IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

WRIT PETITION (CIVIL) NO. 880 OF 2017

IN THE MATTER OF:

ASSOCIATION FOR DEMOCRATIC REFORMS & ANR. …PETITIONERS

VERSUS

UNION OF INDIA & ORS. …RESPONDENT

WRITTEN SUBMISSIONS ON BEHALF OF

MR. PRASHANT BHUSHAN FOR THE PETITIONERS

TIME SOUGHT: 4 HOURS

INTRODUCTION

1. The above petition has challenged far reaching amendments made to various statutes by means of Finance Act 2016 and Finance Act 2017, which have allowed unlimited, unchecked and opaque funding of political parties through the means of 'Electoral Bonds' (EBs), leading to subversion of democracy and allowing corruption & money laundering at an unprecedented scale, despite serious concerns raised by the Election Commission, Reserve Bank, and even political parties in opposition.

2. The impugned amendments have: a) allowed opaque methods of funding political parties, b) exempted political parties from basic disclosure norms regarding their financial contributions, c) allowed companies (including shell companies and loss making companies) to donate unlimited amounts to political parties, and d) even allowed foreign entities to contribute unlimited sums to political parties by routing them through subsidiary companies registered in India.

3. Initially, the Finance Act, 2016 had made an amendment with retrospective effect from 2010 to the Foreign Contribution Regulation Act (FCRA), 2010, in order to save the two largest political parties from penal action after they were held guilty of violating FCRA by the Delhi High Court against which SLP was dismissed as withdrawn by this Hon'ble Court. By Finance Act, 2018 the aforesaid amendment was given retrospective effect from year 1976 instead of 2010. This amendment in FCRA has virtually allowed all political parties to take donations from foreign companies/entities by routing them through subsidiaries registered in India, thus defeating the very object and purpose of FCRA, which was framed to protect sovereignty and democracy, as observed by this Hon'ble Court.

4. However, it is the Finance Act, 2017, which has singlehandedly reversed and undone the process of electoral reforms and transparency (which had been undertaken in the past by the Parliament and this Hon'ble Court), by introducing a system of 'Electoral Bonds' (EBs) and by removing all limits to corporate donations. In order to introduce these Electoral Bonds, amendments in various statutes has been carried out: a)

Reserve Bank of India (RBI) Act, 1934, b) Representation of the People (RP), Act, 1951, c) Income Tax (I-T) Act, 1961 and d) Companies Act, 2013.

5. The aforesaid amendments have been challenged mainly on the following grounds:

a. The impugned amendments violate Articles 19(1)(a) and 21 of the Constitution by violating the right of citizens to information about funding of political parties.

b. The impugned amendments violate Article 21 by promoting corruption by legitimizing anonymous funding leading to quid pro quo arrangements between political parties and corporates/individuals, and also encourage money laundering on a large scale.

c. The impugned amendments subvert democracy and interferes in free and fair elections, and violates level playing field between the political parties (and also independent candidates).

d. That the amendments are manifestly arbitrary (violating Article 14) as the same were enacted based non-existent and false rationale, justifications and objectives, which were ex-facie untenable, after over-ruling the legitimate objections of the Election Commission, the RBI and opposition political parties.

e. The impugned amendments also violate rights of the shareholders and other stakeholders of the companies to know the beneficiaries of the contributions made by the said companies.

6. **Basic structure**: In numerous judgments of this Hon'ble Court, democracy, rule of law and free & fair elections have all been held to be part of basic structure of the Constitution. Any law abridging democracy or free elections or subverting rule of law, is liable to be held unconstitutional. The trinity of Articles 14, 19 and 21 and fundamental rights arising out of them have also been held to be part of the basic structure.

7. **Fundamental Right to Information**: It is settled law that all citizens enjoy fundamental right to information concerning all governmental and public affairs, and

all voters enjoy fundamental right to information concerning political parties and election candidates. Such law is the heart and soul of democracy, and has been held to be flowing from Articles 19(1)(a) and 21 of the Constitution. Thus any law that abridges the said right to information would be unconstitutional.

8. **Political parties**: Even before 1985, the political parties in India had important statutory status coupled with statutory powers, functions and duties as laid out by the Representation of People Act, 1951. The said Act was enacted in 1951 soon after the Constitution of India came into force.

9. However, vide the 52nd Constitution Amendment in 1985, Political Parties have been given significant Constitutional Status coupled with unprecedented powers, in the form of 10th Schedule (read with Articles 102(2) and 191(2) of the Constitution). These provisions were further significantly strengthened by the 91st Constitution Amendment in 2003. The Constitution of India (as it now stands) has conferred political parties a decisive control over the formation of central/state governments, voting by MPs/MLAs (elected public servants) in Parliament/State Assemblies and passage/non-passage of all Bills in Parliament/State Assemblies. Thus, now political parties have complete control over the laws and policies enacted by legislatures and over the government formation process, as all elected MPs and MLAs are bound by the whips/decisions of the political parties on whose ticket they were elected.

10. Thus, accountability and transparency in the functioning of political parties is of utmost importance as decisions concerning the lives and well-being of the citizens are ultimately taken by political parties, and are thereafter implemented by their representatives in the legislatures and governments who are accountable to the legislature. This Hon'ble Court has, therefore, in various decisions commented on the increased significance of political parties and need for transparency in their functioning.

11. The impugned parts of the Finance Act 2016 and 2017 have been annexed in the Compilation (***Pg 13-18, vol IV, convenience compilation***). The following tabular chart highlights the amendments made to various statutes:

Section 29C, Representation of the People Act 1951	
Prior to Amendment by the Finance Act, 2017	Upon Amendment by Section 137 of the Finance Act, 2017
29C. Declaration of donation received by the political parties. - (1) The treasurer of a political party or any other person authorized by the political party in this behalf shall, in each financial year, prepare a report in respect of the following, namely; (a) the contribution in excess of twenty thousand rupees received by such political party from any person in that financial year; (b) the contribution in excess of twenty thousand rupees received by such political party from companies other than Government companies in that financial year. (2) The report under sub-section (1) shall be in such form as may be prescribed. (3) The report for a financial year under sub-section (1) shall be submitted by the treasurer of a political party or any other person authorized by the political party in this behalf before the due date for furnishing a return of income of that financial year under section 139 of the Income-tax Act, 1961 (43 of 1961), to the Election Commission. (4) Where the treasurer of any political party or any other person authorized by the political party in this behalf fails to submit a report under sub-section (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.	Section 29C. Declaration of donation received by the political parties. - (1) The treasurer of a political party or any other person authorized by the political party in this behalf shall, in each financial year, prepare a report in respect of the following, namely: (a) the contribution in excess of twenty thousand rupees received by such political party from any person in that financial year; (b) the contribution in excess of twenty thousand rupees received by such political party from companies other than Government companies in that financial year. **Provided that nothing contained in this sub-section shall apply to the contributions received by way of an electoral bond.** **Explanation – For the purposes of this sub-section, "electoral bond" means a bond referred to in the Explanation to sub-section (3) of section 31 of the Reserve Bank of India Act, 1934.** (2) The report under sub-section (1) shall be in such form as may be prescribed. (3) The report for a financial year under sub-section (1) shall be submitted by the treasurer of a political party or any other person authorized by the political party in this behalf before the due date for furnishing a return of income of that financial year under section 139 of the Income-tax Act, 1961 (43 of 1961), to the Election Commission. (4) Where the treasurer of any political party or any other person authorized by the political party in this behalf fails to submit a report under sub-section (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.
Section 182, Companies Act 2013	

Prior to Amendment by the Finance Act, 2017	Upon Amendment by Section 154 of the Finance Act, 2017
182.Prohibitions and restrictions regarding political contributions. 1) Notwithstanding anything contained in any other provision of this Act, a company, other than a Government company and a company which has been in existence for less than three financial years, may contribute any amount directly or indirectly to any political party: Provided that the amount referred to in sub-section (*1*) or, as the case may be, the aggregate of the amount which may be so contributed by the company in any financial year shall not exceed seven and a half per cent of its average net profits during the three immediately preceding financial years: Provided further that no such contribution shall be made by a company unless a resolution authorising the making of such contribution is passed at a meeting of the Board of Directors and such resolution shall, subject to the other provisions of this section, be deemed to be justification in law for the making and the acceptance of the contribution authorised by it.	**182.Prohibitions and restrictions regarding political contributions.** 1) Notwithstanding anything contained in any other provision of this Act, a company, other than a Government company and a company which has been in existence for less than three financial years, may contribute any amount directly or indirectly to any political party: **(First proviso omitted)** Provided that no such contribution shall be made by a company unless a resolution authorising the making of such contribution is passed at a meeting of the Board of Directors and such resolution shall, subject to the other provisions of this section, be deemed to be justification in law for the making of the contribution authorised by it.
Section 182 (*3*) Every company shall disclose in its profit and loss account **any amount or amounts** contributed by it to any political party during the financial year to which that account relates, **giving particulars of the total amount contributed and the name of the party to which such amount has been contributed.**	**Section 182 (*3*)** Every company shall disclose in its profit and loss account the total amount contributed by it under this section during the financial year to which the account relates. *(3A) Notwithstanding anything contained in sub-section (1), the contribution under this section shall not be made except 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:* ***Provided that a company may make contribution through any instruments, issued pursuant to any scheme notified under any law for the time being in force, for contribution to the political parties.***
Section 13A, Income Tax Act 1995	
Prior to Amendment by the Finance Act, 2017	Upon Amendment by Section 11 of the Finance Act, 2017

