eight countries has been elucidated. It also provides emerging trends and near future legal matrix relevant to political finance. The questions like availability of law, submission of assets and liability, finance campaign, public disclosure and such other information have been detailed for all of these countries which provides a wider scope to understand legal matters on political finance and helps to reform political finance regime in a balanced way to attain democratic essence.<sup>11</sup>

In a IDEAS publication, researchers identified numerous obstacles in political finance, such as the absence of regulations, the intersection of politics and business, informal party management, and unrealistic practices. Similarly, main trends and emerging issues like public and private funding, spending and oversight issues along with lesson learned like legal mechanics towards effective effectiveness and incorporation of established informal practices are discussed with multiple examples from Asia. Likewise, there are various areas for improvements like realistic regulations and limiting the corporate donations besides recommendations for election management bodies, political parties and civil societies.<sup>12</sup>

Based on data from India dated 16<sup>th</sup> October, 2017, the Association for Democratic Reforms (ADR) looked at the assets and liabilities declared by the seven National Parties (BJP, INC, NCP, BSP, CPI, CPM, and AITC) between FY 2004-05 and FY 2015-16. ADR analyzed the assets and liabilities declared by the 22 Regional Parties between FY 2011-12 and FY 2015-16 in its 9<sup>th</sup> March, 2018 report. ADR also made available a report on the Analysis of IT Returns: Dated 31<sup>st</sup> July, 2019, Assets and Liabilities of National Parties for FY 2016-17 & 2017-18. In FY 2016-17, the seven national parties declared assets totaling Rs 3260.81 crore. In FY 2017-18, these assets increased by 6% to Rs 3456.65 crore. In FY 2016-17, 39 Regional Parties declared Rs 1267.81 crore in assets and liabilities, and 41 Regional Parties declared Rs 1320.06 crore during FY 2017-18, according to ADR's analysis of Regional Parties. This report

looks at the assets and liabilities that the 7 National Parties and 41 Regional Parties declared for the fiscal year 2018-19. Tables and histograms are presented for comparative analysis. Multiple observations were observed, for instance, guidelines of Indian Election Commission were not followed, assets building from donations were not declared properly, liabilities like loans were not declared too, and most importantly, statements of assets and liabilities had a segment of "other assets" and "other liabilities" which made huge grey areas. In the end, suggestions were furnished like compliance with law, control of auditor general of India over Political parties and time-based audit by renowned auditing firms.<sup>13</sup>

In a subsequent research paper published in the Election Law Journal, India asserts that there are two primary causes of corruption in the nation. First, despite economic liberalization, the government still has discretion over how resources are distributed in many areas. Two, ineffective laws governing election spending and party funding encourage politicians and parties to abuse the government's discretion over resource allocation to raise money for political parties and election campaigns. This article examines how these two factors interact to undermine the trustworthiness and effectiveness of India's electoral system. From this, it can be inferred that lack of legal measures in place ultimately questions the overall credibility of elections. It also mentions that assets must be declared not only to IEC but also a public document, such legal reforms help in building a strong election process.<sup>14</sup>

A research paper in India conducted an extensive study on the current legal framework regarding penalty, expenses, assets and disclosure along with political finance regime in India like issues of untraceable funds, lack of restrictions on campaigns and money funnelling from corporate sector. It also throws light on existing legal lacunas, for instance, People Representation Act, 1951 and Companies Act. In the end, it elucidates impact of dwindling legal framework in the form of elitist culture and increasing power of corporate sector to

<sup>11</sup> Political parties in Asia, promoting reforms and combating corruption in Eight countries by Peter M. Manikas

<sup>12</sup> Integration of Political Finance system in Asia by IDEAS.

<sup>13</sup> Analysis of assets and liabilities of national and regional political parties by ADR with particular reference of India

<sup>14</sup> Reforming India's Party financing and election laws by M V Rajeev.



influence the policy making besides that It also provide some recommendations towards its improvement.<sup>15</sup>

Last but not the least, multiple newspapers extracts are studied by the author which furnish details on the assets and liabilities of political parties and political leaders in a comparative way, these newspapers have got this secondary information from the primary source of Election Commission of Pakistan. Among those holding valuable assets and making a fortune are prominent politicians from virtually all major political parties. 12 out of the total 342 members of the National Assembly have declared that they own assets worth more than a billion rupees, according to a statement of assets held by MNAs for the year 2019 that was released by the Election Commission of Pakistan (ECP).<sup>16</sup> In accordance with the procedure outlined in Rule 159 of the 2017 Election Rules, 82 out of the 125 registered political parties submitted their consolidated statements of accounts. Any registered party is obligated to adhere to the related rules by this rule.<sup>17</sup>

#### 4. Methodology:

In this research work, the author adopts both quantitative and qualitative data methods; however, most part of the work inclines towards qualitative analysis. While using data, comparative analysis among multiple countries is used both from Asia and America, however, data from Asian countries and their comparison is done. Tabulation of data and data representation charts are also used to elaborate the problem statement.

