

Bill No. 205 of 2016

THE REPRESENTATION OF THE PEOPLE
(AMENDMENT) BILL, 2016

By

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A

BILL

further to amend the representation of the People Act, 1951..

Be it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

1. (1) This Act may be called the Representation of the People (Amendment) Act, 2016.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification
5 in the Official Gazette, appoint.

43 of 1951.

2. In section 2 of the Representation of People Act, 1951 (hereinafter referred to as the principal Act),—

Amendment of section 2.

(a) after clause (e), the following clauses shall be inserted, namely:—

10 "(ea) "paying for news" means payment directly or indirectly for any news or analysis relating to any election appearing in electronic media or print media for a price in cash or kind as consideration to any such media, entity, person

employed therein or connected thereto in any manner, but does not include political advertisements;

Explanation.—For the purpose of this clause the expression "electronic media" and "print media" shall have the same meanings as assigned to them under section 126A;

(*eb*) "political advertisement" means any advertisement paid for by any political party, candidate of a political party, any other person contesting an election, or any other person connected therewith or associated thereto, carrying necessary disclosures as notified by the Election Commission in this regard;" and

(*b*) after clause (*h*), the following clause shall be inserted, namely:—

"(*ha*) "receiving payment for news" means any media entity, person employed therein or connected thereto in any manner receiving payment directly or indirectly for any news or analysis relating to any election under this Act but does not include political;"

Amendment of section 4. **3.** In section 4 of the principal Act, after clause (*d*), the following proviso shall be inserted, namely:—

"Provided that only the political parties registered with the Election Commission under sub-section (7) of section 29A shall be entitled to put forward candidates to fill a seat in the House of the People."

Amendment of section 5. **4.** In section 5 of the principal Act, in clause (*c*), after the proviso, the following proviso shall be inserted, namely:—

"Provided that only the political parties registered with the Election Commission under sub-section (7) of section 29A shall be entitled to put forward candidates to fill a seat in the Legislative Assembly of a State"

Amendment of section 10A. **5.** In section 10A of the principal Act,—

(*i*) for the words 'election expenses' wherever they occur, the word 'election expenses and contribution reports' shall be substituted; and

(*ii*) for the words 'for a period of three years', the words 'for a period not less than three years but which may extend upto a period of five years', shall be substituted.

Substitution of new sections for section 29C. **6.** For section 29C of the principal Act, the following sections shall be substituted, namely:—

Maintenance, audit, publication of accounts by political parties. "29C. (*1*) Each recognised political party shall maintain accounts clearly and fully disclosing all the amounts received by it and clearly and fully disclosing the expenditure incurred by it.

(2) The account shall be maintained according to the financial year.

(3) Within six months of the close of each financial year, each recognised political party shall submit to the Election Commission, its accounts, duly audited by a qualified and practicing chartered accountant from a panel of such accountants maintained for the purpose by the Comptroller and Auditor General.

(4) The Election Commission shall make publicly available, on its website, the audited accounts submitted by all political parties under sub-section (3).

(5) The Election Commission shall also keep these accounts on file for three years after their submission and shall make them available for public inspection on the payment of a prescribed fee.

29D. (1) The treasurer of a political party or any other person authorised by the political party in this behalf shall, in each financial year, prepare a report in respect of the following, namely:—

Declaration of contribution received by the political parties.

5 (a) the contribution in excess of twenty thousand rupees, including an aggregate of contributions in excess of twenty thousand rupees, received by such political party from any person in that financial year;

(b) the contribution in excess of twenty thousand rupees, including an aggregate of contributions in excess of twenty thousand rupees received by such political party from any company, not including a Government company, in that financial year.

10 (2) Notwithstanding anything contained in sub-section (1), the treasurer of a political party or any other person authorised by the political party in this behalf shall, in the report referred to in sub-section (1), disclose the particulars of such contributions received from a person or company, not including a Government company, even if the contributions are below twenty thousand rupees, in case such contributions exceeds ten crore rupees, or ten
15 per cent of total contributions, whichever is lesser, as received by the political party in that financial year.

Illustration: A political party, 'P', receives a total of one hundred crore rupees, in cash or cheque, in a financial year. Out of this amount, fifty crore rupees are received from undisclosed sources, by way of contributions less than twenty thousand rupees (in cash or
20 multiple cheques). P shall be liable to disclose the particulars of all donors beyond twenty crores, even if they have contributed less than twenty thousand rupees each.

(3) The report under sub-section (1) shall be in such form as may be prescribed.

25 (4) The report for a financial year under sub-section (1) shall be submitted by the treasurer of a political party or any other person authorised by the political party in this behalf before the due date for furnishing a return of its income of that financial year under
43 of 1961. section 139 of the Income-tax Act, 1961, to the Election Commission.

