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## ELECTORAL REFORMS AND FUNDING OF POLITICAL PARTIES IN INDIA

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***Abstract:*** *To conduct more free and fair elections, we need independent and powerful election commission, more specific laws and efficient enforcement of these laws by various government bodies. Yet, no election system can ever be perfect. Electoral reforms are changes in electoral systems for efficient transformation of public desires into election results and make the system better. Any democratic society has to keep searching for mechanisms to make more free and fair elections. It is seen that political parties contesting elections, do not maintain proper transparency and accountability in monetary aspects like funding and donations. Political parties in India tend to hide, represent incorrect and incomplete numbers while making declaration about the donations and funding they receive. This misleads innocent citizens, causes corruption, misuse of money and power in election, and gives unethical advantage to political parties that leads to election of wealthy and powerful candidate rather than righteous and deserving candidate. Electoral reforms enacted previously tried to stop these corrupt, non-democratic and unconstitutional practices, by limiting parties' spending in election and mandating political parties to declare donations. This article gives solutions for various problems in the existing system like the problem of no information available about actions taken by Central Board of Direct Taxation (CBDT) against parties defaulting to release the contribution reports. This article also gives remedies to tackle incorrect, incomplete or non-disclosure of information in donation statements of national and regional parties that are available in*

*public domain. Moreover this article provides model to ensure accountability and transparency in funding of the political parties in India.*

## **INTRODUCTION**

As per the rules laid by Section 29C of Representation of People's Act<sup>1</sup> (hereafter referred to as RPA) and Election Commission of India (hereafter referred as ECI), political parties must publish information about all the donations received by them that exceeds ₹ 20,000 (US \$264 approx.) in given financial year in a set format. Failure to do so makes the defaulting parties not eligible for tax relief. According to the provisions, these contribution reports shall be made available on public domain to increase transparency in the governing system. Now let's look into the issues on this matter: Firstly, there is no information available about the actions taken by Central Board of Direct Taxation (hereafter referred as CBDT) against parties defaulting to release these contribution reports. Secondly, an analysis of the donation statements of regional and national parties that are available on public domain shows that in several cases there is incorrect, incomplete or non-disclosure of PAN information.

## **BACKGROUND**

The treasurer/individual appointed by political party, has to prepare a report of donations more than ₹ 20,000 got by national party from any individual or organizations in that fiscal year and to keep record of donor's amount, name and address. Under Section 139 of the Income-tax Act<sup>2</sup>, such report as mentioned above, shall be submitted to ECI for furnishing return of its income. And, political party will not get any tax relief under this act, if fails to submit that report.<sup>3</sup> The Sec. 13A of Income Tax Act<sup>4</sup> states that "a political party's any income that comes under the income by the way of voluntary contributions/ donations is exempted from tax." The Finance Act, 2017<sup>5</sup> introduced Electoral Bond. Under this, "the donations/contributions received in form of electoral bonds isn't mandated to be disclosed in the report that goes to ECI. Maintenance of any details of the names and addresses of donors of these bonds, is not required by the Political parties."<sup>6</sup> The electoral bonds and this scheme inhibits people from knowing about who has contributed, how much, and to what party. This is unethical.

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<sup>1</sup> The Representation of People Act, 1950, § 29C, No. 43, Acts of Parliament, 1950 (India).

<sup>2</sup> The Income-tax Act, 1961, § 139, No. 43, Acts of Parliament, 1961 (India).

<sup>3</sup> *Supra* note 1.

<sup>4</sup> The Income-tax Act, 1961, § 13A, No. 43, Acts of Parliament, 1961 (India).

<sup>5</sup> The Finance Act, 2017, No. 7, Acts of Parliament, 2017 (India).

<sup>6</sup> *Electoral bonds: secretive and opaque*, THE HINDU (May 1, 2021, 10:00AM), <https://www.thehindubusinessline.com/opinion/electoral-bonds-secretive-and-opaque/article23323002.ece>

## **ANALYSIS OF THE DONATION AND INCOME STATEMENTS PUBLISHED BY THE POLITICAL PARTIES**

“From 1546 donations in FY 2012-13 to 2015-16, political parties had got ₹ 355.08 crore which didn't had address information in the contribution form. As per the audit reports, the total income of political parties is ₹ 1559.17 crore in the FY 2016-17. Out of the total income of 7 top parties in India in FY2016-17, ₹ 710.80 crore were from anonymous sources (sources of income specified in the IT Returns are anonymous) i.e. 45.59% of entire income of all Indian political parties. The 4 parties from those 7 parties, namely INC (Indian National Congress), CPM (Communist Party of India- Marxist), BJP (Bhartiya Janata Party) and CPI (Communist Party of India) did not disclosed PAN details of 166 donations from which they collected ₹ 2.86 crore.”<sup>7</sup> Hence, of the total donations received by major National Parties during this time, total donations with undeclared, in complete, or incorrect PAN details amount to hundreds of crores.

