

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. 880 OF 2017
PUBLIC INTEREST LITIGATION

IN THE MATTER OF:

ASSOCIATION FOR DEMOCRATIC REFORMS & ANR.PETITIONERS

VERSUS

UNION OF INDIA & ORS.RESPONDENTS

REJOINDER SUBMISSION ON BEHALF OF MR. PRASHANT BHUSHAN
FOR THE PETITIONERS

1. The Petitioner had filed the present Writ Petition challenging the 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, violating the level playing field, 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. That the Union of India has broadly made the following submissions:
 - a. That the impugned amendments were brought in to reduce political donations being given in black money;
 - b. That the impugned amendments were further brought in to protect donors from victimization.
 - c. That the impugned amendments do not infringe citizens 'Right to know' as citizens have no right to know the financial bearings of political class.
3. With regard to point (a) above: The petitioners submits that the route to cash as well as black money is still open and reduction from Rs 20,000 to Rs. 2,000 for cash

donations (outside ambit of reporting) has made no effective difference. That at present Political Parties need not disclose who donated the money, whereas earlier they used to say people gave below Rs 20,000 and now they say people gave donations below Rs 2,000.

4. The reason for reduction of cash or receipt of cash donations is because of the introduction of a parallel instrument in the form of Electoral Bonds. In fact, cash or black money can also be given through Electoral Bonds. This can be done in several ways: deposit cash to the bank account of an individual and ask them to purchase electoral bonds with the deposited cash and in this way give Electoral Bond to Political Parties for encashment by them. The other route is *via* tax havens. A corporate/individual can take money out through over-invoicing or under-invoicing to tax havens and from there bring it back into the electoral funding system through subsidiaries and then donate it through EBs. (These subsidiaries are more often than not shell companies, because limit of 7.5 percent of 3 years average profits has been removed). Thus, the impugned amendments have legitimised conversion of black money into white money by companies and in the process the companies receive 100% income tax exemption also.
5. The impugned amendments and Electoral bonds allow for black money to be white-washed and deposited 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. Thus, there is always an 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 when helicopters are booked by parties for election campaigns, for advertisements and for social media investments etc made by political parties. A political party who majorly gets benefitted from electoral bonds can use its white money on such formal sectors thereby having an upper hand to influence what voters read, hear, and see.

6. It is submitted that today digital dominance and its influence on elections are intertwined. Elections today are also fought on Facebook and WhatsApp, where sophisticated digital campaigns, with pointed and well-targeted political messages are rolled out. These include the hiring of myriad local influencers, data and digital communications firms, and advertising companies for creative campaigns. Any formal sector providers among these essentially require white resources where money is paid in cheques or online transfers. Hence electoral bonds prove to be a great advantage in such scenarios therefore giving major benefit to a party which has access to electoral bonds. Every rupee spent through these digital channels by a political party helps them reach far more people in comparison to any other medium. The electoral bond money makes complete sense for any political party across board since the cost per reach is much cheaper, but the level through which the political parties are able to hide 'how they spent, how much they spent and how well they can micro target the audiences' is tremendous.
7. With regard to point (b) above: It is submitted that victimization can only be done by the ruling party. Ruling party has multiple ways of finding out who has donated to whom through SBI and through investigative agencies. Political parties can always find out which companies have bought EBs and because the parties know who has given them the EBs, and they can also know total amount of bonds purchased by individual companies. Therefore, they know which bonds have gone to other parties. The same applies for opposition.
8. With regard to point (c) it is important to place before this Hon'ble court that political parties unwavering repudiation towards any form of transparency is a matter of grave concern and Finance Act,2017 makes the matter worse. Owing to the nature and critical role played by political parties in a democracy, on 3rd June, 2013, the full Bench of the Central Information Commission (CIC) in File No. CIC/SM/C/2011/001386& 000838 had declared six national political parties INC, BJP, CPI, CPI (M), NCP and BSP as Public Authorities under section 2(h) of the Right to Information Act, 2005 (*pg 7177 of vol IV CC*). However, since the order, political parties have blatantly refused to abide by the CIC's order. The ceiling on election expenditure is only fixed with respect to the expenditure incurred by a

candidate whereas the political parties have been given a free hand to spend any amount of money. In 1999, the 170th Law Commission report had termed this form of escape route by keeping the political parties outside the purview of any legal sanction as a 'mere eye-wash'. Any transparency guideline given by the Election Commission is deliberately rejected or intentionally side-lined by the political parties. Since there is no law governing political parties and parties do not as such find any direct mention in the Constitution of India except in the Tenth Schedule, political parties have brazenly taken undue advantage of lacuna in existing laws by playing on their whim and fancy, at the cost of public exchequer. Now, with the introduction of electoral bonds and unlimited anonymous corporate donations which have patently endorsed and encouraged black money political parties have been legally permitted into becoming a breeding ground for illegitimate money.