30 *Explanation.*—For the avoidance of doubt, it is hereby clarified that the term "particulars" mentioned in this section shall include the amount donated; the names and addresses, and PAN card number if applicable, of such person or company referred to in this section.

29E. (1) The Election Commission shall make publicly available, on its website, the contribution reports submitted by all political parties under section 29D.

Disclosure of contribution reports submitted by political parties.

35 (2) The Election Commission shall also keep these reports on file for three years after their submission and shall make them available for public inspection on the payment of a prescribed fee.

29F. (1) Every political party contesting an election shall, within seventy five days of the date of an election to a Legislative Assembly of a State or ninety days of the date of an election to the House of the People, lodge with the Election Commission a statement of election expenditure and contribution reports, which shall be a true copy of such statement
40 maintained by the party in consonance with the directions of the Election Commission.

Election expenses by political parties.

(2) The payment of any election expenditure over twenty thousand rupees shall be made by the political parties *via* cheque or draft, and not by cash, unless there are no banking facilities or the payment is made to a party functionary in lieu of salary or reimbursement.

45 29G. (1) Where the treasurer of any political party or any other person authorised by the political party in this behalf fails to submit a report in the prescribed form within the time specified under sub-section (4) of section 29D then such political party shall be liable to a penalty of twenty five thousand rupees for each day of non-compliance and so long as the non-compliance continues:

Penalty.

Provided that If such default continues beyond a period of ninety days, the Election Commission may de-register the political party after giving a reasonable opportunity of being heard in this regard.

(2) If the Election Commission finds on verification, undertaken whether or on information received, that the report submitted under sub-section (4) of section 29D is false in any particular, the Election Commission shall levy a fine up to a maximum of fifty lakh rupees on such political party or may suspend the affiliation of a political party for a period of five years after giving a reasonable opportunity of being heard in this regard. 5

Penalty for political parties accepting contributions from an impermissible donor.

29H. If a political party accepts any contribution offered to it from an impermissible donor, it shall be liable to pay a penalty which shall be five times the amount so accepted from such donor. 10

Explanation.—For the purpose of this section, "impermissible donor" refers to:

(a) a Government company, as defined in section 29B;

(b) a company that does not comply with the requirements of sub-section (1) section 182 of the Companies Act, 2013; or 15 18 of 2013.

(c) any foreign source defined under clause (e) of section 2 of the Foreign Contribution (Regulation) Act, 1976." 49 of 1976.

Insertion of new Parts IVB and IVC.

7. After Part IVA of the principal Act, the following Parts and sections thereunder shall be inserted, namely:—

"PART IVB 20

Regulation of Electoral Trust

Electoral Trusts entitled to accept contribution.

29I. (1) Subject to the provisions of the Companies Act, 2013 and the Income Tax Act, 1961, an Electoral Trust approved by the Central Board of Direct Taxes under the Electoral Trusts Scheme, 2013 may accept any amount of contribution voluntarily offered to it by any person or company not including a Government Company: 18 of 2013. 43 of 1961. 25

Provided that no Electoral Trust shall be eligible to accept any contribution from any foreign source defined under clause (e) of section (2) of Foreign Contribution (Regulation) Act, 1976: 49 of 1976.

Provided further that all words and phrases used in this Part shall have the same meaning as assigned to them in section 29B. 30

Maintenance, audit, publication of accounts by electoral trusts.

29J. (1) Each Electoral Trust shall maintain accounts clearly and fully disclosing all the amounts received by it and clearly and fully disclosing the expenditure incurred by it.

(2) The account shall be maintained according to the financial year calendar.

(3) Within three months of the close of each financial year, each Electoral Trust shall submit its accounts, duly audited by a qualified and practicing chartered accountant from panel of Chartered Accountants, to be appointed by the Comptroller and Auditor General to the Election Commission. 35

(4) The Election Commission shall make publicly available, on its website, the audited accounts submitted by all electoral trusts under sub-section (3).

(5) The Election Commission shall also keep these accounts on file for three years after their submission and shall make them available for public inspection on the payment of a prescribed fee. 40

Declaration of contribution received by the Electoral Trusts.

29K. (1) The treasurer of an Electoral Trust or any other person authorised by the trust in this behalf shall, in each financial year, prepare a report in respect of the following, namely:—

(a) the contribution received by such electoral trust from any person in that financial year, with name, address, PAN of such persons: 45

Provided that the Electoral Trust or any other person authorised by the Trust in this behalf shall not receive any donation in cash and without the name, address and PAN (if any);

5 (b) the contribution to political parties from electoral trusts in that financial year with date amount, mode of payment and name of political party:

Provided that the electoral trusts shall not make any contribution to political parties in cash other than by bank account transfer.

(2) The report shall be in such form as may be prescribed.