13A. Special provision relating to incomes of political parties Any income of a political party which is chargeable under the head "Income from house property" or "Income from other sources" or any income by way of voluntary contributions received by a political party from any person shall not be included in the total income of the previous year of such political party: Provided that- (a) such political party keeps and maintains such books of account and other documents as would enable the Assessing Officer to properly deduce its income therefrom; (b) in respect of each such voluntary contribution in excess of ten thousand rupees, such political party keeps and maintains a record of such contribution and the name and address of the person who has made such contribution; and (c) the accounts of such political party are audited by an accountant as defined in the Explanation below sub- section (2) of section 288. Explanation.- For the purposes of this section, "political party" means an association or body of individual citizens of India registered with the Election Commission of India as a political party under paragraph 3 of the Election Symbols (Reservation and Allotment) Order, 1968, and includes a political party deemed to be registered with that Commission under the proviso to sub-paragraph (2) of that paragraph.	**13A. Special provision relating to incomes of political parties** Any income of a political party which is chargeable under the head "Income from house property" or "Income from other sources" or any income by way of voluntary contributions received by a political party from any person shall not be included in the total income of the previous year of such political party: Provided that- (a) such political party keeps and maintains such books of account and other documents as would enable the Assessing Officer to properly deduce its income therefrom; (b) in respect of each such voluntary contribution **other than contribution by way of electoral bond** in excess of ten thousand rupees, such political party keeps and maintains a record of such contribution and the name and address of the person who has made such contribution; and (c) the accounts of such political party are audited by an accountant as defined in the Explanation below sub- section (2) of section 288; and **(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;** 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.
Section 31, Reserve Bank of India Act 1931	

Prior to Amendment by the Finance Act, 2017	Upon Amendment by Section 11 of the Finance Act, 2017
31. Issue of demand bills and notes. 1) No person in India other than the Bank or, as expressly authorized by this Act, the Central Government shall draw, accept, make or issue any bill of exchange, hundi, promissory note or engagement for the payment of money payable to bearer on demand, or borrow, owe or take up any sum or sums of money on the bills, hundis or notes payable to bearer on demand of any such person: Provided that cheques or drafts, including hundis, payable to bearer on demand or otherwise may be drawn on a person's account with a banker, shroff or agent. (2) Notwithstanding anything contained in the Negotiable Instruments Act, 1881, no person in India other than the Bank or, as expressly authorised by this Act, the Central Government shall make or issue any promissory note expressed to be payable to the bearer of the instrument.	**31. Issue of demand bills and notes.** 1) No person in India other than the Bank or, as expressly authorized by this Act, the Central Government shall draw, accept, make or issue any bill of exchange, hundi, promissory note or engagement for the payment of money payable to bearer on demand, or borrow, owe or take up any sum or sums of money on the bills, hundis or notes payable to bearer on demand of any such person: Provided that cheques or drafts, including hundis, payable to bearer on demand or otherwise may be drawn on a person's account with a banker, shroff or agent. 2) Notwithstanding anything contained in the Negotiable Instruments Act, 1881, no person in India other than the Bank or, as expressly authorised by this Act, the Central Government shall make or issue any promissory note expressed to be payable to the bearer of the instrument. 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.**
Section 2, Foreign Contribution Regulation Act, 2010	
Prior to Amendment by the Finance Act 2016	Upon Amendment by Section 236 of the Finance Act, 2017
Section 2 (1) (j) (j) "foreign source" includes, -_ *(i)* the Government of any foreign country or territory and any agency of such Government; *(ii)* any international agency, not being the United Nations or any of its specialised agencies, the World Bank, International Monetary Fund or such other agency as the	***Section 2 (1) (j)*** (j) "foreign source" includes, -_ *(i)* the Government of any foreign country or territory and any agency of such Government; *(ii)* any international agency, not being the United Nations or any of its specialised agencies, the World Bank, International Monetary Fund or such other agency as

Central Government may, by notification, specify in this behalf; *(iii)* a foreign company; *(iv)* a corporation, not being a foreign company, incorporated in a foreign country or territory; *(v)* a multi-national corporation referred to in sub-clause *(vi)* of clause (*g*); *(vii)* a company within the meaning of the Companies Act, 1956 (1 of 1956), and more than one-half of the nominal value of its share capital is held, either singly or in the aggregate, by one or more of the following, namely:— _ *(A)* the Government of a foreign country or territory; *(B)* the citizens of a foreign country or territory; *(C)* corporations incorporated in a foreign country or territory; *(D)* trusts, societies or other associations of individuals (whether incorporated or not), formed or registered in a foreign country or territory; *(E)* foreign company	the Central Government may, by notification, specify in this behalf; *(iii)* a foreign company; *(iv)* a corporation, not being a foreign company, incorporated in a foreign country or territory; *(v)* a multi-national corporation referred to in sub-clause *(vi)* of clause (*g*); *(vii)*a company within the meaning of the Companies Act, 1956 (1 of 1956), and more than one-half of the nominal value of its share capital is held, either singly or in the aggregate, by one or more of the following, namely:— _ *(A)* the Government of a foreign country or territory; *(B)* the citizens of a foreign country or territory; *(C)* corporations incorporated in a foreign country or territory; *(D)* trusts, societies or other associations of individuals (whether incorporated or not), formed or registered in a foreign country or territory; *(E)* foreign company ***"Provided that where the nominal value of share capital is within the limits specified for foreign investment under the Foreign Exchange Management Act, 1999 (42 of 1999), or the rules or regulations made thereunder, then, notwithstanding the nominal value of share capital of a company being more than one-half of such value at the time of making the contribution, such company shall not be a foreign source."***

12. Pursuant to the aforesaid amendments, Electoral Bond Scheme 2018 was issued by the Central Government. The Amendments and the Scheme make it clear that:

a) EBs are in the nature of bearer instruments/ bonds that are used to donate funds to political parties. EBs may be purchased by any person who is a citizen of India or an entity incorporated or established in India.

b) Political Parties registered under Section 29A of the RP Act, 1951 and which have secured at least one per cent of the votes polled in the last election to the Lok Sabha or the Legislative Assembly of the State, shall be eligible to receive EBs.

c) State Bank of India has been authorised to issue and encash EBs. EBs may be purchased by making payment through cheque/DD/banking channels.

d) The EB shall be valid for fifteen days from the date of issue.

e) EB can be purchased for any value, in multiples of Rs. 1,000, Rs. 10,000, Rs. 1,00,000, Rs. 10,00,000 and Rs. 1,00,00,000 from the specified branches of the State Bank of India (SBI).

f) The window for sale of EBs shall be opened for 10 days each in the month of January, April, July and October. However, *vide* amendment notification dated 22.11.2022, the central government further allowed opening of window for further 15 days in a year when election to any state assembly is to take place. This is in addition to an additional period of 30 days which could be specified by the Centre in year of general elections to the Lok Sabha.

g) Identity of the purchasers of EBs is kept confidential. Political parties are also exempt from providing the identity of donors who donated to them using the instrument of EBs.

13. Use of Electoral Bonds For Political Donations

a) These bonds are in the nature of bearer bonds. The identity of the donor is kept anonymous. Political Parties are not required to disclose the name of the person/entity donating to a party through electoral bonds. Since the bonds are bearer instruments and have to be physically given to the political parties for them to encash, parties will know who is donating to them. It is only the general citizens who will not know who is donating to which party.

b) The requirement for a company to disclose (in its profit & loss account) the name of the political party to which a donation has been made is also removed. After the impugned amendments, only the total amount of donations to political parties has to be disclosed without disclosing the name of the political party to which donation has been made.

c) With the removal of the 7.5% cap on the net profits of the last 3 years of a company, now corporate funding has increase manifold as there is no limit to how much a company can donate. Even loss-making companies now qualify to make donations of any amount to political parties out of their capital or reserves. Further, it opens up the possibility of companies being brought into existence by unscrupulous elements primarily for routing funds to political parties through anonymous and opaque instruments like electoral bonds. This has increased the opacity of funding of political parties, and the danger of quid pro quo for any benefits passed on to such companies or their group companies by the elected government. This has a major negative implication on transparency in political funding and are in violation of citizens' right to information, a fundamental right.

d) The contribution received by any eligible political party in the form of electoral bonds will be exempt from income tax as per Section 13A of the Income Tax Act.

e) While the citizens would have no access to information, the Government can access this information as State Bank of India (SBI) is a nationalised bank under Government's control and its CMD and Directors are appointed by the Government.

14. Introduction of Electoral Bonds has no rational basis

Before the impugned amendments, political parties had to disclose all donations to the Election Commission. Only donations received by political parties below Rs. 20,000 were exempted. This was also highly criticized since political parties would often assert that significant amounts of donations were received by them in cash bin amount of less than Rs. 20,000 and would therefore, not reveal the source of funds. (The limit for income tax exemption for cash donations has now been made Rs. 2000). The political parties had to disclose all donations in their contribution report under Section 29C of the Representation of People's Act, 1951 (except those below Rs. 20,000) as well as in their income tax returns (except those below Rs.10,000). Companies could only donate up to 7.5% of their average net-profit of last 3 years. Companies also had to disclose to which political party they had made their contribution. This ensured that the voter had access to information with regard to

political funding and was not completely in the dark about who was funding which political party.

15. On 07.01.2018, five days after introduction of the Electoral Bond Scheme, the Press Information Bureau published an article written by the then Finance Minister, on the necessity of introducing Electoral Bonds (***pg 716, vol IV of convenience compilation***). The stand of the government was that expenditures of political parties run unto thousands of crores, however, there has not been a transparent funding mechanism of the political system. The said PIB press release quotes from the then Finance Minister's article:

> *"The conventional system of political funding is to rely on donations. These donations, big or small, come from a range of sources from political workers, sympathisers, small business people and even large industrialists. The conventional practice of funding the political system was to take donations in cash and undertake these expenditures in cash. The sources are anonymous or pseudonymous. The quantum of money was never disclosed. The present system ensures unclean money coming from unidentifiable sources. It is a wholly non-transparent system. Most political groups seem fairly satisfied with the present arrangement and would not mind this status-quo to continue. The effort, therefore, is to run down any alternative system which is devised to cleanse up the political funding mechanism."*

> *"It further said that most donors are reluctance to disclose the details of the quantum of donations given to a political party. "A major step was taken during the first NDA Government led by Shri Atal Bihari Vajpayee. The Income Tax Act was amended to include a provision that donations made to political parties would be treated as expenditure and would thus give a tax advantage to the donor. If the political party disclosed its donations in a prescribed manner, it would also not be liable to pay any tax. A political party was expected to file its returns both with the income-tax authorities and Election Commission. It was hoped that donors would increasingly start donating money by cheque. Some donors did start following this practise but most of them were reluctant to disclose the details of the quantum of donation given to a political party. This was because they feared consequences visiting them from political opponents. The law was further amended during the UPA Government to provide for "pass through" electoral trust so that the donors would park their money with the electoral trusts which in turn would distribute the same to various political parties. Both these reforms taken together resulted in only a small fraction of the donations coming in form of cheques."*

16. Thus, from the time of its inception, the government has touted Electoral Bonds as a new modality of electoral funding that would increase transparency in electoral funding. The main argument put forth in introducing Electoral Bonds was that the Electoral Bonds transactions would take place through formal banking system and thus only legitimate entities using white money would be availing of the scheme. Another argument of the Government in pushing the amendments was that use of cash in political funding would be reduced.

