IN THE SUPREME COURT OF INDIA
EXTRAORDINARY CIVIL WRIT JURISDICTION
WRIT PETITION (CIVIL) NO. 1132 OF 2022

IN THE MATTER OF:

SPANDAN BISWAL	**…**	**PETITIONER**
VS.		
UNION OF INDIA & ORS.	**…**	**RESPONDENTS**

WRITTEN SUBMISSIONS

BEHALF OF TUSHAR MEHTA, SOLICITOR GENERAL OF INDIA

OPENING STATEMENT

1. The use of unaccounted cash [black money] in driving the electoral process of the country remains a ***matter of serious concern for the nation***. Periodically, the Government started taking various steps in varying degrees to incentivize use of clean money for being donated to political parties.

2. It may be pointed out, at the very outset, that the **Hon'ble Court is not considering the legality of political funding *per se***. the Hon'ble Court is examining the scheme framed by the competent authority in exercise of the powers which is undisputedly vested in it.

3. After various measures being adopted from time to time, it was realized that there is an incentive for use of unaccounted cash as donations to political parties for essentially two reasons-

a. In absence of digitization, an overall encouragement of use of money through official channel, cash was an easy option; and

b. Most importantly payment of donation to a particular political party through official channel of cheque or bank draft [which necessarily divulge the name of the donor and the amount donated] had an adverse impact on the donor from revealing political party – whether that party is in power or comes to power.

c. So far as the digitization is concerned, the nation started its journey in the direction of digitization under the schemes like digital India and start-up India had greatly contributed not only to the technological transformation but also with the mode of dealing with the money.

4. Digitalization has played a crucial role in not only empowering Indian citizens but also incentivizing them for using official banking channels for their transactions. It may be of

interest to note that India already has 750 million mobile internet users as on date and is adding one new internet user every three seconds.

5. The quantum of digital payments in India is almost 7 times of that in US and Europe combined, 3 times of that in China. This also ***contributed to the decision making process*** which resulted in formulation of the Impuged scheme.

6. It is submitted that the ***apprehension of victimization / retribution was fundamental*** and was a ground for donors choosing unaccounted money to ensure that no other party/parties, other than to whom the donation is made, comes to know about the donation.

7. It was also experienced and is a matter of common knowledge that ***even entities earning clean money would make attempts to convert clean money into unaccounted cash for being donated to political parties to avoid being identified and further avoid victimization or retribution*** by other political parties. This was highly detrimental to the national economy - when clean money is converted into unclean money.

8. The Government of the day made several efforts to deal with this menace of use of unaccounted cash which can be broadly classified as under:

a. Giving exemption to political parties in the taxation to incentivize the parties to take more money by way of clean money;

b. Creation of a system of "pass through" electoral trusts where donor would park their money which would be distributed to various political parties.

c. Officially permitting the companies to contribute to the political parties for suitable amendment in section 239A of the Companies Act.

All above referred efforts failed due to the reason that the donor wanted confidentiality of his name and / or the name of the party to which the donation is made.

9. The present scheme is the ***result of tackling this resistance of donors*** and to incentivize them to use clean money through official banking channel while maintaining the confidentiality of their names.

If this confidentiality, which is the heart and soul of the scheme and necessary to achieve the object of utilizing clean money for political donations, is removed, the scheme will become redundant and the country would go back to the era where donations to political parties were substantially made in cash.

10. All arguments of the Petitioner regarding right to know, necessity of transparency etc. needs to be examined from the aforesaid perspective and a question would arise as to how the citizens would gain by going back to the earlier regime on the ground that the present

scheme, though absolutely transparent and operating through official channel, is declared to be bad merely on the ground that the donor and donee remains confidential.

11. It may also be required to be pointed that the donor is, as such, not confidential since donor will have to disclose the purchase of electoral bond in his / its books of accounts which are to be in case of public companies and the political parties will also have to declare the total amount received through electoral bond while filing their annual audit account before the Election Commission of India.

This ***balances free and fair elections, clean money coming into the system, as against right to know or right to information***. This, therefore, is an appropriate measure for a very noble object and nobody would gain if confidentiality is lifted [as prayed by the petitioners] as a result of which the nation will go several steps backwards and returns to the earlier black money-driven political contributions.

12. It is submitted that further, the aim and objective behind the policy must be ***understood in the larger macro-economic context of the country***. It is submitted that it is well-known fact that India was a cash-based economy which also had a large chunk of unaccounted black money based parallel economy. It is submitted that the said aspect jeopardized the functioning of the economy and further crippled the amelioration initiatives of the Governments. It is submitted that there has a been concrete and concerted effect to tackle this mammoth problem. It is a problem with no direct or straight forward solution are requires a multi-pronged approach.

The ***government has taken various measure in order to promote digitised payments*** and increase the percentage of electronic payment in the larger economic context. The programme such as Jan-Dhan trinity, the promotion of UPI, the incentivisation of banking channel payments, all represent a step in that direction.

It is submitted that the first step that is required is to at least ensure that the money flows through banking channels wherein it can be ensured that the pre-existing cash based economy [which enabled large scale tax avoidance causing loss to the exchequer] is minimised. It is submitted that the Electoral Bonds Scheme is a step in that direction.

It is only submitted that the ***Impugned actions are incentive-driven, realistic not idealist***, and an important ***step towards larger electoral reform***.

13. It is further submitted that ***Impugned actions are inter-dependent and cannot be compartmentalised*** as has been sought to be done by the Petitioners. It is submitted that partial intervention would have the impact of frustration the entire incentive driven process of the digitisation and regularisation of political donations in the country. It is submitted that further, it is clear that a reversion to *status quo ante* is ex-facie against public interest and

therefore, declaration of the Impugned actions as unconstitutional is clearly against public interest as it would take political donations back to the era of unaccounted cash and other unregulated means of political donations.

14. It is submitted that the ***problem of unaccounted cash and other unregulated means of political donations is not merely an issue concerning the black money based parallel economy in the country and fairness of Indian democracy itself***. It is submitted that the Impugned actions are a conjoint policy measure, aimed as an initial incentive driven scheme, in order to alter the pre-existing position in order to further a noble public and national objective. The Impugned policy is to be understood in the context of the Indian economy and its peculiar features and from an idealistic universal approach. The policy has to be connected to the political and economic realities of the problem.

15. It is submitted that further, the assertion of the Petitioners that the present policy furthers "*quid pro quo*" is wholly irrational and misconceived. It is submitted that ***the present policy is in fact an improvement on the pre-existing situation [cash-based donations] which was essentially used as quid-pro-quo***. It is submitted that in fact the Impugned policy has a specific disclosure requirement in case of competent court requiring the information and/or the criminal court requiring the case. It is submitted that therefore, this policy ensures that if any quid-pro-quo takes place, which would obviously be a criminal offence, does not go unpunished. It is submitted that the Petitioner is misleading and misdirecting the Hon'ble Court on the said aspect. It is submitted that to the disclosure requirement under Clause 7(4) the requirement of transparency is optimally balanced through the policy.

16. It is submitted that the ultimate principle of constitutional application in the present case is "*free and fair elections*" and the "*purity to elections*". It is however submitted that ***in order to judge whether the present Scheme impinges the principles of "free and fair elections" and the "purity to elections" it is necessary to juxtapose the present situation with the situation that existed prior to the Scheme***.

17. It is submitted that the present scheme is not a be all and end all solution to the problem of political donations in the country. However, it represents an important first step towards ensuring "*free and fair elections*" and the "*purity to elections*". It is submitted that all ***governmental or legislative policy is ever evolving and often sequential***. It is submitted that in many complex situations, steps have to be adopted one by one and not all at once, in order to bring de-facto tangible changes to the situation. It is submitted that it would be simple to make a "paper policy" which in appearance would be attractive, but in effect, would be unimplementable. It is submitted that therefore, ***it is important to allow the Legislature to make a judgment call on the sequential process.*** It is submitted that incentivisation based

approach to bringing change in political donations the bedrock of the present policy and any interference in the same would defeat the entire purpose and the hinder the desired end result of the policy.

18. It is submitted that it has to be understood that ***the pre-existing position, prior to the Policy in question, was not conducive to the political health of democracy***. It is submitted that a cash based, black money driven political donations, which was obviously opaque clearly hindered the constitutional objectives of "*free and fair elections*" and the "*purity to elections*". It is submitted that when judged in juxtaposition of the pre-existing situation, the present policy is clearly an improvement and therefore, furthers the larger objective of "*free and fair elections*" and the "*purity to elections*". It is submitted that this Hon'ble Court has in ***S. Raghbir Singh Gill v. S. Gurcharan Singh Tohra*** **[1980 Supp SCC 53]** held that "*there is one fundamental principle which permeates through all democratically elected parliamentary institutions viz. to set them up by free and fair election*". The said principle has been re-iterated in the judgment in ***People's Union for Civil Liberties (PUCL)*** **[(2003) 4 SCC 399]; *Kuldip Nayar v. Union of India*, (2006) 7 SCC 1**; and ***Assn. for Democratic Reforms*** **[(2002) 5 SCC 294]**.

19. It is submitted that in fact, if confidentiality is not maintained, apart from the fact that the noble aim of the policy to shift from illegal unclean money driven political donations to clean money will fail, the principles of "*free and fair elections*" and the "*purity to elections*" would also be jeopardised. It is submitted that ***the ultimate principles of "free and fair elections" and the "purity to elections" are not at odds with the rights of speech or privacy of individuals are move in tandem with them***. It is submitted that in fact that Impugned policy is a culmination of fine balance between principles of "*free and fair elections*" and the "*purity to elections*" – the right of speech and privacy of doners – and ***the solution-based realistic approach to resolve the problem of nature of political donations in the country***.

SETTING THE SCOPE OF THE CHALLENGE

20. At the outset, it is submitted that the present Petition seeks to invoke Article 14 and Article 19(1) (a) of the Constitution of India with reference to statutory provisions, specifically the amendment to Finance Act, 2017, Reserve Bank of India Act, 1934, Representation of People's Act, 1951, Income Tax Act, 1961, Companies Act, 2013, the Foreign Contributions Regulation Act, 2010 and the Notification dated 02.01.2018 ("**Notification**") which introduced the Electoral Bond Scheme regulating donations of political parties in India on the grounds of reasonableness, transparency and accountability.

21. It is submitted that this Hon'ble Court, vide order dated 31.01.2023, bifurcated the challenge in the present petitions as under :

> "1 This batch of petitions involves three distinct issues:
> (i) A challenge to the Electoral Bonds Scheme;
> (ii) Whether political parties should be brought within the purview of the Right to Information Act 2005; and
> (iii) A challenge to the amendments to the Foreign Contribution Regulation Act 2010 through the Finance Acts of 2016 and 2018.
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> xxx
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> 3 The three sets of petitions need to be heard separately and de-linked for that purpose."

22. By way of the order dated 16.10.2023, only the petitions falling under clause (i) have been referred to the Constitution Bench. The said order reads as under :

> "2 In view of the importance of the issue which is raised and having due regard to the provisions of Article 145(3) of the Constitution, we are of the considered view that the batch of petitions be listed before a Bench of at least five-Judges.
> 3 The Registry shall take instructions on the administrative side.
> 4 The date of listing the matters on 31 October 2023 shall be maintained."