10 (3) The report for a financial year under sub-section (1) shall be submitted by the treasurer of an Electoral Trust or any other person authorised by the Trust with three months of the close of each financial year to the Election Commission.

29L. (1) The Election Commission shall make available, on its website, the contribution reports, submitted by all Electoral Trusts under sub-sections (2) and (3) of this section. Disclosure of contribution reports submitted by Electoral Trusts by Election Commission.

15 (2) The Election Commission shall also keep these reports on file for three years after their submission and shall make them available for public inspection on the payment of a prescribed fee.

43 of 1961. 20 29M. (1) Where the Electoral Trust fails to submit a report in the prescribed form within the time specified under sub-sections (2) or (3) then, such Electoral Trust shall be liable to a penalty of twenty five thousand rupees for each day of non-compliance and so long as the non-compliance continues: Penalty.

Provided that if such default continues beyond period of ninety days, the Election Commission may ban the electoral trust from receiving any donations in future, after giving a reasonable opportunity of hearing.

25 (2) If the Election Commission finds on verification, undertaken whether *suo motu* or on information received, that the statement of accounts filed under this section is false in any particular, the Election Commission shall impose a fine up to a maximum of fifty lakh rupees on such Electoral trust or ban on receiving further donation for a period as decided by Election Commission or both.

30 (3) If the Electoral Trust has received funds from an impermissible donor, it shall be liable to penalty that is five times the amount so accepted by the Trust.

Explanation.— For the purpose of this section, "impermissible donor" refers to:
(a) a Government company, as defined in section 29B;

18 of 2013. (b) a company that does not comply with the requirements of sub-section (1) section 182 of the Companies Act, 2013; or

35 49 of 1976. (c) any foreign source defined under clause (e) of section 2 of the Foreign Contribution (Regulation) Act, 1976.

PARTIVC

Regulation of Political Parties

29N. (1) Any citizen of the country may form a political party. Formation of political parties.

40 (2) Every political party shall frame its constitution defining its aims and objects and providing for matters specified in this Part:

Provided that the aims and objects of a political party shall not be inconsistent with the provisions of the Constitution.

(3) A political party shall strive towards, and utilize its funds exclusively for, the fulfilment of its aims and objects and the goals and ideals set out in the Constitution of India.

Name of political parties and power to sue.

29. (1) A political party may sue and may be sued in its own name.

(2) A political party shall be competent to hold and dispose of properties.

(3) The name of a political party must be clearly distinguishable from that of any existing political party and shall be subject to approval by the Election Commission. 5

(4) In election campaigns and in elections, only the registered name or its acronym, as may have been approved by the Election Commission, alone shall be used.

Constitution of a political party.

29P. The constitution of a political party shall provide for the following matters:—

(a) name of the political party and acronym (if used) and the aims and objectives of the party; 10

(b) procedure for admission, expulsion and resignation by the members;

(c) rights, duties and obligations of the members;

(d) grounds on which and the procedure according to which disciplinary action can be taken against the members; 15

(e) the general organisation of the party including the formation of State, regional, district, block and village level units;

(f) composition and powers of the Executive Committee (by whatever name it is called) and other organs of the party;

(g) the manner in which the general body meetings can be requisitioned and conducted and the procedure for requisitioning and holding conventions to decide questions of continuance, merger and other such fundamental organisational matters; 20

(h) the form and content of the financial structure of the party consistent with the provisions of this part.

Executive committees.

29Q. (1) Every political party shall elect an Executive Committee. 25

(2) The term of the Executive Committee shall be four years.

(3) The Executive Committee may constitute a sub-committee, by whatever name called, to carry out the business of the Executive Committee and to carry on regular and urgent executive committee business.

(4) The members of the sub-committee shall be elected by the members of the executive committee. 30

Voting procedures.

29R. Every political party shall adopt its resolutions on the basis of a simple majority vote held by secret ballot.

Candidate selection.

29S. The candidates for contesting elections to the Parliament or the Legislative Assembly of the States shall be selected by the executive committee of the political party having due regard to the recommendations and resolutions passed by the concerned local party units. 35

Regular elections.

29T. (1) It shall be the duty of the Executive Committee to take appropriate steps to ensure compliance with the provisions of this chapter including holding of elections at all levels. 40

(2) The executive committee of a political party shall hold elections of national and State levels in the presence of the observers to be nominated by the Election Commission of India:

Provided that, the Election Commission may, if it consider necessary, send its observers at elections to be held at other national and State levels.

29U. (1) The Election Commission shall inquire, either *suo motu* or on information received into allegation of non-compliance of any of the provisions of this Part. Penalties for non-compliance.

5 (2) On inquiry, if the Election Commission is satisfied that there has been non-compliance of any of the provisions of this chapter by any political party, the Commission shall call upon the party to rectify the non-compliance within such period as may be prescribed by the Election Commission.