#### 5. Framing research questions in relevance to impact of legal reforms on submission of assets and liabilities by candidates and political parties

##### 5.1 Elaboration of Balance sheet, assets and liabilities:

**Balance sheet** of the political party in this instance contains data on three primary financial aspects. a) The "Assets" of the party are things like cash, investments in banks, movable and immovable properties, vehicles, and other things of a similar nature; b) The political party's accumulated wealth

is largely comprised of the party's assets less any liabilities, as shown in the "Capital" or "Reserve Fund" section of the balance sheet. c) A political party's "Liabilities" include, among other things, bank borrowings, unsecured loans, and access to overdraft facilities.<sup>18</sup> In the subsequent part of this research, Asian countries- Afghanistan, Pakistan, India, Bangladesh, and Nepal- are discussed with a few references from American states.

##### 5.2 Legal status of declaration related to assets and liabilities:

Asset/liabilities declaration regime involves all the branches of government- legislative, executive and judiciary. The complex issue of corruption also demands involvement of spouse and close family members of government officials. A strategy that is more specific and requires officials who work in areas where corruption is common (such as politicians, heads of state, procurement officials, etc.) could assist in ensuring efficient implementation and enforcement of the law in light of the challenges associated with proper declaration verification.

In case of Afghanistan, article 54 of its constitution explicitly states that assets and liabilities should be declared by candidates and political parties including other government officials, it, moreover, demands declaration of their family member, but it requires a lot of resources to oversee it or to implement it in letter and spirit. In Pakistan, article 62 and 63 of the Constitution of Pakistan, 1973 along with chapter 8 of the Election Act, 2017 make it mandatory for candidates and political parties to declare their assets and liabilities. Ministers, election candidates, and parliamentarians in India are required to disclose their assets. The president is not required to share any information by law. There is no legal requirement for government leaders in Bangladesh to declare their assets. At the time of registering their candidacy, candidates for parliament are required to declare their assets (Art. 27A(2) of the Election Procedure Rules). However, once elected, assets need not be disclosed in accordance with the law. According to the Commission for the

<sup>15</sup> Transparency and accountability in political funding by Shelly Mahajan.

<sup>16</sup> <https://www.dawn.com/news/1589724>

<sup>17</sup> <https://www.thenews.com.pk/print/612283-pti-richest-political-party-with-rs225-3m-assets>

<sup>18</sup> Analysis of Assets and liabilities by national and regional Political parties by ADR

Investigation of Abuse of Authority Act of 1991 and Prevention of Corruption Act of 2002, all government officials in Nepal, including the prime minister, ministers, members of the parliament, and civil servants, are required to declare their income as well as their assets. Additionally, these officials must disclose their spouses' and children's assets and liabilities.<sup>19</sup>

### **5.3 What should be declared in assets and liabilities and what is the existing practice?**

As per an international report, declarations of assets and liabilities should involve: personal possessions and assets; second homes and farms; financial investments like stocks, retirement accounts, and insurance policies, among others business assets like private corporations and partnerships; owing accounts; vehicles; and additional substantial movable assets like jewelry, cattle, and art; all obligations, including loans, mortgages, guarantees, co-signatures, and other obligations.<sup>20</sup>

In Afghanistan, political parties and candidates have to declare their assets and liabilities as per their existing law. Similarly, Election Act, 2017, sections 60, 110, and 137, bound both candidates and political parties in Pakistan to declare their assets and liabilities.<sup>21</sup> As previously mentioned, despite the clear provision, 82 of the 125 political parties registered with the Commission submitted their consolidated statements of accounts in 2020. To declare their assets, civil servants and members of both houses of the Indian parliament are required to complete a standard form. The types of movable and immovable assets that must be declared are outlined in the law. assets, loans, debts, and all sources of income) The law in Bangladesh requires candidates and civil servants to disclose information about their loans, income, and assets. On the other hand, the law doesn't say what should be covered. In Nepal, all the government official including members of parliament have to declare their assets but there is no legal provision on the sources of income.<sup>22</sup>

### **5.4 How often declarations of assets/liabilities are done:**

OECD in a report recommends that declaration of assets and liabilities should be done annually, and it should also be declared upon entering and leaving the public office, the ambit of this report can be extended to both the candidates and political parties because political parties are the main stakeholders as a part of assemblies.<sup>23</sup>

