

Annexure D

Political Parties (Registration and Regulation of Affairs, etc.) Act, 2011

(Draft prepared by committee headed by Justice M.N. Venkatachalaiah)

An Act to regulate the constitution, functioning, funding, accounts, audit, and other affairs of and concerning political parties participating in elections.

Whereas existence of political parties is implicit in a democratic form of Government which our country has adopted;

And whereas, it is necessary and expedient to provide for conduct of elections to the Houses of the Parliament and the Legislature of every State in a fair and efficient manner and to maintain purity of elections and for matters connected therewith;

Whereas corrupt electoral practices, high cost of elections, abuse of money power has resulted in denial of vitals of democracy and dynastic control of political parties;

Whereas it is necessary to make political parties democratic, transparent, accountable and open to scrutiny by regulating the conduct and affairs of political parties such as funding and finances of the parties, maintenance of regular accounts, regular auditing of accounts, regular election of its office bearers by legislation providing for de-recognition and preventing them from contesting elections for failure to adhere to prescribed norms etc. and thereby cleanse public life;

Whereas it is also necessary to impose certain restrictions on persons who contest in elections regarding their background, assets, so as to ensure election of suitable persons as legislators.

Be it enacted by the Parliament of India in the Sixty-second year of the Republic of India as follows:-

CHAPTER I

Preliminary

1. Short title, extent and commencement.

- 1.1** This Act may be called the Political Parties (Registration and Regulation of Affairs, etc.) Act, 2011.
- 1.2** It extends to the whole of India other than the State of Jammu and Kashmir,
- 1.3** It shall come into force on such date as may be notified by the Central Government.

2. Definitions.

In this Act unless the context requires otherwise:

- 2.1 “local authority” means a panchayat or municipality as defined in Parts IX and IXA of the Constitution;
- 2.2 “member” a member of the political party;
- 2.3 “political activity” includes any activity promoting or propagating, the aims or objects of a political party or any cause, issue or question of a political nature by organizing meetings, demonstrations, processions, collection or disbursement of funds, or by the issue of directions or decrees, or by any other means, and includes also such and similar activity by or on behalf of a person seeking election as a candidate for any election to Parliament, any State Legislature or any local authority;
- 2.4 “political party” means an association or a body of individual citizens of India who have attained the age of 18 years;
- 2.5 “Registrar” means the Registrar of Political Parties under section 3;
- 2.6 “religious institution” means an institution for the promotion of any religion or persuasion, and includes any place or premises used as a place of public religious worship, by whatever name or designation known;
- 2.7 Words and expressions used but not defined in this Act but defined in the Constitution of India or in the Representation of the People Act, 1950 (43 of 1950), or the rules made there under or in the Representation of the People Act, 1951 (43 of 1951), or the rules made there under shall have the meanings respectively assigned to them in those Acts and Rules.

CHAPTER II **Political parties.**

3. Registrar of Political Parties.

3.1 The Chief Election Commissioner of India appointed under article 324 of the Constitution shall be the Registrar of Political Parties. He will be assisted by the officers of the Commission both in the States and at the Centre.

4. Formation of political parties.

4.1 A citizen of India who has attained the age of 18 years may form and be a member of a political party;

- 4.1.1** Provided that any of those mentioned below shall not be a member of a political party while in service,
- 4.1.1.1** Members of armed forces of India,
 - 4.1.1.2** Members of the civil services, including judicial services and legal advisers, of the Union or a State.

- 4.2** No political party shall carry on any activity prejudicial to the sovereignty, unity and integrity of India.
- 4.3** Every political party shall have its constitution, by whatever name called, in writing defining its aims and objects and matters specified in this Act. The aims and objects of a political party shall not discriminate the members on the basis of race, caste, religion, creed, language or place of residence and inconsistent with any of the provisions of the Constitution of India;

