

ANNEXURE-C/3**ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN, ASHOKA ROAD, NEW DELHI-1100001.**

No. 3/ER/LET/ECI/FUNC/JUD/SDR/Vol.I 2017

Dated: 15th march, 2017.

To,

The secretary to the Govt. of India.
Ministry of Law & Justice,
Legislative Department,
Shastri Bhavan,
New Delhi.

Subject: Amendment of provisions related to funding of political parties and Candidates regarding.

Sir,

I am directed to state that the Commission has reviewed the various provisions relating to funding of political parties and candidates. The commission proposes that the following amendments may be made in the Income Tax Act 1961 and relevant provisions of Representation of the People Act, 1951.

Proposal for amendments in the I.T. Act, 1961**1). Amendment to Section 13A of the Income Tax Act, 1961**

In 2003, Sections 29B and 29C were inserted in the Representation of the People Act, 1951 making provisions regarding receiving of donations/ contributions by the political from individuals and companies (other than Govt., companies). Section 29C provides that for contribution in excess of Rs. 20,000/- in a year, the treasure/ authorized person of the party shall prepare a report of such contributions. The contribution report is required to be submitted in Form 24A appended to the Conduct of Elections Rules, 1961 on an annual basis to the Commission before the due date for furnishing the return of its income, and failure to do so would render a party ineligible for any tax relief under Income Tax notwithstanding any provision therein.

It has been observed that many political parties have been

reporting a major portion of the donations received as being less than the prescribed limit of Rs. 20,000 for which details regarding name, address & PAN of the donors are not maintained. In the interest of transparency of funding of political parties, the Commission is proposing the following amendments to the existing laws:

(i) **Amendment to Income Tax Act.**

Existing provisions of IT Act	Proposed changes
Section 13A of the Income Tax Act, 1961 confers tax exemption to political parties for Income from house property income by way of voluntary contribution income from capital gains and income from other sources. Political parties registered with the Election Commission of India are exempt from paying Income Tax under section 13A of Income Tax Act, 1961 as along as the political parties comply with the proviso to section 13A, that is, if they file their Income Tax Return every Assessment Year along with their audited accounts, Income/	To only grant Income tax exemption, as 13A, in respect of voluntary contributions, as under: i). 100% exemption in respect of voluntary contributions received by political parties through cheque/e-transfer. ii). in respect of voluntary contributions in cash, their tax exemption may be restricted to an amount of Rs.20 Crores or 20% of the total contribution received by a political party, whichever is less; and iii). No exemption for anonymous/ cash donations above Rs.2000 (Rs. Two

Expenditure details and balance sheet.	Thousand Only).
(ii) Amendment to the Representation of the people Act, 1951 Section 29C of the R.P. Act, 1951, should also be amended to prohibit anonymous donations above Rs. 2000.	

Existing provisions of the R.P. Act, 1951	Proposed changes
No recording/ reporting of names, addresses, PANs of donors of sums upto Rs. 20,000/-	<p>i). Anonymous Donations/ Cash Donations Exceeding Rs. 2000 May Be Prohibited Accordingly, The Words "Twenty Thousand Rupees" In Section 29C may be substituted by "two thousand rupees".</p> <p>ii) a new proviso may be added under Section 29B to provide that a party shall not receive contribution in cash for amount, exceeding Rs. 20 Crores or 20% of the total contribution, received by the party, whichever is less, in the Financial Year.</p>

2. Specific date of furnishing of Return of Political Parties

The due date of furnishing the contribution Report by the political parties under the existing law is before the due date for furnishing the Return of Income of that Financial Year u/s 139 of the IT Act. However, there is no specific due date for submission of return by political parties as per Sec. 139(1) of the IT Act, 1961. Therefore, it is proposed that "due date" may be prescribed in the said Act, as under:

Existing provisions of IT Act	Proposed changes
No specific "due date" for Political Parties and they file on 30 th September under Explanation 2(a)(ii) of Sec 39(1) of the IT Act. 1961.	It may be prescribed in Sec. 139(1) of the IT Act, that Political Parties will be required to file their returns within 6 months from the end of relevant Financial Year.

Correspondence changes may also be made in sub-Section 29C of the Representation of the People Act, 1951,

specifying that the political parties shall submit the report of contributions within 6 months from of the Financial Year.

Further proposals for amendment in the Representation of the People Act, 1951:

3. Maintenance of separate Bank Accounts and details of receipt and expenditure by candidates.

As per Section 77 of the Representation of the People Act, 1951, "every candidate at an election shall, either by him or his election agent keep a separate and correct account of all expenditure in connection with the election incurred or authorized by him or his election agent between the date on which he has been nominated and the date of declaration of the result thereof, both dates inclusive "Section 77(2) provides that said account shall contain such particulars as may be prescribed Rule 86 of the Conduct of Election Rules, 1961 prescribe, such particulars. Sub Section (3) of section 77 provides that the total expenditure for a candidate shall not exceed the prescribed limit. The limit for election expenses for candidates has been prescribed under Rule 90 of the Conduct of Election Rules, 1961. For effectively monitoring the election expenditure of individual candidates, the commission has taken several measures. The expenditure monitoring tools adopted by the Commission include the instruction to have separate bank accounts by candidates for election related expenses, which do not form a part of the requirement of documentation to be maintained and presented for verification, as laid out in Sec. 77

of the RP Act and Rule 86 of the Conduct of Election Rules, 1961.