In Afghanistan officials are required to declare their assets and income upon entering the public service, annually, and upon leaving office. Additionally, the President, the Supreme Court, or the High Office of Oversight and Anti-Corruption may at any time require any official to declare their assets. Asset declarations must be submitted annually by Pakistani parliamentarians and civil servants, respectively, upon taking office or their first appointment (by September 30 and December 31). When new members of the Indian parliament take office and whenever their assets change, they are required to submit an asset declaration. Candidates for parliament in Bangladesh are required to declare their assets as part of the registration process. They are not generally expected to reveal their resources subsequent to being chosen. Every year and upon entering the workplace, heads of state, priests, and members of parliament are required to present their announcements in Nepal.<sup>24</sup>

### **5.5 What is the mechanism of monitoring and enforcement?**

For an effective system, an independent agency will be required to receive, examine, and enforce asset declaration regulations. In addition, the responsible organization or organizations must ensure that the establishment has the resources necessary to carry out its responsibilities, such as a

<sup>19</sup> Analysis of Assets and liabilities by national and regional Political parties by ADR

<sup>20</sup> Transparency International Report, Holding politicians to account, asset declaration, 2013

<sup>21</sup> Election Act, 2017

<sup>22</sup> World Bank Report, Public Accountability Mechanism, 2008

<sup>23</sup> OECD report: Assets declaration by public officials, a tool to prevent corruption, 2011

<sup>24</sup> World Bank Report, Public Accountability Mechanism, 2008

sufficient budget, competent staff, suitable facilities, and accessibility to technology.<sup>25</sup>

In Afghanistan, High Office of oversight is available to monitor and scrutinize all of the declarations of public officials. An ongoing organization, the Election Commission of Pakistan collects, processes, and examines statements made by political parties and candidates. In India, there is no independent organization that receives and monitors regulations regarding asset declaration. Members of the lower and upper houses are required to submit declarations to the respective houses' speakers and chairman. In Bangladesh, the Election Commission's Returning Officer is in charge of receiving and examining candidates' nomination papers to ensure compliance with all regulations. The only organization in Nepal that is in charge of receiving and enforcing asset declarations from civil servants is the Commission of Investigation of the Abuse of Authority.<sup>26</sup>

For instance, when it comes to verification, the law in Pakistan does not specify the kind of content examination that the Election Commission or other ministries and government agencies ought to carry out. Consequently, these organizations typically only control the submitted declarations. The Election Commission only checks the content when there is a complaint about a particular parliamentarian or when there is a reason to believe that the information is false or inaccurate. Similar to this, the Indian legal system does not specify how accuracy checks should be carried out. The law even does not specify who is in charge of enforcing and confirming declarations made by parliamentarians. In Bangladesh, the law does not require an independent review of the statements. The National Vigilance Centre in Nepal, which is directly controlled by the Prime Minister, raises concerns for obvious reasons.

#### **5.6 Status of legal sanction in case of non-compliance:**

At the foremost level, there is a huge grey area in law which does not clearly provide legal status of

non-compliance. Above that, there is a disparity in actual implementation of these sanction.

In Afghanistan, there are legal provisions which call for suspensions and dismissal of public officials including parliamentarians. Similarly, in Pakistan, section 60 and 137 clearly states sanctions like rejection of nomination paper, suspension of membership and even dismissal in case of non-compliance. However, in India, there are no administrative or criminal penalties for parliamentarians who fail to declare their assets or provide inaccurate or false information. In these instances, both houses' general conduct guidelines apply. This means that the speaker of either house can use general administrative sanctions if there is evidence of wrongdoing. The Election Commission in Bangladesh may deny a candidate's nomination for parliament if they fail to disclose their assets. In Nepal, the law says that submitting the asset declaration late or not at all could lead to investigations and a fine.<sup>27</sup>

#### **5.7 Disclosure of statements and declaration to public:**

Declaration of assets and liabilities of candidates and political parties should be made public considering the fact that they are people representatives and they are sitting in the parliament only because of the reason that they are voted by the people. Nevertheless, In Afghanistan, the High Office of Oversight does not make any declaration public. However, in Pakistan, Election Act, 2017, section 138, bounds ECP to declare the assets and liabilities statements of the members of parliament. Even during the submission of nomination papers, declarations and statements are open to public inspection and commission shall make available copies of these documents if asked. In India, law does not demand public disclosure of any of these documents, same is the case for Nepal. However, In Bangladesh, declarations of assets and liabilities are available to people for inspection by Bangladesh Election Commission.<sup>28</sup>

<sup>25</sup> Stolen Asset Recovery Initiative (Star). 2012. "Public Office, Private Interests: Accountability through income and asset disclosure".