23. Therefore, the present challenge concerns the limited challenge to the electoral Bond scheme.

THE PROBLEM BEFORE THE POLICY

Position in India

24. The issue of political donations in the country has evolved through times. A brief list of dates would put the issue in context :

YEAR	EVENT
1956	Section 293 r/w 293A of the Companies Act, 1956 allowed corporate donations to political parties as long as the Memorandum of Association ("MoA") of the company permitted the company to do so.
1957	A company had amended its MoA to provide for donations to political associations. This amendment was challenged by a shareholder on the ground that in accordance with Sections 17(1)(a) and 17(1)(b), a company could amend its MoA only for the purposes of (a) to carry on its business more economically or more efficiently, and (b) to attain its main purpose by new or improved means. On the said issue, the Bombay High Court ruled that in the absence of any law that explicitly prohibits corporate donations, as the Court held, it is 'axiomatic that what an individual can lawfully do can be done by a joint stock

YEAR	EVENT
	corporation.' - *Jayantilal Ranchchoddas Koticha v Tata Iron and Steel Co Ltd* (1958) AIR 1958 Bom 155 Further, the said judgment noted that "*But it is not for us to legislate, nor is it for us to lay down the Policy. But having had this case before us and our attention having been drawn to the possible evils attendant upon powers exercised by the companies, we thought it our duty to draw the attention of Parliament to the necessity of remedial measures being immediately undertaken to curb and control this evil.*"
1969	Following the recommendations of Santhanam Committee, the Government introduced an amendment which prohibited any contribution by a company 'to any political party', or 'for any political purpose to any individual or body'.[1] ***Note:*** "*…..since corporate funding was illegal, the corporates and politicians created several backdoor routes of channelling the money into the Congress Party, facilitated by large sums of cash holding with businesses…… A commentator has called this practice 'Briefcase Politics' referring to a prevalent practice of pricing government permits at number of briefcases of cash that can be supplied. In exchange for doling out benefits to corporates, the party collected large amounts of cash and illicit money, while at the same time depriving opposition parties of legally collecting funds from corporates. Thus, corporate donations continued despite bans; they just became underground.* *…… it devised a new method of legally channelling corporate money into Congress coffers by placing corporate advertisements in party journals. These corporate advertisements were indirect ways of funding the party without violating the law banning corporate donations.*"[2]
1979	Income Tax Act, 1961 was amended to exempt the income of political parties from taxation by way of Section 13A subject to certain conditions including, *inter alia*, the requirement to maintain a record contribution made to the party.
1985	Corporate funding was re-introduced by the Government by making necessary amendments in Section 293A of the Companies Act, 1956. All companies, except Government companies, were allowed to contribute to political parties or to any person for political purposes subject to approval by the board of directors, and disclosure in the profit and loss statement. These donations were restricted to five per cent of the company's average net profits of previous three years.
2003	Wide ranging amendments were made in the Representation of People Act, 1951, the Income Tax Act, 1961 and the Companies Act, 1956 in various provisions relating to elections, political parties and connected matter. The amendments, *inter alia*, included the following:

[1] Section 293-A as inserted by Companies (Amendment) Act 1969
[2] Where's the Money?/ Paths and Pathologies of the Law of Party Funding by Aradhya Sethia

YEAR	EVENT
	1. Section 29B was inserted in the Representation of the People Act, 1951 by way of which political parties were explicitly permitted, subject to provisions of the Companies Act, 1956, to accept any amount of contribution voluntarily offered to it by any person or company other than a Government company. 2. Provision for declaration of donation received by the political parties was also inserted as Section 29C in the Representation of the People Act, 1951. 3. A chapter relating to supply of certain material to recognised political parties was also inserted as Chapter VA in the Representation of the People Act, 1951. 4. Contributions to political parties by individuals as well as corporations were made 100% tax deductible by insertion of Section 80GGB and 80GGC in the Income Tax Act, 1961.
2009	By way of amendments in the Income Tax Act, 1961, tax deductions of the contributions made by a company to electoral trusts were enabled and income received by electoral trusts were also exempted from income tax.
2013	Section 182 of the Companies Act, 2013 increased the limit of contribution to 7.5% of the average profit of the previous three years.
2014	Guidelines for Submission of Contribution Reports of Electoral Trusts were issued by the Election Commission of India to requiring electoral trusts to disclose details relating to contributions received by it and the contributions made by the trust to various political parties.
2015	Report No. 255 by the Law Commission of India on Electoral Reforms was submitted. Important highlights of the report relating to election finance reforms are as follows: 1. It recommended the amendment of Section 182(1) of the Companies Act, 2013 to require passing of the resolution authorising the contribution of the company's funds at the company's Annual General Meeting instead of its Board of Directors. 2. It also recommended the keeping of account of the contributions received by the candidates from their political party (not in cash) or any other permissible donor. It was also recommended that the reports by candidate shall be made publicly available. 3. The committee also recommended that the parties be required to disclose the names, addresses and PAN card numbers of donors along with the amount of each donation and disclose such particulars even for contributions less than Rs. 20,000 if such contributions exceed Rs. 20 crore or twenty per cent of party's total contribution, whichever is less.

YEAR	EVENT
	4. The above information was also recommended to be made publicly available. Penalties, in addition to losing of tax benefits, were recommended to be imposed on parties who did not comply with the disclosure requirements. 5. Similar provisions were recommended to be made for electoral trusts. 6. The committee stated that complete state funding is not feasible in light of the economic conditions and developmental problems of the country.
2017	Amendments to various statutes including the Reserve Bank of India Act, 1934, the Representation of People Act, 1951, the Income Tax Act, 1961 and the Companies Act, 2013 as part of the measures to introduce the Electoral Bonds Scheme.
02.01.2018	The Electoral Bonds Scheme was notified. A minor amendment was made in 2021.

25. It is submitted that before appreciating the challenge to the present policy of the Respondent, it is important to understand and appreciate the nature of the problem that is faced by the country. It is submitted that while it is wholly possible to pick out purported issues in the solution implemented by the Respondent, it is only when one understands the gravity, the complex nature and multi-dimensional character of the problem of political donations in the country [or for that matter anywhere in the world], that one can appreciate the Impugned actions of the Respondent. It is submitted that in fact, even most of the developed economies of the world have not been able to resolve the issues faced with political donations.

Impact of black money on the economy

26. It is submitted that furthermore, keeping in view the emergent need to ensure that there is enhanced accountability and electoral reforms to defeat the growing menace of black money, especially when the country is moving towards a cashless-digital economy, the legislature has adopted a conscious legislative policy culminating in the introduction of the electronic reforms.

27. It is submitted that it is pertinent to mention here that the complex issue of black money is elaborately discussed by this Hon'ble Court in the matter of ***Vinay Narayan Sharma v. Union of India & Ors.*** **2023 SCC OnLine SC 1** in the following words:

> "315. Practices such as hoarding "black" money, counterfeiting, etc., when coupled with corruption, are eating into the vitals of our society and economy. **Any measure intended to strike at such practices, and thereby eliminate off shoots thereof, such as, terror**

> **funding, drug trafficking, emergence of a parallel economy, money laundering including Havala transactions, must be commended. Such measures are necessary to sanitize the economy and society, and enable it to recover from the plague caused by the evils listed hereinabove.**" (Emphasis Supplied)

While discussing the powers of the Central Government to make policy decisions and the validity of such decisions involving matters of grave importance concerning the sovereignty and integrity of India, this Hon'ble Court further went on to hold that:

> "**391.** I find considerable force in the contention of the learned Attorney General inasmuch as the Central Government cannot be said to be without powers in initiating demonetisation of bank notes. This is on the strength of Entry 36 of List I of the Seventh Schedule of the Constitution. **The Central Government is not just concerned with the financial health of the country as well as its economy, but it is also concerned with the sovereignty and integrity of India; the security of the State; the defence of the country; its friendly relations with foreign countries; internal and external security and various other aspects of governance.** On the other hand, the Bank is only concerned with the regulation of currency notes, monetary policy framework, maintaining price stability and allied matters. **Therefore, if the Central Government is of the considered opinion that in order to meet certain objectives such as the ones stated in the impugned notification, namely, to eradicate black money, fake currency, terror funding etc., it is necessary to demonetise the currency notes in circulation, then the Central Government may initiate a proposal for demonetisation."** (Emphasis Supplied)

28. It is submitted that in ***Ram Jethmalani v. Union of India*, (2011) 8 SCC 1**, it was held as under:

> 10. Security of the nation, infrastructure of governance, including those that relate to law-making and law-keeping functions, crime prevention, detection and punishment, coordination of the economy, and ensuring minimal levels of material, and cultural goods for those who may not be in a position to fend for themselves or who have been left by the wayside by the operation of the economy and society, may all be cited as some examples of the kinds of public goods that the State is expected to provide for, or enable the provision of. Inasmuch as the market is primarily expected to cater to purely self-centred activities of individuals and groups, markets and the domain of purely private social action significantly fail to provide such goods. Consequently, the State, and Government, emerges to rectify the coordination problem, and provide the public goods.
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> 11. Unaccounted for monies, especially large sums held by nationals and entities with a legal presence in the nation, in banks abroad, especially in tax havens or in jurisdictions with a known history of silence about sources of monies, clearly indicate a compromise of the ability of the State to manage its affairs in consonance with what is required from a constitutional perspective. This is so in two respects. The quantum of such monies by itself, along with the numbers of individuals or other legal entities who hold such monies, may indicate in the first instance that a large volume of activities, in the social and the economic spheres within the country are unlawful and causing great social damage, both at the individual and the collective levels. Secondly, large quanta of monies stashed abroad, would also indicate a substantial weakness in the capacity of the State in collection of taxes on incomes generated by individuals and other legal entities within the country. The generation of such revenues is essential for the State to

> undertake the various public goods and services that it is constitutionally mandated, and normatively expected by its citizenry, to provide. A substantial degree of incapacity, in the above respect, would be an indicia of the degree of failure of the State; and beyond a particular point, the State may spin into a vicious cycle of declining moral authority, thereby causing the incidence of unlawful activities in which wealth is sought to be generated, as well as instances of tax evasion, to increase in volume and in intensity.
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> 12. Consequently, the issue of unaccounted for monies held by nationals, and other legal entities, in foreign banks, is of primordial importance to the welfare of the citizens. The quantum of such monies may be rough indicators of the weakness of the State, in terms of both crime prevention, and also of tax collection. Depending on the volume of such monies, and the number of incidents through which such monies are generated and secreted away, it may very well reveal the degree of "softness of the State".

29. It is submitted that the Petitioner emphasis on larger disclosure requirements, on a policy level, is wholly misconceived. It is submitted that in fact, it was the pre-existing complete disclosure requirements [above Rs. 20000] that were in a way responsible for creation of the cash driven political donations.

30. It is interesting to note that while there was no record whatsoever of the cash donations of political parties, even the regular banking channel-based donations in the pre-existing scheme throws some startling findings. It is submitted that in fact, it is a Report of the Petitioner itself tiled as "**Analysis of Sources of Funding of National and Regional Parties of India FY 2004-05 to 2014-15 (11 years)**" [**ANNEXURE A**] which sheds some insights. It noted that in the preexisting scheme – "*At present, political parties are not required to reveal the name of individuals or organizations giving less than Rs. 20,000.* ***As a result, over two-thirds of the funds cannot be traced and are from 'unknown' sources***".

31. The highlights from the said Report under the pre-existing scenario are mentioned as under :

- **Total income of National and Regional political parties between FY 2004-05 and 2014-15: Rs 11,367.34 cr.**
- Total income of political parties from **known donors** (details of donors as available from contribution report submitted by parties to Election Commission): **Rs 1,835.63 cr, which is 16% of the total income of the parties**.
- Total income of political parties from **other known sources** (e.g., sale of assets, membership fees, bank interest, sale of publications, party levy etc.): **Rs 1,698.73 cr, or 15% of total income**.
- Total income of political parties from **unknown sources** (income specified in the IT Returns whose sources are unknown): **Rs 7,832.98 crores, which is 69% of the total income of the parties**.

- **During the 11 years between FY 2004-05 and 2014-15, 83% of total income of INC, amounting to Rs 3,323.39 cr and 65% of total income of BJP, amounting to Rs 2,125.91 cr came from unknown sources.**
- **Among the Regional Parties, Rs 766.27 cr or 94% of total income of SP and Rs 88.06 cr or 86% of the total income of SAD came from unknown sources.**
- **The income of National Parties from unknown sources increased by 313%, from Rs 274.13 cr during FY 2004-05 to Rs 1130.92 cr during FY 2014-15**
- **The income of Regional Parties from unknown sources increased by 652% from Rs 37.393 cr during FY 2004-05 to Rs 281.01 cr during FY 2014-15.**
- **Among all the National and Regional parties considered, BSP is the only party to consistently declare receiving NIL donations above Rs 20,000 between FY 2004-05 and 2014-15 thus 100% of the party's donations came from unknown sources.**
- **INC has the highest total income of Rs 3,982.09 cr between FY 2004-05 and 2014-15, this is 42.92% of the total income of the 6 parties during the same time.**

32. It is submitted that further, the reliance of the Petitioner on the ADR Report of 2023, at **Pg 719 Vol IV** which shows that Electoral Bonds have become the chose means of political donations is self-contradictory. As stated above, prior to the Scheme, the majority of donations came through cash which were never reported either under Rs. 20,000 or above Rs. 20,000 and the stakeholders wanted to ensure anonymity. The data mentioned above also merely reflects a fraction of the actual political donations in the country as it reflects only the money which came in to the system and was reported. The Electoral Bonds Scheme brought the money which was earlier funneled out and converted to cash, back in to the banking channels and therefore, it obviously became the preferred mode of donation. It is submitted that in fact, the stated intention of the policy was to make the cash a less attractive option for doners.

33. It is submitted that further, the data relied upon by the counsel in W.P. C. 59/2018 is again self-contradictory. It is submitted that the said data again shows that how cash-based donations [less than Rs. 20,000] have decreased percentage wise. This shows that earlier the money that was funneled and converted to cash for political donations now remains in the banking systems.

Position in United States of America

34. In the United States, there exists a concept of a political action committee ("PAC") which is a tax-exempt organization that pools campaign contributions from members and donates those funds to campaigns for or against candidates, ballot initiatives, or even specific

legislations. At the U.S. federal level, an organization becomes a PAC when it receives or spends more than $1,000 for the purpose of influencing a federal election, and registers with the Federal Election Commission (FEC), according to the Federal Election Campaign Act as amended by the Bipartisan Campaign Reform Act of 2002. At the state level, an organization becomes a PAC according to the state's election laws.

Super PACs (independent expenditure only political committees) are committees that may receive unlimited contributions from individuals, corporations, labor unions and other PACs for the purpose of financing independent expenditures and other independent political activity.