With a view to ensuring accountability, Rule 86 of the Conduct of Elections Rules, 1961, should be amended to provide for the following particulars:

Existing Provision	Proposed changes
<p>There is no existing legislation regarding:</p> <p>i). the maintenance of a separate bank account by a candidate to meet election expenses.</p> <p>ii). Meeting of major expenses by a/c payee cheque.</p> <p>iii). Receipt of donation or contributions through a/c payee cheques/ e-transfer.'</p>	<p>Necessary amendment may be made in Rule 86 of the CE Rules, 1961, by adding the following sub-rules therein-</p> <p>(5) Every candidate shall open a separate bank account for the purpose of elections and shall route all expenses and receipts through this account. Details of the bank account shall be shown in the account of election expenditure.</p> <p>(6) All expenses exceeding Rs. 2000/- to a single person/ entity during the entire process of the election, shall be met through account payee cheques or through electronic transaction from bank account referred to in sub-rule(5).</p>

4. Changes in Sec. 29(B) of the Representation of the People Act, 1951

In Sec. 29B of the Representation of the People Act, 1951, reference has been made to Foreign Contribution (Regulation) Act, 1976, both of which have been repealed and the present version are Foreign Contributor (Regulation) Act, 2010 and Companies Act, 2013, respectively. Therefore Sec. 29B of the RP Act, 1951, may be amended to incorporate these corresponding changes.

5. Amendments In Sec.8 of the Representation of People Act, 1951

In sec.8 (i)(e) of the Representation of People Act, 1951 the Foreign Exchange (Regulation) Act, 1973 (46 of 1973) is mentioned. The said Foreign Exchange (Regulation) Act, 1973, referred to in this Section was repealed in 1999 and has been replaced by the Foreign Exchange Management Act (FEMA), w.e.f. 01.06.2000. therefore, necessary amendments may be made therein.

6. Apart from the above Form 24A appended to the Conduct of elections Rules, 1961, in which political parties have to submit their annual report to the commission may also be suitably amended in keeping with the above proposed changes.

It is requested that early action may be taken in this regard.

Yours faithfully

Sd/-
(K.F. Wilfred)
Principal secretary

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ANNEXURE – C/4**By Special Messenger****ELECTION COMMISSION OF INDIA****Nirvachan Sadan, Ashoka Road, New Delhi — 110001**

No. 56/PPEMS/Transpareney/2017

Dated: 26th May, 2017

To

The Secretary,
Legislative Department,
Ministry of Law and Justice,
Shastri Bhawan,
New Delhi.

Subject: Amendments in the Finance Act 2017

Sir,

I am directed to draw your attention to the Finance Act 2017, which has introduced certain amendments in the Income Tax Act, the Representation of the People Act 1951 and the Companies Act, 2013 and will have serious impact on Transparency aspect of political finance/funding of political parties.

2. Representation of the People Act:

2(i) The amendment in Section 29C of the Representation of the People Act, 1951, inserts a new proviso and explanation to sub-section (1), which read as follows-

"Provided that nothing contained in this sub-section shall apply to the contributions received by way of an electoral bond.

Explanation — For the purposes of this sub-section, "electoral bond" means a bond referred to in the Explanation to sub-section (3) of Section 31 of the Reserve Bank of India Act, 1934."

2(ii) It is evident from the Amendment which has been made, that any donation received by a political party through an electoral bond has been taken out of the ambit of reporting under the Contribution Report as prescribed under Section 29C of the Representation of the People Act, 1951 and therefore, this is a retrograde step as far as transparency of donations is concerned and this proviso needs to be withdrawn.

2(iii) Moreover, in a situation where contributions received through Electoral Bonds are not reported, on perusal of the Contribution reports of the political parties, it cannot be ascertained whether the political party has taken any donation in violation of provisions under Section 298 of the Representation of the People Act, 1951, which prohibits the political parties from taking donations from Government Companies and Foreign sources.

3. Income-tax Act, 1961: An amendment has been made in Sec. 13A of the Income Tax Act, whereby, no donation exceeding Rs.2,000 can be received by a Political party otherwise than by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account or through electoral bond. However, the limit for receipt of anonymous donations by political parties still remains at Rs.20,000 in Sec.29C of the RP Act, 1951. The RP Act needs to be Amended to reduce the limit of anonymous/cash donations to Rs.2,000 so as to bring these two Acts in consonance with each other.

4(i) Companies Act, 2014: Certain amendments have been proposed in Section 182 of the Companies Act, where the first proviso has been omitted and consequently the limit of seven and a half percent(7.5%) of the average net profits in the preceding three financial years on contributions by companies has been removed from the statute. This opens up the possibility of shell companies being set up for the sole purpose of making donations to political parties, with no other business of consequence having disburseable profits.

4(ii) The second amendment, in Sec. 182(3), abolishes the provision that firms must declare their political contributions in their profit and loss statements, as this requirement is now reduced to only showing a total amount under this head, which again, would compromise transparency.

5. In view of the position explained above, I am directed to state that the amendments made in Section 29C of the Representation of the People Act 1951 and Companies Act, 2013 introduced in the Finance Act 2017, referred to above in paras 2(i) and 4(ii) above may be reconsidered and modified so as to provide for Transparent Reporting of Contributions received by the Political Parties through Electoral Bonds u/s 29C of the RP Act, 1951 and a provision should be made in the Companies Act to declare the party-wise Contributions made by Companies in the P&L A/c, so that the transparency in the fund-raising by political parties is maintained.

6. With respect to para 4(i), the Commission has expressed its apprehension that the abolition of the relevant provision of Sec.182 would lead to increased use of black money for political funding through shell companies. The Commission is of the view that the earlier provisions ensured that only profitable companies with a proven track record could provide donations to political parties and accordingly, it is recommended that this provision may be Re-introduced.

7. Further, as mentioned in para 3, necessary changes may kindly be made in RP Act, 1951.

Yours faithfully,

Sd/-

Vikram Batra
(Director EE)

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