SYNOPSIS

The Petitioner is filing the instant Public Interest Litigation under Article 32 of the Constitution of India raising a very important and far-reaching question relatable primarily to the citizen's fundamental right to know guaranteed by Article 19(1)(a) of the Constitution of India. The immediate cause of concern in this petition is the amendments in various statutes introduced through Finance Act, 2017 by the Ministry of Finance. The said Act was introduced in the Parliament as a money bill and therefore bypassed the Rajya Sabha. The amendments made by the Finance Act 2017 are in:

i. Section 31, the Reserve Bank of India Act, 1934 through Part III, Section 135 of the Finance Act, 2017,
ii. Section 29C, the Representation of the People Act, 1951 through Part – IV, Section 137 of the Finance Act, 2017
iii. Section 13A, the Income Tax Act, 1961 through Chapter III, Section 11 of the Finance Act, 2017 and in
iv. Section 182 of the Companies Act, 2013 through Part-XII, Section 154, the Finance Act, 2017.

The petitioner submits that the amendments introduced through the new Finance Act, 2017 by the Ministry of Finance, passed as a money bill thereby bypassing the Rajya Sabha, are unconstitutional and violate of doctrines of separation of powers and citizen's fundamental right to information which are parts of the basic structure of the Constitution. The aforesaid amendments are also patently arbitrary, capricious and discriminatory as they attempt to keep from the citizens crucial information regarding electoral funding.

That the Finance Act, 2017 was introduced in Lok Sabha as Bill No. 12 of 2017 on February 1, 2017 to give effect to the financial proposals of the Union Government for the Financial Year 2017-18. The Finance Act, 2017, which was enacted as a money bill has introduced a system of electoral bonds to be issued by any scheduled bank for the purpose of electoral funding. The Act has also removed the previous limit of 7.5 per cent of the company's average three-year net profit for political donations with the result that a company is no longer required to name the parties to which such contributions are made. That the new amendments are a *mala*

fide attempt to bypass the approval of the Rajya Sabha, which holds an important place in the Constitutional and democratic framework of law-making.

That the said amendments to the Reserve Bank of India Act, 1934, Representation of the People Act, 1951 and Income Tax Act, 1961 have affected transparency in political funding. The consequence of the amendments is that now the contribution reports of political parties need not mention names and addresses of those contributing by way of electoral bonds. This will have a major implication on transparency in political funding as now the political parties are free not to file contributions received through electoral bonds. Election Commission regularly displays political party's contribution reports on its website through which citizens get to know about the contributions made to various political parties and the source of such contribution. But with the introduction of electoral bonds, Election Commission and the citizens of the country will not get to know the vital information regarding political contributions.

That the aforesaid amendment to the Companies Act, 2013 has also done away with a limiting clause for companies to make donations. Prior to the amendment, there existed a cap on the donations permitted up to 7.5 percent of net profits of the last 3 years for the companies. But the aforesaid amendment has removed the said limit for contributions that a company may make to political parties and the requirement of a company to disclose the name of the political parties to which a contribution has been made. The companies are no longer required to disclose the break-up of contributions made to different political parties. The result of this would be that now corporate funding will increase manifold as there is no limit to how much the companies can donate. Loss-making companies will also qualify to make payments. This has increased the danger of quid pro quo and if any benefits are passed on to such companies by the elected government.

That these amendments infringe the citizen's fundamental 'Right to Know' and is not saved by any of the eight reasonable restrictions under Article 19(2). That such an unreasonable and irrational restriction on information at the cost of larger public interest is a severe blow to the very fundamentals of transparency and

accountability. Making the political class even more unanswerable and unaccountable and causing of annoyance, inconvenience, obstruction to the citizens at large by withholding crucial public information from them regarding electoral funding are all outside the purview of Article 19(2) as well as the very basis of democracy.

That the primary objective of the Finance Act, 2017 was to curb the ever growing menace of deep-rooted corruption and black money circulating within the political class. However, by allowing electoral bonds on the donor's side and removing the name of the recipient brings in complete opacity in political funding. Removal of the company's limit of 7.5% of the average net profit of the last three financial years will not only heightens the odds of conflict of interest but will also drastically increase black money and corruption. This will also lead to the creation of shell companies and rise of *benami* transactions to channelize the undocumented money into the political and electoral process in India. The new amendments contravene the bare text of the Constitution. The present petition therefore, highlights this breach which is particularly disturbing, because the legislation imperils our core liberties and rights guaranteed under the Constitution, in manners both explicit and insidious.

That the reluctance of the existing Political Establishments to introduce transparency and accountability within parties has only permitted corruption to percolate further in the electoral process. Over a period, we have observed burgeoning election expenditure, political party funding, and inadequate reporting and disclosure laws. Sometimes black money is generated by business houses and individuals to evade corporate and income taxes, later it is pumped back to political parties and candidates to garner favorable policy decisions. In our current electoral and political system, those who are willing and are able to utilize black money, dominate politics.

In light of the above, the petitioner urges this Hon'ble Court to pass an appropriate write, order or directions to the respondents to stay the operation and strike down Section 135, Section 137, Section 11 and Section 154 of the Finance Act, 2017 as being *ultra vires* the Constitution of India.

IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

Writ Petition (Civil) No. ..... Of 2017

PUBLIC INTEREST LITIGATION

ASSOCIATION FOR DEMOCRATIC REFORMS
THROUGH ITS FOUNDER-TRUSTEE
PROF. JAGDEEP S. CHHOKAR
T-95, 2ND FLOOR, C.L HOUSE,
GAUTAM NAGAR,
NEW DELHI-110049 .... PETITIONER

VERSUS

1. UNION OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
ROOM NO.137, NORTH BLOCK,
NEW DELHI-110001 ....RESPONDENT NO. 1

2. UNION OF INDIA
MINISTRY OF LAW AND JUSTICE
4TH FLOOR, A WING,
RAJENDRA PRASAD ROAD,
SHASTRI BHAVAN,
NEW DELHI-110001 .... RESPONDENT NO. 2

3. ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN,
ASHOKA ROAD,
NEW DELHI-110001 .... RESPONDENT NO.3

To,

THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS COMPANION JUDGES OF THE HON'BLE SUPREME COURT OF INDIA

The Humble Petition of
The Petitioners above-named

MOST RESPECTFULLY SHOWETH:

1. The Petitioner is filing the instant Public Interest Litigation under Article 32 of the Constitution of India raising a very important and far-reaching question relatable primarily to the citizen's fundamental 'Right to Know' guaranteed by Article 19(1)(a) of the Constitution of India. The immediate cause of concern in this petition is the amendments in various statutes

introduced through Finance Act, 2017 by the Ministry of Finance. The said Act was introduced in the Parliament as a money bill and therefore bypassed the Rajya Sabha. The amendments made by the Finance Act 2017 are in:

i. Section 31, the Reserve Bank of India Act, 1934 through Part III, Section 135 of the Finance Act, 2017,
ii. Section 29C, the Representation of the People Act, 1951 through Part – IV, Section 137 of the Finance Act, 2017,
iii. Section 13A, the Income Tax Act, 1961 through Chapter III, Section 11 of the Finance Act, 2017and in
iv. Section 182 of the Companies Act, 2013 through Part-XII, Section 154, the Finance Act, 2017.