10 (3) In case, the non compliance continues even after the period so prescribed, it shall be open to the Election Commission to impose such fine on the political party as it may deem fit in circumstances of the case including imposition of a penalty of rupees twenty five thousand per day for each day of non-compliance and withdrawal of registration of the party.

29V. (1) If any political party registered under section 29A of this Act does not contest any election to the House of the People or the Legislative Assembly of a State for ten consecutive years, its registration shall be liable to be cancelled by the Election Commission. Penalty for failure to contest elections for ten years consecutively.

(2) The Election Commission shall scrutinise the registrations of all the political parties under section 29A, and if it finds that any registered party has not contested any election to the House of the People or the Legislative Assembly of a State for ten consecutive years, it shall cancel such registration."

20 **8.** In section 33 principal Act, in sub-section (7)— Amendment of Section 33.

(i) in clause (a), for the words "from more than two Parliamentary constituencies", the words "from more than one Parliamentary constituency" shall be substituted;

(ii) in clause (b), for the words "from more than two Assembly constituencies", the words "from more than one Assembly constituency" shall be substituted;

25 (iii) in clause (c), for the words "from more than two Council constituencies", the words "from more than one Council constituency" shall be substituted;

(iv) in clause (d), for the words "for filling more than two such seats", the words "for filling more than one such seat" shall be substituted;

30 (v) in clause (e), for the words "from more than two such Parliamentary constituencies", the words "from more than one such Parliamentary constituency" shall be substituted;

(vi) in clause (f), for the words "from more than two such Assembly constituencies", the words "from more than one such Assembly constituency" shall be substituted;

35 (vii) in clause (g), for the words "for filling more than two such seats", the words "from more than one such seat" shall be substituted;

(viii) in clause (h), for the words "from more than two such Council constituencies", the words "from more than one such Council constituency" shall be substituted.

40 **9.** After Chapter VIIA of the principal Act, the following Chapter and sections thereunder shall be inserted, namely:— Insertion of new Chapter VIIB.

"Chapter VIIB

Restriction on Government Sponsored Advertisements

45 75B. (1) The Central Government or the State Government, as the case may be, shall not publish any advertisements its achievements either in the print media, electronic media, or by way of banners or hoardings in public places for a period of six months prior to the date Restriction on Government sponsored advertisement.

of expiry of the term of the House of the People or the Legislative Assembly of the concerned State:

Provided that the restrictions above shall not apply to the advertisements of achievements of the Governmnets relating to their poverty alleviation programmes or any health related schemes; however, such advertisements shall not carry any symbol of a political party or the names or photographs of any Minister or leader of any political party. 5

(2) In case, Election Commission of India finds through the means of complaint or by itself that advertisement issued are in contravention to section 75B, the party responsible shall be fined twice the amount of the advertisements issued.". 10

Insertion of new section 77A.

10. After section 77 of the principal Act, the following section shall be inserted, namely:—

Account of contributions received.

"77A. Every candidate at an election shall, either by himself or by his election agent, also keep an account of the following particulars in respect of the donations or contributions received by the candidate after the date of notification of election, namely:— 15

(a) the amount of contribution received by the candidate from his party for the election;

(b) the amount of contribution received by the candidate from—

(i) any person; 20

(ii) any company, not being a Government company;

(c) the name, address and PAN card details, if applicable, of the donor in sub-clause (b) above;

(d) the nature of each contribution, in particular, whether it is:

(i) cash; or 25

(ii) cheque; or

(iii) gifts in kind;

(e) the date on which the contribution was received.

Explanation.— All contributions by a political party to its candidate shall be made by a crossed account payee cheque or draft or bank transfer.". 30

Amendment of Section 78.

11. In section 78 of the principal Act,—

(a) the words "or, if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates" shall be omitted; and

(b) after the words "by his election agent under section 77", the words "and section 77A, respectively" shall be added. 35

Insertion of new section 78B.

12. After section 78A of the principal Act, the following section shall be inserted, namely:—

Disclosure of account submitted by contesting candidates.

"78B. (1) the district election officer shall make publicly available, on its website, the accounts of election expenses and contribution reports submitted by every contesting candidate or their election agent under section 78. 40

(2) The district election officer shall also keep accounts of election expenses and contribution reprints on file for three years after their submission and shall make them available

for public inspection on the payment of a prescribed fee under rule 88 of the Conduct of Election Rules, 1961."

13. In section 79 of the principal Act, for clause (e), the following clause shall be substituted, namely:—

Amendment
of section 79.

5 "(e) "High Court" means the High Court within the local limits of whose jurisdiction the election to which the election petition relates has been held; wherever applicable, a reference to the High Court in this Part shall also be deemed to include a reference to the 'Election Bench' designated by the Chief Justice of the relevant High Court in accordance with the procedure prescribed by this Part;"

10 **14.** In section 80A of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely:—

Amendment
of section
80A.