5. Constitution of political parties.

5.1 The constitution of a political party shall provide for the following matters:

- 5.1.1** name of the political party and acronym (if used) and the aims and objectives of the party;
- 5.1.2** any person desiring to become member of a party shall subscribe to and abide by the objectives and ideals of the party as stated in the constitution and rules and regulations of the party;
- 5.1.3** conditions for membership of the party, procedure / requirements for admission including membership fee, expulsion and resignation of members;
- 5.1.4** rights, duties and obligations of the members;
- 5.1.5** grounds on which and by whom and the procedure according to which disciplinary action can be taken and punishment may be imposed against the members;
- 5.1.6** the general organization of the party including the formation of local units like State, district, taluk/tehsil and village level units and control over them;
- 5.1.7** composition and powers of the executive committee (by whatever name called) and other organs of the party;
- 5.1.8** 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 fundamental organization matters;
- 5.1.9** the form and content of financial structure of the party consistent with the provisions of this Act;
- 5.1.10** accounts of the funds of a party shall be maintained in such books and in such manner as may be specified by the Registrar;
- 5.1.11** principles for electing the office bearers.

5.2 Every political party shall have following office bearers, a President, Secretary, Treasurer, Chief Executive Officer and such others as the party may deem necessary.

- 5.3** Every political party shall utilize its funds exclusively for, the fulfillment of its aims, objects or goals and ideals set out in the Constitution of India.
- 5.4** A political party shall be competent to hold and dispose of properties both movables and immovable within the territory of India.
- 5.5** A political party may sue or be sued in its own name. In all suits and legal and other proceedings by or against a political party the pleadings shall be signed and verified by and all communications of such suits and legal and other proceedings shall be issued to and be served on the Chief Executive Officer.
- 5.6** 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 Registrar. In election campaigns and in elections, only the registered name or its acronym, as may have been approved by the Registrar alone shall be used.

6. Executive Committee and local committees.

- 6.1** Every political party shall maintain a register of members of the party containing prescribed particulars. The local units of the party may enroll members and shall periodically send list of members enrolled by them to the State unit. An up-to-date register of members shall be maintained by the State unit of the party.
- 6.2** There shall be an Executive Committee for every political party. The members of the Executive Committee of a political party shall be elected by the members of the local committees of the State units of the party. The members of the Executive Committee shall elect the office – bearers of the party from among themselves. Practice of nominating members is prohibited.
- 6.3** There shall be a local committee for every local unit of the party. The members of the committee of a local unit shall be elected by the members of the local committees of the immediate lower local unit of the party i.e. members of a State unit shall be elected by the members of the district units in that State. The members of the lowest local unit of the party shall be elected by the members of the party in that local unit. The members of the local committee of a local unit shall elect its office –bearers from among themselves. Practice of nominating members is prohibited.
- 6.4** The term of the Executive Committee and local committees shall not exceed three years. Well before the expiry of the term, steps shall be taken for electing a new committee. Executive committee may, if necessary, constitute a sub-committee (by whatever name called) to carry on regular and urgent executive committee business delegated by the Executive Committee. The members of the sub-committee shall be elected by the members of the executive committee from among themselves.
- 6.5** Executive Committee and local committees shall take decisions and elect its office bearers on the basis of simple majority vote. The voting shall be

by secret ballot. Name, age, profession and address of each elected member and office bearer shall be communicated by registered post to the Registrar within ten days from the date of announcement of the results.

- 6.6** Party candidates for contesting elections to either House of Parliament shall be elected by the Executive Committee of the political party having due regard to the recommendations made by the State units of the constituency. Similarly candidates for contesting elections to either House of Legislature of a State shall be elected by the Executive Committee of the political party having due regard to the recommendations made by the concerned State unit and the district units of the constituency. Candidates for election to different constituencies in elections to local bodies shall be selected by the highest local units of the concerned constituency.
- 6.7** It shall be the duty of the Executive Committee to take appropriate steps to ensure compliance with the provisions of this Act including election of members of the Executive Committee and committees of all local units of the party well before the expiry of their term. Elections to the Executive Committee of a political party shall be held in the presence of observers nominated by the Registrar. The Registrar may send observers to watch elections of any State local unit of the party.
- 6.8** No office bearer of a political party shall be an office bearer of the party for more than six years. No person shall be eligible to become an office bearer of a party unless six years have elapsed after he or a member of his family was an office bearer of that party.
- 6.9** No political party shall use for promotion or propagation of any political activity.
- 6.9.1** any ceremony, festival, congregation, procession or assembly organised or held under the auspices of a religious institution; or
 - 6.9.2** any property or premises belonging to or under the control of a religious institution.
- 6.10** No political party shall do anything, which promotes or attempts to promote disharmony or feeling of enmity, hatred or ill will between different religious, racial, language or groups or castes or communities.