2. The Petitioner no. 1 is Association for Democratic Reforms (ADR), a Trust registered with Registration No. F/9/9339/AHMEDABAD. ADR has been at the forefront of electoral reforms in the country for the last 14 years from wide-ranging activities including advocacy for transparent functioning of political parties, conducting a detailed analysis of candidates in every election, and researching the financial records of political parties including their income-tax returns. It was on ADR's petition that this Hon'ble Court ordered all election candidates to declare their criminal records and financial assets. The Organization is registered as Public Trust under Mumbai Public Trust Act, 1950. Under the practice followed by ADR, the Founder-Trustee Prof. Jagdeep S Chhokar is authorised to institute proceedings on behalf of petitioner no. 1. The Registration Certificate of Petitioner No.1 and authority letter are being filed along with the vakalatnama. The petitioner organization's annual income is Rs. 6,95,97,119 (FY/13-14) (PAN No. AAAAA2503P). Petitioner No. 1 not being an individual does not have a National UID number. The petitioners have no personal interest, or private/oblique motive in filing the instant petition. There is no civil, criminal, revenue or any litigation involving the petitioners, which has or could have a legal nexus with the issues involved in the PIL.

3. The petitioner submits that the amendments introduced through the new Finance Act, 2017 by the Ministry of Finance, passed as a money bill thereby bypassing the Rajya Sabha, are unconstitutional and violate of doctrines of separation of powers and citizen's fundamental right to information which are parts of the basic structure of the Constitution. The aforesaid amendments are also patently arbitrary, capricious and discriminatory as they attempt to keep from the citizens crucial information regarding electoral funding.

4. That the Finance Act, 2017 was introduced in Lok Sabha as Bill No. 12 of 2017 on February 1, 2017 to give effect to the financial proposals of the Union Government for the Financial Year 2017-18. The Finance Act, 2017, which was enacted as a money bill has introduced a system of electoral bonds to be issued by any scheduled bank for the purpose of electoral funding. The Act has also removed the previous limit of 7.5 per cent of the company's average three-year net profit for political donations with the result that a company is no longer required to name the parties to which such contributions are made. That the new amendments are a *mala fide* attempt to bypass the approval of the Rajya Sabha, which holds an important place in the Constitutional and democratic framework of law-making.

   A true and correct copy of the relevant pages of the Finance Act, 2017 is annexed herewith and marked as **Annexure P1** (pages_____to_____).

5. That Section 11 of the Finance Act, 2017 has amended Section 13A of the Income-tax Act pertaining to special provision relating to incomes of political parties. Section 13A of the Income-tax Act, *inter alia*, provides that any income of a political party which is chargeable under the head "Income from house property" or" Income from other sources" or "Capital gains" or any income by way of voluntary contributions received by a political party from any person shall be excluded in computing the total income of the previous year of such political party subject to the conditions that such political party keeps and

maintains such books of account and other documents, maintains a record of voluntary contribution in excess of twenty thousand rupees and the accounts are audited by an accountant as defined in the *Explanation* below sub-Section (*2*) of Section 288 and furnishes a report under sub-Section (*3*) of Section 29C of the Representation of the People Act,1951 to the Election Commission.

6. The Finance Act, 2017 has amended the said Section so as to provide the inclusion of electoral bonds. These amendments will take effect from 1st April, 2018 and will, accordingly, apply in relation to assessment year2018-2019 and subsequent years. The relevant Section of the Finance Act, 2017 is reproduced below;

> *11. In Section 13A of the Income-tax Act, with effect from the 1st day of April, 2018,—*
> *(I) in the first proviso,—*
> *(i) in clause (b),—*
> *(A) after the words "such voluntary contribution", the words "other than contribution by wayof electoral bond" shall be inserted;*
> *(B) the word "and" occurring at the end shall be omitted;*
> *(ii) in clause (c), the word "; and" shall be inserted at the end;*
> *(iii) after clause (c), the following clause shall be inserted, namely:—*
> *(d) no donation exceeding two thousand rupees is received by such 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.*
> *Explanation.—For the purposes of this proviso, "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.';*
> *(II) after the second proviso, the following proviso shall be inserted, namely:—*

"Provided also that such political party furnishes a return of income for the previous year in accordance with the provisions of sub-Section (4B) of Section 139 on or before the due date under that Section."

7. That Sections 133 and 134, Chapter VI, Part III "Amendments to the Reserve Bank of India Act, 1934" of the Finance Act, 2017 has amended Section 31 of the Reserve Bank of India Act, 1934 relating to issue of demand bills and notes. It is proposed to insert a new sub-Section (3) to the said Section so as to provide that the Central Government may authorise any scheduled bank to issue electoral bond as referred to in the proposed clause (d) of the first proviso to Section 13A of the Income-tax Act. This amendment came into force from 1st April, 2017. The relevant Section of the Finance Act, 2017 is reproduced below;

134.In the Reserve Bank of India Act, 1934, in Section 31, after sub-Section (2), the following sub-Section shall be inserted, namely:—

"(3) Notwithstanding anything contained in this Section, the Central Government may authorise any scheduled bank to issue electoral bond.

Explanation.— For the purposes of this sub-Section, ''electoral bond'' means a bond issued by any scheduled bank under the scheme as may be notified by the Central Government.''

8. That clauses 135 and 136 , Chapter VI , Part IV "Amendments to the Representation of the People Act, 1951" of the Act has amended Section29C of the Representation of the People Act, 1951 relating to declaration of donation received by the political parties. Sub-Section (3) of Section 29C of the Representation of the People Act, 1951, inter alia, provides that every political party shall furnish a report to the Election Commission with regard to the details of contributions received by it in excess of twenty thousand rupees from any person in order to avail the income-tax relief as per the provisions of Income-tax Act, 1961. Now the contributions received by way of "electoral bond" shall

be excluded from the scope of sub Section (3) of Section29C of the said Act. It is also proposed to define the term "electoral bond" which is consequential in nature. This amendment has taken effect from 1st April, 2017. The relevant Section of the Finance Act, 2017 is reproduced below;

> *136.In the Representation of the People Act, 1951, in Section 29C, in sub-Section (1), the following shall be inserted, namely:—'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.*

9. That the said amendments to the Reserve Bank of India Act, 1934, Representation of the People Act, 1951 and Income Tax Act, 1961 have affected transparency in political funding. The consequence of the amendments is that now the contribution reports of political parties need not mention names and addresses of those contributing by way of electoral bonds. This will have a major implication on transparency in political funding as now the political parties are free not to file contributions received through electoral bonds. Election Commission regularly displays political party's contribution reports on its website through which citizens get to know about the contributions made to various political parties and the source of such contribution. But with the introduction of electoral bonds, Election Commission and the citizens of the country will not get to know the vital information regarding political contributions.