9. In fact, the updated figures with regard to total amount worth of electoral bonds having been sold is now Rs. 14,940 crores as on October 2023, out of which more than 94% of electoral bonds are in the denomination of 1 crore, which shows that big corporates are purchasing the bonds. A copy of report published in *The Week* dated 01.11.2023 is annexed as **Annexure A** (pg ____). ~~The figure of electoral bonds sold between 2018 and April 2022 was Rs. 9188 crores (pg 737 of vol IV CC).~~ **Between April 2022 and July 2023, Electoral Bonds worth Rs 4583.6603 cr were sold (pg 725 of vol IV CC). The data on the Electoral Bonds sold in 28th Phase in October 2023 was released recently, which amounted to Rs 1148.3807 cr** This means that between April 2022 and October 2023, Electoral Bonds **worth Rs. 5732.041** crores have been deposited in mere 19 months.
10. Moreover, a new window for the sale of electoral bonds has been opened from 05.11.2023. Therefore, if the Hon'ble Court agrees with our submissions that anonymity of EBs is illegal, then this Hon'ble Court should order full disclosure of who has given how much to whom, which was also contemplated by interim orders dated 12.04.2019 (**pg 525 of vol III CC**) and 02.11.2023 in the instant case.
- 11. Increase in Income declared by National Parties from Unknown Sources, FY 2004-05 to 2021-22:** With the introduction of the Electoral Bonds Scheme, the

quantum of unknown sources has steadily gone up and the same can be observed from the table below, which summarizes the total unknown income received by National parties in the last five years between FY 2017-18 and 2021-22. It is submitted that as per ADR research total unknown income only of national political parties in eleven-year period between 2004-05 to 2014-15 was Rs. 6612.418 crores (pg 632 of vol IV CC) while in 5 years of EBs it is Rs. 9217.86 (please see table below and pg 634 of vol IV CC).

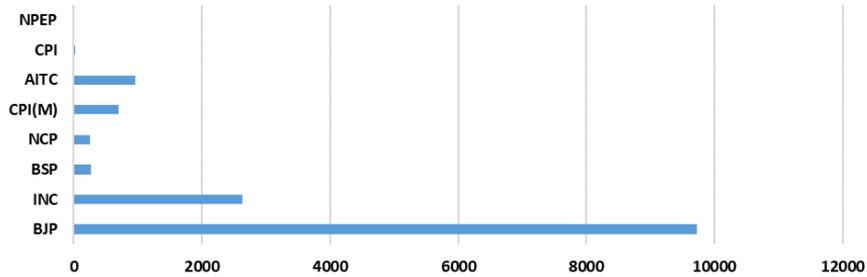
Party Name	Total Unknown Income of national parties between FY 2017-18 and 2021-22	
	Financial Year	
Year-Wise	FY-2021-22	Rs 2172.231 cr
	FY-2020-21	Rs 426.742 cr
	FY-2019-20	Rs 3377.41 cr
	FY-2018-19	Rs 2512.98 cr
	FY-2017-18	Rs 728.50 cr
	Total	Rs 9217.86 cr

12. Analysis of Level-Playing Field pre and post-Electoral Bonds

On the question of the electoral level-playing field, the government argued that disproportionate donations in favour of the incumbent party have always been a reality. While this may be true, but with the introduction of Electoral Bonds, the inequity has become even more stark. In some cases, the party in power at the centre has amassed funds eighteen times more than other National Parties put together. This needs to be addressed instead of being seen as inevitable. Please see the two charts below and compare the share of income of National Parties in a five-year period between FY2017-18 to 2021-22 (post EBs) and eleven-year period between FY 2004-05 and 2014-15 (pre EBs).

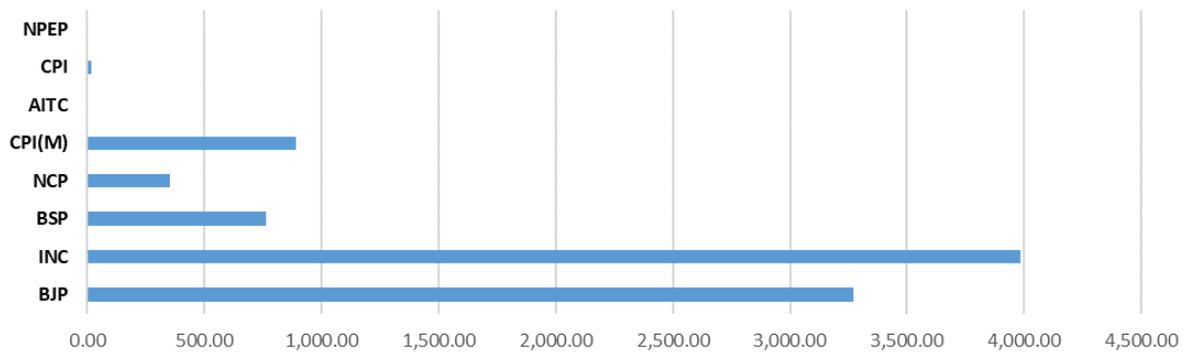
Post Electoral Bonds Chart

Total Income of National Parties as per audit report
FY 2017-18 to FY 2021-22 (In Rs cr)



Pre-Electoral Bonds Chart

Total Income of National Parties as per audit report
FY 2004-05 to FY 2014-15 (In Rs cr)



**AITC and NPEP were not National Parties between this time period. AITC became the National Party in 2016 and NPEP in 2019. Therefore, their figures are not taken in this chart*

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