7. Registration of political parties.

7.1 A political party shall apply for registration to the Registrar.

7.2 Every such application shall be made,

- 7.2.1** if the association or body is in existence at the commencement of this Act, within sixty days from the date of commencement of this Act.
- 7.2.2** if the association or body is formed after such commencement, within thirty days from the date of its formation.

7.3 Every application under sections 7.1 and 7.2 shall be signed by all the office bearers of the association or body and presented by the Chief

Executive Officer (by whatever name called) of the association or body to the Registrar or sent to the Registrar by registered post.

7.4 Every such application shall contain the following particulars, namely:

- 7.4.1** the name of the association or body;
- 7.4.2** the State in which its head office is situated;
- 7.4.3** the address to which letters and other communications meant for it may be sent;
- 7.4.4** the name, age, profession and address of its president, secretary, treasurer, chief executive officer and other office-bearers;
- 7.4.5** the numerical strength of its members, and if there is more than one category of members, the numerical strength in each such category;
- 7.4.6** whether it has any local units; if so, at what levels and the address of such local units;
- 7.4.7** whether it is represented by any member or members in either House of Parliament or of the Legislature of any State; if so, the number of such member or members.
- 7.4.8** a declaration that the applicant has complied with and shall continue to comply with the requirements of this Act.

7.5 An application under clause (a) shall be accompanied by a copy of the constitution and memorandum or rules and regulations of the association or body, (by whatever name called) which shall contain a specific provision that the association or body shall shun violence for political gains, avoid discrimination or distinction based on race, caste, creed, language or place of residence for political mobilization and to select candidates for political offices, who bear true faith and allegiance to the Constitution of India as by law established, and to the principles of honesty, socialism, secularism and democratic values, and would uphold the sovereignty, unity and integrity of India.

7.6 The Registrar may call for such other particulars as he may deem fit from the association or body or direct modification of any provision of its constitution or the rules and regulations.

7.7 After considering all the particulars as aforesaid in its possession and any other necessary and relevant factors including reasonableness of membership fee and after giving the representatives of the association or body reasonable opportunity of being heard, the Registrar shall decide either to register the association or body as a political party for the purpose of this Act, or not so to register it; and the Registrar shall communicate his decision to the association or body. No association or body shall be registered as a political party unless the constitution or the rules and regulations thereof conform to the provisions of this Act. The decision of the Registrar shall be final.

7.8 After an association or body has been registered as a political party as aforesaid, any change in its name, head office, office-bearers, address or in

any other material particulars shall be communicated to the Registrar without delay.

7.9 No political party shall be eligible to set up candidates to contest elections to either House of Parliament or Legislature of a State or a local authority unless it is registered under this Act and such registration is subsisting.

CHAPTER III **Finances**

8. Finances of the party.

8.1 A political party may accept donations or contributions voluntarily offered to it by any company, association, organization or person except from the following sources:

- 8.1.1** from foreign nationals or foreign governments,
- 8.1.2** organizations or associations registered outside the territory of India,
- 8.1.3** from any other association, organization or group which is in receipt of foreign funds from foreign nationals or from other sources,
- 8.1.4** donations from corporate bodies and companies except in accordance with the provisions of the Companies Act, 1956,
- 8.1.5** communal or anti-national sources,
- 8.1.6** Union Government or State Government including Government undertakings,
- 8.1.7** anonymous givers,
- 8.1.8** any other company which has been in existence for less than three financial years, and
- 8.1.9** such other sources as may be specified by the Registrar.

8.2 For every amount received by the party including membership fee receipt shall be issued by an office bearer of the party. Similarly every expenditure shall be supported by a voucher.

8.3 The amount or, as the case may be, the aggregate of the amounts which may be so contributed by a company in any financial year shall not exceed five per cent of its average net profits determined in accordance with the provisions of sections 349 and 350 of the Companies Act 1956 during the three immediately preceding financial years.