10. That the aforesaid amendment to the Companies Act, 2013 has also done away with a limiting clause for companies to make donations. Prior to the amendment, there existed a cap on the donations permitted up to 7.5 percent of net profits of the last 3 years for the companies. But the aforesaid

amendment has removed the said limit for contributions that a company may make to political parties and the requirement of a company to disclose the name of the political parties to which a contribution has been made. The companies are no longer required to disclose the break-up of contributions made to different political parties. The result of this would be that now corporate funding will increase manifold as there is no limit to how much the companies can donate. Loss-making companies will also qualify to make payments. This has increased the danger of quid pro quo and if any benefits are passed on to such companies by the elected government.

11. That these amendments infringe the citizen's fundamental 'Right to Know' and is not saved by any of the eight reasonable restrictions under Article 19(2). That such an unreasonable and irrational restriction on information at the cost of larger public interest is a severe blow to the very fundamentals of transparency and accountability. Making the political class even more unanswerable and unaccountable and causing of annoyance, inconvenience, obstruction to the citizens at large by withholding crucial public information from them regarding electoral funding are all outside the purview of Article 19(2) as well as the very basis of democracy.

12. That the primary objective of the Finance Act, 2017 was to curb the ever growing menace of deep-rooted corruption and black money circulating within the political class. However, by allowing electoral bonds on the donor's side and removing the name of the recipient brings in complete opacity in political funding. Removal of the company's limit of 7.5% of the average net profit of the last three financial years will not only heightens the odds of conflict of interest but will also drastically increase black money and corruption. This will also lead to the creation of shell companies and rise of *benami* transactions to channelize the undocumented money into the political and electoral process in India. The new amendments contravene the bare text of the Constitution. The present petition therefore, highlights this breach which is particularly disturbing, because

the legislation imperils our core liberties and rights guaranteed under the Constitution, in manners both explicit and insidious.

13. That the Election Commission of India in a written reply to the Standing Committee on Personnel, Public Grievances, Law and Justice, headed by Anand Sharma has said that the introduction of electoral bonds would compromise transparency in political funding. Election Commission has stated that the amendment in Section 29 C of Representation of the People Act,1951, making it no longer necessary to report details of donations received through electoral bonds, is a retrograde step.

14. That the National Commission to Review the Working of the Constitution in its report submitted in March 2002 had also recommended that Political Parties as well as individual candidates be made subject to a proper statutory audit of the amounts they spend. The relevant paras of the Report are extracted below:

> *"8.11. Regulating political contributions: There is a need for one comprehensive legislation regarding the regulation of political contributions to political parties and towards election expenses. The various existing provisions in different Acts need to be consolidated into a single law regulating the flow of funds to political parties both from the internal as well as external sources.Legislation should provide for compulsory auditing of the accounts of all political parties registered with the Election Commission by an independent authority specified under the new law regulating the functioning of political parties, publishing of audited party account, and immediate de-recognition and enforcement of penalties for filing false or incorrect election returns. Accounts should be made available for public inspection."*

A copy of the report by National Commission to Review the Working of the Constitution on "Reform of the Electoral Laws" is annexed herewith and marked as **Annexure P2** (page_____to_____).

15. That the 20th Law Commission of India in its 255th Report on Electoral Reformshas studied the issueand recommended in Para No. 2.28.10 to Para No. 2.28.14 the imperative necessity for more transparency and accountability in party funds and expenses. A copy of the relevant sections of the 255th Report on Electoral Reforms is annexed herewith as **Annexure P3** (page_____to_____).

16. That the Law Commission of India in the aforesaid report has further recommended in Para No. 2.28.16 as under for incorporating the maximum limit for such donations below Rs. 20,000/-, for exemption from producing the relevant records before the Income Tax Authorities or before the Election Commission of India.

17. That it is also worth stating that none of the Committee reports in the past have ever recommended any of the amendments brought by the new Finance Act, 2017. And that the reluctance of the existing Political Establishments to give effect to the Recommendations of the Election Commission of India and the 255th Law Commission report, has only permitted the corruption to percolate further in the Electoral Process.

18. That various judgments of this Hon'ble Court have emphasized on the importance of freedom of speech and expression in a democratic form of government and also held that free flow of information is necessary for an informed citizenry. In*comes Thappar v. State of Madras*, [1950]S.C.R. 594 at 602, this Hon'ble Court stated that freedom of speech lay at the foundation of all democratic organizations. In *Sakal Papers (P) Ltd. & Ors. v. Union of India*, [1962] 3 S.C.R. 842at 866, a Constitution Bench of this Hon'ble Court said that freedom of speech and expression of opinion is of paramount importance under a democratic constitution which envisages changes in the composition of legislatures and governments and must be preserved.

19. That the people of this country have a right to know every public act, everything that is done in a public way by the public functionaries. In *State of Uttar Pradesh v. Raj Narain and Others* [(1975) 4 SCC 428], the Constitution Bench of this Hon'ble Court had observed that "the right to know which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security". The Court pertinently observed as under:-

> *"74. In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing…"*

20. That in *Secretary, Ministry of Information and Broadcasting, Government of India and Others v. Cricket Association of Bengal and others*[(1995) 2 SCC 161], this Hon'ble Court considered the issue and thereafter summarized the law on the freedom of speech and expression. The relevant paragraph of the judgment is reproduced below:

> *"44.The freedom of speech and expression includes right to acquire information and to disseminate it. Freedom of speech and expression is necessary, for self- fulfilment. It enables people to contribute to debate on social and moral issues. It is the best way to find a truest model of anything, since it is only through it that the widest possible range of ideas can circulate. It is the only vehicle of political discourse so essential to democracy. Equally important is the role it plays in facilitating artistic and scholarly endeavours of allsorts… "*

21. That this Hon'ble Court also observed that a successful democracy posits an `aware' citizenry" and held in Para 82.

> *"82. True democracy cannot exist unless all citizens have a right to participate in the affairs of the polity of the country. The right to participate in the affairs of the country is meaning less*

unless the citizens are well informed on all sides of the issues, in respect of which they are called upon to express their views. One-sided information, disinformation, misinformation and non-information all equally create an uninformed citizenry which makes democracy a farce when medium of information is monopolised either by a partisan central authority or by private individuals or oligarchic organisation. This is particularly so in a country like ours where about 65 per cent of the population is illiterate and hardly 1 ½ per cent of the population has an access to the print media which is not subject to pre-censorship."