<sup>26</sup> Analysis of Assets and liabilities by national and regional Political parties by ADR

<sup>27</sup> World Bank Report, Public Accountability Mechanism, 2008

<sup>28</sup> Country wise, Global Integrity Reports

## 6. Impacts of legal reforms on the submission of assets and liabilities of the candidates and political parties:

### 6.1 Positive self-selection:

This is due to the fact that disclosure primarily discouraged candidates from running for office due to privacy concerns, as some of the aforementioned Panama Papers repercussions suggest. We anticipate some immediate effects on non-incumbent candidates and an elect on them. Incumbents self-select to resign rather than revealing the wealth they have amassed while in office. In India, candidates have to declare not only their and their family's assets but also their criminal record, such disclosure sometimes discourage them to stand for next election.<sup>29</sup>

### 6.2 Improved pool for politicians:

A researcher provides evidence in a paper that better candidates replace candidates who self-select out of running for office. Additionally, voters receive information that they can use to evaluate candidates through disclosures. Because incumbents with low abilities only choose to leave, their expected abilities will be higher even if replacements are chosen at random. estimates that asset disclosures have reduced the chances of legislative assembly members running for office by 16.6 percentage points. If lower-quality MLAs self-select out of politics as a result of disclosure, the researcher predicts that incumbents who choose not to run will be replaced by, on average, higher-quality candidates.<sup>30</sup>

### 6.3 Fair play and political equality:

Political equality is fundamentally at the heart of the regulation of party funding; Consequently, asset declaration ought to be required to ensure this. Perhaps the only time all citizens are treated equally is when they go to the polls to cast their votes. In the lives of the majority of South Africans, this straightforward democratic act is a hard-won right and a tangible manifestation of democracy. However, if political parties do not have control over private funding, wealthy individuals may be able to "buy" access and

influence through covert donations, thereby drowning out citizens' voices and undermining the equal value of each voter's vote. When private money in politics is not regulated, the real possibility that wealthy individuals will have undue influence over the course of the government or its policy options increases.

Using the Promotion of Access to Information Act (PAIA) of 2000, the Institute for Democracy in South Africa (Idasa) has asked all political parties represented in the National Assembly to provide information on the identities of all private donors since 1994. the total amount contributed; as well as the date that they were given to them. The next step will be determined by the responses from the parties. The case may provide the high court—and ultimately the constitutional court—with an opportunity to decide whether political parties are public or private entities in addition to the application of PAIA. If it decides that private funding comes from public sources, there might be a way to regulate it. The timing of the court's decision is crucial given that 2004 is an election year. Legislators and politicians face the challenge. Now is the time to have the political will to make sure that all voters in South Africa's democracy are treated equally.<sup>31</sup>

### 6.4 Inclusive democracy:

Women typically have less access than men to the resources they require to win an election or the party nomination. This is because women worldwide earn less than men, are more likely to hold low-paying jobs, have fewer personal assets to draw from, and have limited control over how their own money is spent. Additionally, 15% of the world's population, or one billion people, suffer from some kind of disability, and the rate of disability is higher in developing nations. Despite the fact that rights to participate in political processes are protected and guaranteed by international, regional, and national treaties, people with disabilities are still underrepresented in political and public life, particularly as candidates or members of institutions like political parties, electoral management bodies, local governments,

<sup>29</sup> Financial disclosure and political selection: Evidence from India, 2018

<sup>30</sup> Financial disclosure and political selection: Evidence from India, 2018

<sup>31</sup> Income inequality in South Africa is the eighth highest out of the 125 countries assessed by the UNDP, *Human Development Report 2003* (New York: Oxford University Press, 2003)



and parliaments. Declaration of assets acts as a deterrence for male dominating elite, as declaring assets as a mandatory condition may jeopardize their existing assets besides legal action against them, in case, it is earned from corrupt ways, and allow space for women and other marginalized segments of societies to come forward.<sup>32</sup>

#### **6.5 Good governance at state level and improvement in intra-party governance:**

In order to safeguard the party from embezzlement and prevent money from being diverted through individuals rather than the party, candidates and party officials must declare their assets and liabilities. One of the 10 fundamental components of the SRP platform is anti-corruption, and the Cambodian SRP has prioritized fighting corruption. The party has advocated for a law against corruption, an independent anti-corruption commission, and the requirement that all elected leaders in the National Assembly declare their assets. The constitutions of the Nepali Congress Party, the NSP, the United Marxist Leninist (UML) Party, the Marxist Leninist (ML) Party of Nepal, and the RPP all require all-party office holders at all levels to declare their assets and income sources in order to locate unusual wealth.<sup>33</sup>

#### **6.6 Improved political conscience of the general public:**

Observable indicators of candidate quality like local economic growth are less predictive of the incumbent's reelection under disclosure because disclosures provide voters with additional information about the incumbent's quality. If disclosures provide additional information on the quality of candidates, other measures will be given less weight in the post-disclosure period when evaluating candidates. Consequently, the political class will not be able to deceive the public with the GDP figure alone.