"(4) Where the High Court functions in more than one State, or where the High Court has more than one bench, the election petition shall be filed before the Principal Seat of the relevant High Court.

15 *Explanation.*— The High Court in its discretion may, in the interests of justice or convenience, try an election petition, wholly or partly, at the bench or place other than the Principal Seat of the High Court."

15. In section 86 of the principal Act,—

Amendment
of section 86.

(a) after sub-section (2), the following sub-section shall be inserted, namely:—

20 "(2A) There shall be one or more election Benches, comprising of one or more judges, as designated by the Chief Justice of the High Court under sub-section (2) of 80A, which shall only be dealing with election petitions presented in accordance with the provisions of this Part.

25 (2B) The trial of an election petition shall be continued from day to day until its conclusion, and the election Bench shall not grant any adjournments unless sufficient cause is made out and may impose costs, including exemplary costs, on the party seeking the adjournment.

30 (2C) Every election petition shall be tried as expeditiously as possible and trial shall be concluded within six months from the date on which the election petition is presented to the High Court for trial:

Provided that if the trial is not concluded within six months, the designated election Bench shall, for reasons to be recorded in writing, explain the cause for delay in a report to the Chief Justice of the High Court.

35 (2D) The respondent(s) shall file the written statement within forty-five days from the date of service of summons:

Provided that if the election bench is satisfied that the respondent(s) were prevented by sufficient cause from filing the written statement within the said period of forty-five days, it may entertain the written statement within a further period of fifteen days, but not thereafter:

40 Provided further that on expiry of the period of fifteen-days, the respondent(s) shall forfeit the right to file the written statement and the Election Bench shall not allow the written statement to be taken on record thereafter."

(b) sub-sections 6 and 7 shall be omitted.

- (d) the population from which the sample of respondents was drawn;
- (e) the number of people who were contacted to participate in the survey; and
- (f) if applicable, the margin of error in respect of the data obtained.

5 (g) A declaration that the results are in the nature of predictions, to be displayed prominently, in the manner prescribed by the Election Commission.

(h) Any other information as may be notified by the Election Commission.

10 (2) In addition to the information under sub-section (1), the publisher or broadcaster of an opinion poll shall, within a period of twenty- four hours after the publication or broadcast of the opinion poll, publish on its website a copy of a written report on the results of the survey referred to in sub-section (1).

(3) The report referred to in sub-section (2) shall include the following, as applicable:

(a) the name and address of the sponsor of the survey;

(b) the name and address of the person or organization that conducted the survey;

15 (c) the date on which or the period during which the survey was conducted;

(d) information about the method used to collect the data from which the survey results are derived, including

(i) the sampling method;

(ii) the population from which the sample was drawn;

20 (iii) the size of the initial sample;

(iv) the number of individuals who were asked to participate in the survey and the numbers and respective percentages of them who participated in the survey, refused to participate in the survey, and were ineligible to participate in the survey;

25 (v) the date and time of day of the interviews;

(vi) the method used to recalculated data to take into account in the survey the results of participants who expressed no opinion, were undecided or failed to respond to any or all of the survey questions, and

30 (vii) any weighting factors or normalization procedures used in deriving the results of the survey;

(e) the wording of the survey questions and, if applicable the margins of error in respect of the data obtained; and

(f) a copy of the poll as published along with the copy of the disclosure under sub-section(1).

35 (4) The Election Commission may issue further notifications regarding the manner in which the disclosures under sub-sections (1) and (2) are to be made.

40 (5) Any person who contravenes the provisions of this section shall be punished, on first conviction, with fine which may extend up to five lakh rupees, and in the event of a second or subsequent conviction with imprisonment of either imprisonment for a term which may extend up to two years, and shall also be liable to fine.

(6) No Court shall take cognisance of any offence punishable under this section unless there is a complaint made by order of, or under authority from, the Election Commission or the Chief Electoral Officer of the State concerned.

Explanation.—For the purposes of this section, "opinion poll" means a survey of how electors shall vote at an election or of the preferences of electors respecting any candidate, group of candidates, or political party.

Offences by companies.

126D. (1) Where an offence under sub-section (1) of section 126C has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: 5

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. 10

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. 15

Explanation.—For the purpose of this section,—

(a) "company" means any body corporate, and includes a firm or other association of individuals; and 20

(b) "director", in relation to a firm, means a partner in the firm."

Insertion of new Sections 127B, 127C and 127D.

21. After section 127A of the principal Act, the following sections shall be inserted, namely:—

Paying for news.