PASSING OF THE FINANCE ACT 2017 AS A MONEY BILL

22. That the Constitution of India distinguishes between an Ordinary Bill, a Money Bill and a Financial Bill. Article 110(1) defines a money bill and Article 109 provides for the special procedure in respect of money bills. It states that a money bill can be introduced only in the Lower House. A Money Bill as per Article 110(1) is a Bill which contains *only* provisions dealing with all or any of the following matters, namely-

(a) the imposition, abolition, remission, alteration or regulation of any tax;

(b) the regulation of the borrowing of money or the giving of any guarantee by the Government of India, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Government of India;

(c) the custody of the consolidated Fund or the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such Fund;

(d) the appropriation of moneys out of the consolidated Fund of India;

(e) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure;

(f) the receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or

issue of such money or the audit of the accounts of the Union or of a State; or

(g) any matter incidental to any of the matters specified in sub-clause (a) to (f).

In view of Article 117(1), a Bill which makes provisions for any of the abovementioned matters, and additionally with any other matter is called a Financial Bill. Therefore, the Finance Bill, 2017 may be a Money Bill if it deals *only* with the matters specified above, and not with any other extraneous matter as otherwise it would be categorised as a Financial Bill.

23. That similarly, there are corresponding provisions in the Constitution of India for money bills introduced in and passed by a State Legislative Assembly. Article 198 provides for the special procedure for money bills in the State Legislative Assembly, while Art. 199 defines a money bill and also provides for finality of the decision of the speaker of the Legislative Assembly. When a money bill has been passed by the State Legislative Assembly, Article 200 requires it to be presented to the Governor, along with the speaker's certificate, for his assent.

24. That since the Rajya Sabha does not possess co-ordinate power with Lok Sabha in case of a Money Bill, the Lok Sabha has effectively bypassed the Rajya Sabha by voting the same as a Money Bill, which in essence is a Financial Bill in light of the various amendments carried out in addition to the matters specified in Article 110(1), and hence ceasing it to be a Money Bill.

25. That various MPs of the Rajya Sabha have shown their condescension with respect to the aforesaid amendments introduced through the Finance Act, 2017. The minutes of the Rajya Sabha proceedings are self-explanatory and attest the very fact that the aforesaid amendments are only going to bring turmoil and generate insurmountable amount of black money in the electoral funding by making it more opaque and impervious.

A copy of the relevant excerpts of the MPs expressing their dissent during the Rajya Sabha proceedings dated 27-03-2017 has been reproduced below and marked as **Annexure P4** (page_____to_____).

26. The usage of money bill to enact the Finance Act, 2017 was not a solitary exception. In the last few years, key legislative reforms have been enacted as money bills. For instance, the Specified Bank Notes (Cessation of Liabilities) Bill, 2017, which was passed by the Lower House to fully implement the recent demonetisation scheme, was certified as a 'money bill' by the speaker. In fact, the revenue deficit target under the Fiscal Responsibility and Budget Management Act 2003 has been changed thrice in the past using money bills - through Finance Act 2004, Finance Act 2012 and Finance Act 2015. The above vignettes consequently, exemplify not only the past, current and potential future usage of money bills in India, but also underscore its potential abuses

27. That the words used under Article 110 of the Constitution are clear and its normal form and hence, vests no uncontrolled discretion in the Speaker. The provision requires that a bill conform to the criteria prescribed in it for it to be classified as a money bill. Where a bill intends to legislate on matters beyond the features delineated in Article 110, it must be treated as an ordinary draft statute. Any violation of this mandate needs to be checked, therefore, as a substantive constitutional error. Where a Speaker's choice is grossly illegal, or disregards basic constitutional mandates, or, worse still, where the Speaker's decision is riddled with perversities, this Hon'ble Court has the power to review such parliamentary pronouncements

28. That a plain reading of the text of the Finance Act, 2017 would show us that its contents have gone far beyond the features enumerated in Article 110. A draft legislation is classified as a money bill when it provides for funds to be made available to the executive to carry out specific tasks. In the

present case of Finance Act, 2017 such provisions are manifestly absent. The Speaker's decision to confirm the government's classification is, therefore, an error that is not merely procedural in nature but one that constitutes, in substance, an unmitigated flouting of Article 110.

29. The principle of constitutionalism requires control over the exercise of Governmental power to ensure that it does not destroy the democratic principles upon which it is based. These democratic principles include the protection of fundamental rights. Articles 19 represent the foundational values which form the basis of the rule of law. These are the principle of constitutionality which form the basis of judicial review apart from the rule of law and separation of powers. The supremacy of the Constitution mandates all constitutional bodies to comply with the provisions of the Constitution.

30. That in *I.R Cohelo vs. State of Tamil Nadu*, (2007) 2 SCC 1; the Nine-Judge bench headed by Y.K. Sabharwal, C.J.I. held that the authority to enact law and decide the legality of the limitations cannot vest in one organ. The relevant paragraphs of the judgment are reproduced below:

> *"98. The consequence of insertion is that it nullifies entire Part III of the Constitution. There is no constitutional control on such nullification. It means an unlimited power totally nullify Part III in so far as Ninth Schedule legislations are concerned. The supremacy of the Constitution mandates all constitutional bodies to comply with the provisions of the Constitution. It also mandates a mechanism for testing the validity of legislative acts through an independent organ, viz. the judiciary. The responsibility to judge the constitutionality of all laws is that of judiciary. …… The absence of guidelines for exercise of such power means the absence of constitutional control which results in destruction of constitutional supremacy and creation of parliamentary hegemony and absence of full power of judicial review to determine the constitutional validity of such exercise."*

"149.The basic structure doctrine requires the State to justify the degree of invasion of fundamental rights. Parliament is presumed to legislate compatibly with the fundamental rights and this is where Judicial Review comes in. The greater the invasion into essential freedoms, greater is the need for justification and determination by court whether invasion was necessary and if so to what extent."

"149.The degree of invasion is for the Court to decide. Compatibility is one of the species of Judicial Review which is premised on compatibility with rights regarded as fundamental. The power to grant immunity, at will, on fictional basis, without full judicial review, will nullify the entire basic structure doctrine. The golden triangle referred to above is the basic feature of the constitution as it stands for equality and rule of laws."