Similar to this, Malaysia's PAS has established a system with an ombudsperson to verify compliance with ethical standards. All leaders must declare their wealth and assets under this system, and there is a special committee to investigate violations.

<sup>32</sup> Political Finance Reforms by IDEAS

<sup>33</sup> Political parties in Asia, promoting reforms and combating corruption in Eight countries by Peter M. Manikas

The general public can complain about any member of the party.

The way people vote has helped Taiwan's party reform process. Public opinion surveys in Taiwan consistently indicate that people want political parties that are accountable and honest. The best way to do this is to declare political parties' assets and liabilities. Political parties have been required to demonstrate their reform credentials in order to compete effectively.

Indonesia's Golkar Party has lost power after decades of unquestioned dominance. It has realized, like the KMT, that its political survival is partly dependent on its capacity to reform the party and alter public perceptions. As political competition has increased, party leaders in a number of nations have become more concerned with their public image, particularly when it comes to anti-corruption issues. Another "lesson learned" from Taiwan's experience is that parties often copy one another. If one party sets a high standard for clean practices and reform and offers voters a desirable alternative, other parties are more likely to follow suit.<sup>34</sup>

#### **6.7 Independent and just policy making needs asset declaration by political elite:**

Business community influence the policy making to fulfil their vested interest and political class collude with them to gain financing for their campaigns, therefore, it is very important that political candidates and parties should declare their assets to see increment in them to monitor such pumping of money and it must also accompany with legal provisions which make sure that donor should also be identified. Businesses were asked to estimate the frequency with which businesses in their industry use bribes or undocumented additional payments to influence government policymaking in the first question of a questionnaires survey that WEF conducted. Only 27% of business leaders in countries say that such payments never or rarely occur in their sector, while 17% say that such payments are fairly common or common.

<sup>34</sup> Political parties in Asia, promoting reforms and combating corruption in Eight countries by Peter M. Manikas

Business leaders were tasked with assessing the prevalence of illegal political party contributions in their respective nations in the second question. There are even more negative responses to this question; Only 18% of business leaders in their country say that illegal donations are rare or very rare. Some of these nations, like China and Vietnam, may have a rating that is more indicative of the nature of the political parties than of how much corruption there is. Business leaders believe that illegal donations are common or fairly common in 41% of nations. Business leaders were asked to estimate the direct impact that legal political donations have on their nation's policy outcomes in the third question. In 89% of countries, businesses rate the impact as moderate or high. The answer to the question reveals how businesses can

comply with the law while continuing to engage in practices that could be considered corrupt.<sup>35</sup>

**6.8 Dirty politics is a repercussion of infirm asset declaration regime:**

As a result of political party preference for wealthy candidates, a new breed of "political entrepreneurs" may emerge who are willing to invest in running for office in the hope of controlling the levers of government and increasing their personal wealth. In addition, it argues that the detrimental effect of parties' preference for wealthy candidates is an increase in the participation of criminals in electoral politics, which is becoming more prevalent in India. Table 4 displays some self-explanatory statistics below.

**Table 4: Analysis of Criminal and Financial Details of MPs of 15th Lok Sabha (2009)**

Value of assets	No. of candidates	No. of winners	% of Winners
Very high (> 50m)	322	106	33%
High (5-50m)	1485	283	19%
Medium (1-5m)	1785	116	6%
Low (<1m)	7029	520	7.4%

From the table above, it can easily be noticed that as value of assets increases, percentage of winners increase because it allows wealthy political elite to spend on their election campaigns, therefore, leads to unfair grounds, which favours only wealthy candidates or political parties. It also creates space for criminals and criminal activities in politics, they ultimately lead to undemocratic culture.<sup>36</sup>

**Case study on assets/liabilities in India: a comparison with Pakistan**

In a research paper, researcher analysed assets and liabilities of some national level parties in India, regional parties were also incorporated in that research<sup>37</sup> but major findings can easily be drawn out from trends of national level parties and it also helps in identifying assets regime of the major national level political parties in Pakistan.<sup>38</sup>Details of the assets and liabilities are given in the tables below:<sup>39</sup>

Political parties in India	Total assets	Other assets
BJP	2904	1331.224
INC	928.28	415.458
AITC	210.19	207
CPM	510.71	336.98

Table: 1

<sup>35</sup> World Economic Forum Report, 2003

<sup>36</sup> Reforming India's Party Financing and Election Expenditure Laws by Rajeev Gowda (2012)

<sup>37</sup> Analysis of Assets and liabilities by national and regional Political parties by ADR

<sup>38</sup> <https://www.thenews.com.pk/print/612283-pti-richest-political-party-with-rs225-3m-assets>

<sup>39</sup> Analysis of Assets and liabilities by national and regional Political parties by ADR

From the aforementioned table, it can be easily seen that among assets, “other assets” makes more than 50% of the total assets of most of the political parties which is very difficult to be regulated because there is no legal provisions or framework

to incorporate such assets, this is how political elite plays upon anti-corruption institutions and make fortunes. Similar trends can be observed for these political parties in case of liabilities in the table 2. Two separate charts below further clarify the data.