17. However, the said objectives were clearly false, as not only are cash donations still allowed (upto Rs.2,000) but Electoral Bonds with denominations of Rs. 1 crore have been introduced. Thus, cash donations have not been replaced with Electoral Bonds, in fact, donations which used to be made by banking channels and sources of which were reported to Election Commission and in the income tax returns and were publicly available are also now being made secretly through electoral bonds. Moreover, an avenue for huge surreptitious donations has been opened and bearer bonds are issued opening doors to corruption and money laundering.

18. At the time of introduction of electoral bonds in 2017, the government had made claims that the donors had asked for EBs due to fear of political retribution if they used transparent methods of funding. An RTI reply dated 04.11.2019 however stated: *"No representation or petition or communication has been received from the donors, regarding the need for maintaining the confidentiality of their identity while making donations to political parties"* (***Pg 536, Vol IV of convenience compilation***).

19. Previous orders passed by this Hon'ble Court in the instant case

This Hon'ble Court in its interim order dated 12.04.2019 (***pg 525, vol III of convenience compilation***) had observed the following:

"11. ***We have considered the matter including the amendments in the different statutes brought in by the Finance Act, 2016 and 2017.*** *We have closely examined the stand taken by the respective parties including what has been stated by the Election Commission of India in the affidavit filed, details of which have been setout.* ***All that we***

would like to state for the present is that the rival contentions give rise to weighty issues which have a tremendous bearing on the sanctity of the electoral process in the country. *Such weighty issues would require an indepth hearing which cannot be concluded and the issues answered within the limited time that is available before the process of funding through the Electoral Bonds comes to a closure, as per the schedule noted earlier.*

13. In the above perspective, according to us, the just and proper ***interim direction would be to require all the political parties who have received donations through Electoral Bonds to submit to the Election Commission of India in sealed cover, detailed particulars of the donors as against the each Bond; the amount of each such bond and the full particulars of the credit received against each bond, namely, the particulars of the bank account to which the amount has been credited and the date of each such credit.***

14. The above details will be furnished forthwith in respect of Electoral Bonds received by a political party till date. The details of such other bonds that may be received by such a political party upto the date fixed for issuing such bonds as per the Note of the Ministry of Finance dated 28.2.2019, i.e. 15.5.2019 will be submitted on or before 30th May, 2019. The sealed covers will remain in the custody of the Election Commission of India and will abide by such orders as may be passed by the Court." (emphasis supplied)

20. This Hon'ble Court in its interim order dated 26.03.2021 (***pg 505, vol III of convenience compilation***), however, based on the government's claims while rejecting petitioner's prayer for interim stay, had noted:

"25. The financial statements of companies registered under the Companies Act, 2013 which are filed with the Registrar of Companies, are accessible online on the website of the Ministry of Corporate Affairs for anyone. They can also be obtained in physical form from the Registrar of Companies upon payment of prescribed fee. Since the Scheme mandates political parties to file audited statement of accounts and also since the Companies Act requires financial statements of registered companies to be filed with the Registrar of Companies, the purchase as well as encashment of the bonds, happening only through banking channels, is always reflected in documents that eventually come to the public domain. All that is required is a little more effort to cull out such information from both sides (purchaser of bond and political party) and do some "match the following". Therefore, it is not as though the operations under the Scheme are behind iron curtains incapable of being pierced."

21. In regard to aforesaid order of 26.03.2021, it is respectfully submitted that if "match the following" were actually possible, then the governments assertion that secrecy needs to be maintained falls flat. The petitioner organization conducted its own research to find out whether it was in fact possible to gather data pertaining to

electoral bonds on the MCA website. A total of 23,33,958 companies were registered under the Companies law as of April 30, 2022. The common man cannot be expected to go through the financial statements of every registered company in India (after making required payment for each company separately) to ascertain how many such companies have made political contributions via electoral bonds to the political parties.

22. Additionally, as mentioned in Union of India's submission: *"For furtherance of objective of Scheme to maintain privacy and anonymity of the donors and donations made by them to political party of their choice, the Act has now omitted the requirement to disclose the details of the donee political party(ies) and the bifurcation of amount. Accordingly, the companies now require to disclose the total amount contributed towards political donations."* (***pg 424 vol III of convenience compilation***)

23. In a scenario, where neither the contributing company (donor) nor the accepting party (donee) discloses the identity of the beneficiary and the company name, respectively, all we have is a list of consolidated figures of donations via EBs as declared by political parties in their audit reports on one hand and figures of political contributions via EBs declared by companies in their annual reports (collated via an inexhaustive and random search) on the other hand.

24. It is submitted that the electoral bonds scheme has practically undone and reversed the steps that had been taken in the direction of greater transparency of political parties and political candidates and has stifled fundamental rights guaranteed under Articles 14, 19(1)(a) and 21 of the Constitution of India, and has also undermined basic structure of the Constitution.

Central Government ignored the objections raised by Election Commission

25. That the Election Commission in its letter dated 26 May, 2017 brought the attention of Ministry of Law and Justice to the amendments introduced through Finance Act 2017 and stated that these amendments *"will have a serious impact on Transparency*

aspect of political finance/funding of political parties". The Election Commission stated that it is evident from the Amendment in Section 29C of the Representation of People Act, 1951 "*that any donation received by a political party through an electoral bond has been taken out of the ambit of reporting under the Contribution Report as prescribed under Section 29C of the Representation of Peoples Act, 1951, and therefore, this is a retrograde step as far as transparency of donations is concerned and this proviso needs to be withdrawn"* (***Pg 467, Vol IV of convenience compilation***).

26. That the central government also made a false statement in the Rajya Sabha concerning the question pertaining to the concerns of the Election Commission dated 18.12.2018. The question posed by Mr. Nadimul Haque specifically asked whether "the Election Commission has raised concerns on the issue of electoral bonds, if so, the details thereof as well as reasons therefor". Further the question asked about the steps taken by the Government to address the concerns. (***Pg 489, Vol. IV of convenience compilation***).

27. That Shri P. Radhakrishnan, Minister of State in the Ministry of Finance, in his answer to the Rajya Sabha stated that *"the Government has not received any concerns from Election Commission on the issue of Electoral Bearer Bonds"*. Whereas, Election Commission had already sent the aforementioned letter dated 26.05.2017 to the Ministry of Law and Justice stating its serious concerns. This reply was subsequently revised after Mr. Nadimul Haque sent a notice for breach of privilege.

Central Government disregarded RBIs repeated opposition to Electoral Bond Scheme

28. The Reserve Bank of India's (RBI) gave repeated warnings to the government against the electoral bond scheme stating that it has the potential to increase black money circulation, money laundering, cross-border counterfeiting and forgery. This is evident through the documents obtained under the RTI Act which include the

correspondence between the Reserve Bank of India and the Finance Ministry and the related file notings.

29. RBI in its letter dated 30.01.2017, accessed under the RTI Act, raised concerns regarding the proposed amendment to Section 31 of the RBI Act for enabling Scheduled Banks to issue Electoral Bearer Bonds (***Pg 437, Vol IV of convenience compilation***) and stated that-

> "*i. The move will result in multiple, non-sovereign entities being authorised to issue bearer instruments. As such, the proposed mechanism militates against the Reserve Banks' sole authority for issuing bearer instruments ie cash. Bearer instruments have the potential to become currency and if issued in sizeable quantities can undermine the faith in banknotes issued by the central bank. Amending Section 31 of the RBI Act would seriously undermine a core principle of central banking legislation and doing so would set a bad precedent.*
>
> *ii. Even the intended purpose of transparency may not be achievable as the original buyer of the instrument need not be the actual contributor to a political party. The bonds are bearer bonds and are transferable by delivery. Hence, who finally and actually contributes the bond to the political party will not be known.*
>
> *iii. While the person/entity buying the bearer bond will be as per Know Your Customer (KYC) parameters, the identities of the intervening persons/entities will not be known. Thus the principles and the spirit of the Prevention of Money Laundering Act (PMLA 2002) get affected."*

30. The concerns raised by the RBI were summarily dismissed by the Finance Ministry as recorded in note dated 30.1.2017 signed by Revenue Secretary and carrying signature of the then Finance Minister. The relevant extract of the note is reproduced below;

> "*2. It appears to me that the RBI has not understood the proposed mechanism of having pre-paid instruments for the purpose of keeping the identity of the donor secret, while ensuring that donation is made only out of fully tax paid money of a person. Since there will be a time limit for redeeming the pre-paid instruments and since there will be a limitation of redeeming such bonds only in the designated accounts of registered political parties, the fear of such bearer instrument being used as currency is totally*

unfounded. Also this advice has come quite late at a time when the Finance Bill is already printed.

3. We may, therefore, go ahead with our proposal."

31. The RBI again raised concerns about the potential of misuse of Electoral Bonds (EBs) highlighting that globally there are hardly any precedents in recent times for issuance of bearer bonds and recommended safeguards to minimise misuse vide its letter dated August 4, 2017 signed by B.P. Kanungo, the Deputy Governor of RBI. (***Pg 440, Vol IV of convenience compilation***).