"127B. (1) Any person who is found paying for news, or receiving payment for news shall be punished with imprisonment for a term which may extend upto three years, and with fine, which may extend upto twenty-five lakh rupees. 25

(2) Nothing contained in sub-section (1) shall apply to payments made by registered political parties for the management of official publications whether print, radio, television and all other electronic owned or controlled by them. 30

(3) For the purposes of sub-section (2) every registered political party shall disclose its interests in any publication in the form and manner notified by the Election Commission of India in this regard.

(4) An attempt to commit an act punishable under sub-section (1) shall be punished with imprisonment for a term, which may extend upto two years, or with fine, which may extend upto ten lakh rupees, or with both. 35

(5) No court shall take cognisance of any offence punishable under this section unless there is a complaint made by order of, or under authority from, the election Commission of India or the Chief Electoral Officer of the State concerned.

Non-disclosure of interest in political advertising.

127C. (1) Any political advertisement in any media shall carry a disclosure to this effect in the form and manner notified by the Election Commission of India in this regard. 40

(2) Whoever contravenes the provision of sub-section (1) shall be punished with imprisonment for a term which may extend upto six months or fine which may extend upto five lakh rupees or with both.

Offences by companies.

127D. (1) Where an offence under sub-section (1) of section 127B has been committed by a company every person who, at the time the offence was committed, was in charge of, 45

and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

5 Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

10 (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purpose of this section,—

15 (a) "company" means any body corporate, and includes a firm or other association of individuals; and

 (b) "director", in relation to a firm, means a partner in the firm."

STATEMENT OF OBJECTS AND REASONS

Transparency in election financing is most important for a truly democratic electoral representation. Although there are legal provisions limiting election expenditure for candidates and governing the disclosure of contributions by companies to political parties. However, the same is not properly regulated, either due to loopholes in the law or their improper enforcement. This is evident from the 2001 Consultation Paper of the National Commission to Review the Working of the Constitution on Electoral Reforms, which estimates that actual campaign expenditure by candidates is "*in the range of about twenty to thirty times the said limits.*"

Association of Democratic Reforms (ADR) in its election expenses analysis for the Lok Sabha, 2009 of the 6753 candidates (of a total of 8028 candidates) whose summary statements of expenses were available, only four candidates exceeded the ceiling and only 30 spent up to 90 percent of the expenditure limit. On the other hand, 1066 candidates declared election expenses of less than Rs. 20,000 and 197 declared expenses less than Rs. 10,000.⁹⁷ Given the distortion between the reported and estimated candidate expenditure, increasing the expenditure limits further might not necessarily provide an answer.

As pointed out by Law Commission of India its 255th Report on Reforms in Election Commission, section 77 of the Representation of People Act, 1951 only covers individual "Candidates" and not on political parties. It allows political parties to have unlimited expenditure on part account. In case of political contribution, the Rs. 20,000 disclosure limit can be easily evaded by writing multiple cheques below rupees 20,000 each, or giving the money in cash. Election Commission of India's transparency guidelines do not have statutory authority and there is no legal consequence for non-compliance. Further, unlike many of the countries, political parties and candidates file their returns with the Election Commission of India, without putting up the information online (on the Election Commission of India's website) or making it easily available for public inspection (barring an RTI). This is essential to bring about transparency in the public domain and to let the voters know the donors, contributions and expenditures of the parties and candidates.

The present Bill, therefore, seeks to amend the Representation of People Act, 1951 with a view to—

(a) expand the ambit of Election Commission of India by providing it the powers to prosecute, in case, issues are found with the filing of expenditure reports of candidates and parties;

(b) include 'paid news' within the mandate of Election Commission of India to put a check on electoral malpractice which severely hinges on the idea of Freedom of Speech by manipulating public opinion;

(c) constitute Electoral Benches under the respective High Court of the States to adjudicate upon election related cases; and

(d) confer Election Commission of India with the powers to prosecute and de-register a political party in case of non-disclosure or wrongful disclosure of the expenditure.

The aforesaid amendments in the Representation of People Act, 1951 were long overdue and have been repeatedly pointed out by Election Commission of India, civil society and various Law Commission Reports. A transparent election is right of the citizens of the country. It is on this edifice of transparency and accountability of politicians that the true idea of democracy can be achieved.

Hence this Bill.