35. Super PACs were first have been legitimised by the judgement of the United States Supreme Court in ***Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010)**. It is submitted that while they are considered to be facially independent however they can spend money advocating for or against a candidate. The Super PACs have been noted to have created a unique problem in American political funding. A Super PACs has been defined as under:

> "Super PACS are FEC-registered political action committees that may raise unlimited funds from individuals, corporations, and labor unions and can spend those unlimited funds in direct support of candidates. While Super PACS can raise unlimited funds, an individual may contribute only $2,800 directly to a candidate. Because coordination between a candidate and a Super PAC may lead to concerns surrounding quid pro quo corruption or the appearance thereof, there are regulations in place that restrict Super PACs from coordinating with the candidates they support. In reality, however, single-candidate Super PACs operate as an extension of the candidate's own campaign team."[3]
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> ***Note:*** *The FEC regularly revises the contribution limits. The latest contribution limits are:*
> - *The limits on contributions made by persons to candidates (increased to $3,300 per election, per candidate) (52 U.S.C. § 30116(a)(1)(A));*
> - *The limits on contributions made by persons to national party committees (increased to $41,300 per calendar year) (52 U.S.C. § 30116(a)(1)(B));*
> - *The limit on contributions made by certain political party committees to Senate candidates (increased to $57,800 per campaign) (52 U.S.C. § 30116(h)).*

36. It is submitted that the Super PACs have been noted to have by-passed the regulations and created an entire framework of unlimited and opaque donations of campaign in the United States. It is submitted that however, the exploiting loopholes in the finance campaign regulations, is not something of recent origin and legitimized only through ***Citizens United* supra**. It is submitted that even before ***Citizens United*** ruling, loopholes in campaign finance regulations were exploited which has been noted as under:

[3] Sarah E. Adams, How Single-Candidate Super PACs Changed the Game and How to Change it Back: Adopting a Presumption of Coordination and Fixing the FEC's Gridlock, 85 Brook. L. Rev. 851,853 (2020)

> "For example, in 2004, liberal financier George Soros wanted to help defeat Republican President George W. Bush, who was running for reelection. Soros could give only a few thousand dollars directly to the campaign of Democrat John Kerry, who was running against Bush. But Soros gave approximately $27 million to other organizations which promoted Kerry's candidacy. At the time, federal law provided that an individual could not give more than $5,000 to a political committee supporting candidates for federal office. But Soros gave millions to a group called "Americans Coming Together" ("ACT"), which was a political organization organized under section 527 of the tax code, and which argued that even though it was running ads attacking Bush and supporting Kerry, and even though the organization was headed by Kerry's former campaign manager, the group was not a political committee and therefore not bound by the $5,000 individual contribution limitation. There was no evidence the group coordinated with Kerry's campaign, but it did mimic his advertising and augment his campaign strategy. A few years after the election, the Federal Election Commission determined that ACT violated the law, imposed a $775,000 fine, and decided it should have registered as a political committee because its major purpose was to elect a federal candidate. It should not have accepted contributions exceeding $5,000 from individuals."[4]

37. It is submitted that Super PACs can raise unlimited donations as long as they spend it independently. However, these *"groups— which are often staffed by former employees of the candidates — throw their money and resources behind candidates or political causes favored by the wealthy donors. The process drowns out the voices of regular voters, giving the superrich a level of access to and influence over the political process that's impossible for the vast majority of Americans to obtain. Examples abound over the last decade*."[5]

38. It is submitted that in fact"*….in recent years, Super PACs and political candidates have* ***invented various legally sound methods to coordinate their expenditures while continuing to enjoy the benefits of unlimited fundraising***." It is submitted that it has been noted as under :

> "The use of a so-called "common vendor" is one of the methods Super PACs and candidates have taken to using to circumvent contribution limits. **In this practice, a Super PAC uses a commercial vendor to develop advertising material to support a political candidate while the candidate uses the very same vendor to develop his or her own advertising material. By hiring the same media vendor for their advertising efforts, Super PACs and their supported candidates can coordinate their advertising strategies without triggering penalties**."[6]

39. It is submitted that a recent example of a potential coordination as referred to above is the Trump Campaign. It has been noted that :

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[4] Richard L. Hasen, Super PAC Contributions, Corruption, and the Proxy War Over Coordination, 9 Duke Journal of Constitutional Law & Public Policy 1-21 (2014)

[5] https://www.brennancenter.org/our-work/analysis-opinion/10-years-super-pacs-show-courts-were-wrong-corruption-risks (last visited on 29.10.2023)

[6] Matt Choi, An Avenue for Corruption: Super PACs and the Common Vendor Loophole, 18 NW. J. L. & SOC. POL'Y. 99, 101 (2022)

> "In 2016, the Trump campaign and the NRA's political action committee, the NRA-PVF, hired two of the Slaters Lane media strategy firms to place pro-Trump, anti-Hillary Clinton advertisements for TV. The NRA-PVF purchased a slate of fifty-two ad slots on an ABC affiliate TV channel in Virginia targeting adults aged 35 to 64, as the Trump campaign purchased thirty-three ads with complementary messages on the same station, set to air during the same week, and aimed at precisely the same demographic. While the Trump campaign and the NRA-PVF employed two legally different entities for their advertisements, at least four staffers who were employees of both entities signed FCC registration forms and ad purchase forms for both the Trump campaign and the NRA-PVF. In fact, one officer named Jon Ferrell signed ad purchases for both the Trump campaign and the NRA-PVF with the same ABC channel."[7]

40. It is submitted that Regulations of the Federal Election Commission relating to the use of common vendors by super PACs on the one hand and political parties or candidates on the other have been described in the following manner:

> "Many find that, **while the FEC upholds the principle of free speech from Citizens United, it neglects Congress's judicially sanctioned interest in preventing quid pro quo corruption.** The Harvard Law Review criticized the rules as "permissive" and facilitating "a greater degree of candidate engagement with Super PAC efforts than may be desirable considering the mandate of independence imposed on Super PACs." The regulations betray a highly deferential attitude toward political players, drawing a wide, permissive berth around their existing practices….
> Administrative records indicate that, when the FEC passed its regulations on coordination and common vendors, it was more preoccupied with protecting common vendor use than it was with preventing potentially corruptive behavior."[8]

41. It is submitted that the above-referred coordinated spending has been described in the following manner. The author argues that such coordinated spending is as good as cash given directly to the candidate, which has been capped as opposed to 'independent' expenditures by super PACs:

> "…Because Super PACs are often run by candidates' confidants, when they employ common vendors with their candidates, a Super PAC can spend on advertising that the candidate would have put out anyway, making it little different from the candidate spending the money him or herself. **Thus, the Super PAC's spending is as good as "cash" for candidates, transforming the expenditure into a contribution.** Furthermore, since so few major Super PAC donors are out there, candidates can often easily identify and reward them, meaning donors can "have confidence that their contributions will carry as much weight as if they were contributing directly to the candidates' campaigns." The reason the Court treats coordinated expenditures as contributions applies equally for expenditures through common vendors."[9]

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[7] Matt Choi, An Avenue for Corruption: Super PACs and the Common Vendor Loophole, 18 NW. J. L. & SOC. POL'Y. 99, 110-111 (2022)
[8] Matt Choi, An Avenue for Corruption: Super PACs and the Common Vendor Loophole, 18 NW. J. L. & SOC. POL'Y. 99, 115 (2022)
[9] Matt Choi, An Avenue for Corruption: Super PACs and the Common Vendor Loophole, 18 NW. J. L. & SOC. POL'Y. 99, 120 (2022)

42. It has been argued that the judgment in ***Citizens United*** **supra** had not only opened the gates for unlimited corporate donations but permitted nonprofit corporations to engage in such spending as well:

> "The holding not only enabled commercial corporations to spend their business revenues on political activities in potentially unlimited amounts; it similarly permitted nonprofit corporations to engage in such spending as well. This, in turn, motivated individuals and entities seeking anonymity to choose politically active nonprofits as vehicles for their political spending because such nonprofits are rarely required to disclose the identities of their donors. As a result, a significant part of outside group spending shifted to nondisclosing nonprofits (dark money groups) during the nine months before the 2010 mid-term elections, and these groups have continued to play an outsize role in campaigns ever since."[10]

43. It is submitted that Super PACs are joined by growing number of not-for-profit organisations who are now increasingly getting engaged in political activities:

> "Super PACs established by wealthy individuals are not the only source of unlimited campaign dollars. They are joined by the growing number of 501(c) organizations—enterprises recognized by the Internal Revenue Code as not-for-profit and tax-exempt social-welfare and business leagues (501(c)(4)s are social-welfare organizations; 501(c)(5)s include labor unions; 501(c)(6)s include business leagues.) Like Super PACs, these groups are prohibited from coordinating efforts with a campaign or party. Federal Election Commission rules interpret the standards as requiring qualified organizations to spend less than half of their money on political activity. But, the rules also create an enormous loophole; 501(c)4s are permitted to give to Super PACs, while remaining exempt from donor-disclosure requirements. Voila! Super PAC money becomes dark money."[11]

44. It is submitted that the routing of money through not-for-profit organisations has further been explained in the following manner:

> "In addition to wealthy individuals, for-profit businesses are increasingly 'investing' in control over our democracy. Seventeen percent of 2011 Super PAC money came from business interests. This doesn't sound like much, but the figure greatly underestimates the amount of business money in politics now and in future election cycles. Super PACs are required to disclose all of their direct donors, so most public companies with reputations to protect and an aversion to such disclosure are choosing to give in other ways.
>
> And, in fact, much of the money streaming into the political process is flowing through 501(c)(4) nonprofit organizations or 501(c)(6) trade as sociations that are not required to disclose their donors. Section 501(c) (4) nonprofits alone outspent Super PACs in the 2010 cycle, and much of the billions of dollars in outside funds spent in 2012 will flow through these two types of organizations."[12]

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[10] Miriam Galston, *Outing Outside Group Spending and the Crisis of Nonenforcement*, 32 STAN. L. & POL'Y REV. 253 (2021)

[11] John Raidt, Corrosive Big Money available at https://www.jstor.org/stable/pdf/resrep16793.9.pdf?refreqid=fastly-default%3Af6c8ce2f4ae225c026261ca161eba326&ab_segments=0%2Fbasic_search_gsv2%2Fcontrol&origin=&initiator=search-results&acceptTC=1 (last visited on 30.10.2023)

[12] Adam Lioz and Liz Kennedy, Democracy at Stake: Political Equality in the Super PAC Era 39(1) Human Rights 15, 16 (2012)

45. Further, the decline of reported spending by nonprofits in 2016 reflects the adoption of different strategies for influencing elections rather than a reduction in political spending. In any event, the aggregate of reported outside spending from all sources in presidential elections has increased dramatically". It has been noted as under :

> "….nonprofit groups contribute to SuperPACs, they do not necessarily report the sums involved as political expenditures. During the 2018 mid-term election cycle, nonprofits and other nondisclosing groups gave more than $176 million to SuperPACs and hybrid PACs, none of which would have been reported to the FEC.[13]

46. It is submitted that Super PACs have even been described as shadow parties running a shadow campaign:

> "The shadow parties have grown so muscular that we are even seeing what we term shadow campaigns. In the 2014 cycle, a majority of Senate races included a Super PAC spending unlimited funds on behalf of only one candidate. In a recent special election in Florida, the campaigns of the two congressional candidates controlled less than one-third of the total money spent on the election. Three-quarters of the money spent on behalf of a recent senatorial candidate in Mississippi was supplied by Super PACs. Political observers now muse openly about the possibility of candidates with empty campaign coffers outsourcing all campaign activities to such shadow party groups. The shadow parties and the official parties, then, are deeply intertwined and properly understood as part of what we call the "party writ large." And the parties writ large retain a commanding grip on American politics."[14]

47. It is submitted that the above illustration is not to justify the present policy rather merely seeks to highlight that issue of political donations are far from perfect even in the more developed and more mature democracies of the world where the macro-economic situation and the presence of parallel black/cash economy is also not present.

Campaign finance issues across the world

48. It is submitted that issues of dubious political donations in France continues to be a problem despite strict spending limits and disclosure requirements being put into place. In 2007, former President Nicolas Sarkozy was put on trial and subsequently convicted for allegedly receiving illegal contributions from Libyan dictator Muammar Gaddafi as it was noted that *"In the Libya case, he is charged with illegal campaign financing, embezzling, passive corruption and related counts. Sarkozy has been under investigation in the Libya case since 2013. Investigators examined claims that Gadhafi's government secretly gave Sarkozy €50 million for his*

[13] Miriam Galston, *Outing Outside Group Spending and the Crisis of Nonenforcement*, 32 STAN. L. & POL'Y REV. 253 (2021)
[14] Joseph Fishkin and Heather K. Gerken, The Party's Over: McCutcheon, Shadow Parties, and the Future of the Party System 2014(1) The Supreme Court Review 175, 177 (2015)

winning 2007 campaign. The sum would be more than double the legal campaign funding limit at the time and would violate French rules against foreign campaign financing."[15]

49. It is submitted that prior to this, extensive corruption relating to illegal "political donations" spreading across party lines had also been discovered in the French Oil Company Elf-Aquitane as it was found that t showed malfeasance at Elf.