32. The then Governor of the RBI, Sh. Urjit R. Patel *vide* his letter dated 14.9.2017 addressed to the then Finance Minister Sh. Arun Jaitley once again raised objections. The relevant portions are reproduced below:

> "*3. We are concerned that the issue of EBs as bearer instruments in the manner currently contemplated has the possibility of misuse more particularly through use of shell companies. This can subject the RBI to a serious reputational risk of facilitating money laundering transactions…*
>
> *4. Given that the major objective of the EB scheme is to provide anonymity to persons making a contribution to political parties, we believe that this can be better achieved if EBs are issued in electronic form (demat form), with the Reserve Bank as the depository rather than as a physical scrip… Apart from avoiding the use of EBs for money laundering, this arrangement will be more secure and will also reduce the cost, as the need for printing security features is obviated."* (***Pg 442, Vol IV of convenience compilation***).

33. Upon the government not taking on board the objections and recommendations of the RBI, the then Governor of RBI Sh. Urjit Patel again wrote to the then Finance Minister Sh. Arun Jaitley on 27.09.2017 conveying the serious reservations of the Committee of the Central Board of RBI on issuance of EBs in the form of bearer bond scrips in physical form (***Pg 444, Vol IV of convenience compilation***). The relevant portions are reproduced below:

"*3. ...Some of the issues that the Committee flagged during the deliberations are listed below:*

xxx

c) Issue of EBs in scrip form is fraught with serious risk of money laundering, as consideration for transfer of scrips from the original subscriber to a transferee and thereafter, till it is eventually given to the political party for encashment, will be paid in cash. This will leave no trail of the transactions and in the process of providing anonymity to the contributor to the political party, anonymity will be provided to several others in the chain of transfer of the EBs. This can render the scheme open to abuse by unscrupulous elements. If RBI agrees to issue EBs in scrip form, it will be accused of acquiescing in the process in spite of the risk that it would almost inevitably result in money laundering. This would seriously dent the image and reputation of the RBI.

d) The EBs in scrip form could also be exposed to the risk of forgery and cross-border counterfeiting besides offering a convenient vehicle for abuse by "aggregators"

xxx

4. The Committee of the Central Board, for the above reasons, suggested that we advise the central government in our fiduciary capacity, to reconsider the idea of issuing EBs in the form of physical scrips in view of the likely unintended consequences that it could result in. The Committee, also suggested that we convey our concurrence and readiness to issue EBs in demat form with such changes as are required to address the concerns of the government on the need to keep intact the anonymity of the contributor, adopting the now well established structure of demat form in securities."

34. The record of proceedings of the 4040th weekly meeting of the Committee of Central Board (CCB) of RBI held on 11.10.2017 indicated that the CCB was not in favour of issuing EB in scrip form (***Pg 450, Vol IV of convenience compilation*****).**

35. Not only were the objections raised by the RBI disregarded, but even the suggestions made to make the scheme less vulnerable to fraud were ignored. The only suggestion which was accepted was regarding restricting the validity of these electoral bearer

bonds to 15 days. The documents obtained through the RTI Act show that the central bank never actually gave the government its explicit consent to go ahead with the electoral bond scheme as envisaged. Instead, the government had to resort to using the RBI's "indirect approval" as recorded in a hand written noting by Secretary (EA) dated 21.11.2017 and also carrying signature of the finance minister.

Limits on corporate funding

36. It is submitted that corporate funding in India was completely prohibited till the year 1985. Section 293A of the Companies Act, 1956 (inserted in 1969) had imposed a ban on the companies making contributions to any political party. However, this ban was lifted in 1985 by amending the Companies Act, 1956. Till 2013 there existed a cap on the donations permitted only up to 5.5% of net average profits of the last 3 years for the companies. The Company Act, 2013 brought this limit to 7.5%, and even this was completely removed by the impugned amendments made via Finance Act, 2017.

37. Under the present provision, a company is permitted to contribute any amount to a political party without any accountability. Even shell companies and loss-making companies can make such contributions, and further can have their identity kept secret by the use of electoral bonds. To make things worse, Foreign Contribution Regulation Act (FCRA), 2010 was amended *via* the Finance Act 2016 to allow foreign companies to make political donations through their Indian subsidiaries, thus defeating the very purpose and object of FCRA itself.

38. In **Noel Harper v. Union of India, (2023) 3 SCC 544**, a three-judge bench of this Hon'ble Court was pleased to observe as follows about FCRA, 2010:

> "*87. … the legislation under consideration must be understood in the context of the underlying intent of insulating the democratic polity from the adverse influence of foreign contribution remitted by foreign sources.*
>
> *125. … The subject enactment is essentially conceived in the interests of public order and also general public as the intent is to prevent misuse and misutilisation of foreign contribution coming from foreign sources to*

safeguard the values of a sovereign democratic republic." [emphasis supplied]

GROUNDS FOR CHALLENGE

A. <u>The impugned amendments violate Articles 19(1)(a) and 21 of the Constitution by violating the right of citizens to information about funding of political parties.</u>

39. Right to information has been held to be part of fundamental right to freedom of speech and expression in terms of Article 19(1)(a) and 21 of the Constitution of India. Political parties hold a very important constitutional status as explained above, having significant powers in the form of decisive control over formation of central/state governments, voting by MPs and MLAs and passage/non-passage of important bills in Parliament and State Assemblies. For the purpose of properly giving effect to the said right of citizens to have information about political parties, including voter's fundamental rights, information about who all have donated to a particular political party is an essential information for the common people. Without any knowledge of which political party is being funded by which corporate house /individuals and whether policies are being carved in favour of such corporate entities/individuals, a citizen is bereft of critical information.

40. This Hon'ble Court in a catena of decisions has held that transparency and right to information are cherished fundamental rights under Articles 19(1)(a) and 21 of the Constitution. In ***Anjali Bhardwaj vs Union of India (2019) 18 SCC 246***, this Court noted:

"10. Much before the enactment of the RTI Act, which came on the statute book in the year 2005, this Court repeatedly emphasized the people's right to information to be a facet of Article 19(1)(a) of the Constitution. It has been held that the right to information is a fundamental right and flows from Article 19(1)(a), which guarantees the right to speech. This right has also been traced to Article 21 which concerns about right to life

and liberty. There are umpteen number of judgments declaring that transparency is the key for functioning of a healthy democracy." [Emphasis Supplied].

41. Judgments passed by this Hon'ble Court such as 5-judge bench decisionin ***State of UP vs Raj Narain (1975)4SCC428***, 7-judge bench decision in ***S.P. Gupta vs Union of India (1981 SuppSCC 87)***, ***Reliance Petrochemicals Ltd. vs. Indian Express Newspapers Bombay (1988)4 SCC 592***, ***RBI vs Jayantilal N Mistry (2016) 3 SCC 525*** and scores of others have recognized the Right to Information and transparency to be a fundamental right and basic facet of democracy and rule of law.

42. In ***Union of India vs Association for Democratic Reforms*** *(ADR) (2002) 5 SCC 294* (***pg 3599 , vol V of convenience compilation***), this Hon'ble Court while declaring that *"The right to get information in democracy is recognized all throughout and it is a natural right flowing from the concept of democracy*", also directed all candidates contesting election (who were not even public servants) to disclose their criminal antecedents, assets and liabilities and educational qualifications, since the said information was required for the voters to exercise their choice. It was held thus:

> *30. Now we would refer to various decisions of this Court dealing with citizens' right to know, which is derived from the concept of "freedom of speech and expression". The people of the country have a right to know every public act, everything that is done in a public way by the public functionaries. MPs or MLAs are undoubtedly public functionaries. Public education is essential for functioning of the process of popular government and to assist the discovery of truth and strengthening the capacity of an individual in participating in the decision-making process. The decision-making process of a voter would include his right to know about public functionaries who are required to be elected by him.*
>
> *31. In State of U.P. v. Raj Narain [(1975) 4 SCC 428] the Constitution Bench considered a question — whether privilege can be claimed by the Government of Uttar Pradesh under Section 123 of the Evidence Act in respect of what has been described for the sake of brevity to be the Blue Book summoned from the Government of Uttar Pradesh and certain*

documents summoned from the Superintendent of Police, Rae Bareli, Uttar Pradesh? The Court observed that: (SCC p. 453, para 74)

> *"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: (SCC p. 453, para 74)*
>
> *"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."*

34. From the afore quoted paragraph, it can be deduced that the members of a democratic society should be sufficiently informed so that they may influence intelligently the decisions which may affect themselves and this would include their decision of casting votes in favour of a particular candidate. If there is a disclosure by a candidate as sought for then it would strengthen the voters in taking appropriate decision of casting their votes.

46. To sum up the legal and constitutional position which emerges from the aforesaid discussion, it can be stated that:

..

..

4. ***To maintain the purity of elections and in particular to bring transparency in the process of election, the Commission can ask the candidates about the expenditure incurred by the political parties and this transparency in the process of election would include transparency of a candidate who seeks election or re-election. In a democracy, the electoral process has a strategic role. The little man of this country would have basic elementary right to know full particulars of a candidate who is to represent him in Parliament where laws to bind his liberty and property may be enacted.***

5. ***The right to get information in democracy is recognised all throughout and it is a natural right flowing from the concept of democracy.*** *At this stage, we would refer to Article 19(1) and (2) of the International Covenant on Civil and Political Rights, which is as under:*

> *"(1) Everyone shall have the right to hold opinions without interference.*
>
> *(2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."*
>
> *6. On cumulative reading of a plethora of decisions of this Court as referred to, it is clear that if the field meant for legislature and executive is left unoccupied detrimental to the public interest, this Court would have ample jurisdiction under Article 32 read with Articles 141 and 142 of the Constitution to issue necessary directions to the executive to subserve public interest.*
>
> *7. Under our Constitution, Article 19(1)(a) provides for freedom of speech and expression. Voter's speech or expression in case of election would include casting of votes, that is to say,* ***voter speaks out or expresses by casting vote****. For this purpose, information about the candidate to be selected is a must. Voter's (little man — citizen's) right to know antecedents including criminal past of his candidate contesting election for MP or MLA is much more fundamental and basic for survival of democracy.* ***The little man may think over before making his choice of electing law-breakers as law-makers****.* (emphasis supplied)