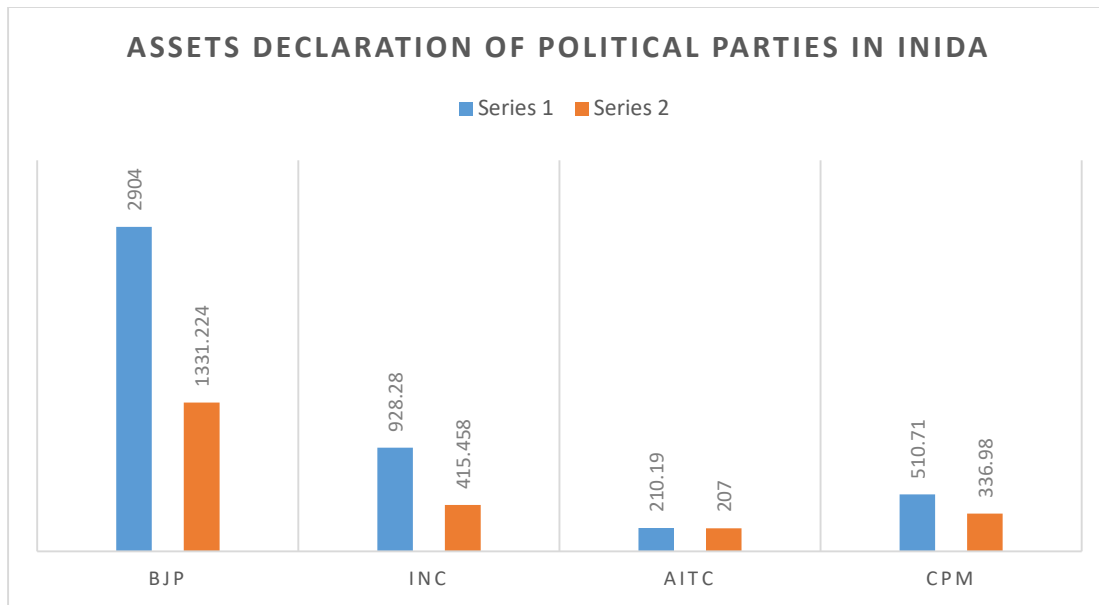


Chart 1

Political parties in India	Total liabilities	Other liabilities
BJP	37.4	9.88
INC	78.4	64.23
AITC	10.58	10.58
CPM	3.38	3.38

Table 2

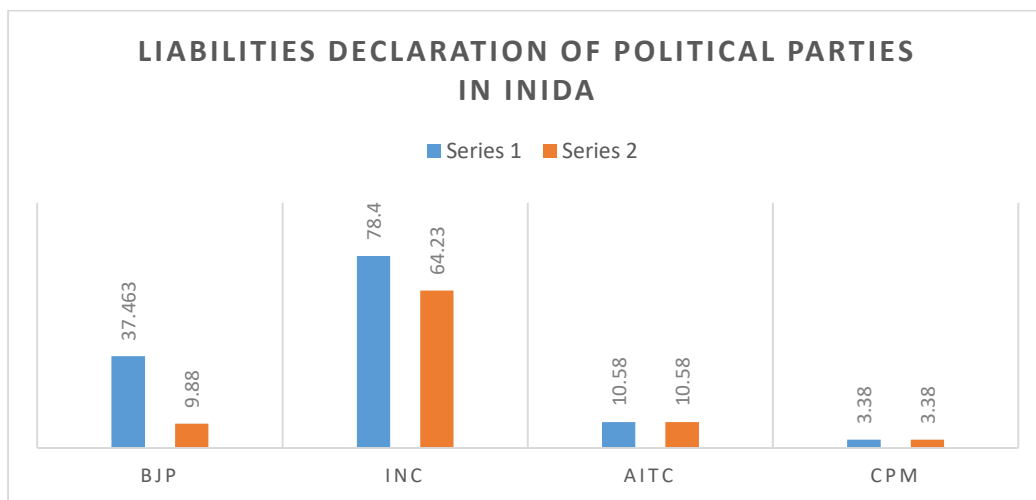


Chart 2

From the aforementioned data, multiple observations can be utilized for Pakistan. For instance, as per an estimate given by a newspaper, mentioned in the table 3, PTI owns largest assets followed by PPP, PML-N, MQM and PML-Q. These assets should be adjusted to remove “other asset” option, if there is any, right now, author has no information on what amount of the assets fall under the heading of “other assets” but one thing

which can be done is to add as many as sections to avoid unregulated terms like “other assets”.