50. Historically, Germany has also had to deal with the problem of untreacable campaign contributions. The 1990s, the Christian Democratic Union (CDU) was found to have been receiving money covertly through the use of secret accounts. It was reported that *"the scandal began in 1995 with the news that arms dealer Karlheinz Schreiber had given a series of undeclared contributions to then-Chancellor Helmut Kohl's Christian Democratic party, the CDU. Investigators also found that the money was not a one-time payment to the CDU. It turned out that the CDU had long been using a system of secret accounts to receive campaign contributions. On* December *16, 1999, the German parliament set up a special commission to investigate the CDU slush fund affair. The most serious allegation was that the donations were kept secret because they influenced key government decisions. On the same day, Kohl admitted having accepted cash donations for his party. In his first detailed interview on the scandal, Kohl said on German television that he had made mistakes but denied that he was corrupt. He also refused to name the donors.".*[16] The discovery of these illicit donations had resulted in fines of over 41 million being imposed on the CDU. Likewise in 2018, the party Alternative for Germany was found to have created a secret fund to receive political donations illegally, for which it was fined by the German Parliament.=Again in 2021, members of the German Parliament were discovered to have accepted illegal donations from foreign sources such as Hungary and Azerbaijan. A host of illegal practices were revealed in the wake of this discovery ie *"Some of the MPs exposed had been taking financial payments from authoritarian regimes such as Azerbaijan and North Macedonia to lobby for them in both Berlin and Brussels….One widespread practice is the use of dubious 'consultancies' affiliated with members of parliament and former top-level politicians. Fees received for such activities are generally uncapped, and there are no legal requirements for MPs to declare this income to the Bundestag"* [17]

51. Likewise, in Spain the Gurtel case, where businessman Fransiciso Correa had created *"a secret campaign fund the conservative People's Party (which) ran from 1999 until 2005"*. It was not the only such incident. It has been noted that *"Although Gürtel is by far the most high-profile corruption scandal in Spain in years, it is far from the only case pointing to an unhealthy culture of corruption in the country. It is also part of a larger network of connected corruption scandals, including*

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15 https://timesofindia.indiatimes.com/world/europe/sarko-faces-2025-trial-over-alleged-libyan-corruption/articleshow/103075835.cms?from=mdr
16 https://www.dw.com/en/the-scandal-that-rocked-the-government-of-helmut-kohl/a-5137950
17 https://ecfr.eu/article/germanys-corruption-scandals-how-to-limit-authoritarian-influence-in-the-eu/

the case of Luis Bárcenas, a former PP treasurer who was linked to secret cash contributions and donations made by businesspersons, and alleged bonus payments to top party officials. The Audiencia Nacional found Bárcenas guilty of evading more than €11.5 million in taxes, and of taking €1.24 million in bribes from figures who were introduced to him by Correa. Bárcenas will have to serve 33 years in prison and pay a fine of more than €44 million"[18]

52. In Brazil, a major anticorruption investigation codenamed Lava Jato (Car wash) found that the Brazilian state owned company Petrobras was acting as a channel for routing black money to political parties through secret slush funds. Three major political parties were embroiled in the investigation and the then President of Brazil was sentenced to imprisonment19 as were nearly 280 politicians, with amn amount of USD 800 million being recovered in the course of the investigation. The investigation ended in 2021, and attempts to reform the electoral laws in Brazil are still ongoing

53. Morten Messerschmidt and the Danish People's Party were found to have misappropriated EU funds. He spent EU funds on Danish People's Party (DF) summer camps in 2014 and 2015, even though the money, about €26,000, was meant to be spent on events related to his now-defunct pan-European party, the Movement for a Europe of Liberties and Democracy (MELD).A subsequent investigation by the European Parliament resulted in Messerschmidt being told to repay around €400,000 of EU funds. In contravention of rules governing the funding of European political parties, EU funds had been spent on political campaigning as well as a golden parachute worth €170,000 for a MELD consultant, the Parliament investigation found. Another €16,000 of EU funds had been spent on renting a schooner for a Danish People's Party's summer cruise in 2013.

54. Canada-The ;In and Out; scandal was a Canadian political scandal involving improper election spending on the part of the Conservative Party of Canada during the closely contested 2006 federal election. Parliamentary hearings into the issue led to a deadlocking of various committees, and then to the snap election in 2008. On 6 March 2012, charges were dropped as part of a plea deal in which the Conservative Party of Canada and its fundraising arm pleaded guilty to exceeding election spending limits and submitting fraudulent election records, and agreed to repay $230,198.00 for its role in violating Canadian election spending laws.

On 30 April 2019, it surfaced that SNC-Lavalin made illegal donations to the federal Liberal Party for a period of 5 years ending in 2009. The Liberals received the

[18] https://www.transparency.org/en/news/after-guertel-what-next-for-spains-struggle-with-political-corruption
[19] Pinotti, MC, Lava Jato, Mani Pulite, and the Role of Institutions, Retrieved From: file:///C:/Users/gaura/Downloads/9781484339749-ch020%20(1).pdf

information in 2016 and did not make it public for 3 years. Employees made contributions totalling over $110,000 to the party which were later reimbursed by the company, actions which were prohibited. For this executive was charged and a compliance agreement was signed with the company to not break the rules again in the future.

Judicial notice of the problem of political donations in India

55. It is submitted that his Hon'ble Court in a plethora of judgements has held that the right to free and fair elections is an essential component of democracy. Reference is made to the decision of this Hon'ble Court in ***People's Union for Civil Liberties & Anr. v. Union of India & Anr.*, (2009) 3 SCC 300**, wherein it was held that:

> "1. Democracy is a part of the basic structure of our Constitution and rule of law and free and fair election are basic features of democracy. Democracy postulates that there should be periodical elections so that people may be in a position either to re-elect the same representatives or choose new representatives. Democracy also contemplates that elections should be free and fair and the voters should be in a position to vote for the candidates of their choice. The pre-requisite of this is that the elections are not rigged and manipulated and the candidates or their agents are not able to resort to unfair means and malpractices.
>
> 15. … In last five decades, the Courts of this country have repeatedly held that democracy is one of the basic features of the Constitution and free and fair election based on universal adult suffrage is an essential component of democracy."

56. It is submitted that historically, India has witnessed widespread corruption in the process of election, wherein, specifically, election donations has remained an opaque and black money driven exercise, lacking accountability and transparency in its operation. It is submitted that use of huge amount of black money during elections was taken note of and concerns were expressed by the Election Commission of India (ECI) in the 2012 White Paper on Black Money wherein it was also observed that cash has always been a facilitator of black money since transactions made in cash do not leave any audit trails.

57. It is submitted that mindful of the existence of a cash driven and corrupt source of election donations, this Hon'ble court in the case of ***Dr. P. Nalla Thampy Terah v. Union of India & Ors.* [1985 Suppl. SCC 189]**, whilst dealing with the validity of Section 77(1) of the Representation of People's Act, referred to report of the Santhanam Committee on Prevention of Corruption, and held (Para 10):

> "The public belief in the prevalence of corruption at high political levels has been strengthened by the manner in which funds are collected by political parties, especially at the time of elections. **Such suspicions attach not only to the ruling party but to all parties, as often the opposition can also support private vested interests as well as members of the Government party. It is, therefore, essential that the conduct of political**

> **parties should be regulated in this matter by strict principles in relation to collection of funds and electioneering.** It has to be frankly recognized that political parties cannot be run and elections cannot be fought without large funds. But these funds should come openly from the supporters of sympathizers of the parties concerned." (Emphasis Supplied)

58. It is submitted that in this regard, reference is also made to the observations made by the Committee on State Funding of Elections headed by Shri Indrajit Gupta as its Chairman, which submitted its report in 1998. In the concluding portion, it summarised it's observations as under:

> "**CONCLUSION:**
> 1. Before concluding, the Committee cannot help expressing its considered view that its recommendations being limited in nature and confined to only one of the aspects of the electoral reforms may bring about only some cosmetic changes in the electoral sphere. **What is needed, however, is an immediate overhauling of the electoral process whereby elections are freed from evil influence of all vitiating factors, particularly, criminalisation of politics. It goes without saying that money power and muscle power go together to vitiate the electoral process and it is their combined effect which is sullying the purity of electoral contests and effecting free and fair elections.** Meaningful electoral reforms in other spheres of electoral activity are also urgently needed if the present recommendations of the committee are to serve intended useful purpose." (Emphasis Supplied)

59. That this Hon'ble Court has also recognised the need for electoral reform and the emergent need to change the unregulated donations to political parties by way of donations which infuse black money and unaccounted money in the elections process. In the matter of ***People's Union for Civil Liberties (PUCL) & Anr. v. Union of India & Anr.*** **(2003) 4 SCC 399**, 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 governance in the country. The sources of some of the election funds are believed to be unaccounted criminal money in return for 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."

THE FUNDAMENTAL FEATURES OF THE ELECTORAL BOND POLICY

60. In the light of the above, a need was felt to introduce a major electoral reform by introducing Electoral Bonds as a transparent form of donations in the country in place of wholly unregulated and unaccounted cash donations which was the backbone if the illegal black money parallel economy in the country. It is submitted that electoral bonds ensure that the money that is being infused by way of donations/contributions is only via clean and known channels, where the source of the money can be linked back to a banking channel and the evil of black money is weeded out.

61. It is submitted that electoral bonds were introduced on 02.01.2018 to promote transparency in donations received by political parties, which can be encashed by an eligible political party only through their bank accounts with the authorised bank. The bonds do not have the name of the donor or the receiving political party and only carry a unique hidden alphanumeric serial number as an in-built security feature.

62. The then Hon'ble Finance Minister, in his speech on 01.02.2017 [**ANNEXURE B**], noted as under :

> "Transparency in Electoral Funding
>
> 164. India is the world's largest democracy. Political parties are an essential ingredient of a multi-party Parliamentary democracy. Even 70 years after Independence, the country has not been able to evolve a transparent method of funding political parties which is vital to the system of free and fair elections. An attempt was made in the past by amending the provisions of the Representation of Peoples Act, the Companies Act and the Income Tax Act to incentivise donations by individuals, partnership firms, HUFs and companies to political parties. Both the donor and the donee were granted exemption from payment of tax if the accounts were transparently maintained and returns were filed with the competent authorities. Additionally, a list of donors who contributed more than `20,000/- to any party in cash or cheque is required to be maintained. The situation has only marginally improved since these provisions were brought into force. Political parties continue to receive most of their funds through anonymous donations which are shown in cash.
>
> 165. An effort, therefore, requires to be made to cleanse the system of political funding in India. Donors have also expressed reluctance in donating by cheque or other transparent methods as it would disclose their identity and entail adverse consequences. I, therefore, propose the following scheme as an effort to cleanse the system of funding of political parties:
>
> a) In accordance with the suggestion made by the Election Commission, the maximum amount of cash donation that a political party can receive will be `2000/- from one person.
>
> b) Political parties will be entitled to receive donations by cheque or digital mode from their donors.

c) As an additional step, an amendment is being proposed to the Reserve Bank of India Act to enable the issuance of electoral bonds in accordance with a scheme that the Government of India would frame in this regard. Under this scheme, a donor could purchase bonds from authorised banks against cheque and digital payments only. They shall be redeemable only in the designated account of a registered political party. These bonds will be redeemable within the prescribed time limit from issuance of bond.

d) Every political party would have to file its return within the time prescribed in accordance with the provision of the Income-tax Act.

Needless to say that the existing exemption to the political parties from payment of income-tax would be available only subject to the fulfilment of these conditions. This reform will bring about greater transparency and accountability in political funding, while preventing future generation of black money"

63. Further, the speech of the then Hon'ble Finance Minister on 02.01.2018 [**ANNEXURE C**], notes as under:

"SHRI ARUN JAITLEY: Let me clear the misconception, if there is any, because we have gone through this debate at the time of the Finance Bill itself. This announcement was a part of the General Budget itself. I had announced in the Budget speech itself that political funding in India needs to be cleaned up. Today, the system is, and this is no secret to any political party or to the world outside, that donations coming to political parties are coming otherwise than through banking instruments. The names of the donors, quantum and the source of the money are not known.

Electoral bonds substantially Seek to cleanse that system. Any person Seeking to donate money to a political party during that specified period can buy electoral bonds from the specified branch of the State Bank of India. Those bonds can be given only to a registered political party and only such parties, so that fake parties are not registered, which secured at least one per cent vote in the last election. Those parties will have to announce one designated account, that is the Congress or the BJP or the BJD will have one account given to the Election Commission in advance. These bonds can be encashed within 15 days of purchase by the donor to the political party.

Now, the element of transparency is that the donors buy these bonds. Obviously, their balance sheets will reflect that they have bought a certain amount of bonds. Political parties will file their returns and collectively also say that this is the extent of electoral bonds that they have received. And, therefore, this will be the cleaner money coming from the donor, cleaner money coming into the hands of a political party who would have cleansed substantially the whole process.

There would be a significant amount of transparency. Today, there is nil transparency. When the cash is given, the source of the money, the donor and where it is spent is not known. Therefore, at least now it will be known. The donor will be having an account of how many bonds he has purchased. The political party will be filing returns to the Election Commission, thereby indicating the total bonds it has received and which donor gave to which political party.

It is in order to ensure that the transformation into clean money takes place smoothly and people are incentivised to give that. That is the only factor which will not be known.

So, there will be clean money, and a substantial, significant amount of transparency as against the present system of unclean money and no transparency."