43. In ***People's Union for Civil Liberties (PUCL) v. Union of India, (2003) 4 SCC 399*** **(*pg 3628, vol V of convenience compilation*),** this Hon'ble Court rightly struck down Section 33B of the Representation of the Peoples Act, 1951, which had been introduced in order to nullify the aforementioned decision in *Union of India v ADR*. Section 33B (inserted by Act 72 of 2002) provided that a candidate shall not be liable to disclose or furnish any such information in respect of his election which is not required to be disclosed or furnished under the Representation of Peoples Act, 1951. This Hon'ble Court in held that Section 33B was on the face of it beyond the legislative competence as voter has a fundamental right under Article 19(1)(a) to know the antecedents of a candidate. It was held thus;

> *"78. What emerges from the summarised the above discussion can be summarised thus:*
>
> *(D) The contention that as there is no specific fundamental right conferred on a voter by any statutory provision to know the antecedents of a candidate, the directions given by this Court are against the statutory*

provisions is, on the face of it, without any substance. In an election petition challenging the validity of an election of a particular candidate, the statutory provisions would govern respective rights of the parties. However, voters' fundamental right to know the antecedents of a candidate is independent of statutory rights under the election law. A voter is first citizen of this country and apart from statutory rights, he is having fundamental rights conferred by the Constitution. Members of a democratic society should be sufficiently informed so that they may cast their votes intelligently in favour of persons who are to govern them. Right to vote would be meaningless unless the citizens are well informed about the antecedents of a candidate. There can be little doubt that exposure to public gaze and scrutiny is one of the surest means to cleanse our democratic governing system and to have competent legislatures.

(E) It is established that fundamental rights themselves have no fixed content, most of them are empty vessels into which each generation must pour its content in the light of its experience. The attempt of the Court should be to expand the reach and ambit of the fundamental rights by process of judicial interpretation. During the last more than half a decade, it has been so done by this Court consistently. There cannot be any distinction between the fundamental rights mentioned in Chapter III of the Constitution and the declaration of such rights on the basis of the judgments rendered by this Court."

44. In ***Gajanan Krishnaji Bapat vs Dattaji Raghobaji Meghe (1995) 5 SCC 347***, this Hon'ble Court held: "*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 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.*"

45. This Hon'ble Court in ***Anoop Baranwal v. Union of India [Election Commission Appointments], (2023) 6 SCC 161,*** (***pg 5514, vol V of convenience compilation***) noted:

> *221. Political parties must be viewed as organisations representing the hopes and aspirations of its constituents, who are citizens. The electorate are ordinarily, supporters or adherents of one or the other political parties. We may note that the recognition of NOTA, by this Court [People's Union for Civil Liberties v. Union of India, (2013) 10 SCC 1 : (2013) 4 SCC (Civ) 587 : (2013) 3 SCC (Cri) 769 : (2014) 2 SCC (L&S) 648] enabling a voter to express his distrust for all the candidates exposes the disenchantment with the electoral process which hardly augurs well for a democracy. Therefore, any action or omission by the Election Commission in holding the poll which treats political parties with an uneven hand, and what is more, in an unfair or arbitrary manner would be anathema to the mandate of Article 14, and therefore, cause its breach. <u>There is an aspect of a citizen's right to vote being imbued with the fundamental freedom under Article 19(1)(a). The right of the citizen to seek and receive information about the candidates who should be chosen by him as his representative has been recognised as a fundamental right</u> [see Public Interest Foundation [Public Interest Foundation v. Union of India, (2019) 3 SCC 224]].*

46. Thus, all information about political funding, including the names of donors and quantum of donations to each political party is a fundamental information that becomes even more critical given the important role played by political parties in our political system.

47. That even under the Right to Information Act, 2005, political parties have been held to be public authorities. A full bench of CIC *vide* judgment dated 03.06.2013 (**Pg 7177, Vol. IV of convenience compilation)** and again vide judgment dated 16.03.2015 (**Pg 7231, vol. IV of convenience compilation)** has held six political parties namely the BJP, INC, NCP, CPI, CPI (M) and BSP as "public authorities" under Section 2(h) of the RTI Act, 2005. However, the political parties have failed to comply with the decisions of the Ld. CIC. The Ld. CIC has itself expressed its anguish and helplessness over the non-compliance of its orders by political parties.

48. The impugned amendments, in so far as they exclude political parties from financial scrutiny are arbitrary, illogical and violative of Article 14 of the Constitution of India, which espouses 'Equality before law' and 'Equal protection of laws' for all and citizen's right to know to make an informed choice in a

participatory democracy under Article 19(1)(a). While the government (through SBI), political party and the donor would always know about the donations made through Electoral Bonds Scheme, it is only a common man/woman who will be kept in dark with no say whatsoever in a matter of such importance.

49. It is submitted that in the current times where NGOs and civil societies are being subjected to an extra unwarranted government scrutiny be it their internal functioning or finances, it is rather ironic that in such similar situation any kind of similar scrutiny is not only negated by encouraging anonymity in their functioning but such scrutiny is also seen as a burden and interference by the political class particularly when political parties are undeniably the life and blood of any polity.

B. **The impugned amendments violate Article 21 by promoting corruption by legitimizing anonymous funding leading to *quid pro quo* between political parties and corporates/individuals, and also encourage money laundering on a large scale.**

50. Electoral Bonds by their very nature belie the objective for which they were introduced. These instruments allow political parties to receive huge funds from anonymous entities and thereby facilitating a *quid pro quo* in the form of kickbacks and preferential treatment to these funding entities. Large contributions running into hundreds of crores of rupees from one corporate house to a political party (which more often than not is the ruling party) is bound to result in political favours, increased influence on policy decisions and thus an increased control on democratic processes in the country. The impugned amendments have facilitated and legitimised all of the above. RBI and EC had also warned the government in strong words of the possible misuse of electoral bonds, however, views of these apex institutions were overruled in a bid to introduce electoral bonds. The impugned amendments have in fact legitimised unlimited funding by corporates (even foreign companies) thereby even

removing the existing checks and balances which were in place prior to the impugned amendments.

51. As per the existing data on Electoral Bonds, more than 94% of total electoral bonds purchased are in the denomination of Rs. 1 crore, indicating that these bonds are being purchased by corporates rather than by individuals. **(page____ vol IV of CC)**

52. A company which is investing in a particular political party does so with an expectation that the receiver of such enormous funds, which is either already a party in power or a party whenever it ascends to power, will bring about favourable policies, legislation, regulations, and executive orders as also favourable contracts doing to the donor company, their friends and allies. This *quid pro quo* arrangement between the parties, politicians and the corporate entities is a premeditated and the most sophisticated arrangement where instead of breaking a rule or a regulation, the system is bent just enough in such a way so as to benefit the corporate and rich donor. In this scheme of things, the only party at loss are the citizens who are rendered clueless of the enormity of fraud being paid upon them in the garb of electoral bonds.

53. It is also astonishing that if government's argument is to be accepted that no one except the SBI has details about the donors, then that would mean the Election Commission (which conducts entire election process), Government of India (which enforces various laws like FCRA), CBI (which investigates Prevention of Corruption Act), Enforcement Directorate (which inquires into Money Laundering), have no access to the list of donors, unless some alleged criminal offence is already being investigated and they have specific information that money has been routed through EBs. This means it is brazenly easy for EBs which are in the nature of bearer bonds to be used for corruption, money laundering and violations of FCRA, and illicit contributions to political parties.

54. Such is the effect of the impugned amendments, that even an Indian subsidiary of a foreign company, which had never carried out any legitimate business, can now secretly funnel hundreds of crores to a political party. The corporates also do not have to disclose to whom they made their contribution in their balance sheets and accounts. The bonds are fashioned in a way that the money could secretly pass several hands to reach the ultimate beneficiary political party, creating further layers of opaqueness and potential for money laundering.

55. According to a report by Business Standard dated 21.06.2023 **(page____ vol IV of CC)**, Vedanta Limited, a multinational mining company headquartered in Mumbai, donated **Rs 457 crores** in the last five years to political parties through these bonds. Vedanta's donation only in FY23 was Rs. 155 crores which was higher than Rs.123 crores donated in FY22, according to stock exchange disclosures by the company. It is interesting to note that in FY23, Vedanta Limited has been declared as the preferred bidder for various mining licences, namely Bicholim iron ore block in Goa, Sijimali bauxite and Ghogharpalli coal blocks in Odisha, and Kelwar Dabri in Chhattisgarh.

56. While various newspaper portals have reported that Vedanta is facing a severe financial crisis as it is under lot of debts, it is still donating hundreds of crores in donations. The same raises severe concerns regarding the fact as to why the such high donations are being made when the said company is under huge debts. **(*page____ vol IV of convenience compilation*).**

57. An investigative report by an International Investigative Group 'Organized Crime and Corruption Reporting Project' (OCCRP); a global network of investigative journalists titled *"Inside Indian Energy and Mining Giant Vedanta's Campaign to Weaken Key Environmental Regulations*" **(page____ vol IV of CC)** revealed backroom lobbying between Vedanta and the Union government where key environmental regulations were modified in favour of Vedanta who has been an important donor to BJP. Two entities linked to a Vedanta subsidiary i.e Bhadram Janhit Shalika and Janhit Electoral Trust gave a

combined 43.5 crore rupees (around $6.16 million) to the party between 2016 and 2020, according to the contribution reports of BJP. The donations from just one of these trusts, Bhadram Janhit Shalika, put it in the top ten donors to the BJP between the fiscal years 2016-2017 and 2021-22. The true amount could be far more because Vedanta has also made political donations through electoral bonds. Vedanta's annual reports show it bought more than $35 million of these bonds.