“In FY 2016-17, the most favourite unidentified income source for INC was ‘Sale of coupons’ by which it received ₹ 115.64 crore i.e. 91.69% of INC's total funding from unidentified sources. In FY 20-16-17, 99.98% of the total income i.e. 454.84 crores of BJP in the unidentified sources were collected under ‘Voluntary Contribution’ by BJP.”<sup>8</sup> Now how can someone collect ₹ 115.64 crores just by mere sale of coupons? What is even the use of such coupons and who has bought these coupons? How can 99.98% of all the funds be collected just from voluntary contribution? This all is very mysteries. “The Bahujan Samaj Party (BSP) declared that it didn't get any donations more than ₹ 20,000 in FY 2016-17, as it had been declaring for the last eleven yrs.”<sup>9</sup> Now this is very impractical and furtive that how can big party like BSP receive crores of donations, all below ₹20,000, that also for so eleven years? It's like to take donation of ₹19,999 to escape from the declaring the donations as for declaring it should be ₹20,000. Moreover, there is also delay of many months after the due date, for submitting the audit reports to the Election Commission.

## **PROBLEM ANALYSIS IN LIGHT OF RECENT DEVELOPMENTS**

No information given by Central Board of Direct Taxation (CBDT) about action taken against defaulting parties who fail to submit and delay in submission of contribution reports and donation statement is a botch

<sup>7</sup> ADR Team, *Analysis of Donations Received above ₹ 20,000 by National Political Parties – FY 2016-17*, ADR (May 1, 2021, 11:30AM), <https://adrindia.org/content/analysis-donations-received-above-rs-20000-national-political-parties-%E2%80%93-fy-2016-17>.

<sup>8</sup> *Supra* note 7.

<sup>9</sup> *Supra* note 7.

to curtail black money and frauds in political funding and inhibits the people from knowing who has contributed, how much and to which political party. Further, the ECI will have no information of the funds received by such defaulting political parties. The Section 139 4(a) of Income-tax Act 1961<sup>10</sup>, by which a political party is required to show all incomes, including donations/contributions from bonds. Still, it's also not certain if the CBDT will have an opportunity to get all the details of the contribution in spite of the applicability of the above mentioned Section 139 4(a)<sup>11</sup>. Political funding will become more opaque. This Corporate-Political Nexus is fatal for democracy. Over 70% of their donations are from anonymous sources. An amendment to Sec. 13A of Income Tax Act was made in 2017 that states "political parties shall declare all donations above ₹2,000 to Dept. of Income Tax for getting the tax exemption". But it didn't amend Sec. 29C of Representation of People's Act 1951<sup>12</sup>, which states that report of donations/ contributions above ₹20,000 to the political parties shall be declared to the ECI. The limit of ₹20,000 should have been lowered to ₹2000 for Sec. 29C of RPA too. So, by this now the Income-tax Department (under Govt. of India which is in control of the political party in power) will know about all details about donations above ₹2000 to all the political parties in India, but the ECI won't know any details of the donations to political parties above ₹2000. It still has to follow the old ₹20,000 limit and now after electoral bonds the ECI will not know details of the donors i.e. who donate above ₹20,000 by means of electoral bonds.

The ECI has probably highlighted this issue to Ministry of Law, but no action has been taken yet. The Election Commission (ECI) has investigated the apprehensions on electoral transparency which has currently increased as an outcome- with filing reports of contribution of above ₹ 20,000, still done by the political parties. This implies that, a political party would have to declare all donations received above ₹ 2,000 to the Dept. of Income Tax in order to get of tax exemptions, but it's not bound to declare names and other details of donors for the same to ECI in its donation statement. In recent case, "BSP in 2017-18 declared that it hasn't got any contributions more than ₹ 20,000, skipping all mention of the new ₹ 2,000 limit."<sup>13</sup>

If incorrect, incomplete and undeclared information about PAN, names and other details in the report is found then exemptions in tax shall be deprived of to such political party. A revolutionary statutory provision announced by the Union govt. is that any donations/funding above ₹2,000 can only be done by the means of net banking, electoral bond, cheques, etc.<sup>14</sup> Sec. 13 I-T Act deal with tax exemptions for political donations and contributions and, Sec. 139 (4B) of I-T Act<sup>15</sup> deals with the furnishing of income returns by political

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<sup>10</sup> The Income-tax Act, 1961, § 139 4(A), No. 43, Acts of Parliament, 1961 (India).

<sup>11</sup> *Ibid*

<sup>12</sup> *Supra* note 1.

<sup>13</sup> Anubhuti Vishnoi, *Non- amended RPA prevents Funding Transparency*, THE ECONOMIC TIMES (May 2, 2021, 09:00AM), <https://economictimes.indiatimes.com/news/politics-and-nation/non-amended-rpa-prevents-funding-transparency/articleshow/66036321.cms>.

<sup>14</sup> *Supra* note 4.