31. That under the Constitution of India, the Houses have to follow not only procedures laid down by their own legislation and rules, but also by the Constitution itself. Importing absolute immunity from judicial review would render the constitutional procedure for law making utterly derisory in Indian democracy. In Special Reference No. 1 of 1964; AIR 1965 SC 745,a matter was referred to this Hon'ble Court through a presidential reference under Article 143 of the Constitution of India, wherein the Court was required to determine the scope of legislative privilege enjoyed by the State Legislative Assembly under the Constitution of India. In this context, the Supreme Court discussed the scope of immunity from judicial review under Article 212, clarifying that it is not absolute in nature. The Court thus held:

"61. Article 212(1) seems to make it possible for a citizen to call in question in the appropriate court of law the validity of any proceedings inside the legislative chamber if his case is that the said proceedings suffer not from mere irregularity of procedure, but from an illegality. If the impugned procedure is

illegal and unconstitutional, it would be open to be scrutinised in a court of law, though such scrutiny is prohibited if the complaint against the procedure is no more than this that the procedure was irregular."

32. That this principle was further upheld by the Supreme Court in the case of *Raja Ram Pal v. Hon'ble Speaker, Lok Sabha*, (2007) 3 SCC 184.The Supreme Court was called upon to decide whether each House of the Parliament in exercise of its powers, privileges and immunities under Article 105 of the Constitution of India could expel its own members from membership of the respective House. The Supreme Court observed that the proceedings which may be tainted on account of substantive illegality or unconstitutionality, as opposed to those suffering from mere irregularity thus cannot be held protected from judicial scrutiny by Article 122(1). The court limited the scope of immunity of legislative proceedings from judicial review under Article 122 by holding:

"Any attempt to read a limitation into Article 122 so as to restrict the court's jurisdiction to examination of the Parliament's procedure in case of unconstitutionality, as opposed to illegality would amount to doing violence to the constitutional text. Applying the principle of 'expressio unius est exclusio alterius' (whatever has not been included has by implication been excluded), it is plain and clear that prohibition against examination on the touchstone of 'irregularity of procedure' does not make taboo judicial review on findings of illegality or unconstitutionality."

33. That evidently, under American law, allegation of breach of a constitutional procedure in enacting a law is a valid ground for judicial review. In *United States v. Munoz-Flores*, a statute was challenged before the Supreme Court on the ground that its enactment process violated the origination clause in the Constitution of the United States of America. The government argued that judicial invalidation of a law for breach of the Origination Clause would evince a lack of respect for the

House's determination. The Court rejected the government's argument and went on to exercise its powers of judicial review. While rendering the majority judgement, Justice Marshall reasoned:

"To survive this Court's scrutiny, the "law" must comply with all relevant constitutional limits. A law passed in violation of the Origination Clause would thus be no more immune from judicial scrutiny because it was passed by both Houses and signed by the President than would be a law passed in violation of the First Amendment."

34. That this act of the Parliament is a "clear case of Constitutional fraud" violating fundamental rights, and a colourable exercise of power. If this bill with far-reaching implications for rights, accountability and the powers of the state is a money bill, then practically any legislation can be converted into a money bill.

35. The Finance Act, 2017 has been enacted after being introduced as a money bill and therefore, the petitioner also urges this Hon'ble Court to ensure that the practice of by-passing the Rajya Sabha for important Bills by classifying them as money bills ought to be immediately stopped.

ASSOCIATION OF DEMOCRATIC RESEARCH DATA

36. That regional and national political parties receive large sum of money in the form of donations and contributions from various sources. The Petitioner has been collecting data regarding donations and contributions received by the political parties as submitted by them to the Election Commission. ADR had conducted an eleven year analysis of funding of the national and regional political parties from the FY2004-05 to FY 2014-15. Six National parties (INC, BJP, BSP, NCP, CPI and CPM) and 51 Regional recognised were considered for this analysis, including AITC which was declared a National Party only in September, 2016. Total income of National and Regional political parties between FY 2004-05 and 2014-15: Rs 11,367.34 cr. Total income of political parties from known

donors (details of donors as available from contribution report submitted by parties to Election Commission): Rs 1,835.63 cr, which is 16% of the total income of the parties. Total income of political parties from other known sources (e.g., sale of assets, membership fees, bank interest, sale of publications, party levy etc.): Rs 1,698.73 cr, or 15% of total income. Total income of political parties from unknown sources (income specified in the IT Returns whose sources are unknown): Rs 7,832.98 cr, which is 69% of the total income of the parties.

37. That analysis of political parties with maximum income from unknown sources was also conducted. During the 11 years between FY 2004-05 and 2014-15, 83% of total income of INC, amounting to Rs 3,323.39 cr and 65% of total income of BJP, amounting to Rs 2,125.91 cr came from unknown sources. Among the Regional Parties, Rs 766.27 cr or 94% of total income of SP and Rs 88.06 cr or 86% of the total income of SAD came from unknown sources.

38. That the income tax returns/ audit reports of National and Regional parties were obtained by filing RTI applications with the Income Tax departments. The income tax returns of 42 out of the 51 regional parties analysed were unavailable for at least one financial year. The information was either denied by the IT departments/ the parties had not filed their returns for the financial year/ the departments were unable to trace the audit reports/ incomplete information was provided. Where possible, copies of audit reports were procured from the ECI.

39. The 12 regional parties which have never filed their contributions report since FY 2004-05 are: J&K PDP, AJSU, NPP, RSP, MPC, KC-M, SKM, AINRC, PDA, MSCP, HSPDP and PPA. The income of National Parties from unknown sources increased by 313%, from Rs 274.13 cr during FY 2004-05 to Rs 1130.92 cr during FY 2014-15. The income of Regional Parties from unknown sources increased by 652% from Rs 37.393 cr during FY 2004-05 toRs 281.01 cr during FY 2014-15. Among all the National and Regional parties considered, BSP is the only party to consistently declare receiving NIL donations above Rs 20,000 between FY 2004-05 and 2014-15 thus 100% of the party's donations came from

unknown sources. The total income of the party increased by 2057% from Rs 5.19 cr during FY 2004-05 to Rs 111.96 cr during FY 2014-15.

40. That according to the analysis, it was found that INC has the highest total income of Rs 3,982.09 crores between FY 2004-05 and 2014-15 which is 42.92% of the total income of the 6 parties during the same time. BJP has the second highest income of Rs 3,272.63 crores which is 35.27% of the total income of the 6 National parties. CPM declared third highest Income of Rs 892.99 crores which is 9.62% of the total income of the 6 National parties.

41. That as per the analysis of the total income of the National Parties from donations above Rs 20,000 during the FY 2004-05 to 2014-15, it was found that the total amount of donations above Rs 20,000 declared by the 6 National Parties was Rs.1405.19 crores. BJP topped the list by declaring a total of Rs 917.86 crores as received via voluntary contributions above Rs 20,000. The donations declared by BJP is more than twice the donations declared by the INC during the same period. INC declared donations of Rs 400.32 crores, received between FY 2004-05 and FY 2014-15 where as BSP declared that the party did not receive any donations above Rs 20,000 in the past 11 Financial Years. NCP did not submit its Donations Report to the ECI between FY 2004-05 and 2006-07.