8.4 The Executive Committee of a political party shall cause to be maintained by itself and all the local units regular accounts clearly and fully disclosing the sources of all amounts received by it, and clearly and fully disclosing details of the expenditure incurred by it. The accounts shall be maintained according to the financial year in such books of account and registers as may be prescribed and have them audited by a Chartered Accountant approved by the Registrar every year and make the account books and the

report of the auditor available for inspection by the Registrar as and when demanded by him. The Registrar may direct a special audit of the accounts of any year of a party or of any local unit.

- 8.5** The accounts shall also be open for inspection by the members of the party and they shall also be entitled to obtain copies of such accounts or any part thereof.
- 8.6** The custody and control of the funds of a political party shall vest in the Treasurer of the party and he shall be solely responsible for it. If it is considered necessary the Executive Committee of a party may create an office of Assistant Treasurer to assist the Treasurer.
- 8.7** If the Registrar finds on verification undertaken whether suo motu or on information received, that the statement of accounts filed under sub-section (1) is false in any particular, the Registrar shall levy such penalty upon the political party, as it may deem appropriate besides initiating criminal prosecution as provided under law.
- 8.8** Any order passed under sub-section (7) may be directed by the Registrar to be published in the press and other media, for public information.

9. Declaration of donation received by the political parties.

- 9.1** The Treasurer of a political party shall, in each financial year, prepare or cause to be prepared a report in respect of the following namely:
 - 9.1.1** the contribution or donation of twenty thousand rupees or more received by the political party from a person or any other source in that financial year;
 - 9.1.2** the particulars of the contributions or donations of twenty thousand rupees or more made by companies to the party in that financial year.
- 9.2** The report under section 9.1 shall be in such form and contain such particulars as may be specified by the Registrar.
- 9.3** The report for a financial year under section 9.1 shall be submitted by the Treasurer of the party 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.
- 9.4** Where the Treasurer of a party fails to submit a report under section 9.3 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.

10. Facilities offered by public bodies.

Where a public authority provides facilities or offers public services to a political party, it must accord equal treatment to all. The scale of such facilities and services may be graduated to conform to the importance of the parties subject to the minimum extent needed for the achievement of their aims. The importance of

a party shall be decided on the basis of the results of immediately previous election to House of People or Legislative Assembly of the State concerned, as the case may be. The granting of public services shall be only in connection with and for the duration of the election campaign period. For the purposes of this section, the election campaign period shall be deemed to commence 14 days prior to the commencement of poll in a State.

CHAPTER IV

Penalties

11. Inquiry by Registrar.

- 11.1** The Registrar shall be competent to inquire, either suo-motu or on information received, of non-compliance or violation of any of the provisions of this Act by a political party. If on due inquiry, the Registrar is satisfied that there has been non-compliance or violation of any of the provisions of this Act by a political party, the Registrar shall call upon the party, to rectify the non-compliance or violation within sixty days if the same could be rectified.
- 11.2** If the non-compliance or violation is such that it cannot be rectified or if it could be rectified but not rectified and continues beyond the period of sixty days, the Registrar may impose such punishment on the political party as he may deem appropriate in the circumstances of the case including levy of the penalty of Rs. 10,000/- per day for each day of non-compliance or violation. He may also withdraw the registration of the party for a specified period after giving the party an opportunity to show cause.
- 11.3** An office bearer or member of a political party who receives or accepts any contribution or donation in violation of any provision of section 8 shall be punishable with imprisonment for a term, which may extend to three years and shall also be liable to pay fine which may extend to three times the amount received.
- 11.4** A political party which does not contest elections for more than one general election, or does not secure a prescribed minimum percentage of votes polled or does not take part in mainstream political activities shall be liable to be de-registered and made ineligible to contest elections for such period as the Registrar may specify.

CHAPTER V

Miscellaneous

12. Power to make rules.

12.1 The Central Government may, after consulting the Registrar, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

12.2 Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

13.

Protection of action taken in good faith.

No suit, prosecution or other legal proceedings shall lie against the Central Government, State Government, the Registrar or any person acting under the directions of the Central Government, State Government or the Registrar in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or order made there under.

14.

Act to override other enactments.

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

15.

Repeal.

Section 29A of the Representation of People Act 1951 (43 of 1951) is hereby repealed.
