

AS INTRODUCED IN THE RAJYA SABHA  
ON THE 3RD FEBRUARY, 2017

**Bill No. LII of 2016**

THE REPRESENTATION OF THE PEOPLE (AMENDMENT) BILL, 2016

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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,  
extent 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. For section 29B of the Representation of the People Act, 1951 (hereinafter referred to as the Principal Act), the following section shall be substituted namely:— Substitution of  
new section for  
section 29B.

Political party to be funded by appropriate authority.	“29B. (1) Every political party shall be funded only by the Central government in consultation with the State Governments.	
	(2) The quantum of funding for each political party shall be decided by the Central Government in consultation with the State Government as may be prescribed taking into account the vote share of each party in the last concluded general election to the Lok Sabha or the concerned State Legislative Assembly as the case may be.	5
	(3) No political party shall be eligible to accept any contribution in any form from any person or company."	
Omission of section 29C.	3. Section 29C of the principal Act shall be omitted.	
Omission of section 77.	4. Section 77 of the principal Act shall be omitted.	10
Amendment of section 126.	5. In section 126 of the principal Act, the sub-section (1), the following be substituted, namely:— "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) 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.	15
Insertion of new sections 126C and 126D.	6. After section 126B of the principal Act, the following sections shall be inserted, namely:—  "126C. (1) No person shall publish or broadcast the results of an opinion poll in any polling area during the period of twenty-four hours ending with the hour fixed for the conclusion of the poll for any election in the polling area. (2) No broadcast of opinion polls shall be done without providing the following information together with the results,— (a) the name of sponsor of the survey; (b) the name of the person or the organisation that concluded the survey; (c) the date on which or the period during which the survey was conducted; (d) the population from which the sample of respondents was drawn; (e) the margin error with respect to the data obtained; and (f) the number of people who participated in the survey.	20
Restrictions for publication of opinion poll.	<i>Explanation</i> —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 towards any candidate, group of candidates, or political party.	
Offences Committed by companies.	126D. Where an offence under 126C has been committed by a company, every person who at the time the offence was committed, was in charge the company, shall be deemed to be guilty of the offence and shall be liable to be punished with imprisonment for a term which may extend to two years, or with fine, or both.	35
Insertion of new section 127B.	7. After section 127A of the principal Act, the following sections shall be inserted, namely:—	40

“127B. (1) No person shall publish or broadcast any paid news.

Prohibiting and  
punishment for  
paid news.

(2) Any person who is found guilty of publishing paid 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.

5 (3) No court shall take cognizance 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.

(4) All political advertisements in any media shall carry a disclosure in such form and manner to be notified by the Election Commission of India.

10 (5) Whoever contravenes the provision of sub-section (4) of section 127B 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.

15 *Explanation*—For the purpose of this section, "Paid news" means news items sponsored by an individual/group of individuals without any basis of true facts for furthering their political motives.

8. After section 170 of the following section shall be inserted, namely:—

Insertion of  
new section  
171.

20 "171. (1) With effect from such date, as the Central Government may, by notification, appoint, there shall be constituted, for the purpose of this Act, an authority, to be known as the "Election Commission Auditing Authority" consisting of three retired Supreme Court judges nominated by the Central Government in consultation with the President of India.

Authority to  
audit the  
Election  
Commission of  
India.

(2) The salary and allowances payable to, and other terms and conditions of service of the retired Supreme Court judges shall be such, as may be prescribed.

(3) The Authority may appoint such number of officer and staff as it consider necessary for discharge of its functions under this Act.

25 (4) The salary, allowances and terms of conditions of service of officers and staff of authority shall be such as may be prescribed.

(5) The authority shall have the powers to audit the actions taken by the Election Commission as may be prescribed.

30 (6) The authority shall submit a report on any excesses committed by the Election Commission of India, to the President of India, as may be prescribed.

(7) The President of India may take action pertaining to excesses committed by Election Commission of India or receipt of the report from the authority.

35 (8) The Central Government, shall from time to time provide, after due appropriation made by the Parliament by law in this behalf, requisite funds for the functioning of the authority.

## STATEMENT OF OBJECTS AND REASONS

The elections in the country form the cornerstone of democracy, conducting of free and fair elections is pertinent to India's democratic framework. Given the fact, India is the largest democracy in the world; its electoral system is bounded by its unique set of political and institutional problems. With the increasing number of electorates and diverse party structures, a robust nature of Indian democracy can be further enhanced by introducing certain electoral reforms. With the growing use of excessive money in election campaign, followed by money and muscle politics, this Bill aims to introduce or insert concepts like State Funding of Elections. Thus, in order to ensure just and free and fair election, the present bill seeks to amend section 29B of Representation of the People Act, 1951 (RPA). Introduction of the concept of state funding envisages to prescribe a fixed budget for central and assembly elections, respectively All the parties and individual candidates would be given financial support as per their earlier performance in the elections.