Article 324 of the Indian Constitution empowers the ECI with plenary powers, which was established in the Supreme Court judgment (AIR 1978 SC 851) by stating that the Commission has the powers to fill any legal void in order to promote free and fair elections. This is another similarity between Indian and Pakistani legal provisions.

Political parties in Pakistan	Assets own by Political parties in Pakistan in millions
PTI	225
PPP	160
MQM	41
PML-N	88
PML-Q	49

Table 3

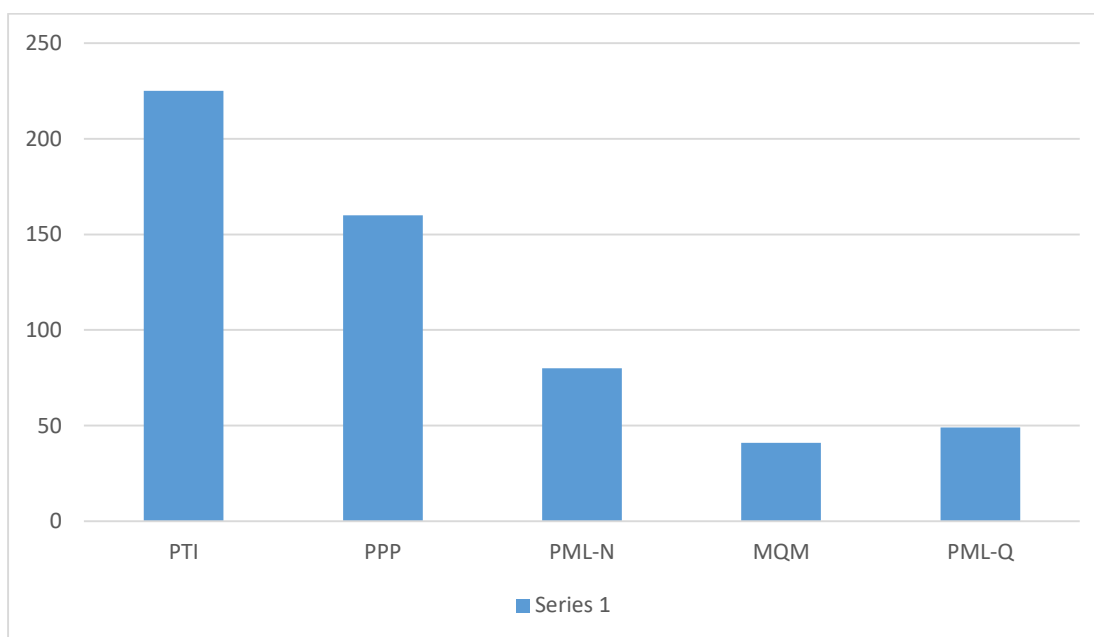


Chart 3

**7. Challenges and recommendations towards the submission of assets and liabilities by the candidates and political parties**

**7.1 Implementation Challenges:**

The majority of studies on asset declaration focus primarily on the legal framework, with less attention paid to the rules' practical application and enforcement.

- Most of the Asian countries lack human resource and capital to implement the available sanction. For example, Afghanistan’s High

Office of Oversight itself claims that there is severe deficiency of qualified staff. Similarly, ECP has to rely on other intelligence agencies for implementation of sanctions and these



agencies are under the direct control of ruling elite.<sup>40</sup>

- There is a lack of political will as this will directly jeopardize the vested interests of the political class, for instance, in Pakistan, although ECP is an independent organization, yet its CEC and members are selected through a political process which questions the independence of ECP. Moreover, in 2010, more than 100 members of assemblies and senate were suspended as they didn't submit their statements of income and this didn't include the issue of wrong declaration.<sup>41</sup>
- Inadequate legal provisions are one of the major challenges which if remained unaddressed could potentially ensue into absolute corruption, for instance, in Bangladesh, there is no law requiring the members of parliament to declare their assets and liabilities.
- Lack of independence of agencies does not allow them to implement sanctions in case of non-compliance, for example, in India, agencies are unable to oversee the activities of political elite owing to former's dependence on the latter.<sup>42</sup>
- Legal loopholes are yet other factors which hampered the smooth sailing of the submission of assets and liabilities, for example, section 137 (4) states that in case of false declaration by a member, he may be proceeded against on the lapse of 120 days, such a time provides him time to escape corrective measures.<sup>43</sup>

### 7.2 Pragmatic approach to cope with challenges:

- There should be an audit for each political party annually and auditing firm should be replaced by a new firm after every 5 years. Moreover, foreign renowned firms should be allowed to do audit as there would be no political pressure on these firms.
- "A qualified and practicing Chartered Accountant from a panel of such accountants

should audit the political parties' accounts," according to the Comptroller and Auditor General. This contrasts with the current system, in which political parties independently select auditors.