NEW DELHI;
July 5, 2016

FEROZE VARUNGANDHI

ANNEXURE

EXTRACTS FROM THE REPRESENTATION OF PEOPLE ACT, 1951

(43 OF 1951)

*	*	*	*	*	*
	2. (1) In this Act, unless the context otherwise requires,—				Interpretation.
*	*	*	*	*	*
	(e) "elector" in relation to a constituency means a person whose name is entered in the electoral roll of that constituency for the time being in force and who is not subject to any of the disqualifications mentioned in section 16 of the Representation of the People Act, 1950 (43 of 1950);				
*	*	*	*	*	*
7* * *	4. A person shall not be qualified to be chosen to fill a seat in the House of the People unless—				Qualifications for membership of the House of the People.
*	*	*	*	*	*
	(d) in the case of any other seat, he is an elector for any Parliamentary constituency.				
*	*	*	*	*	*
	5. A person shall not be qualified to be chosen to fill a seat in the Legislative Assembly of a State unless—				Qualifications for membership of a Legislative Assembly.
*	*	*	*	*	*
	(c) in the case of any other seat, he is an elector for any Assembly constituency in that State:				
*	*	*	*	*	*
	10(A). If the Election Commission is satisfied that a person—				Disqualification for failure to lodge account of election expenses.
	(a) has failed to lodge an account of election expenses within the time and in the manner required by or under this Act; and				
	(b) has no good reason or justification for the failure, the Election Commission shall, by order published in the Official Gazette, declare him to be disqualified and any such person shall be disqualified for a period of three years from the date of the order.				
*	*	*	*	*	*
	29C.—(1) The treasurer of a political party or any other person authorised by the political party in this behalf shall, in each financial year, prepare a report in respect of the following, namely:—				Declaration of donation received by the political parties.
	(a) the contribution in excess of twenty thousand rupees received by such political party from any person in that financial year;				
	(b) the contribution in excess of twenty thousand rupees received by such political party from companies other than Government companies in that financial year.				
	(2) The report under sub-section (1) shall be in such form as may be prescribed.				
	(3) The report for a financial year under sub-section (1) shall be submitted by the treasurer of a political party or any other person authorised by the political party in this behalf before the due date for furnishing a return of its income of that financial year under section 139 of the Income-tax Act, 1961 (43 of 1961), to the Election Commission.				

(4) Where the treasurer of any political party or any other person authorised by the political party in this behalf fails to submit a report under sub-section (3) then, notwithstanding anything contained in the Income-tax Act, 1961 (43 of 1961), such political party shall not be entitled to any tax relief under that Act.]

* * * * *

33. (1) * * * * *

* * * * *

Presentation of nomination paper and requirements for a valid nomination.

(7) Notwithstanding anything contained in sub-section (6) or in any other provisions of this Act, a person shall not be nominated as a candidate for election,—

(a) in the case of a general election to the House of the People (whether or not held simultaneously from all Parliamentary constituencies), from more than two Parliamentary constituencies;

(b) in the case of a general election to the Legislative Assembly of a State (whether or not held simultaneously from all Assembly constituencies), from more than two Assembly constituencies in that State;

(c) in the case of a biennial election to the Legislative Council of a State having such Council, from more than two Council constituencies in the State;

(d) in the case of a biennial election to the Council of States for filling two or more seats allotted to a State, for filling more than two such seats;

(e) in the case of bye-elections to the House of the People from two or more Parliamentary constituencies which are held simultaneously, from more than two such Parliamentary constituencies;

(f) in the case of bye-elections to the Legislative Assembly of a State from two or more Assembly constituencies which are held simultaneously, from more than two such Assembly constituencies;

(g) in the case of bye-elections to the Council of States for filling two or more seats allotted to a State, which are held simultaneously, for filling more than two such seats;

(h) in the case of bye-elections to the Legislative Council of a State having such Council from two or more Council constituencies which are held simultaneously, from more than two such Council constituencies.

Explanation.—For the purposes of this sub-section, two or more bye-elections shall be deemed to be held simultaneously where the notification calling such bye-elections are issued by the Election Commission under section 147, section 149, section 150 or, as the case may be, section 151 on the same date.

* * * * *

Lodging of account with the district election officer.

78. Every contesting candidate at an election shall, within thirty days from the date of election of the returned candidate or, if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates, lodge with the district election officer an account of his election expenses which shall be a true copy of the account kept by him or by his election agent under section 77.

Definitions.

79. In this Part and in [Part VII] unless the context otherwise requires—

* * * * *

(e) "High Court" means the High Court within the local limits of whose jurisdiction the election to which the election petition relates has been held;

* * * * *

80A. * * * * *

(3) The High Court in its discretion may, in the interests of justice or convenience, try an election petition, wholly or partly, at a place other than the place of seat of the High Court.

86. * * * * *

High Court to try election petitions.

(6) The trial of an election petition shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion, unless the High Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.

(7) Every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial.

* * * * *

99. (1) At the time of making an order under section 98 3 [the High Court] shall also make an order—

Trial of election petitions.