At present under section 126 A of RPA exit polls are banned in India. Followed by section 126B, which restricts conducting of opinion polls forty eight hours prior to the election. These restrictions are to enable holding free and fair elections, bereft of any external influence on the voters. Similar is the case with political advertisements in electronic media. However, these restrictions are in contradiction with right to free speech and right to know. Given the growing upsurge in social media, it has become a major platform for more political advocacy and advertisements, which is currently not regulated under any act. In the light of more inclusive and participatory approach to democratic framework, the section aims to ban existing restrictions on opinion polls and political advertisement prior to forty eight hours before the elections. Conduct and publication of opinion polls should be allowed, to be followed by a given code of conduct. The Bill also prohibits publication of paid news.

Under article 324 of the constitution, Chief Election Commissioner can exercise certain powers, which are not prescribed in the rules and the acts. These powers are enshrined in the Constitution to ensure free and fair conduct of election across all India In order to curb futuristic misinterpretation of powers, under article 324 RPA is to be amended to insert mechanism for accountability and transparency in the execution of power up held by Election Commission.

The above given amendments and reforms are an attempt to resolve the challenges unique to India's democratic framework. The present, bill is an endeavour to reflect the concerns and voices political parties and citizens across the country. Largely, the existing problems are seated into the political and institutional failure within the existing RPA. Thus, in the light of these above given concerns, the present Bill envisages to strengthen the transparent and participatory conduct of election in India.

Hence this Bill.

VIVEK GUPTA

## FINANCIAL MEMORANDUM

Clause 2 of the Bill makes it obligatory for the Central Government to provide requisite funds to every political party.

Clause 8 Provides for the constitution of Election Commission Auditing Authority and it further provides for the appointment of officers and staff of the Authority.

The Bill, therefore, if enacted will involve recurring expenditure from the Consolidated Fund of India to the tune of rupees five Hundred crore per annum.

However, a non-recurring expenditure to the tune of rupees one hundred crore is also likely to be involved.

ANNEXURE

EXTRACT FROM THE REPRESENTATION OF THE PEOPLE ACT, 1951

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Political parties entitled to accept contribution.

29B. Subject to the provisions of the Companies Act, 1956 (1 of 1956), every political party may accept any amount of contribution voluntarily offered to it by any person or company other than a Government company:

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

49 of 1976.

*Explanation.*—For the purposes of this section and section 29C,—

(a) "company" means a company as defined in section 3;

(b) "Government company" means a company within the meaning of section 617; and

(c) "contribution" has the meaning assigned to it under section 293A of the Companies Act, 1956 and includes any donation or subscription offered by any person to a political party; and

1 of 1956.

(d) "person" has the meaning assigned to it under clause (31) of section 2 of the Income-tax Act, 1961, but does not include Government company, local authority and every artificial juridical person wholly or partially funded by the Government.

43 of 1961.

Declaration of donation received by the political parties.

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:—

(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, to the Election Commission.

43 of 1961.

(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.

43 of 1961.

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Account of Election expenses and maximum thereto.

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 2 [the date on which he has been nominated] and the date of declaration of the result thereof, both dates inclusive.

*Explanation 1.* —For the removal of doubts, it is hereby declared that—

(a) the expenditure incurred by leaders of a political party on account of travel by air or by any other means of transport for propagating programme of the political party shall not be deemed to be the expenditure in connection with the election incurred or authorised by a candidate of that political party or his election agent for the purpose of this sub-section.

(b) any expenditure incurred in respect of any arrangements made, facilities provided or any other act or thing done by any person in the service of the Government and belonging to any of the classes mentioned in clause (7) of section 123 in the discharge or purported discharge of his official duty as mentioned in the proviso to that clause shall not be deemed to be expenditure in connection with the election incurred or authorised by a candidate or by his election agent for the purpose of this sub-section.

*Explanation 2.*— For the purpose of clause (a) of Explanation 1, the expression "leaders of a political party", in respect of any election, means,—

(i) where such political party is a recognised political party, such persons not exceeding forty in number, and

(ii) where such political party is other than a recognised political party, such persons not exceeding twenty in number.

whose names have been communicated to the Election Commission and the Chief Electoral Officers of the States by the political party to be leaders for the purposes of such election, within a period of seven days from the date of the notification for such election published in the Gazette for India or Official Gazette of the State, as the case may be, under this Act:

Provided that a political party may, in the case where any of the persons referred to in clause (i) or, as the case may be, in clause (ii) dies or ceases to be member of such political party, by further communication to the Election Commission and the Chief Electoral Officers of the States, substitute new name, during the period ending immediately before forty-eight hours ending with the hour fixed for the conclusion of the last poll for such election, for the name of such person died or ceased to be a member, for the purpose of designating the new leader in his place.

(2) The account shall contain such particulars, as may be prescribed.

(3) The total of the said expenditure shall not exceed such amount as may be prescribed.

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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.

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

(2) Any person who contravenes the provisions 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.

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RAJYA SABHA

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

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*(Shri Vivek Gupta, M.P.)*