64. It is submitted that a relevant extract of the Article written by Late Shri Arun Jaitley on the necessity of electoral bonds is as follows:

"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.

…

In order to make a serious effort to carry forward this reform process, I had announced in my Budget Speech for the year 2017-18 that the existing system would be substantially widened and donations of clean money could be made to political parties in several ways. A donor could enjoy a tax deduction by donating in cheque. Donors were also free to donate moneys online to political parties. A cash donation to a political party could not exceed an amount of Rs.2000/-. In addition, a scheme of electoral bonds was announced to enable clean money and substantial transparency being brought into the system of political funding.

I do believe that donations made online or through cheques remain an ideal method of donating to political parties. However, these have not become very popular in India since they involve disclosure of donor's identity. However, the electoral bond scheme, which I placed before the Parliament a few days ago, envisages total clean money and substantial transparency coming into the system of political funding. A donor can purchase electoral bonds from a specified bank only by a banking instrument. He would have to disclose in his accounts the amount of political bonds that he has purchased. The life of the bond would be only 15 days. A bond can only be encashed in a pre-declared account of a political party. Every political party in its returns will have to disclose the amount of donations it has received through electoral bonds to the Election Commission. The entire transactions would be through banking instruments. As against a total non-transparency in the present system of cash donations where the donor, the donee, the quantum of donations and the nature of expenditure are all undisclosed, some element of transparency would be introduced in as much as all donors declare in their accounts the amount of bonds that they have purchased and all parties declare the quantum of bonds that they have received. How much each donor has distributed to a political party would be known only to the donor. This is necessary because once this disclosure is made, past experience has shown, donors would not find the scheme attractive and would go back to the less-desirable option of donating by cash. In fact, the choice has now to be consciously made between the existing system of substantial cash donations which involves total unclean money and is non-transparent and the new scheme which gives the option to the donors to donate through entirely a transparent method of cheque, online transaction or through electoral bonds. While all three methods involve clean money, the first two are totally transparent and the electoral bonds scheme is a substantial

improvement in transparency over the present system of no-transparency. **(Emphasis Supplied)**

65. That the salient features of the policy of Electoral Bonds are as under along with a short description of the rationale behind it:

CLAUSE OF POLICY	OBJECT BEHIND THE SAME
2. Definition.– In this Scheme, unless the context otherwise requires, — (a) "electoral bond" means a bond issued in the nature of promissory note which shall be a bearer banking instrument and shall not carry the name of the buyer or payee;	The electoral bond is the result of experiments detailed above which fail to reject the menace of unclean money coming into the electoral system. The electoral bond do not carry the name of the buyer or payee in order to protect the citizen's right to privacy to its own political affiliation and to choose to fund a political party of its own choice, without the fear of being targeted or suffering vindicative repercussion for owning such a choice. It is in furtherance of the State's positive obligation to safeguard the privacy of its citizens, which necessarily includes, the citizens' right to informational privacy, including the right to secure the political affiliation of its citizens.
(b) "authorised bank" means the State Bank of India authorised to issue and encash the bonds in the branches specified in Annexure I to this notification;	1. State Bank of India is the largest public sector bank of the country having presence throughout the nation. 2. There is a specific non exclusion of other banks, private sector banks or cooperative banks with a view to ensure protection of citizens data which is the heart and soul of incentivizing the use of legitimate and legal banking channel for political donations. 3. It is only if one particular bank operates the scheme that it would be possible to comply with the direction of the court, as and when made under clause 7(4) of the Scheme dated 02.01.2018.
(c) "issuing branch" means a designated branch of the authorised bank specified in Annexure I for issuing electoral bonds;	This is to ensure that only the designated branches are involved in this transaction. Involvement of any other bank or any other branch may have the potential of some electoral bonds being encashed while escaping the notice of law.

CLAUSE OF POLICY	OBJECT BEHIND THE SAME
(d) "person" includes- (i) an individual; (ii) a Hindu undivided family; (iii) a company; (iv) a firm; (v) an association of persons or a body of individuals, whether incorporated or not; (vi) every artificial juridical person, not falling within any of the preceding sub-clauses; and (vii) any agency, office or branch owned or controlled by such person.	The word "person" is defined to lay down the beneficiaries of the scheme, who are eligible under the same to seek issuance of bonds. Any person other than the one's referred to under this scheme are therefore explicitly excluded from the purport of the scheme. The petitioner is creating a false of prejudice by suggesting that only companies donate funds to political parties.
3. Eligibility for purchase and encashment of electoral bond.- (1) The Bond under this Scheme may be purchased by a person, who is a citizen of India or incorporated or established in India. (2) A person being an individual can buy bonds, either singly or jointly with other individuals. (3) Only the political parties registered under section 29A of the Representation of the People Act, 1951 (43 of 1951) and secured not less than one per cent of the votes polled in the last general election to the House of the People or the Legislative Assembly, as the case may be, shall be eligible to receive the bond. (4) The bond shall be encashed by an eligible political party only through a bank account with the authorised bank.	- Clause 3(1) ensures that only citizens of India or companies incorporated in India only can utilise the policy and therefore, on the very face of it, acts as a explicit bar on receiving foreign funding. Clause 3 (2) provides that either individuals or a group of eligible persons are permitted to purchase the electoral bond in the denominations specified. This is done so as to ensure that even if an individual is incapable of buying an electoral bond at the minimum denomination, then he/she may purchase the same, jointly with other individuals, subject of course to them all complying with the KYC requirements. - Para 3(3) of the Electoral Bond Scheme, 2018 imposes a pre-condition that only a registered political party which had secured at least 1% of the votes polled in the last general election would be eligible to receive the bond. This condition is imposed to make sure that all the major political parties fall under the ambit of the Electoral Bond as those are the parties which receive hefty amounts of unaccounted donations. This provision ensures that the ghost political parties which exist on only paper solely for the purposes of tax evasion are barred from seeking/receiving any political funding. - Clause 3(4) ensures that the withdrawal of funds received via electoral bonds by a political party can be solely exercised through banking channels.

CLAUSE OF POLICY	OBJECT BEHIND THE SAME
4. Applicability of Know Your Customer Norms.- (1) The extant instructions issued by the Reserve Bank of India regarding Know Your Customer norms of a bank's customer shall apply for buyers of the bonds. (2) The authorised bank may call for any additional Know Your Customer documents, if it deems necessary.	Through Clause 4, only a person whose KYC is completed in accordance with the RBI directions as per Para 4 of the Scheme, shall be eligible to make an application. KYC was introduced in compliance of the guidelines issued by the Financial Action Task Force, the objective of which is to develop and promote an international response to combat money laundering. According to the Scheme, any person who is not KYC compliant shall not be entitled to buy the Electoral Bond and his/its application shall be rejected. In addition, the bank may call for additional KYC documents, if it deems necessary. KYC also ensures that there are no ghost / fake bank accounts which are used for the purpose.
5. Denomination – The bonds shall be issued in the denomination of ` 1000, ` 10,000, ` 1,00,000, ` 10,00,000 and `1,00,00,000.	Clause 5 provides the denomination of the bonds. This is for operational simplicity.
6. Validity of Bond.- (1) The bond shall be valid for fifteen days from the date of issue and no payment shall be made to any payee political party if the bond is deposited after expiry of the validity period. (2) The bond deposited by any political party to its account shall be credited on the same day.	In order to ensure that the bonds are not used as parallel currency, the limited time period also ensures that possibility of quid pro quo in minimised as the bond would have to be honoured within the time limit otherwise the same would expire.
7. Procedure for making application for purchase of bonds.– (1) Every buyer desirous of purchasing bond can apply with a physical or through online application in the format specified in Annexure II to this notification.	In order to ensure complete transparency and to make the process leak-proof, Para 7 of the Scheme prescribes a comprehensive Application Procedure for purchase of bonds. A physical/online application in the format A, as specified, has to be made, which shall contain all the particulars, which includes, PAN No., Applicant details, Details of identity, address in full, and the Application must

CLAUSE OF POLICY	OBJECT BEHIND THE SAME
(2) Every application shall contain particulars as per the format in Annexure-II and shall be accompanied with the specified documents. (3) On receipt of an application, the issuing branch shall issue the requisite bond, if all the requirements are fulfilled. (4) The information furnished by the buyer shall be treated confidential by the authorised bank and shall not be disclosed to any authority for any purposes, except when demanded by a competent court or upon registration of criminal case by any law enforcement agency. (5) A non-Know Your Customer compliant application or an application not meeting the requirements of the scheme shall be rejected. (6) The bond shall be issued to the buyer on non-refundable basis.	be attested by two witnesses with a declaration of the truthfulness of the contents of the Application. It must be noted that a non-KYC compliant Application or an Application that doesn't meet the requirements of the scheme shall be rejected. In order to protect the identity, privacy and personal details of the buyer, Para 7(4) provides that the information furnished by the buyer shall be treated as confidential by the authorized bank and shall not be disclosed to any authority for any purposes, except when directed by an order passed by a competent court or upon registration of criminal case by any law enforcement agency. The disclosure provision under Clause 7(4) acts as a necessary safeguard and deterrent against the misuse of the electoral bonds. For instance, allegations made by the Petitioner of routing of funds as part of a money laundering exercise in purchasing the electoral bonds is dealt with through this safeguard and any compliant made in this regard will secure disclosure and therefore consequences. This is an important balancing provision which allows disclosures only by orders of a competent court or upon registration of a criminal case by a law enforcement agency.
8. Periodicity of issue of bonds.- (1) The bonds under this Scheme shall be available for purchase by any person for a period of ten days each in the months of January, April, July and October as may be specified by the Central Government. (2) An additional period of thirty days shall be specified by the Central Government in the year of general elections to the House of People.	This is to ensure that the bonds are not used as parallel currency and are not available at all times for persons to trade. If the bonds were available for the entire years, there was a possibility of the bonds being used as bill of exchange by parties even outside the intended purpose of political donations. This further minimises possibilities of *quid pro quo* and other misuses. This clause may be read with Clause 11.

CLAUSE OF POLICY	OBJECT BEHIND THE SAME
9. Interest.—No interest shall be payable on the bond. 10. Issuing offices and commission payable.-No commission, brokerage or any other charges for issue of bond shall be payable by the buyer against purchase of the bond.	This further ensures that electoral bond do not becoming a trading instrument, which can be used as a means of making investment or parking the money in a bearer bond without any accountability.
11. Payment options.- (1) All payments for the issuance of the bond shall be accepted in Indian rupees, through demand draft or cheque or through Electronic Clearing System or direct debit to the buyer's account. (2) Where payment is made through cheque or demand draft, the same shall be drawn in favour of the issuing bank at the place of issue such bond.	To curb down the circulation of black money, Para 11 provides that all payments for the issuance of the bonds shall be made only in Indian Rupees through demand draft or cheque or through the Electronic Clearing System or direct debit to the buyers' account. No payment for the bond shall be accepted through cash and only banking channels can be used to secure the issuance of electoral bonds
12. Encashment of the bond.- (1) The bond can be encashed only by an eligible political party by depositing the same in their designated bank account. (2) The amount of bonds not encashed within the validity period of fifteen days shall be deposited by the authorised bank to the Prime Minister Relief Fund.	As stated above, Para 6 of the Scheme provides that the bond shall be valid for only a period of 15 days from the date of issue and no payment shall be made to any political party if the bond is deposited after expiry of the validity period. Para 12(2) provides that all such bonds shall be non-refundable and on expiry of the period of fifteen days, amount of the not-encashed bonds shall be deposited by the authorised bank to the Prime Minister Relief Fund.
13. Tax treatment.— The face value of the bonds shall be counted as income by way of voluntary contributions received by an eligible political party, for the purpose of exemption from Income-tax under section 13A of the Income- tax Act, 1961.	The face value of the bonds shall be counted as income by way of voluntary contributions received by an eligible political party, for the purpose of seeking exemption from Income-tax under Section 13A of the Income Tax Act, 1961.
14. Trading of bonds.—The bonds shall not be eligible for trading.	The bonds shall be non-fungible and non-tradable.

66. Further, a detailed list of response to Frequently asked Questions ("FAQs") have been prepared by State Bank of India and is available on its website in the segment pertaining to electoral bonds. Section 2, Para 5 of the FAQs provides the consequences of failure to secure 1% votes as prescribed above in the following words:

> "If the Political Party becomes de-notified before the next issuance of Electoral Bonds, then Bank will change the product code of their account to a regular Current Account code, so that Electoral Bonds cannot be deposited in the account." (Emphasis Supplied)

67. It is submitted that the Petitioners are misconceived in their understanding of the policy when they allege that the amendments and the Notification seek to create an anonymous and secretive mechanism for increasing the wealth of political parties. It is submitted that the elements of anonymity and the privacy of information are important in order to incentive and popularise the scheme in order shift the cash based economy to the regulated legal economy.

It is further submitted that that the amendments are not arbitrary and provide only limited reasonable and narrow tailored restrictions on the freedom to information regarding the identities of persons or corporations making contributions to political parties.

It is submitted that therefore, the restriction and incentives have a rational relation to the object that is sought to be achieved and in fact, if the said incentives are not provided, the object would not be achieved at as the political donations would then continue to remain outside regulatory bounds.