42. That egregious level of opacity in the financial disclosure of political parties certainly points the needle of suspicion towards the dubious sources of income and their influence in our electoral process. According to the analysis of the contributions received by political parties from various known and unknown sources between FY 2004-05 and 2014-15,it was found that the total income of National parties between FY 2004-05 and 2014-15 was Rs 9,278.30 crores . Total income of political parties from known donors (details of donors as available from contribution report submitted by parties to Election Commission): Rs 1,405.19 crores, which is 15.14 % of the total income of the parties. Total income of political parties from other known sources (e.g., sale of assets, membership fees,

bank interest, sale of publications, party levy etc.): Rs 1,260.69 crores, or 13.59% of total income. Total income of political parties from unknown sources (income specified in the IT Returns whose sources are unknown): Rs 6,612.42 crores, which is 71.27% of the total income of the parties. It is noteworthy to mention that the contribution statements, submitted by the political parties declaring names and other details of donors who contribute above Rs 20,000, are the only known source. The unknown sources are income declared in the IT returns but without giving source of income for donations below Rs.20,000. Such unknown sources include 'sale of coupons', 'Aajiwan Sahayog Nidhi', 'relief fund', 'miscellaneous income', 'voluntary contributions', 'contribution from meetings/ morchas' etc. The details of donors of such voluntary contributions are not available in the public domain.

A copy of the report giving the analysis of the sources of funding of national and regional parties FY-2004-05 to 2014-15 is annexed herewith and marked as **ANNEXURE P5** pages (_____to_____).

43. That according to analysis of the donations received above Rs 20,000 by the National Parties for the FY 2015-16, the total amount of donations received by the National Parties was Rs 102.02 crores from 1744 donations. As per the analysis, a total of Rs 76.85 crores was declared by BJP from 613 donations while INC declared receiving Rs 20.42 crores from 918 donations. It would be significant to note that the donations declared by BJP is more than thrice the aggregate declared by INC, NCP, CPI, CPI(M) and AITC where as BSP declared that the party did not receive any donations above Rs 20,000 during FY 2015-16, as it has been declaring for the past 10 years.

44. That according to the analysis it was also found that out of the 7 National Parties, 4 parties, BJP, INC, CPI and NCP had not declared PAN details of 473 donations through which the parties collected a total of Rs 11.68 crores. INC collected Rs 8.11 crores from 318 donations but failed to provide PAN details of donors while BJP collected Rs 2.19 crores from 71 donations

without PAN. CPM has not adhered with the format specified by the ECI for submission of donations report. The party has not provided details of mode of contributions of any of its 61 donations. Such details include, cheque/ DD number, bank in which it was drawn, date of receipt or if it was a cash donations or bank transfer. Similarly, AITC has not provided cheque number, bank on which it was drawn and the date on which the cheque was received/ encashed for any of its 12 donors who contributed a total of Rs 65 lakhs. Thus, without the complete cheque/DD details, it would be a time consuming process to link the donors against their donations and hence trace the money trail. CPI has also not declared the details of cheque/ DD/ Bank transfer for a total of 71 donations through which the party received Rs 1.19 crores. CPI has not provided the names and PAN number of 13 state secretaries of the party though their contributions amount to Rs 59.68 lakhs. Overall, the party has not provided PAN details for 82 donations received during FY 2015-16 which aggregate to Rs 1.13 crores.

The true and correct copy of the report giving the analysis of the donations received by the parties FY 2015-16 is annexed herewith and marked as **ANNEXURE P6** (pages_____to_____)

45. That the analysis of the details of funds declared by the National Parties, as collected from corporates between FY 2012-13 and 2015-16, each donations being above Rs 20,000 shows that between FY 2012-13 and 2014-15, there was an increase of 598.66% in the donations made by corporates to National Parties but these donations reduced by 86.58% between FY 2014-15 and 15-16, immediately after the Lok Sabha elections.In the 4 years considered for the analysis, BJP declared receiving the highest donations during every financial year from corporates with an average of Rs 176.45 cr per annum followed by INC and NCP.It is to be noted that NCP declared that the party received no funds from corporates during the FY 2012-13 but declared receiving an average of Rs

12.68 cr per annum from corporates during the remaining period between FY 2013-14 and 2015-16.

A copy of the analysis of the donations above Rs 20.000 from corporate houses to national parties from the FY-2012-13 to 2015-16is annexed herewith and marked as **ANNEXURE P7** (pages_____to_____)**.**

46. That the government also amended the Foreign Contribution (Regulation) Act, 2010 with retrospective effect so that foreign companies registered in India can contribute to parties from their corporate social responsibility fund. This move of the government to amend Foreign Contribution (Regulation) Act, 2010 was aimed at bailing out the two national political parties BJP and INC from facing legal consequences for violating the Foreign Contribution (Regulation) Act, 1976 and 2010. This has made foreign funding to political parties easier as a foreign company can make a subsidiary in India and make donations to political parties.

A copy of the relevant part of the amended Foreign Contribution (Regulation) Act, 2010 is attached herewith and marked as **Annexure P8** (pages_____to_____)**.**

47. That on the request of Election Commission, the Institute of Chartered Accountants of India made certain recommendations in February 2010 under its "Guidance Note on Accounting & Auditing of Political Parties" to the Election Commission for improving the system of accounting followed by political parties in India. The ECI issued transparency guidelines under Article 324 of the Constitution of India bearing No. 76/PPEMS/Transparency/2013 dated 29/08/2014 with effect from 01/10/2014 stating that the accounts maintained by the treasurer of the political party shall conform to the "Guidance Note on Accounting and Auditing of political parties" issued by the ICAI. The objective of this move was to bring greater financial accountability in political parties especially in the upkeep of their finances. ICAI formulated a guidance note on "Accounting and Auditing of political parties". The Election

Commission urged all the political parties to begin preparing their accounts and disclosures in the prescribed formats but such a change in accounting practices was never adopted by any of the parties**.** Important recommendations of ICAI include: a) Political parties should maintain their books of account on accrual basis; b) Elements of financial statements basically comprising income, expenses, assets and liabilities; c) Principles for recognition of income, expenses, assets and liabilities; d) Political parties, irrespective of the fact that no part of the activities is commercial, industrial or business in nature that all political parties should follow Accounting Standards; e) A Political Party should not recognise a contingent liability on the face of financial statements, but it should make the following disclosures, for each class of contingent liability, in the notes to financial statements; f) Books of account format was provided; g) Schedule 13 of the Guidance Note states that collection from issuance of coupons/sale of publications should be classified and disclosed. A copy of the ICAI's guidance note and Election Commission's request letter is attached herewith and marked as **Annexure P9** (pages_____to_____).