(a) where any charge is made in the petition of any corrupt practice having been committed at the election, recording—

(i) a finding whether any corrupt practice has or has not been proved to have been committed the election, and the nature of that corrupt practice;

(ii) the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt practice and the nature of that practice; and

(b) fixing the total amount of costs payable and specifying the persons by and to whom costs shall be paid: Provided that 6 [a person who is not a party to the petition shall not be named] in the order under sub-clause (ii) of clause (a) unless—

(a) he has been given notice to appear before 3 [the High Court] and to show cause why he should not be so named; and

(b) if he appears in pursuance of the notice, he has been given an opportunity of cross-examining any witness who has already been examined by the High Court and has given evidence against him, of calling evidence in his defence and of being heard.

(2) In this section and in section 100, the expression "agent" has the same meaning as in section 123.

100. (1) Subject to the provisions of sub-section (2) of 3 [the High Court] is of opinion

Other orders to be made by the High Court.

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act 9 [or the Government of Union Territories Act, 1963 (20 of 1963)]; or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c) that any nomination has been improperly rejected; or

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—

(i) by the improper acceptance or any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate 1 [by an agent other than his election agent], or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non-compliance which the provisions of the Constitution or of this Act or of any rules or orders made under this Act,

[the High Court] shall declare the election of the returned candidate to be void.

(2) If in the opinion of 2 [the High Court], a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice 4 *** but 2 [the High Court] is satisfied

(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and 5 [without the consent], of the candidate as his election agent;

* * * * *

(c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt *** practices at the election; and

(d) that in all other respects the election was free from any corrupt 7 *** practice on the part of the candidate or any of his agents,

then 2 [the High Court] may decide that the election of the returned candidate is not void.

* * * * *

Grounds for declaring election to be void.

102.—If during the trial of an election petition it appears that there is an equality of votes between any candidates at the election and that the addition of a vote would entitle any of those candidates,—

(a) any decision made by the returning officer under the provisions of this Act shall, in so far as it determines the question between those candidates, be effective also for the purposes of the petition; and

(b) in so far as that question is not determined by such a decision 1 [the High Court] shall decide between them by lot and proceed as if the one on whom the lot then falls had received an additional vote,

* * * * *

Withdrawal of election petitions.

109. (1) An election petition may be withdrawn only by leave of the High Court.

(2) Where an application for withdrawal is made under sub-section (1), notice thereof fixing a date for the hearing of the application shall be given to all other parties to the petition and shall be published in the Official Gazette.

* * * * *

Section 112 (1) An election petition shall abate only on the death of a sole petitioner or of the survivor of several petitioners.

(2) Where an election petition abates under sub-section (1), the High Court shall cause the fact to be published in such manner as it may deem fit.

(3) Any person who might himself have been a petitioner may, within fourteen days of such publication, apply to be substituted as petitioner and upon compliance with the conditions, if any, as to security, shall be entitled to be so substituted and to continue the proceedings upon such terms as [the High Court may deem fit.]

* * * * *

Abatement of election petitions.

116. If before the conclusion of the trial of an election petition, the sole respondent dies or gives notice that he does not intend to oppose the petition or any of the respondents dies or gives such notice and there is no other respondent who is opposing the petition, 5

[the High Court] shall cause notice of such event to be published in the Official Gazette, and thereupon any person who might have been a petitioner may, within fourteen days of such publication, apply to be substituted in place of such respondent to oppose the petition, and shall be entitled to continue the proceedings upon such terms as 5 [the High Court] may think fit.

* * * * *

119. (1) Costs shall be in the discretion of the High Court Provided that where a petition is dismissed under clause (a) of section 98, the returned candidate shall be entitled to the costs incurred by him in contesting the petition and accordingly the High Court shall make an order for costs in favour of the returned candidate.

Abatement or substitution on death respondent.

(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person 7 [with the consent of the candidate or his election agent], with the free exercise of any electoral right:

* * * * *

123. The following shall be deemed to be corrupt practices for the purposes of this Act:—

Corrupt practices.

* * * * *

(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person 7 [with the consent of the candidate or his election agent], with the free exercise of any electoral right:

Provided that—(a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who—(i) threatens any candidate or any elector, or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community; or (ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure,

126. (1) No person shall— (a) convene, hold or attend, join or address any public meeting or procession in connection with an election; or (b) display to the public any election matter by means of cinematograph, television or other similar apparatus; or (c) propagate any election matter to the public by holding, or by arranging the holding of, any musical concert or any theatrical performance or any other entertainment or amusement with a view to attracting the members of the public thereto, in any polling area during the period of forty-eight hours ending with the fixed for the conclusion of the poll for any election in the polling area. (2) Any person who contravenes the provision of sub-section (1) shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both. (3) In this section, the expression "election matter" means any matter intended or calculated to influence or affect the result of an election.

Prohibition of public meetings during period of forty-eight hours ending with hour fixed for conclusion of poll.

LOK SABHA

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BILL

further to amend the Representation of People Act, 1951.

(Shri Feroze Varun Gandhi, M.P.)