<sup>15</sup> The Income-tax Act, 1961, § 139 4(B), No. 43, Acts of Parliament, 1961 (India).

parties for such cases. But there are not many actions taken if incomplete/incorrect information in the declaration by political parties. As per latest Sec. 13A of Income-tax Act, as amended in 2017, there's no necessity to declare record of electoral bonds or details of such donors. This amendment lessened discrepancies about incomplete/incorrect declaration as now transactions will be done via electoral bond, but this would hide the identity and amount donor gave to the party.

## **SOLUTIONS FOR THESE ISSUES**

The orders of Central Information Commission that deemed political parties to be public authorities under Right to Information (hereafter referred as RTI) Act should be implemented by political parties and they shall be open for public scrutiny under RTI Act, 2005. To bring Central Board of Direct Taxation (CBDT) under purview of RTI Act, by ordinance or amendment in legislature. So that information about the action taken against the defaulting parties is known. Institute of Chartered Accountants of India (ICAI) had made certain suggestions in 2010 to Election Commission under its "Guidance Note on Accounting and Auditing of Political Parties"<sup>16</sup> to refine scheme of auditing followed by Indian political parties. This Guidance Note shall be legalised by an act of the legislature. If any discrepancy regarding incorrect, undeclared or incomplete PAN details arise in donation statement than license of the respective accountant working for that political party shall be cancelled by ICAI.

During period of election, there should be a fixed limit on amount of donation and contribution which can be collected by political parties. Moreover, to make limit on the number and amount of electoral bond that can be issued by a person or a company or other bodies. The suggested limit is maximum 10% of the quarterly net profit of a company and maximum of 10% of annual income of a person to set for the number and amount of electoral bonds that can be issued. To develop intra-party democracy in the political parties. All the donation and financial matters in the party to file the Contribution Reports and Donation Statements shall be done with consent and supervision of majority of the members of party. Insert recommendations of the Law Commission in Report 255<sup>17</sup> like inserting Sec. 29C, 29D, and 29E in Representation of People Act, 1951 mentioned in it. This will guarantee transparency, accountability and empower public to make righteous choices about electing their representatives.

Supreme Court and ECI shall issue guidelines to Income Tax Department and UIDAI to share the data of tax returns and PAN number and Aadhar details to the Election Commission, so that the verification of incorrect, undeclared or incomplete PAN details in the contribution reports and donation statements can be done by ECI appointing team and nominate NGO to verify these using technology. To file more and more PILs in Supreme

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<sup>16</sup> Institute of Chartered Accountants of India, *Guidance Note on Accounting and Auditing of Political Parties*, ICAI (2012).

<sup>17</sup> Law Commission of India, *Electoral Reforms*, 255 THE LAW COMMISSION REPORT, March 12, 2015.

Court and grievances to the Ministries against electoral bonds to bring pressure on government to either scrap the use of electoral bond or make the information of who issued to electoral bond available to the Election Commission and make the system of electoral bonds more transparent and accountable. To involve United Nations Fair Elections Commission as international observer over these issues. Hence, little international pressure by the contemporary democracies can ensure some transparency and accountability of the political parties.

Unknown donation equal/above ₹2000 should be prohibited. Even if Sec. 29C of the RPA, 1950 mandates the political parties to declare their incomes, nevertheless such declaration is only required for contributions more than ₹20,000. This is insufficient for ensuring accountability and transparency of political parties in the monetary administration. Hence, the political parties should be bound to quarterly publish their accounts, maintenance of such accounts and their auditing to ensure their accuracy and for information of the citizens. Those contributors who donated ₹ 20,000 above as a sole/multiple donations must give details of their PAN. Political parties should be mandated to keep proper accounts in a prescribed format and such accounts should be audited by accountants approved and recommended by the Comptroller and Auditor General of India (CAG) to avoid incorrect, undeclared or incomplete details in the contribution reports and donation statements of political parties.

## **CONCLUSION**

Still there's vagueness in data of donations declared by political parties as incomplete declaration of data in the donations reports. On Sept. 13, 2013, the Supreme Court held that no part of the affidavit of candidate shall be left empty.<sup>18</sup> Likewise, Form 24A that is submitted by political parties to ECI, any part providing details of donations above ₹ 20000, must not have to be left blank. Date on which the funding was done shall recorded in Form 24A. As present in US, France, Bhutan, Japan and Brazil; all details of all donors shall be made accessible for civic inspection. In India more than 50% of the source of incomes are unidentified, which is not with in case with these countries. Political parties that fail to submit its donation statements before the due date to the ECI, shall be not tax-exempted and penalized severely.

A huge amount was collected by the political parties from corporate donors without obtaining their address and PAN details. These unfinished contributions reports shall be returned to the parties by the ECI, to daunt them from giving incomplete data. Similar to USA, corporates must make information of their political contributions presented to public on their websites or annual reports for snowballing transparency in political financing. To daunt financing by shell companies or illegitimate bodies, a special department under CBDT

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<sup>18</sup> Resurgence India v. Election Commission of India and Anr., W.P. (C) No. 121/2008 (S.C.).

shall be made for investigate donation reports of regional and unrecognised parties. This will go a long way in consolidating democracy, elections and political parties.