48. That in August 2014, ECI issued "*Guidelines on transparency and accountability in party funds and election expenditure matter*" in which the Commission had urged the parties to observe higher standards of transparency and accountability in respect to funds raised and expenditure incurred by them during both elections and in other times. This was the Commission's fourth such attempt in two years (2013 and 2014) to come with such guidelines aiming at greater financial transparency in working of the political parties.

A copy of the Election Commission's "Guidelines on transparency and accountability in party funds and election expenditure matter" are attached herewith and marked as **Annexure P10** (pages_____to_____).

49. That the reluctance of the existing Political Establishments to introduce transparency and accountability

within parties has only permitted corruption to percolate further in the electoral process. Over a period, we have observed burgeoning election expenditure, political party funding, and inadequate reporting and disclosure laws. Sometimes black money is generated by business houses and individuals to evade corporate and income taxes, later it is pumped back to political parties and candidates to garner favorable policy decisions. In our current electoral and political system, those who are willing and are able to utilize black money, dominate politics.

50. That the media coverage reproduced below also demonstrates how political parties have been able to generate unaccounted money without any repercussion:

a) *http://indiatoday.intoday.in/story/cash-mafias-black-money-india-today-expose/1/833683.html*

- Political Parties [BSP, INC, NCP, JD(U)] caught in a sting operation offering to convert old notes into new notes at a 30-40% commission, by using channels such as fake NGOs and bogus PR Companies.
- Operations run from party offices in Delhi itself.

A copy of the report dated published in India Today is annexed herewith as **Annexure P11** (pages_____to_____).

b) http://www.forbes.com/sites/timworstall/2016/12/17/this-is-clever-indias-political-parties-can-deposit-old-notes-with-no-tax-investigation/#6909e0d24e55

- International coverage on the loopholes in the demonetisation campaign.
- “India's political parties can deposit unlimited amounts of the old Rs 500 and Rs 1,000 demonetised notes into the banking system--without facing any tax investigations into how or where that money came from.”
- “The bad part here looks like it creates a great gaping loophole in the demonetisation campaign itself. Anyone

with a stock of black money can simply donate it into politics…"

A copy of the report dated published in Forbes is annexed herewith as **Annexure P12** (pages_____to_____).

c) http://indianexpress.com/article/india/poll-panel-lists-200-parties-that-exist-mostly-on-paper-will-send-it-to-income-tax-for-action-money-laundering-fake-4437976/

- EC has moved to delist 200 parties which only exist as a front for laundering money. Names of these parties were forwarded to the CBDT for further action as successive Governments have failed to act upon proposed electoral reforms which would increase transparency.
- A copy of the report dated published in Indian Expressis annexed herewith as **Annexure P13** (pages_____to_____).

d) *http://indianexpress.com/article/india/election-commission-fake-political-parties-money-laundering-delisted-parties-elcetions-4441037/*

- Addresses for these political parties include the official residence of Union Home Minister, Rajnath Singh, Jammu and Kashmir CID, etc.

A copy of the report dated published in the Indian Express is annexed herewith as **Annexure P14** (pages_____to_____).

51. In light of the above, the petitioner urges this Hon'ble Court to pass an appropriate write, order or directions to the respondents to stay the operation and strike down Section 135, Section 137, Section 11 and Section 154 of the Finance Act, 2017 as being *ultra vires* the Constitution of India.

52. The Petitioner herein had filed various Public Interest Litigations under Article 32 of the Constitution of India before this Hon'ble Court to effectuate electoral reforms. A few notable mentions may be in *Union of India v. Association for Democratic Reforms and Anr.,* (2002) 5 SCC 294 and *People's Union for Civil Liberties & Anr., Lok Satta and Ors.* and *Association for Democratic Reforms v. Union of India (UOI) and Anr.,* (2003) 4 SCC 399. A true copy of the certificate of registration of the Petitioner is annexed herewith and marked as **ANNEXURE P15** (pages_____to_____).

GROUNDS

A. That these amendments infringe the citizen's fundamental 'Right to Know' and is not saved by any of the eight reasonable restrictions under Article 19(2). That such an unreasonable and irrational restriction on information at the cost of larger public interest is a severe blow to the very fundamentals of transparency and accountability. Making the political class even more unanswerable and unaccountable and causing of annoyance, inconvenience, obstruction to the citizens at large by withholding crucial public information from them regarding electoral funding are all outside the purview of Article 19(2) as well as the very basis of democracy.

B. That the primary objective of the Finance Act, 2017 was to curb the ever growing menace of deep-rooted corruption and black money circulating within the political class. However, by allowing electoral bonds on the donor's side and removing the name of the recipient brings in complete opacity in political funding. Removal of the company's limit of 7.5% of the average net profit of the last three financial years will not only heightens the odds of conflict of interest but will also drastically increase black money and corruption.

C. Because this will lead to the creation of shell companies and rise of *benami* transactions to channelize the undocumented money into the political and electoral process in India. The new amendments contravene the bare text of the Constitution. The present petition therefore, highlights this breach which is particularly disturbing, because the legislation imperils our core liberties and rights guaranteed under the Constitution, in manners both explicit and insidious.

D. Because the amendments introduced through the new Finance Act, 2017 by the Ministry of Finance, passed as a money bill thereby bypassing the Rajya Sabha, are unconstitutional and violate of doctrines of separation of powers and citizen's fundamental right to information which are parts of the basic structure of the Constitution. The aforesaid amendments are also patently arbitrary, capricious and discriminatory as they attempt to keep from the citizens crucial information regarding electoral funding.

E. Because the Constitution of India distinguishes between an Ordinary Bill, a Money Bill and a Financial Bill. Article 110(1) defines a money bill and Article 109 provides for the special procedure in respect of money bills. It states that a money bill can be introduced only in the Lower House. A Money Bill as per Article 110(1) is a Bill which contains *only* provisions dealing with all or any of the following matters, namely- (a) the imposition, abolition, remission, alteration or regulation of any tax; (b) the regulation of the borrowing of money or the giving of any guarantee by the Government of India, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Government of India; (c) the custody of the consolidated Fund or the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such Fund; (d) the appropriation of moneys out of the consolidated Fund of India; (e) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure; (f) the receipt of money on account of the Consolidated Fund of India

or the public account of India or the custody or issue of such money or the audit of the accounts of the Union or of a State; or (g) any matter incidental to any of the matters specified in sub-clause (a) to (f). In view of Article 117(1), a Bill which makes provisions for any of the abovementioned matters, and additionally with any other matter is called a Financial Bill. Therefore, the Finance Bill, 2017 may be a Money Bill if it deals *only* with the matters specified above, and not with any other extraneous matter as otherwise it would be 31nalyse31zed as a Financial Bill.