68. It is submitted that therefore, as far as the present problem of illegal and cash based donations of political parties is concerned, it is necessary to understand that the Legislature understand the nature of the problem best and further, that the Legislature is the best equipped to devise a solution to the same. The juristic principles of presumption of constitutionality and Legislature being the best policy judge are rooted in the same. It is submitted that the Impugned actions are a conjoint, multi-statute, multi-faceted approach to devise an initial mechanism for resolution of a long terms problem.

69. It is submitted that the Respondent does not claim to be a be-all and end-all solution to the issue. It is submitted that the issue of dubious political donations has plagued the nation and its economy for decades and cannot be resolved through an instantaneous approach. It is submitted that it requires a sustained policy effort which functions within the limitations of reality and practicality in order to achieve the desired results.

AMENDMENTS TO THE FINANCE ACT AND CONSEQUENTIAL BENEFITS

70. It is submitted that the Finance Act, 2017 was passed with the primary objective to promote transparency in political donations and to curb the ever-growing menace of deep-rooted corruption and black money circulating within the political class. Therefore, in furtherance of the same, the amendments to other legislations such as Income Tax Act, 1961, Companies Act, 2013, Foreign Contributions Regulation Act, 2010, etc. were made.

A. RESERVE BANK OF INDIA ACT, 1934

71. Section 135 of the Finance Act, 2017 amended Section 31 of the Reserve Bank of India Act, 1934 and introduced sub-section (3) which provides as follows:

> "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."

72. This sub-section empowers the Central Government to authorise any scheduled bank to issue electoral bond. At the moment, the State Bank of India through its authorised branches have been recognised as the Scheduled bank to issue electoral banks, State bank of India is the largest public sector bank in India. Authorising SBI to collect personal data and upon reviewing the KYC norms issue electoral bonds using the official banking channels, as stated hereinabove, ensures that no counterfeit bonds are circulated and the scheme is not misused.

B. INCOME TAX ACT, 1961 AND REPRESENTATION OF PEOPLE'S ACT, 1951

73. Section 137 of the Finance Act, 2017 amends Section 29C of the Representation of People Act, 1951 read as follows:

> "29C. Declaration of donation received by the political parties.—

(1) The treasurer of a political party or any other person authorised 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 of 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 authorised by the political party in this behalf before the due date for furnishing a return of its 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 authorised 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."

74. In view of the above, it becomes clear that a political party need not prepare a report in case of a donation received by way of Electoral Bond thereby promoting anonymity of donors which was not possible in the pre-Electoral Bond scenario. This amendment was made to promote the use of Electoral Bond for donation in order to enable clean money and substantial transparency being brought into the system of political donations.

75. It is submitted that Section 29C of the Representative of People Act, 1951 shall be read with the amended Section 13A of the Income Tax Act, 1961, which was amended by Section 11 of the Finance Act, 2017. Section 13A of Income Tax Act, 1961 reads as follows:

"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 Capital gains 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 1 [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 twenty 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 (2 of 1934):
Provided further that if the treasurer of such political party or any other person authorised by that political party in this behalf fails to submit a report under sub-section (3) of section 29C of the Representation of the People Act, 1951 (43 of 1951) for a financial year, no exemption under this section shall be available for that political party for such financial year:
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.
Explanation.—For the purposes of this section, "political party" means a political party registered under section 29A of the Representation of the People Act, 1951 (43 of 1951)."

76. On a bare perusal of the above stated provisions, it becomes ample clear that the intent of the legislature was clear while amending Section 13A of Income Tax Act, 1961, i.e. to facilitate the donations being made through Electoral Bond in order to curb down the donations by way of cash and other means. Clause (d) of First Proviso makes it obligatory to use 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 such other electronic mode or use of electoral bond in cases of donations of more than ₹ 2,000/-. This was done to make the law pertaining to cash donations to political parties more stringent in order to achieve the larger goal of curbing down the black money.

77. It is, therefore, pertinent that the provisions of the Representation of People Act, 1951 have to be read holistically along with the provisions of the Income Tax Act, to understand the true intent behind the said amendments.

78. It must be noted that the in order to claim deductions under Section 80GGB and 80GGC, Income Tax Act, 1961, the donor must disclose the donations made. This should be read in consonance with the amendment put in place in clause (d) of the proviso to Section 13A which prohibits cash donations beyond ₹ 2,000/-.

This means that no cash donations beyond ₹ 2,000/- shall be allowed and the donor needs to make declaration in order to claim deduction which guarantees that the donations received by the political parties shall be by way of clean money. Furthermore, the amendment makes it obligatory on the part of the political parties to furnish return of income for the previous year in accordance with Section 139(4B).

79. It is submitted that all these amendments are brought into place in order to promote the use of Electoral Bond which shall in turn ensure that the money channelised to political parties is clean and the end-goal of the donor or the political party is being achieved, rather than the facilitation of money laundering which was prevalent in the erstwhile regime governing donations of political parties. In order to do so, the income by way of donations through Electoral Bonds is exempted from Income Tax.

C. COMPANIES ACT, 2013

80. It is submitted that by virtue of Section 154 of Finance Act, 2017, Section 182 of the Companies Act, 2013 was amended as follows:

> "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.
> (2) Without prejudice to the generality of the provisions of sub-section (1),—
> (a) a donation or subscription or payment caused to be given by a company on its behalf or on its
> account to a person who, to its knowledge, is carrying on any activity which, at the time at which
> such donation or subscription or payment was given or made, can reasonably be regarded as likely toaffect public support for a political party shall also be deemed to be contribution of the amount of such donation, subscription or payment to such person for a political purpose;
> (b) the amount of expenditure incurred, directly or indirectly, by a company on an advertisement
> in any publication, being a publication in the nature of a souvenir, brochure, tract, pamphlet or the
> like, shall also be deemed,—
> (i) where such publication is by or on behalf of a political party, to be a contribution of such
> amount to such political party, and(ii) where such publication is not by or on behalf of, but for the advantage of a political party,
> to be a contribution for a political purpose.
> (~~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.~~

(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:
(4) If a company makes any contribution in contravention of the provisions of this section, the
company shall be punishable with fine which may extend to five times the amount so contributed and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months and with fine which may extend to five times the amount so contributed.
Explanation.—For the purposes of this section, —political party‖ means a political party registered under section 29A of the Representation of the People Act, 1951 (43 of 1951)."

81. It is submitted that as per Section 128(1) of the Companies Act, 2013 every company needs to prepare and keep books of accounts and financial statement for every financial year. The term Financial Statement is defined under Section 2(40) as follows:

"2. ----
(40) "financial statement" in relation to a company, includes—
(i) a balance sheet as at the end of the financial year;
(ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
(iii) cash flow statement for the financial year;
(iv) a statement of changes in equity, if applicable; and
(v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv):
Provided that the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement;"

82. It is submitted that under Section 129(1), such financial statements should give a true and fair view of the state of affairs of the company and comply with the accounting standards notified under Section 133. These financial statements are to be placed at every Annual General Meeting of the company. Further, section 137 provides that a copy of financial statement, along with all the documents duly adopted at the Annual General Meeting shall be filed with the Registrar of Companies.

83. It is submitted that it is settled law that there is a presumption of constitutionality in favour of legislative enactments. The presumption of constitutionality for legislative enactments has been a long accepted principle in our constitutional jurisprudence. Apart from the same, it has also been accepted principle of judicial approach in matter concerning constitutional validity that the Legislature understands the needs of the people and the means to tackle problems of administration or otherwise better than the judicial branch. A

Constitution Bench of this Hon'ble Court in ***Charanjit Lal Chowdhury v. Union of India*, 1950 SCC 833**, speaking through Fazl Ali, J. stated as follows:

> "58. Prima facie, the argument appears to be a plausible one, but it requires a careful examination, and, while examining it, two principles have to be borne in mind: (1) that a law may be constitutional even though it relates to a single individual, in those cases where on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself; (2) that it is the accepted doctrine of the American Courts, which I consider to be well-founded on principle, that the presumption is always in favour of the constitutionality of an enactment, and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. A clear enunciation of this latter doctrine is to be found in Middleton v. Texas Power and Light Company [248 US 152, 157] in which the relevant passage runs as follows:
>
> > **"It must be presumed that a legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based upon adequate grounds."**

Further, it has been followed in ***Ram Krishna Dalmia v. Justice S.R. Tendolkar*, AIR 1958 SC 538; *B Banerjee v. Anita Pan*, (1975) 1 SCC 166**; ***In re*, (1979) 1 SCC 380; *Mohd. Hanif Quareshi* v. *State of Bihar*, AIR 1958 SC 731; *Sanjeev Coke Manufacturing Company v. M/s. Bharat Coking Coal Limited* (1983) 1 SCC 147; *Karnataka Bank Ltd. v. State of A.P.*, (2008) 2 SCC 254.**

RATIONAL RELATION OF THE MEASURES WITH OBJECTS OF THE POLICY

84. It is submitted that in order to appreciate the rational relation of the measures undertaken through the larger policy with the objects of the policy, it is necessary to understand that the present policy is an attempt to shift from an illegal donation to political parties with a legal form of donations. In order to ensure that the person involved as stakeholders in this adopt this new regulated form of donations, it is necessary to incentivise the scheme in order to promote the adoption of the same by the parties involved. It is submitted the importance of incentivisation cannot be overstated as the policy is voluntary and cannot be forced or thrust upon the system. It is submitted that unless it is incentivised, it would not be adopted by the parties involved and the previously existing cash driven unregulated illegal money political donations would continue. It is further submitted that coercion in that scenario as a matter of policy would not yield result as the same would further promote parties involved adopting other untraceable and illegal means of donations.

85. It is submitted that the Impugned Scheme envisages building a transparent system of acquiring bonds with validated KYC and an audit trail. Besides, a limited window and a very short maturity period shall make any misuse improbable. Donors who buy these bonds, their balance sheet will reflect such donations made. The electoral bonds will prompt donors to

take the banking route to donate, with their identity captured by the issuing authority. This will ensure transparency, accountability and a big step towards electoral reform.

86. It is submitted that the electoral bond, which will be a bearer instrument, will not carry the name of the payee and can be bought for any value, in multiples of ₹ 1,000, ₹ 10,000, ₹ 1,00,000, ₹ 10,00,000 or ₹ 1,00,00,000. These bonds with a life of only 15 days, during which it can be used for making donation only to registered political parties, can be encashed only through a designated bank account of the receiver. It will be available for purchase for 10 days each in designated months only.

87. Furthermore, the purchaser, whose name will not appear on the bonds, would have to make KYC (know your customer) disclosures to the SBI. The 15 days' time has been prescribed for the bonds to ensure that they do not become a parallel currency. Further, every political party will file returns before the Election Commission of India as to how much money has come through electoral bonds, which will provide accountability. It is also submitted that the bonds cannot be bought through cash or unaccounted moneys which ensures accountability.

88. Furthermore, it is submitted that the right of the buyer to purchase bonds without having to disclose his preference of political party is in furtherance of his right to privacy, which has been recognized as a fundamental right in ***K.S. Puttaswamy v. Union of India,*** **(2017) 10 SCC 1** and reiterated in ***K.S. Puttaswamy (Aadhaar-5 J.) v. Union of India,*** **(2019) 1 SCC 1** by declaring thus:

> "109.5. Informational privacy is a facet of right to privacy: The old adage that "knowledge is power" has stark implications for the position of individual where data is ubiquitous, an all-encompassing presence. Every transaction of an individual user leaves electronic tracks without her knowledge. Individually these information silos may seem inconsequential. In aggregation, information provides a picture of the beings. The challenges which big data poses to privacy emanate from both State and non-State entities. This proposition is described in the following manner: (K.S. Puttaswamy case [K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1], SCC pp. 500-02, 509-10, 618-20 & 630-31, paras 300, 304, 328, 585-94 & 629-36)
> 300… Technology has made life fundamentally interconnected. The internet has become all-pervasive as individuals spend more and more time online each day of their lives. Individuals connect with others and use the internet as a means of communication. The internet is used to carry on business and to buy goods and services. Individuals browse the web in search of information, to send e-mails, use instant messaging services and to download movies. Online purchases have become an efficient substitute for the daily visit to the neighbouring store. Online banking has redefined relationships between bankers and customers. Online trading has created a new platform for the market in securities. Online music has refashioned the radio. Online books have opened up a new universe for the bibliophile. The old-fashioned travel agent has been rendered redundant by web portals which provide everything from restaurants to rest houses, airline tickets to art galleries, museum tickets to music shows. These are but a few of

> the reasons people access the internet each day of their lives. Yet every transaction of an individual user and every site that she visits, leaves electronic tracks generally without her knowledge. **These electronic tracks contain powerful means of information which provide knowledge of the sort of person that the user is and her interests**. Individually, these information silos may seem inconsequential. **In aggregation, they disclose the nature of the personality**: food habits, language, health, hobbies, sexual preferences, friendships, ways of dress and **political affiliation**. In aggregation, information provides a picture of the being: of things which matter and those that do not, of things to be disclosed and those best hidden.
> …
> 328. Informational privacy is a facet of the right to privacy. The dangers to privacy in an age of information can originate not only from the State but from non-State actors as well. We commend to the Union Government the need to examine and put into place a robust regime for data protection**. The creation of such a regime requires a careful and sensitive balance between individual interests and legitimate concerns of the State. The legitimate aims of the State would include for instance protecting national security, preventing and investigating crime, encouraging innovation and the spread of knowledge, and preventing the dissipation of social welfare benefits**. These are matters of policy to be considered by the Union Government while designing a carefully structured regime for the protection of the data.
> …
> 634. People change and an individual should be able to determine the path of his life and not be stuck only on a path of which he/she treaded initially. An individual should have the capacity to change his/her beliefs and evolve as a person. **Individuals should not live in fear that the views they expressed will forever be associated with them and thus refrain from expressing themselves**." (Emphasis Supplied)

89. It is submitted that it is pertinent to say that the State in order to balance the interest of the individual *vis-à-vis* the State, has notified that the information furnished by the buyer shall be treated as confidential by the authorized bank and shall not be disclosed to any authority for any purposes, except when demanded by a competent court or upon registration of criminal case by any law enforcement agency.