58. Similarly, as per recent reports Kolkata-based IFB Agro Industries Ltd, a distillery, bottling and marine products company, notified stock exchanges that its board of directors and all stakeholders had approved a contribution of up to Rs 40 crore through subscription to electoral bonds for 2022-23. More pertinently, it pointed out that this was in continuation of its earlier letters about excise-related issues faced by the company and that its decision about political contribution was in the context of 'such issues **(*page____ vol IV of convenience compilation)*.**

59. In ***People's Union for Civil Liberties (PUCL) & Anr. v. Union of India & Anr. (2003) 4 SCC 399*** (***pg 3628 , vol V of convenience compilation***), this Hon'ble Court showed concern as to the high cost involved in the elections process in the following words:

> *"4.14 High Cost of Elections and Abuse of Money Power.*
> *4.14.1 One of the most critical problems in the matter of electoral reforms is the hard reality that for contesting an election one needs large amounts of money. The limits of expenditure prescribed are meaningless and almost never adhered to. As a result, it becomes difficult for the good and the honest to enter legislatures. It also creates a high degree of compulsion for corruption in the political arena. This has progressively polluted the entire system. Corruption, because it erodes performance, becomes one of the leading reasons for non-performance and compromised protection, unaccounted funds from business groups who expect a high return on this investment, kickbacks or commissions on contracts etc. No matter how we look at it, citizens are directly affected because apart from compromised governance, the huge money spent on elections pushes up the cost of everything in the country. It also leads to unbridled corruption and the consequences of wide spread corruption are even more serious than many*

imagine. Electoral compulsions for funds become the foundation of the whole super structure of corruption."

60. A Constitution Bench of this Court in ***Subramanian Swamy v. CBI, (2014) 8 SCC 682 (Pg 6848, vol V of convenience compilation)*** while striking down Section 6-A of Section 6-A of the Delhi Special Police Establishment Act, 1946 observed:

"60. Corruption is an enemy of the nation and tracking down corrupt public servants and punishing such persons is a necessary mandate of the PC Act, 1988. It is difficult to justify the classification which has been made in Section 6-A because the goal of law in the PC Act, 1988 is to meet corruption cases with a very strong hand and all public servants are warned through such a legislative measure that corrupt public servants have to face very serious consequences...

...

72. Corruption is an enemy of nation and tracking down corrupt public servant, howsoever high he may be, and punishing such person is a necessary mandate under the PC Act, 1988. The status or position of public servant does not qualify such public servant from exemption from equal treatment. The decision-making power does not segregate corrupt officers into two classes as they are common crimedoers and have to be tracked down by the same process of inquiry and investigatio

...

75. Corruption corrodes the moral fabric of the society and corruption by public servants not only leads to corrosion of the moral fabric of the society but is also harmful to the national economy and national interest, as the persons occupying high posts in the Government by misusing their power due to corruption can cause considerable damage to the national economy, national interest and image of the country [J. Jayalalitha v. Union of India, (1999) 5 SCC 138 : 1999 SCC (Cri) 670] .

...

77. The menace of corruption has been noticed by this Court in Ram Singh [State of M.P. v. Ram Singh, (2000) 5 SCC 88 : 2000 SCC (Cri) 886] . The Court has observed: (SCC p. 94, para 9)

> *"9. ... Corruption, at the initial stages, was considered confined to the bureaucracy which had the opportunities to deal with a variety of State largesse in the form of contracts, licences and grants. Even after the war the opportunities for corruption continued as large amounts of government surplus stores were required to be disposed of by the public servants. As a consequence of the wars the shortage of various goods necessitated the imposition of controls and extensive schemes of post-war reconstruction involving the disbursement of huge sums*

of money which lay in the control of the public servants giving them a wide discretion with the result of luring them to the glittering shine of wealth and property."

...

80. The two-Judge Bench of this Court observed in Sanjiv Kumar [Sanjiv Kumar v. State of Haryana, (2005) 5 SCC 517 : (2006) 1 SCC (Cri) 235] that the case before them had brought to the fore the rampant corruption in the corridors of politics and bureaucracy.

…

81…In the supplementing judgment, A.K. Ganguly, J. while concurring with the main judgment delivered by G.S. Singhvi, J. observed: (Subramanian Swamy case [Subramanian Swamy v. Manmohan Singh, (2012) 3 SCC 64 : (2012) 1 SCC (Cri) 1041 : (2012) 2 SCC (L&S) 666] , SCC p. 100, para 68)

"68. Today, corruption in our country not only poses a grave danger to the concept of constitutional governance, it also threatens the very foundation of the Indian democracy and the rule of law. The magnitude of corruption in our public life is incompatible with the concept of a socialist secular democratic republic. It cannot be disputed that where corruption begins all rights end. Corruption devalues human rights, chokes development and undermines justice, liberty, equality, fraternity which are the core values in our Preambular vision. Therefore, the duty of the court is that any anti-corruption law has to be interpreted and worked out in such a fashion as to strengthen the fight against corruption."...

...

82. In Balakrishna Dattatrya Kumbhar [State of Maharashtra v. Balakrishna Dattatrya Kumbhar, (2012) 12 SCC 384 : (2013) 2 SCC (Cri) 784 : (2013) 2 SCC (L&S) 201] , this Court observed that corruption was not only a punishable offence but also "undermines human rights, indirectly violating them, and systematic corruption, is a human rights' violation in itself, as it leads to systematic economic crimes". (SCC p. 390, para 17)

83. In R.A. Mehta [State of Gujarat v. R.A. Mehta, (2013) 3 SCC 1 : (2013) 2 SCC (Cri) 46 : (2013) 1 SCC (L&S) 490] , the two-Judge Bench of this Court made the following observations about corruption in the society: (SCC p. 47, para 95)

"95. Corruption in a society is required to be detected and eradicated at the earliest as it shakes 'the socio-economic-political system in an otherwise healthy, wealthy, effective and vibrating society'. Liberty cannot last long unless the State is able to eradicate corruption from public life. Corruption is a bigger threat than external threat to the civil society as it corrodes the vitals of our polity and society. Corruption is instrumental in not proper implementation and enforcement of policies adopted by the Government. Thus, it is not merely a fringe issue but a subject-matter of grave concern and requires to be decisively dealt with."

61. It is submitted that any business or corporate entity that donates to a political party sees it as an investment where they expect a healthy return on the investment. This Hon'ble Court in ***Vatal Nagaraj v. R. Dayanand Sagar 1976 2 SCC 932*** had rightly observed, "*Money power casts a sinister shadow on our elections and the political payoff of undue expenditure in the various constituencies is too alluring for parties to resist temptation."*

62. The petitioner organization has conducted a research into donations to political parties which shows that there is a huge gap in funds received through EBs by ruling party as opposed to other parties. The BJP alone has received 74.72% of all electoral bonds purchased in the country amounting to Rs. 5271.97 crores. Another revelation from analysis of contribution reports from political parties is that there is a huge increase in donations received through EBs (anonymous) as opposed to corporate donations through other channels (non-anonymous). The total donations received by the 31 political parties analysed during the six-year period was Rs 16,437.635 cr. Donations worth Rs 9188.35991 crores were received from Electoral Bonds (55.90%), Rs 4614.53 Cr were received from the corporate sector (28.07%) and Rs 2634.74509 cr were received from other sources (16.03%). For National parties, there is a 743% increase in donations from Electoral Bonds between 2018 and 2022. Thus, Electoral Bonds have become the most preferred mode of donations by corporates for making contributions to National and Regional political parties. ***(Pg 618 and Pg 638, Vol IV of convenience compilation)***.

63. To summarise, electoral bonds have legalised unlimited anonymous donations by allowing foreign entities, large scale entities, unknown hidden entities and benami companies to funnel unaccounted black money through shell companies. Till electoral bonds became a reality, the use of unaccounted money in politics was illegal, at least on paper. With the emergence of electoral bonds illegal money has been enabled to enter quiet conveniently into the electoral process. Any corporate or individual could now hand over any amount of unaccounted money secretly to a political party. Large-

scale corruption i.e. crony capitalism is being enabled because of the *quid pro quo* relationship between the government in power and corporate giants.

C. <u>The impugned amendments subvert democracy and interfere in free and fair elections, and violate level playing field between the political parties and also independent candidates.</u>

64. Electoral Bonds subvert democracy and violate the level playing field between political parties and between political parties and independent candidates thereby interfering in free and fair elections. The big money flowing in the electoral process through the use of electoral bonds is a serious anathema to the concept of level playing field in the electoral process. Data shows that most funds from electoral bonds are consistently going to the ruling party, which harms level playing field between different parties and between a party and an independent candidate.

65. The Election Commission of India in its Guidelines on Transparency and Accountability in Party Funds and Election Expenditure dated 29.08.2014 recognised that "money power is disturbing the level playing field and vitiating the purity of elections" **(CC Vol IV pg 7028).** It was thereby recommended that political parties in maintenance of their accounts shall conform to ICAI's Guidance Note on Accounting and Auditing of political parties**.** It was also noted that political parties must observe transparency and accountability in respect of funds raised and expenditures incurred

66. That the Law Commission in its 255th Report on Electoral Reforms dated March 2015 ***(Pg 280 , Vol IV of convenience compilation)*** noted:

> *2.5 First, is the undeniable fact that financial superiority translates into electoral advantage, and so richer candidates and parties have a greater chance of winning elections. This is best articulated by the Supreme Court in Kanwar Lal Gupta v Amar Nath Chawla (hereinafter "Kanwar Lal Gupta"), when it explained the influence of money as follows:*
>
> *"...money is bound to play an important part in the successful prosecution of*

an election campaign. Money supplies "assets for advertising and other forms of political solicitation that increases the candidate's exposure to the public." Not only can money buy advertising and canvassing facilities such as hoardings, posters, handbills, brochures etc. and all the other paraphernalia of an election campaign, but it can also provide the means for quick and speedy communications and movements and sophisticated campaign techniques and is also "a substitute for energy" in that paid workers can be employed where volunteers are found to be insufficient. The availability of large funds does ordinarily tend to increase the number of votes a candidate will receive. If, therefore, one political party or individual has larger resources available to it than another individual or political party, the former would certainly, under the present system of conducting elections, have an advantage over the latter in the electoral process". [Emphasis supplied]

2.7 Second, and connected to the above point is the issue of equality and equal footing between richer and poorer candidates. This can be explained with the help of the Court's observations in Kanwar Lal Gupta on the rationale behind expenditure limits:

"...it should be open to individual or any political party, howsoever small, to be able to contest an election on a footing of equality with any other individual or political party, howsoever rich and well financed it may be, and no individual or political party should be able to secure an advantage over others by reason of its superior financial strength."