F. Because this Hon'ble Court has categorically observed in the case titled *Gajanan Krishnaji Bapat Vs. Dattaji Raghobaji Meghe*, (1955) 5 SCC 347 the practice followed by the Political Parties in not maintaining accounts of receipts of sale of coupons and donations, though is a reality, yet it is certainly not a good practice as it leaves a lot of scope for soiling the purity of elections by money influence. That as far back as 1955 this Hon'ble Court was consciously aware of the lack of initiative on the part of the Political parties to maintain proper accounts of donations. The necessity of such a requirement as emphasised by the Supreme Court where it observed pertinently as under:

> *"We wish, however, to point out that though the practice followed by political parties in not maintaining accounts of receipts of the sale of coupons and donations as well as the expenditure incurred in connection with the election of its candidate appears to be a reality but it certainly is not a good practice. It leaves a lot of scope for soiling the purity of election by money influence. Even if the traders and businessmen do not desire their names to be publicized in view the explanation of the witnesses, nothing prevents the political party and particularly a National party from maintaining its own accounts to show total receipts and expenditure incurred, so that there could be some accountability. The practice being followed as per the evidence introduces the possibility of receipts of money from the candidate himself or his election agent for being spent for furtherance of his election, without getting directly exposed, thereby defeating the real intention behind Explanation I to Section 77 of the Act. It is, therefore, appropriate for the Legislature or the Election Commission to intervene and prescribe by Rules the requirements of maintaining true and correct account of the receipt and expenditure by the political parties by disclosing the*

sources of receipts as well. Unless, this is done, the possibility of purity of elections being soiled by money influence cannot really be ruled out. The political parties must disclose as to how much amount was collected by it and from whom and the manner in which it was spent so that the court is in a position to determine "whose money was actually spent" through the hands of the Party. It is equally necessary for an election petitioner to produce better type of evidence to satisfy the court as to "whose money it was" that was being spent through the party."

G. That in *Dr. P. Nalla Thampy Terah v. Union of India and Ors.* [1985 Suppl. SCC 189], the Hon'ble Supreme Court while considering the validity of Section 77(1) of the Representation of People's Act, referred to the report of the Santhanam Committee on Prevention of Corruption, which says*:*

"The public belief in the prevalence of corruption at high political levels has been strengthened by the manner in which funds are collected by political parties, especially at the time of elections. Such suspicions attach not only to the ruling party but to all parties, as often the opposition can also support private vested interests as well as members of the Government party. It is, therefore, essential that the conduct of political parties should be regulated in this matter by strict principles in relation to collection of funds and electioneering. It has to be frankly recognized that political parties cannot be run and elections cannot be fought without large funds. But these funds should come openly from the supporters or sympathizers of the parties concerned."

"It is the reluctance and inability of these parties to make small collections on a wide basis and the desire to resort to short cuts through large donations that constitutes the major source of corruption and even more of suspicion of corruption."

H. That in *Common Cause (A Registered Society) Vs. Union of India* (AIR 1996 SC 3081),Supreme Court dealt with the issue of election expenses, while holding that the purity of election was fundamental to democracy and the Election Commission could ask the candidates about the expenditure incurred by the candidates and by a political party. The Hon'ble Supreme Court summed up the position in page no. 8 and 9 thus:-

"From these discussions, I have drawn the conclusion that most politicians are not interested in honest money funding

for elections. Honest money entails accountability. Honest money restricts spending withinlegally sanctioned limits (whichare ridiculously low). Honest moneyleaves little scope for thecandidate to steal from electionfunds. Honest money funding islimiting. While the politicianswant money for election, moreimportantly, they want money forthemselves – to spend to hoard, toget rich. And this they can do onlyif the source of money is black .Thecorruption in quest of politicaloffice and the corruption in themechanics of survival in power hasthoroughly vitiated our lives andour times. It has sullied ourinstitutions. The corrupt politiciangroomed to become the corruptminister, and, in turns the corruptminister set about seducing thebureaucrat THINK OF ANY problem oursociety or the country is facingtoday, 33nalyse it, and you willinevitably conclude, and rightly,that corruption is at the root ofthe problem. Prices are high.Corruption is the cause. Quality isbad. Corruption is the cause. Roadsare pockmarked. Corruption is thecause. Nobody does a good job.Corruption is the cause. Hospitalskill. Corruption is the cause.Power-failures put homes indarkness, Corruption is the cause. Businesses go intobankruptcy. Corruption is thecause. Cloth is expensive.Corruption is the cause. Bridgescollapse. Corruption is the cause.Educational standards have fallen.Corruption is the cause. We have nolaw and order. Corruption is thecause. People die from poisoning,through food, through drink,through medicines. Corruption is the cause. The list is endless. Thevery foundation of our nation, ofour society, is now threatened. Andcorruption is the cause."

I. That on April 28th, 2008 the Central Information Commission in an appeal filed by the Petitioner Organization vide its order number *CIC/AT/A/2007/01029 & 1263-1270;* made the Income Tax Returns (ITR) of political parties available for the public scrutiny under the Right to Information (RTI) Act. *The relevant paragraphs; para 49 and 50 of the Commission's order are reproduced below;*

"49. Democratic States, the world over, are engaged in finding solutions to the problem of transparency in political funding. Several methodologies are being tried such as State subsidy for parties, regulation of funding, voluntary disclosure by donors — at least large donors — and so on. The German Basic Law contains very elaborate provisions regarding political funding. Section 21 of the Basic Law

enjoins that political parties shall publicly account for the sources and the use of their funds and for their assets. The German Federal Constitutional Court has in its decisions strengthened the trend towards transparency in the functioning of political parties. It follows that transparency in funding of political parties in a democracy is the norm and, must be promoted in public interest. In the present case that promotion is being effected through the disclosure of the Income Tax Returns of the political parties."

J. That on November 2, 2000 this Hon'ble Court, while allowing the petition filed by the petitioner organisation, held that for making a right choice it is essential that relevant information regarding the past of the candidate should be disclosed in the interest of parliamentary democracy, which is a basic feature of the Constitution. The Court held that the voter and the citizen of this country have a fundamental right to such information, which shall make meaningful his/her fundamental right to express himself/herself in the elections. This Hon'ble Court also directed the Election Commission to use its powers under Article 324 of the Constitution to secure to voters the information regarding criminal antecedents, and assets and liabilities of candidates contesting elections to the Parliament and State Legislatures.

PRAYERS

In the fact and circumstances mentioned above and in interest of justice, it is the humble prayer of the Petitioners above named that this Hon'ble Court may graciously be pleased to:

a) Issue any writ, order, declaration and pass an order to stay the operation and strike down Section 135, Section 137, Section 11 and Section 154 of the Finance Act, 2017 as being *ultra vires* the Constitution of India

b) Pass any other further order as this Hon'ble Court may deem fit and proper in the interest of justice

Petitioner Through

Counsel for the Petitioners

Drawn by: Shivani Kapoor/Neha Rathi

Drawn & Filed On:

New Delhi.