It is further stated that keeping the identity of the buyer of the bonds anonymous is also an extension to his right to vote via secret ballot.

90. It is submitted that Para 3(2) of the Electoral Bond Scheme, 2018 imposes a pre-condition that only a registered political party which had secured at least 1% of the votes polled in the last general election would be eligible to receive the bond. This condition is imposed to make sure that all the major political parties fall under the ambit of the Electoral Bond as those are the parties which receive hefty amounts of unaccounted donations.

91. It is submitted that in addition to the transparency and privacy, the Scheme provides for taxation benefits to the political parties as well by way of deductions and exemptions. This will facilitate the donations being made through official banking channels and making disclosures regarding the same to seek the benefit in tax emptions, as a consequence, reducing

the instances of cash donations, which will eventually keep a check on the flow of money involved in the process of election and make it a transparent process.

92. It is submitted that the Electoral Bond Scheme is in furtherance of the foundation to promote disclosure of political donations as existing in the Income Tax Act, 1961 by way of Sections 80GGB and 80GGC. These Sections provided that any donation made by any company or person to any of the political parties may be claimed as deduction provided such donation is not made by way of cash. This was done to promote the use of cheques and other means such as Electronic Clearing System or bank transfer and to curb down the impact of money laundering in the garb of making donation to political parties. It was in furtherance of the same objective that the Electoral Bonds have been introduced.

The intent behind the non-disclosure of the personal details of the donor is only to safeguard the privacy of the donor and to protect them from being targeted by political opponents, if elected.

93. It is submitted that the claim of the Petitioners that Government shall have the details of the donors, it is submitted that the Scheme categorically provides under sub-Para (4) of Para 7 that:

> "(4) The information furnished by the buyer shall be treated confidential by the authorised bank and shall not be disclosed to any authority for any purposes, except when demanded by a competent court or upon registration of criminal case by any law enforcement agency."

94. It is submitted that therefore the information provided by the donor is treated as highly confidential and cannot be shared with any person or authority, except when demanded by a "competent" court or on registration of "criminal case".

95. In the matter of ***K.S. Puttaswamy (retd.) & Anr. (Aadhar) v. Union of India & Anr.*** **(2019) 1 SCC 1**, this Hon'ble Court discussed the validity of Section 33 of the Aadhaar Act, 2016, which provided for disclosure of information, including identity information or authentication records, under certain circumstances.

It is submitted that while upholding Section 33, this Hon'ble Court however, added a layer of safeguard, as per which, such information may be shared only upon an Order being passed by the Judge of a High Court. The provision under sub-section (2) of Section 33, which provides for disclosure of information in the interest of national security, pursuant to the direction of an officer not below the rank of Secretary to the Government of India specially authorised in this behalf by an order of the Central Government was also upheld.

96. It is submitted that therefore, the Electoral Bond Scheme, also mandates that the information collected by the Donor shall remain confidential and not be shared with anyone

except when demanded by a "competent" court or on registration of "criminal case. Such collection of information or disclosure of information cannot be termed as being violative of the right to privacy.

Any submission made by the Petitioner that such information shall be misused by the Government is based on conjectures and surmises, and therefore, the same does not hold water and is liable to be dismissed.

97. It is submitted that the procedure prescribed under Para 7 of the Scheme for making application for purchase of bonds is very strict. It provides that only a person whose KYC is completed in accordance with the RBI directions as per Para 4 of the Scheme, shall be eligible to make an application. KYC was introduced in compliance of the guidelines issued by the Financial Action Task Force, the objective of which is to develop and promote an international response to combat money laundering. According to the Scheme, any person who is not KYC compliant shall not be entitled to buy the Electoral Bond and his/its application shall be rejected. In addition, the bank may call for additional KYC documents, if it deems necessary. Para 7 of the Scheme prescribes an elaborate procedure for making an application for the purchase of Electoral Bonds as follows:

> "(1) Every buyer desirous of purchasing bond can apply with a physical or through online application in the format specified in **Annexure II** to this notification.
> (2) Every application shall contain particulars as per the format in **Annexure-II** and shall be accompanied with the specified documents.
> (3) On receipt of an application, the issuing branch shall issue the requisite bond, if all the requirements are fulfilled.
> (4) The information furnished by the buyer shall be treated confidential by the authorised bank and shall not be disclosed to any authority for any purposes, except when demanded by a competent court or upon registration of criminal case by any law enforcement agency.
> (5) A non-Know Your Customer compliant application or an application not meeting the requirements of the scheme shall be rejected.
> (6) The bond shall be issued to the buyer on non-refundable basis".
> (Emphasis Supplied)

98. From a bare perusal of the procedure, it becomes clear that only a KYC compliant person is eligible to make an online application for purchase of Electoral Bond and any application made by a non-KYC compliant person is liable to be rejected. Only an online Application can be made in order to avoid any human interference to keep the information provided by the applicant, safe and secure.

99. Furthermore, Section 1, Paras 9 and 10 of the FAQs clearly provides for an exhaustive list of documents which are required for KYC compliance which is reproduced hereinbelow:

> "**9) What are the KYC documents required for Individuals?**

Aadhaar with current address & Permanent Account Number (PAN) or Form No. 60 as defined in Income-Tax Rules, 1962.

- In case Aadhaar Number is not available with the customer, he/she shall furnish proof of application of enrolment for Aadhaar.
- In case PAN is not available and/or Aadhaar does not have current address, one certified copy of any one from following five Officially Valid Documents (OVDs) to be submitted:

(i) Passport,
(ii) Driving License,
(iii) Voter's Identity Card issued by Election Commission of India,
(iv) Job Card issued by NREGA duly signed by an officer of the State Govt.
(v)The letter issued by the National Population Register containing details of Name and Address.

Further, if the abovementioned OVD also does not contain current address, the Purchaser has to provide any one document from the undernoted list of deemed OVDs.
(i) Utility Bill which is not more than two months old of any service provider (electricity, telephone, post-paid mobile phone, piped gas, water bill);
(ii) Property or Municipal Tax Receipt;
(iii) Pension or Family Pension Payment Orders (PPOs) issued to retired employees by Government Departments or Public Sector Undertakings, if they contain the address;
(iv) Letter of Allotment of accommodation from Employer issued by State Government or Central Government Departments, Statutory or Regulatory Bodies, Public Sector Undertakings, Scheduled Commercial Banks, Financial Institutions and Listed Companies and Leave and License Agreements with such employers allotting official accommodation.

An Individual, **who is a Non-Resident Indian, or Resident of J&K / Assam / Meghalaya or otherwise not eligible to be enrolled for an Aadhaar Number:**
PAN and one certified copy of OVD for proof of address. In case the customer submits Form 60, in place of PAN, one certified copy of an OVD containing details of his identity of address, and one recent photograph shall also be provided.

10) What are the applicable Officially Valid Documents (OVDs)?
i. Passport,
ii. Driving License,
iii. Voter's Identity Card issued by Election Commission of India,
iv. Job Card issued by NREGA duly signed by an officer of the State Govt
v. the letter issued by the National Population Register containing details of name, address.

11) What are the KYC documents required for Companies?
(i) Certificate of Incorporation;
(ii) Memorandum and Articles of Association;
(iii) A Resolution from the Board of Directors and Power of Attorney granted to its managers, officers or employees to transact on its behalf;
(iv) PAN of the Company; and

(v) (a) Aadhaar Number and (b) PAN or Form 60 as defined in the Income-Tax Rules, 1962, issued to managers, officers or employees holding an Attorney to transact on the Company's behalf.
(vi) Declaration of Beneficial Ownership on Specified Format
(vii) Self attested KYC documents and photograph of each Beneficial Owner.

12) What are the KYC documents required for Partnership Firm?
(i) Registration Certificate;
(ii) Partnership Deed;
(iii) PAN of the Partnership Firm;
(iv) (a) Aadhaar Number and (b) Permanent Account Number or Form 60 as defined in the Income-Tax Rules, 1962, issued to the person holding an Attorney to transact on its behalf.
(v) Declaration of Beneficial Ownership on Specified Format
(vi) Self attested KYC documents and photograph of each Beneficial Owner.

13) What are the KYC documents required for Trust?
(i) Registration Certificate
(ii) Trust Deed
(iii) PAN of the Trust
(iv) (a) Aadhaar Number and (b) Permanent Account Number or Form 60 as defined in the Income-Tax Rules, 1962, issued to the person holding an Attorney to transact on its behalf.
(v) Declaration of Beneficial Ownership on Specified Format
(vi) Self attested KYC documents and photograph of each Beneficial Owner.

14) What are the KYC documents required for Unincorporated Association or a Body of Individuals?
(i) Resolution of the Managing Body of such Association or Body of Individuals;
(ii) Power of Attorney granted to him/her to transact on its behalf;
(iii) PAN of the unincorporated Association or a Body of Individuals
(iv) (a)Aadhaar Number and (b) Permanent Account Number or Form 60 as defined in the Income-Tax Rules, 1962, issued to the person holding an Attorney to transact on its behalf.
(v) Declaration of Beneficial Ownership on Specified Format
(vi) Self attested KYC documents and photograph of each Beneficial Owner.

100. It is submitted that the FAQs issued by the SBI specifies that *"The extant instructions issued by the Reserve Bank of India regarding Know Your Customer norms of a Bank's customer shall apply for all Applicants of the Electoral Bonds."* Further, the SBI has been given power to call for additional documents, if deemed necessary.

101. It is submitted that the FAQs issued by the SBI prescribes the complete procedure to purchase Electoral Bond under Section 1 Para 20 which is reproduced hereinbelow:

> "Purchaser not maintaining account with State Bank of India can purchase Electoral Bond through
> a. Cheque / DD drawn in favour of the Authorized SBI Branch and payable at the local Clearing House.

Steps involved:

i. Purchaser submits the Electoral Bond Application Form along with pay-inslip, Citizenship & KYC documents and Cheque/ DD at Authorized SBI Branch. The same need to be submitted at least three working days before the closure of the scheme, so that clear funds for issuance of Electoral Bonds, are available with the Authorized SBI Branch. In case of payment through DD, a Performa from the DD issuance Branch on the prescribed format should also be provided.

ii. The Cheque/ DD should be in favour of "SBI TB A/c"

iii. Once the Citizenship and KYC documents are verified the instrument will be sent in clearing. Tear off portion of pay-in-slip will be handed over to the Applicant.

iv. On the third working day the Purchaser/ Authorised Representative need to visit the Branch with the tear off portion of pay-in-slip and collect the EB from the Branch against acknowledgment.

b. Remittance of Funds through NEFT/RTGS after generating Virtual Account Number on the pre-login screen of Online SBI site (www.onlinesbi.com)

Steps involved :

i. Purchaser visits pre-login page (home page) of Online Banking site of State Bank of India and selects Remittance Tab of Electoral Bond.

ii. He / she keys in his/her Mobile Number. He / she selects the Branch from where he/she proposes to take delivery of Electoral Bond. He / she also keys in the amount in multiples of 1000.

iii. System generates an OTP that he/she needs to validate to move to next screen

iv. In the next screen he/ she can take a printout of the Challan where the remittance details, i.e., Virtual Account Number, IFSC Code, Name of the Account, Amount and Beneficiary Reference Number is printed. Based on these information, funds can be remitted to SBI.

v. Purchaser visits his/her Bank Branch and requests for remittance of funds through NEFT/RTGS. The same can also be done through any Bank internet banking with the details provided in the challan.

vi. Purchaser must note down the EB Reference Number carefully for future use.

vii. Once the funds are remitted successfully, SBI receives the same within 3 hours (based on NEFT Cycle).

viii. After three hours of remittance of funds, purchaser again visits the prelogin site of OnlineSbi for generation of Payment Receipt which contains the Unique Reference Number required for issuance of EB.

ix. Purchaser keys in his / her validated Mobile Number given at the time of generation of challan and TB Reference Number on the site.

x. He / she receives the OTP and after successful validation he /she can print the receipt.

xi. Purchaser visits the Authorized SBI Branch with Electoral Bond Application Form along with pay-in-slip, Citizenship & KYC documents, printout of the Remittance Receipt, UTR Number along with date of payment and any other document evidencing payment made by him/ her from his/ her account for this purpose.

xii. After the Citizenship / KYC documents, source of Funds are verified, Electoral Bond will be issued to him / her against acknowledgment."

