

Bill No. XV of 2022

THE REPRESENTATION OF THE PEOPLE (AMENDMENT) BILL, 2022

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

BE it enacted by the Parliament in the Seventy-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Representation of the People (Amendment) Act, 2022.

Short title and commencement.

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

43 of 1951.

2. In section 77 of the Representation of the People Act, 1951 (*hereinafter referred to as the principal Act*), in sub-clause (1), for the words "on which he has been nominated", the words "of notification of such election" shall be substituted.

Amendment of section 77.

3. In the principal Act, after section 127A, the following sections shall be inserted, namely:—

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

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Paying for news to further the prospect of election of a candidate.

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

(2) Nothing contained in sub-section (1) shall apply to payments made by a registered political party for the management of official publications, including print, radio, television and all other electronic transmission medium owned or controlled by that political party. 5

(3) To avail of the exemption under sub-section (2) all registered political parties shall disclose their interests in any publication in such form and manner, as may be 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 to two years, or with fine, which may extend to ten lakh rupees, or with both. 10

(5) No court shall take cognisance of any offence punishable under this section unless there is a complaint made by the order of, or under authority from, the Election Commission of India or the Chief Electoral Officer of the State concerned. 15

Non-disclosure of interest in political advertising.

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

(2) Any person who contravenes the provision of sub-section (1) shall be punishable with imprisonment for a term which may extend to six months or fine which may extend to five lakh rupees, or with both. 20

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, 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: 25

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. 30

(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. 35

Explanation.—For the purposes of this section,—

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

(b) "director", in relation to a firm, means a partner in the firm." 40

STATEMENT OF OBJECTS AND REASONS

Section 77(1) of the Representation of the People Act, 1951, imposes a ceiling on the election expenses of a candidate from the date of nomination to the date of declaration of results. This provision does not cover the pre-nomination period, though it constitutes a major part of candidates' expenses. Usually, campaigning commences before or after the announcement of the date of elections, however, to evade the application of section 77(1), the nomination is filed on the last filing days. This concern has been highlighted in the 255th Law Commission Report on Electoral Reforms as well.

2. In *PUCL v. Union of India* (2003) 4 SCC 399, while endorsing the recommendations of the National Commission to review the working of Constitution (NCRW) for stronger disclosure and auditing norms, the Supreme Court observed that "*...the political parties as well as individual candidates be made subject to a proper statutory audit of the amounts they spend.... EC should devise specific formats for filing such statements so that fudging of accounts becomes difficult. Also, the audit should not only be mandatory but it should be enforced by the Election Commission.*"

3. Many countries such as the United Kingdom follow a two-way approach, the laws regulate election expenditure for both the pre-candidacy long campaign period, *i.e.*, a year before the date of nomination and short-campaign period, *i.e.*, from the date of nomination to the date of declaration of result. Although considering the huge diversity, it may not be feasible in the Indian context but, extending the scope of section 77 from "date of nomination" to "date of notification" would be a better mid-way and practical alternative.

4. Further, the influence which money exerts in corrupting the democratic process is undeniable and sadly this is true now, more than ever. In our increasingly connected, media heavy world, political advertisements are omnipresent and an essential part of any campaign. Unregulated, they provide a platform for candidates to propagate patent untruths. This severely undermines the right to accurate information based on which a voter can make his/her decision. The seriousness of these issues is amplified by the extent to which it has become a systematic part of promoting one's election. The money spent on unethical paid news and disguised political advertisements is rising at an exponential rate in both national as well as regional media.

5. In *PUCL v. Union of India* (2003) 4 SCC 399, the Supreme Court also held that availability of impartial, proper and relevant information about the election candidates fosters and promotes freedom of speech and expression. Paid news distorts this right. As per the 2010 Press Council Sub-committee report on Paid News, it was suggested that the act of publishing news items in exchange for consideration should be construed as electoral malpractice with a punishment of minimum two years imprisonment. The Election Commission of India in its 2012 circular which was later incorporated in the Handbook for Media for Lok Sabha General Elections, proposed that the Representation of the People Act, 1951, should be amended to prevent the publishing and abetment to publish any paid news for furthering the prospects of a candidate's election. In 2014, TRAI in its recommendations on media ownership also recommended that the term 'paid news' should be comprehensively defined and a proper framework for scrutinizing complaints and taking punitive actions should be established.

6. In the United Kingdom, there is a blanket ban on telecasting paid political advertisements on television and radios. This prohibition also extends to any advertisement which tends to influence public opinion on a matter of general controversy. As per the Commonwealth Electoral Act, 1918 of Australia, it is mandatory for unfolding the details of any electoral advertisement, handbill, pamphlet, poster or notice that contains electoral

matter. Similarly in Canada, the Canada Election Act, 2000, set provisions for adequately disclosing the details of any electoral advertising.

7. Currently, the guidelines for disclosing political paid advertisements are not adequately framed and uniform. To check disguised paid political advertisements, the disclosure provisions have to be made compulsory for all media firms to assist the public in identifying the nature of content (whether sponsored or editorial content) and keep a vigilant track of transactions between the media and election candidates.

8. It is, therefore, imperative to amend the Representation of the People Act, 1951 to regulate the election expenditure and to check the menace of 'paid news'.

Hence, this Bill.

DR. SASMIT PATRA

ANNEXURE

EXTRACTS FROM THE REPRESENTATION OF THE PEOPLE ACT, 1951

(43 OF 1951)

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77. (1) Every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorized by him or by his election agent between the date on which he has been nominated and the date of declaration of the result thereof, both dates inclusive.

Account of election expenses and maximum thereof.

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

(Dr. Sasmit Patra, M.P.)