

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

IN THE MATTER OF:

Association for Democratic Reforms & Ors. . . . Petitioners

versus

Union of India & Ors. . . . Respondents

**BRIEF SUBMISSIONS ON BEHALF OF THE ATTORNEY GENERAL FOR
INDIA**

1. In a democratic frame of social organisation, every citizen or collective in any form is entitled to participate in and have access to institutions of governance.
2. Political parties, as an association of people sharing the same views and beliefs, are the product of long gestation of social changes. They are an integral product of a free and open society. Free and responsive governance is premised on the role of political parties in the administration of the affairs of the community. It is axiomatic that political parties receive all support including financial support and contributions.
3. Political parties and their supporters have their fundamental right under Article 19(1)(c) of the Constitution.
4. Reasonable restrictions under Article 19(2) to (6) connote regulations as well. They can be enabling, permissive and imposing conditions.
5. The scheme under challenge is regulatory within the scope of Article 19(2) of the Constitution. It facilitates transfer of funds to political parties of one's choice through banking channels instead of direct inter party transfer and ensures transfer

by requiring tax abidance. In this way, it is a departure from prevalent modes of contributions which were not regulated.

6. The scheme does not impinge upon any existing right of any person and cannot be said to be repugnant to any right under Part III of the Constitution. In the absence of such repugnance, the Scheme will not be illegal. A law which is not so repugnant cannot be voided for any other reason. Judicial review is not about scanning State policies for the purposes of suggesting better or different prescriptions.
7. The Petitioners seek a declaration that citizens have a right to know as an aspect / facet of the right to freedom of expression. Based on such declaration it is canvassed that the right to have access to the details of contribution to political parties must follow. Consequently, the confidentiality facilitated under the Scheme is said to be impermissible.
8. The above submissions are refuted on the following basis:
 - a. Firstly, there can be no general right to know anything and everything without being subjected to reasonable restrictions.
 - b. Secondly, the right to know as necessary for expression can be for specific ends or purposes and not otherwise.
9. Democracy is a wide concept and comprehends many aspects. Right to know for the general health of democracy will be too over-broad.
10. The right to know the criminal antecedents of a candidate which can be of utility and relevance to the choice of a candidate is neither comparable to the case on hand nor can there be a general right to know anything and everything for undefined ends.
11. The judgements in *People's Union for Civil Liberties v. Union of India* (2003) 4 SCC 399 and *Union of India v. Association for Democratic Reforms* (2002) 5 SCC 294 were in the context of making informed choices about electoral candidates and knowing their antecedents. Information limited to such knowledge serves a specific end of citizens' choice of electing candidates free from blemish. Right to

know for specific rightful expression was thus conceived. From that it cannot be said that the right to know for general or broad ends necessarily follows.

12. Therefore, these judgments cannot be read as to suggest that a citizen has a right to information under Art. 19(1)(a) regarding funding of political party. If there is no right under Article 19(1)(a), the further question of locating reasonable restriction under Article 19(2) does not arise.
13. While reading into enumerated constitutional rights any one of their aspects (by penumbral formulation) the Court will also be alive to the need for stating relevant restrictions on the exercise of such penumbral aspects. The Court will also consider that having regard to the importance of such aspects and their impacts on the organisation of political parties and the right under Article 19(1)(c) the entire subject deserves parliamentary debates.
14. Shareholders have no right against the company under Article 19(1)(g). Both the company and the shareholders have only a common right under Article 19(1)(g). The right to carry on a trade does not extend to the fundamental right to carry on trade and business along with another person. No shareholder can enter into a contract of shareholding insisting on their conditions for such shareholding
15. The scheme in question extends the benefit of confidentiality to the contributor. It ensures and promotes clean money being contributed. It ensures abiding by tax obligations. Thus, it does not fall foul of any existing right. A constitutional Court reviews State action only if it impinges upon existing rights and not because State action has not provided for a possible right or an expectation howsoever desirable.
16. A law does not become void because it does not take cognisance of the possibility of an aspect being read into or treated as part of an enumerated right. Only existing rights need to be noticed.
17. The influence of financial contributions to political parties by corporate entities is baneful according to some thinking. It is perceived that such contributions will always influence policy making or other executive decisions or functions. As a sequitur, it is canvassed that such contributions will be suspect. Consequently, a

connection is sought to be established between information on contributions and overseeing governance.

18. Additionally even when the Court proceeds to declare an aspect as part of a right for the first time, it will be in tune with separation of powers that the subject of reviewing or testing a law with the newly stated aspect of a right be relegated to public and parliamentary debates. This is also not the case for Court driven guidelines. That contribution to political parties has democratic significance and a fit subject for political debate and demand of governance accountability free from influences does not mean that the Court will proceed to declare on such matters in the absence of a clear constitutionally offending law.
19. It is submitted that these are highly debatable matters and cannot be subjected to simplistic statements without Parliamentary debates.