- There should be sanctions and penalties for both candidates and political parties and most importantly, these sanctions should be implemented in letter and spirit. For example, Section 276CC of the IT Act in India penalizes individuals who fail to submit their IT returns. The laws that govern political parties ought to be the same. In *Common Cause v. Union of India and Others*, the Supreme Court said that parties appear to be breaking an IT Act provision when they don't file returns.<sup>44</sup>
- Professional training should be done for the members of political parties, for example, The Democrat Party of Thailand has begun a reform process that involves restructuring and "professionalizing" the party's management in order to prevent MPs and officials from having conflicts of interest. The party has held training seminars all over the country to get members' opinions.<sup>45</sup>
- Sources and amount of donations should be identified individually, meaning thereby, all the political parties and candidates should declare their resources along with list of donations, if any, with exact source information. For example, in Brazil, amount of donation is identified individually, information of all the donations along with their donors are mandatory to be mentioned.<sup>46</sup>
- Digitalization ought to be guaranteed because it would make the available information easier to examine or access. For instance, according to the ECP annual report for the year 2020, 1,190 parliamentarians—members of the National Assembly, Senate, and Provincial Assemblies—had submitted their statements of assets and liabilities (form-B) for the fiscal year that came to a close on June 30, 2019.

<sup>40</sup> High office of oversight reported in 2009

<sup>41</sup> Global integrity Report, 2010

<sup>42</sup> Global Integrity Report, 2011

<sup>43</sup> Election Act, 2017

<sup>44</sup> Analysis of Assets and liabilities by national and regional Political parties by ADR

<sup>45</sup> Political parties in Asia, promoting reforms and combating corruption in Eight countries by Peter M. Manikas

<sup>46</sup> Marcin Walecki is the adviser for political finance at the International Foundation for Election Systems, or IFES.

These statements (Form-B) were digitized within 120 days of submission for a comprehensive and critical comparison with nomination papers and previously submitted Form-B. This time during of 120 days should be reduced.<sup>47</sup>

- Civil society organizations like the Open Government Partnership ought to be incorporated into states. A National Action Plan (NAP) with civil society that focuses on important national open government priorities and ambitious reforms must be developed by countries participating in the OGP. The OGP and International IDEA launched a joint campaign in 2019 to include political finance transparency in the NAPs.<sup>48</sup>
- Enhanced cross-institutional coordination must be guaranteed. Oversight agencies must collaborate closely with anti-corruption, data protection, IT, and other private sector actors. Institutional mechanisms should be established to facilitate information sharing and policy coordination among all stakeholders.<sup>49</sup>
- Evidence and data should be utilized to their fullest extent. Although political finance regulations are in place in some form in almost every nation, most of them struggle to determine whether or not they are effective. It is difficult to evaluate and compare political finance regulations across nations due to a lack of data. In order to create efficient political finance systems, nations ought to develop benchmarks and indicators for determining

whether their policies result in the desired outcomes.<sup>50</sup>

- It is essential to carry out analysis that is particular to the nation and the region, and cultural realities ought not to be overlooked. Developed nations have been the focus of numerous previous assessments of political finance. In order to expand the evidence and foundation of global political finance research, international organizations, civil society organizations, and the media could conduct in-depth assessments of political finance systems in Latin America, Asia and the Pacific, and Africa.<sup>51</sup>

## 8. Conclusion

To conclude, undeniably, legal provisions on the submission of assets and liability lead to multiple benefits as discussed above; moreover, comparative analysis not only helps the researchers to identify multiple lacunas in the legal systems around Asia but also provides insight to improve legal reforms on the submission of assets and liabilities in Asia in general and particularly in Pakistan. Especially, case study of India and its comparison with Pakistan helps to improve legal framework in that particular regards. An effective legal framework on asset regime leads to positive self-selection, inclusive democracy, hinders corruption and improve governance besides proving level playing field for all the political parties and candidates which ensures fairness in a

<sup>47</sup> ECP annual report, 2020

<sup>48</sup> Political Finance Reforms by IDEAS.

<sup>49</sup> Political Finance Reforms by IDEAS.

<sup>50</sup> Political Finance Reforms by IDEAS.

<sup>51</sup> Political Finance Reforms by IDEAS.