Similarly, in Ashok Shankarrao Chavan, the Supreme Court noted: "...it is a hard reality that if one is prepared to expend money to unimaginable limits only then can he be preferred to be nominated as a candidate for such membership, as against the credentials of genuine and deserving candidates."

2.13 Fourth, the current system tolerates, or at least does not prevent, lobbying and capture, where a sort of quid pro quo transpires between big donors and political parties/candidates. While the problem of bribery, corrupt practices and black money are important, to some extent, they have distracted from the larger problem of election finance and the capture of government by private individuals and interest groups. The Supreme Court, citing a note from Harvard Law Review on campaign finance regulation, articulated this concern in Kanwar Lal Gupta observing:

"A less debatable objective of regulating campaign funds is the elimination of dangerous financial pressures on elected officials. Even if contributions are not motivated by an expected return in political favours, the legislator cannot overlook the effects of his decisions on the sources of campaign funds."18 ....

2.14 Similarly, Justice Kennedy in McConnell v Federal Election Commission very well, when recognising the problem of solicitation as a corruption, said:

"The making of a solicited gift is a quid both to the recipient of the money and to the one who solicits the payment (by granting his request). Rules governing candidates' or officeholders' solicitation of contributions are, therefore, regulations governing their receipt of quids."

2.15 Unregulated, or under-regulated, election financing leads to two types of capture: the first involves cases where the industry / private entities use money to ensure less stringent regulation, and the money used to finance elections eventually leads to favourable policies. 20 The second involves cases of "deeper capture", where through their disproportionate and self-serving influence, corporations capture not just regulators, but also the views of ordinary citizens and what they think of as "public interest."

2.16 Thus, lobbying and capture give undue importance to big donors and certain interest groups, at the expense of the ordinary citizen and violates what the Indian Supreme Court terms, "the right of equal participation [of each citizen in the polity]." In Kanwar Lal Gupta, the Supreme Court expressed its views on this issue when it stated:

"The other objective of limiting expenditure is to eliminate, as far as possible, the influence of big money in electoral process. If there were no limit on expenditure political parties would go all out for collecting contributions and obviously the largest contributions would be from the rich and the affluent who constitute but a fraction of the electorate. It is likely that some elected representatives would tend to share the views of the wealthy supporters of their political party, either because of shared background and association, increased access or subtle influences which condition their thinking."

2.17 Finally, the argument for election finance reform is premised on a more philosophical argument that large campaign donations, even when legal, amount to what Lessig terms "institutional corruption", which compromise the political morality norms of a republican democracy. Here, instead of direct exchange of money or favours, candidates alter their views and convictions in a way that attracts the most funding. This change of perception leads to an erosion of public trust, which in turn affects the quality of democratic engagement.

67. **<u>Party-wise donations received from Electoral Bonds, FY 2017-18 to 2021-22:</u>** The tables below provide an overview of the share of donations declared by recognised political parties from Electoral Bonds during a five-year period, since the inception of the Electoral Bonds Scheme. Among National parties, share of donations of the party in power from Electoral Bonds is the highest at 74.72%. Ruling party's share is almost

three times of all the other 3 National parties, which received donations from Electoral Bonds.

Donations declared through Electoral Bonds by National Political Parties since 2018 (Amount in Cr)							Total	Party wise share (among National Parties only)
Political Party	**Sources of Income**	**FY 2021-22**	**FY 2020-21**	**FY 2019-20**	**FY 2018-19**	**FY 2017-18**		
BJP	Contributions through Electoral Bonds	1033.7	22.385	2555.0001	1450.89	210	**5271.9751**	74.72%
INC	Electoral Bond	236.0995	10.075	317.861	383.26	5	**952.2955**	13.50%
AITC	Donations-Electoral Bonds	528.143	42	100.4646	97.28	-	**767.8876**	10.88%
NCP	Election Bonds	14	-	20.5	29.25	-	**63.75**	0.90%
Total		**1811.9425**	**74.46**	**2993.8257**	**1960.68**	**215.00**	**7055.9082**	**100%**

*ADR research report ***Pg 618 and Pg 638 of Vol IV of convenience compilation.***

68. Electoral bonds allow black money is white-washed into the accounts of a political party for the latter to spend as if it was clean and honest money. This insidious routing of money has a legal cover since all of the money is unaccounted money and all of it is now moving through bank channels. In addition, electoral bonds make clean payments easier for the incumbent and hard for the opposition. There is always an incumbency advantage for ruling party because money obtained from electoral bonds is "white" in the sense that it is legal and can be used to make payments by check to the formal sectors. Bank transfer for political parties is almost essential survival when they cannot provide cash e.g elaborate and extensive election campaigns, advertisements and social media investments made by political parties. A political party which gets benefitted from electoral bonds primarily can use its white money on such formal sectors thereby having an upper hand to influence what voters read, hear, and see.

69. According to an investigative report titled *"Electoral bonds: A lucrative secret investment?"* written by Journalist Nitin Sethi and published in National Herald dated 18th June, 2023;

"I infer from my experience of reporting on electoral politics and corruption that the money flowing through electoral bonds is still not proportionately higher than the cash that oils Indian elections. So, why is it such a big deal then, you may ask? Because this is unaccounted and secretive money that political parties (and predominantly the BJP) now get to spend as 'white' or legitimate income through banks—to pay off wherever they can only pay through banks—coming out looking very clean when it is in fact funded by dubious and secretive corporates and individuals. For example, social media platforms such as Facebook would need to be paid through bank accounts to influence Indian citizens using political advertisement. Potentially, a political party could now source black and untaxed money from dubious corporate friends in India and abroad through electoral bonds and pay it through its bank account to Facebook or other social media platforms."

70. This Hon'ble Court in ***Kanwar Lal Gupta Vs. Amar Nath Chawla & Ors***. **1975 SCC(3)646** (***pg 4197, of vol V convenience compilation***) discussed the influence of big money on electoral process:

9. *..... The object of the provision limiting the expenditure is twofold. In the first place, it should be open to individual or any political party, howsoever small, to be able to contest an election on a footing of equality with any other individual or political party, howsoever rich and well financed it may be, and no individual or political party should be able to secure an advantage over others by reason of its superior financial strength. It can hardly be disputed that the way elections are held in our country, money is bound to play an important part in the successful prosecution of an election campaign. Money supplies "assets for advertising and other forms of political solicitation that increases the candidate's exposure to the public." Not only can money buy advertising and canvassing facilities such as hoardings, posters, handbills, brochures etc. and all the other paraphernalia of an election campaign, but it can also provide the means for quick and speedy communications and movements and sophisticated campaign techniques and is also "a substitute for energy" in that paid workers can be employed where volunteers are found to be insufficient. The availability of large funds does ordinarily tend to increase the number of votes a candidate will receive. If, therefore, one political party or individual has larger resources available to it than another individual or political party, the former would certainly, under the present system of conducting elections, have an advantage over the latter in the electoral process. The former would have a significantly greater opportunity for the propagation of its programme while the latter may not be able to make even an effective presentation of its views. The availability of disproportionately larger resources is also likely to lend itself to misuse or abuse for securing to the political party or individual possessed of such resources, undue advantage over other political parties or individuals. Douglas points out in his book called Ethics in Government at page 72, "if one party ever attains overwhelming superiority in money, newspaper support, and (government) patronage, it will be almost impossible, barring an economic collapse, for it ever to be defeated." This produces anti-democratic effects in that a political party or individual backed by the affluent and wealthy would be able to secure a greater*

representation than a political party or individual who is without any links with affluence or wealth. This would result in serious discrimination between one political party or individual and another on the basis of money power and that in its turn would mean that "some voters are denied an 'equal' voice and some candidates are denied an "equal chance". It is elementary that each and every citizen has an inalienable right to full and effective participation in the political process of the legislatures and this requires that each citizen should have equally effective voice in the election of the members of the legislatures. That is the basic requirement of the Constitution. This equal effective voice--equal opportunity of participation in the electoral process-would be denied if affluence and wealth are to tilt the scales in favour of one political party or individual as against another. The democratic process can function efficiently and effectively for the benefit of the common good and reach out the benefits of self-government to the common man only if it brings about a participatory democracy in which every man, howsoever lowly or humble he may be, should be able to participate on a footing of equality with others. Individuals with grievances, men and women with ideas and vision are the sources of any society's power to improve itself. Government by consent means that such individuals must eventually be able to find groups that will work with them and must be able to make their voices heard in these groups and no group should be insulated from competition and criticism. It is only by the maintenance of such conditions that democracy can thrive and prosper and this can be ensured only by limiting the expenditure which may be incurred in connection with elections, so that, as far as possible, no one single political party or individual can have unfair advantage over the other by reason of its larger resources and the resources available for being utilised in the electoral process are within reasonable bounds and not unduly disparate and the electoral contest becomes evenly matched. Then alone the small man will come into his own and will be able to secure proper representation in our legislative bodies.

10. *The other objective of limiting expenditure is to eliminate as far as possible, the influence of big money in the electoral process. If there were no limit on expenditure, political parties would go all out for collecting contributions and obviously the largest contributions would be from the rich and affluent who constitute but a fraction of the electorate. The pernicious influence of big money would then play a decisive role in controlling the democratic process in the country. This would inevitably lead to the worst form of political corruption and that in its wake is bound to produce other vices at all levels.*

...

It is difficult to generalise about the degree of influence which the large contributors may wield in shaping the policies and decisions of the political party which they finance. It is-widely acknowledged, however, that, at the very least, they would have easy access to the leaders and representatives of the political party. But it would be naive to suggest that the influence ends with mere access

...

