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Finance Act 2017: Progressive or Regressive?

Introduction:

The Finance Act of 2017¹, also known as the Money Bill of 2017, was a significant piece of legislation introduced by the former Finance Minister of India, Arun Jaitley. It was presented on February 1, 2017, and approved by the Lok Sabha on March 22, 2017. The bill received the President's assent on March 31, 2017, and was implemented on April 1, 2017. During each Budget session, the Parliament passes a Finance Bill that proposes tax-related changes by the central government. However, in 2017, the Finance Bill went beyond tax proposals by introducing several amendments that brought structural changes to various primary acts. These changes impacted more than 40 laws and had a significant impact on the financial and economic landscape of the country. Many sectors were impacted due to amendments brought about by the Finance Act 2017, including political finance.

The Finance Act of 2017 introduced a mechanism of political funding called Electoral Bonds, by amending various acts such as the Representation of the People Act, 1951², Income-tax Act, 1961³, Companies Act, 2013⁴, Reserve Bank of India Act, 1934⁵, which were later called unconstitutional by the Supreme Court of India. Now, the question arises: Were these amendments a step forward (progressive) or a step backward (regressive)? This inquiry sets aside the consideration of the amendments facilitating the introduction of electoral bonds and focuses solely on evaluating whether the changes had positive or negative effects overall.

¹ Finance Act, 2017, No. 7, Acts of Parliament, 2017 (India)

² Representation of the People Act, 1959, No. 43, Acts of Parliament, 1959 (India).

³ Income-tax Act, 1961, No. 43, Acts of Parliament, 1961 (India)

⁴ Companies Act, 2013, No. 18, Acts of Parliament, 2013 (India).

⁵ Reserve Bank of India Act, 1934, No. 2, Acts of Parliament, 1934 (India)

Assessing the Amendments:

Representation of People Act, 1951: As per Section 29C of the Representation of People Act⁶, political parties are required to declare any contributions they receive. The treasurer of each party or an authorized representative must submit a report before the due date for income tax return filing. This report should detail any contributions of over twenty thousand rupees from individuals or companies that are not government-owned. Failure to submit this report would disqualify the political party from receiving any tax relief. However, the Representation of People Act, 1951 was amended by Section 137 of the Finance Act 2017⁷, and as per the Finance Act, the donation received through electoral bonds did not need to be disclosed. The non-disclosure feature makes this amendment very tricky. This amendment hinders the citizen's right to information and violates Article 19(1)(a) of the constitution of India⁸.

Companies Act, 2013: Section 154 of the Finance Act of 2017⁹ amended section 182 of the Companies Act 2013¹⁰, According to Section 182(1) of the Companies Act 2013¹¹, a company cannot donate more than 7.5% of its average net profit in the last three financial years. But the Finance Act of 2017 omitted section 182(1) of the Companies Act, of 2013 and removed the cap from a maximum limit of companies to donate to any political party. This amendment not only removed the limits of donations a company can make to political parties but also the distinction between the profit-making company and the company in loss, increasing the likelihood of quid pro quo arrangements.

According to section 182(3) of the Companies Act of 2013¹², companies are required to disclose the total amount of money they have donated to political parties, along with the names of the parties the donations have been made. However, the Finance Act of 2017 brought an amendment to the section, which mandated companies to only disclose the total amount of donations made, without revealing the names of the political parties the donations were made.

⁶ Representation of People Act, 1951, § 29C, No. 43, Acts of Parliament, 1951 (India).

⁷ Finance Act, 2017, § 137, No. 7, Acts of Parliament, 2017 (India)

⁸ India Const. art. 19(1)(a)

⁹ Finance Act, 2017, § 154, No. 7, Acts of Parliament, 2017 (India)

¹⁰ Companies Act, 2013, § 182, No. 18, Acts of Parliament, 2013 (India)

¹¹ Companies Act, 2013, § 182(1), No. 18, Acts of Parliament, 2013 (India)

¹² Companies Act, 2013, § 182(3), No. 18, Acts of Parliament, 2013 (India).

Non-disclosure of names of the political parties violates the voters' right to information i.e. article 19(1)(a) of the Constitution of India, as voters have the right to know from whom their party is receiving funds.

A new subsection, Section 3A¹³, was introduced, stating that a company could only contribute to a political party through methods such as a cheque, bank draft, or electronic clearing system. This change was highly progressive as it helped curb black money and reduce cash transactions in political funding.

Reserve Bank of India Act, 1934: Section 31 of the Reserve Bank of India Act¹⁴ states that only the RBI or the Central Government, as empowered by the RBI Act, possess the authority to draw, accept, make, or issue any bill of exchange or promissory note for the payment of money to the bearer. However, an amendment was introduced through Section 135 of the Finance Act of 2017¹⁵, adding Section 31(3)¹⁶, allowing the Central Government to authorize any scheduled bank to issue electoral bonds. This amendment appears to weaken the exclusive authority of the RBI in issuing bearer instruments, which could potentially serve as currency. Consequently, it undermines the RBI's control over monetary policy and currency issuance, potentially leading to confusion and financial instability within the system.

Income-tax Act, 1961: Section 13(A) of the Income-tax Act, 1961¹⁷ allows political parties to enjoy tax exemption from income through donations and investments, subject to certain conditions such as maintaining proper books of account, keeping records of voluntary contributions exceeding Rs. 20,000, including details of the contributors such as their names and addresses, and conducting audits by an accountant. However, Section 11 of the Finance Act, 2017¹⁸, amended Section 13(A) of the Income Tax Act, exempting political parties from maintaining records of contributions if received through electoral bonds, including details of donors. This amendment is problematic as it facilitates a lack of transparency and allows political parties to enjoy tax exemptions without meeting the criteria. Another issue raised due

¹³ Companies Act, 2013, § 182(3)(A), No. 18, Acts of Parliament, 2013 (India).

¹⁴ Reserve Bank of India Act, § 31, No. 2, Acts of Parliament, 1934 (India).

¹⁵ Finance Act, 2017, § 135, No. 7, Acts of Parliament, 2017 (India)

¹⁶ Reserve Bank of India Act, 1934, § 31(3), No. 2, Acts of Parliament, 1934 (India).

¹⁷ Income-tax Act, 1961, § 13(A), No. 43, Acts of Parliament, 1961 (India).

¹⁸ Finance Act, 2017, § 11, No. 7, Acts of Parliament, 2017 (India).

to this amendment is that it indirectly affected sections 80GGC¹⁹ and 80GGB of the IT Act²⁰. Individuals and donors also do not have to maintain records of the contributions they made through electoral bonds, including details of the political party.

Conclusion:

After analysing the amendments, it's clear that not all of them were regressive. Some had the potential to advance political reforms. However, the Supreme Court deemed all amendments unconstitutional due to their facilitation of legalized corruption. Despite some positive aspects, the overall impact was detrimental. Following the Supreme Court's ruling, parties and other entities will revert to pre-amendment acts and sections, complying with legal requirements. Despite the Supreme Court's decision against certain tax exemptions related to political parties and electoral bonds, past lawful actions cannot be reversed due to the 'Doctrine of Supervising Impossibility'. Thus, tax exemptions previously claimed by political parties and individuals or companies donating through electoral bonds will remain unaffected by recent legal decisions. Despite the Electoral Bond Scheme being scrapped, past tax benefits and deductions will remain intact.

¹⁹ Income-tax Act, § 80GGC, No. 43, Acts of Parliament, 1961 (India).

²⁰ Income-tax Act, § 80GGB, No. 43, Acts of Parliament, 1961 (India).