It is likely that some elected representatives would tend to share the views of the wealthy supporters of their political party, either because of shared background and associations, increased access or subtle influences which condition their thinking. In such event the result would be that though ostensibly the political Parties which

receive such contributions may profess an ideology acceptable to the common man, they would in effect and substance be representative of a certain economic class and their policies and decisions would be shaped by the interests of that economic class. It was over a hundred years ago that John Stuart Mill observed that persons of a particular class who have exclusive governmental power, even if they try to act objectively, will tend to overlook the interests of other classes, or view those interests differently. And to this natural tendency may be added the fact that office bearers and elected representatives may quite possibly be inclined, though unconsciously and imperceptibly, to espouse policies and decisions-that will attract campaign contributions from affluent individuals and groups

...

It is obvious that preelection donations would be likely to operate as postelection promises resulting ultimately in the casualty of the interest of the common man, not so much ostensibly in the legislative process as in the implementation of laws and administrative or policy decisions. The small man's chance is the essence of Indian democracy and that would be stultified if large contributions from rich and affluent individuals or groups are not divorced from the electoral process. It is for this reason that our Legislators, in their wisdom, enacted a coiling on the expenditure which may legitimately be incurred in connection with an election. This background must inform the court in the interpretation of this vital and significant provision in the election law of our country."

71. In ***Common Cause vs Union of India ((1996) 2 SCC 752*) *(pg 1252, of vol V convenience compilation),*** this Hon'ble Court explored the link between electoral funding and pervasive corruption and emphasized on the need for strict regulations and accountability in funding of political parties and the electoral process. It was noted by this Hon'ble Court:

18:"…. Flags go up, walls are painted, and hundreds of thousands of loud speakers play-out the loud exhortations and extravagant promises. VIPs and VVIPs come and go, some of them in helicopters and air-taxis. The political parties in their quest for power spend mora than one thousand crore of rupees on the General Election (Parliament alone), yet nobody accounts for the bulk of the money so spent and there is no accountability anywhere. Nobody discloses the source of the money. There are no proper accounts and no audit. From where does the money come nobody knows. In a democracy where rule of law prevails this type of naked display of black money, by violating the mandatory provisions of law, cannot be permitted."

72. In ***Gadakh Yashwantrao Kankarrao Vs E.V. Alias Balasaheb Vikhe Patil (1994) 1 SCC 682 (pg 1269, of Vol V convenience compilation***) this Hon'ble Court held that elections

must be contested without influence of money power and on the basis of merits and abilities of the contestants:

> **15.** ….. *If the rule of law has to be preserved as the essence of the democracy of which purity of elections is a necessary concomitant, it is the duty of the courts to appreciate the evidence and construe the law in a manner which would subserve this higher purpose and not even imperceptibly facilitate acceptance, much less affirmance, of the falling electoral standards. For democracy to survive, rule of law must prevail, and it is necessary that the best available men should be chosen as people's representatives for proper governance of the country. This can be best achieved through men of high moral and ethical values who win the elections on a positive vote obtained on their own merit and not by the negative vote of process of elimination based on comparative demerits of the candidates. It is also necessary that the impact of money power which has eliminated from electoral contest many men of undoubted ability and credibility for want of requisite financial support should be able to re-enter the field to make the people's choice meaningful. This can be achieved only election are contested on a positive vote and the comparison of between the merits and abilities of the contestants without the influence of power and self and not between their comparative demerits and the support of money power. Apart from the other adverse consequences, the growing influence of money power has also the effect of promoting criminalisation of politics.*

73. In September 2015, the Supreme Court of Brazil ruled that all corporate donations unconstitutional because, *"it is for citizens to elect their government, not the companies."* It was held: *"The influence of economic power has ended up transforming the electoral process into a rigged political game, a despicable pantomime which makes the voter a puppet, simultaneously undermining citizenship, democracy and popular sovereignty*. (***Pg 753,Vol IV convenience compilation***)

74. The pernicious influence of big money inevitably results in the worst form of political corruption and that in its wake is bound to produce other vices at all levels. This danger has been pointed out in telling words from the notes in Harvard Law Review, Vol. 66, p. 1260*:"A less debatable objective of regulating campaign funds is the elimination of dangerous financial pressures on elected officials. Even if contributions are not motivated by an expected return in political favours, the legislator cannot overlook the effects of his decisions on the sources of campaign funds."*

75. According to an article written by Former Governor of RBI Mr. Raghuram Rajan titled "*The undemocratic trinity in our politics today*" published by *The Times of India* (***pg 762of Vol IV convenience compilation***) :

> *"Unfortunately, electoral bonds in their current form are no solution. First, these bonds do not improve transparency. The name of the donor is hidden from the public and other political parties. According to the Association for Democratic Reform, over 90% of the amounts issued so far are in the Rs. 1 crore slab, which must come from very rich individuals and corporations. The public simply cannot judge whether these donations were made out of goodwill or whether there was a quid pro quo, even pressure, involved."*

D. <u>The impugned amendments are manifestly arbitrary (violating Article 14) as the same were enacted based non-existent and false rationale, justifications and objectives, which were ex-facie untenable, after over-ruling the legitimate objections of the Election Commission, the RBI and opposition political parties.</u>

76. Before the impugned amendments, political parties had to disclose all donations to ECI. Only cash donations received by political parties below Rs. 20,000 were exempted. This was also highly criticized since political parties would assert that bulk donations were being received by them in cash below Rs. 20,000, so as to avail an exemption under the pre-amendment Representation of People's Act. The exemption limit of cash donations has now been amended to Rs. 2000 by amendment brought in the Income Tax Act. The political parties had to disclose all donations in their contribution report under Section 29C of the RP Act, 1951 as well as in their income tax returns. Companies could only donate upto 7.5% of the aggregate of their last 3 years. Companies also had to disclose to which political party they had donated to. This ensured that the voter had access to at least *some* information with regard to political funding and was not completely in the dark about who was funding which political party.

77. On 07.01.2018, five days after introduction of the Electoral Bond Scheme, the Press Information Bureau published an article written by Lt. Shri Arun Jaitley, the then Finance Minister, on the necessity of introducing Electoral Bonds (***Pg 716, Vol IV convenience compilation***). The stand of the government was that expenditures of

political parties run unto thousands of crores, however, there has not been a transparent funding mechanism of the political system. The said PIB press release quotes from the then Finance Minister's article:

> *"The conventional system of political funding is to rely on donations. These donations, big or small, come from a range of sources from political workers, sympathisers, small business people and even large industrialists. The conventional practice of funding the political system was to take donations in cash and undertake these expenditures in cash. The sources are anonymous or pseudonymous. The quantum of money was never disclosed. The present system ensures unclean money coming from unidentifiable sources. It is a wholly non-transparent system. Most political groups seem fairly satisfied with the present arrangement and would not mind this status-quo to continue. The effort, therefore, is to run down any alternative system which is devised to cleanse up the political funding mechanism."*

> *"It further said that most donors are reluctance to disclose the details of the quantum of donations given to a political party. "A major step was taken during the first NDA Government led by Shri Atal Bihari Vajpayee. The Income Tax Act was amended to include a provision that donations made to political parties would be treated as expenditure and would thus give a tax advantage to the donor. If the political party disclosed its donations in a prescribed manner, it would also not be liable to pay any tax. A political party was expected to file its returns both with the income-tax authorities and Election Commission. It was hoped that donors would increasingly start donating money by cheque. Some donors did start following this practise but most of them were reluctant to disclose the details of the quantum of donation given to a political party. This was because they feared consequences visiting them from political opponents. The law was further amended during the UPA Government to provide for "pass through" electoral trust so that the donors would park their money with the electoral trusts which in turn would distribute the same to various political parties. Both these reforms taken together resulted in only a small fraction of the donations coming in form of cheques."*

78. Thus, from the time of its inception, the government has touted Electoral Bonds as a new modality of electoral funding that would champion the principal of transparency in electoral funding. The main argument put forth in introducing electoral bonds was that the electoral bond transactions would take place through formal banking system and thus only legitimate entities using white money would be availing of the scheme. However, this "digital paper trail" is the only saving grace of the EB scheme. On one

hand the donor faces no obligation of reporting the funds so donated, the political party receiving the funds has no obligation of disclosing the identity of the donor, leaving the Indian voter clueless about which corporate house has funded and backed which political party. This defeats the very purpose of introducing provisions in the Representation of Peoples Act, 1951 which brought in disclosure requirements for political funding. This leads to the inevitable truth that in the garb of transparency, the EB scheme has unleashed an era of political funding more dangerous to our democracy, more corrupt and opaquer than ever. This has practically countermanded and reversed the laudable steps in the direction of greater transparency of political parties and political candidates as well as in the reading of Articles 19(1)(a), 14 and 21 in the context of the guaranteed right of the "little man, walking into a little booth" - the Indian voter.

E. <u>The impugned amendments also violate rights of the shareholders and other stakeholders of the companies to know the beneficiaries of the contributions made the said companies.</u>

79. It is submitted that companies are funded by public money, after taking contributions from shareholders and loans from banks (which are funded by public money), and allowing them to divert/siphon money for donations to political parties without it being limited to a small percentage of their net-profits, is manifestly arbitrary and violates rights of the shareholders and the public at large, including the lenders.

80. Companies that run on shareholders money, who ought to be the final decision-making authority, cannot be allowed to work on the whims and fancies of the promoters who can divert shareholders money and share in profits to tax-exempt political parties and their own *quid pro quo* arrangements, which enriches the promoters at the cost of shareholders.

81. The impugned amendments have severely affected the rights of shareholders of public companies by a) lifting the cap on political contributions irrespective of net profits and b) making the beneficiary of the donations as secret. Not only has limit on donations

been removed by removing basic safeguards existing in the Companies Act, now the promotors and those in-charge of companies can also make political donations without the shareholders knowing the names of beneficiaries.

82. In light of the above, the impugned amendments made through Finance Act, 2016 and Finance Act 2017, as well the electoral bond scheme 2018 must be struck down by this Hon'ble Court. It is also prayed that the information submitted by the political parties, in terms of the order dated 12.04.2019, to Election Commission in sealed cover regarding the donations received through electoral bonds should be made public.

PRASHANT BHUSHAN
COUNSEL FOR THE PETITIONERS

Drafted by:
Neha Rathi
Shivani Kapoor
Alice Raj
Pranav Sachdeva