Further, under the Scheme, it is provided that other banks cheques can also be accepted for issuance of Electoral Bonds. However, to make the whole procedure time-bound, it is clarified that *"Clearing cheque should be deposited in Designated SBI Branches at least 3 working days before closure of Electoral Bond sale period."*

102. It is submitted that in case the Applicant is desirous of making payment through online/electronic mode, the procedure prescribed under Section 1 Para 47 of the FAQs must be followed. It provides as under:

"**47) What are the steps to be followed in case I am remitting funds through SBI INB?**
Purchaser can initiate purchase of Electoral Bonds from https://www.onlinesbi.com/ by selecting the Electoral Bonds tab. This tab will only be active during the notified Sale Period of Electoral Bonds.

Purchaser will select the State/UT and the Branch (within that State/UT) from where he / she wants to purchase the Electoral Bond.

Purchaser will input the amount of purchase (in multiples of 1000).

Purchaser must enter a valid 10-digit mobile number on which he/she will receive an OTP that must be entered to proceed further. This mobile number will be used to provide any further information to the Purchaser and also to retrieve the payment receipt later.

On submission of the OTP, customer will be redirected to the payments screen where two options will be available to make the payment: (i) SBI Internet Banking (ii) RTGS/NEFT (Other Bank).

On selection of SBI Internet Banking:
(a) Customer will be redirected to the INB merchant login page, where he / she has to login using his / her SBI INB credentials.

(b) On successful transaction, two reference numbers will be generated viz.
i. 10 digit TB reference No.
ii. INB Reference No.
Both the reference numbers will be sent to customer's registered Mobile No. with SBI INB. Customer is required to note down both the reference numbers for future use.

(c) Receipt printing option will appear to the customer. This Payment Receipt will contain the following fields (i) Date of Electronic Payment (ii) INB Reference Number (iii) Amount (iv) Selected Branch code.

(d) Purchaser must print a copy of electronic payment receipt from the tab named "Print/Reprint Receipt". Customer will be prompted to enter the following fields (i) Mobile No. used in the application page and (ii) TB Reference No. On submission, INB system will validate Mobile No. with TB Reference No. on validation he/she will be able to generate/reprint the receipt.

(e) For collection of Physical Electoral Bond Purchaser should present the Payment Receipt, Application Form, KYC Documents, Citizenship Documents, Pay-in-Slip and copy of Bank Account Statement evidencing payment made for purchase of Electoral Bond."

103. It is submitted that the FAQs further clarifies that only in certain situations as mentioned hereinbelow, the Electoral Bond money will be refunded:

"Before the issuance of Electoral Bond money can be refunded to the applicant if

- Applicant/ Remitter is unable to fulfill KYC guidelines
- Applicant/ Remitter could not reach Designated SBI Branch within the sale period time for collection.
- Clear funds not received before the closure of Electoral Bond sale period."

104. It is submitted that the Scheme further prescribes that only a person, who is a Citizen of India or incorporated or established in India is eligible to make an application for purchase of electoral bonds. The FAQs prescribes the exhaustive list of persons who are eligible to purchase electoral bonds, which is reproduced hereinbelow:

"**4) Who can purchase Electoral Bonds? Who is eligible to donate through Electoral Bonds?**

The Electoral Bonds under this Scheme may be purchased by a Person, who is a Citizen of India or Incorporated or Established in India.

The definition of "Person" includes-
(i) an Individual;
(ii) a Hindu Undivided Family;
(iii) a Company;
(iv) a Firm;
(v) an Association of Persons or a Body of Individuals, whether incorporated or not;
(vi) every Artificial Juridical Person, not falling within any of the preceding subclauses; and
(vii) any Agency, Office or Branch owned or controlled by such person."

Therefore, clearly, no person other than those mentioned above can purchase the Electoral Bond, including, foreign national and foreign companies.

105. It is submitted that FAQs further clarify that in order to encash the Electoral Bonds, the political party needs to have an Account maintained with the designated SBI Branch. Section 2 Para 11 provides as under:

> "**11. If Political Party has no Account in Designated SBI Branches, Can they encash the Electoral Bond in other Account?**
> No. Electoral Bond can be encashed by eligible Political Party only through a Bank account maintained with Designated SBI Branch."

This is done to ensure that all the funds received by a political party by way of electoral bonds are streamlined into the designated bank account only.

106. It is submitted that in order to get the funds transferred, the Political Parties need to fill the redemption slips in accordance with the guidelines as prescribed under Section 2 Paras 14 & 15 FAQ as under:

> "**14. How the Electoral Bond Funds are transferred to Political Parties?**
>
> Political Parties need to fill up the Redemption Slip and deposit the same along with Electoral Bonds for redemption only in the presently 29 Authorized SBI Branches within the stipulated period of Fifteen Calendar Days from the date of issuance of the Electoral Bond.
>
> **15. What is Electoral Bond Redemption Slip?**
> Redemption Slip is the mandatory document which has to be filled up and attached with Electoral Bonds at the time of Redemption by Political Parties which will be available in all the presently 29 Authorized SBI Branches."

Further, no cash payment is permitted for Electoral Bonds under any circumstances.

107. It is submitted that the financial statement of the companies registered under the Companies Act which are filed with the Registrar of Companies, are accessible online on the website of the Ministry of Corporate Affairs for anyone. These financial statements can also be easily 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 the encashment of bonds, happening only through banking channels, is always reflected through documents that eventually come to the public domain.

108. It is submitted that by virtue of the amendment made by Section 154 of Finance Act, 2017, sub-section (3) was amended, and sub-section (3A) was added. Section 182 now makes it mandatory to give the details of total amount contributed towards political donations. For the 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.

109. Further, sub-section (3A) makes it mandatory for the companies to make any political donations only by way of "payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account" or by way of Electoral Bond. Resultantly, no cash donations can be made by companies thereby stifling the rotation of black-money, which formed a huge part of political donations.

110. Therefore, what is pertinent to note is that the political party is bound to make the disclosure under Section 139(4B) of the Income Tax Act and the company has to make the disclosure in its profit and loss account in order to claim deductions under Section 80 (GGC) of the Income Tax Act. The only non-disclosure is the information provided by the company in relation to the beneficiary of the said electoral bonds. The political party, in a given situation, in any event, may or may not be aware about the identity of the person who has purchased the electoral bond, as the bond, in itself, does not carry the name or any personal details of the donor and access to such information, as stated hereinabove, is confidential in nature as provided under Para 7(4).

111. It is submitted that after the introduction of the Scheme, a large amount of political donations has been received by all political parties in the country through Electoral Bonds and the donations in cash have reduced substantially.

112. It is submitted that prior to the introduction of Electoral Bonds, the major portion of income of political parties from unknown sources, came through Voluntary Contributions. It must be noted that these voluntary contributions were made in cash. As per the analysis report of Association for Democratic Reforms, out of the total income of ₹ 710.80 crore received from Unknown Sources in the Financial Year 2016-17, i.e., the immediately preceding year from the introduction of Electoral Bonds, ₹ 580.52 crore (81.671%) was received by the Political Parties from Voluntary Contributions. The amount of voluntary contribution received in cash was neither taxable nor regulated, which allowed black money circulation in the economy thereby giving plethora of opportunities for money laundering. Furthermore, as such money remains unaccountable, one cannot be sure if the amount disclosed as being received in voluntary contributions was an accurate account of the moneys received.

113. It is submitted that with the amendments made by the Finance Act, 2017 and subsequent introduction of Electoral Bonds Scheme, such voluntary contributions have drastically reduced. As per the said Report, out of the total income of ₹ 690.67 crore received

from Unknown Sources in the Financial Year, ₹ 325.06 Crore (47.06%) was received by way of Electoral Bonds while the Voluntary Contributions were drastically reduced to 179.614 Crore (26.01%). At this juncture, it is important to mention here that most of the voluntary contributions were made by the Corporate/Business Houses which is evident from the 2016 Report *(supra)* that clearly shows "Sector-wise share of donations received by National Parties: FY 2016-17". According to the report, 95.56% of the donors were Corporate/Business House. Previously, such voluntary contributions were majorly made in cash with the insertion of sub-section 3A to Section 182 of Companies Act, 2013, no company is allowed to donate to political parties, except in accordance with the modes prescribed thereunder. Therefore, even if the electoral bonds may not entirely eliminate cash donations, by introducing incentives of seeking tax benefits through electoral bonds, and limiting the cash donating to Rs. 2000, the scheme in question has successfully resulted in drastic reduction of elections being driven by black money and resultantly introduced transparency and reduced corruption in political donations in the country.

114. It is submitted that to minimise the cash contributions, amendments have been made to Income Tax Act, 1961, Companies Act, 2013, Representation of People Act, 1951, Reserve Bank of India Act, 1934, which eventually results in overall transparency in political donations. In consonance with the larger objective to curb down the flow of black money into elections, and to incentivize disclosures, amendments were incorporated to make Electoral Bonds exempt from tax.

115. It is submitted that the Petitioner in the instant case, on the basis of conjectures and surmises, appears to claim that the Impugned policy may be prone to misuse [even though the same is unsubstantiated from the record]. It is submitted that in matter concerning economic policy, considering the wide latitude available to the Legislature, the possibility of abuse / misuse of a law would not be a relevant consideration while considering the constitutionality of a provision. Further, the possibility of misuse is also to be adjudged in context of pre-existing situation.

116. It is submitted that further, in this regard, the observations of this Hon'ble Court in ***Commr., H.R.E.* v. *Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, 1954 SCR 1005**, may also be noted :

> **"26.** Section 20 of the Act describes the powers of the Commissioner in respect to religious endowments and they include power to pass any orders that may be deemed necessary to ensure that such endowments are properly administered and that their income is duly appropriated for the purposes for which they were founded. Having regard to the fact that the Mathadhipati occupies the position of a trustee with regard to the Math, which is a public institution, some amount of control or supervision over the due administration of the endowments and due appropriation of their funds is

> certainly necessary in the interest of the public and we do not think that the provision of this section by itself offends any fundamental right of the Mahant. We do not agree with the High Court that the result of this provision would be to reduce the Mahant to the position of a servant. No doubt the Commissioner is invested with powers to pass orders, but orders can be passed only for the purposes specified in the section and not for interference with the rights of the Mahant as are sanctioned by usage or for lowering his position as the spiritual head of the institution. **The saving provision contained in Section 91 of the Act makes the position quite clear. An apprehension that the powers conferred by this section may be abused in individual cases does not make the provision itself bad or invalid in law.**"

117. Similarly in ***Collector of Customs* v. *Nathella Sampathu Chetty*, 1962 SCC OnLine SC 30**, this Court observed that "*The possibility of abuse of a statute otherwise valid does not impart to it any element of invalidity.*" Further, it was said in ***State of Rajasthan* v. *Union of India*, (1977) 3 SCC 592** that "*it must be remembered that merely because power may sometimes be abused, it is no ground for denying the existence of power. The wisdom of man has not yet been able to conceive of a government with power sufficient to answer all its legitimate needs and at the same time incapable of mischief*".

118. It is submitted that to the same effect are the observations by Khanna, J. in ***Kesavananda Bharati* v. *State of Kerala*, (1973) 4 SCC 225**, noted as under :

> "In exercising the power of judicial review, the Courts cannot be oblivious of the practical needs of the government. The door has to be left open for trial and error. Constitutional law like other mortal contrivances has to take some chances. Opportunity must be allowed for vindicating reasonable belief by experience."

To the same effect are the observations in ***T.N. Education Deptt. Ministerial and General Subordinate Services Assn.* v. *State of T.N.*, (1980) 3 SCC 97**.

119. It is submitted that this Hon'ble Court, in the landmark judgment in ***Mafatlal Industries Ltd. v. Union of India*, (1997) 5 SCC 536**, also held that mere possibility of abuse of a provision by those in charge of administering it cannot be a ground for holding the provision procedurally or substantively unreasonable.

120. It is submitted that further, it is settled law the mere generality of power cannot be ground for ruling on the vires of a particular provision. It is submitted that this Hon'ble Court, has on numerous occasions, upheld provisions containing powers in general nature on the touchstone of presumption of constitutionality. It is submitted that this Hon'ble Court in ***Municipal Committee v. State of Punjab*, (1969) 1 SCC 475**, held as under :

> "**7.** We are unable to accept the argument that since the High Court of Punjab by their judgment in Mohinder Singh Sawhney case struck down the Act, Act 6 of 1968 had ceased to have any existence in law, and that in any event, assuming that, the judgment of the Punjab High Court in Mohinder Singh Sawhney case did not make the Act non-existent, as between the parties in whose favour the order was passed in the earlier

writ petition, the order operated as res judicata, and on that account the Act could not be enforced without re-enactment. The High Court of Punjab in Mohinder Singh Sawhney case observed at p. 396:

> "...in our opinion the petitions must succeed on the ground that the legislation is vague, uncertain and ambiguous",

and also (at p. 394) that—

> "... as the infirmity of vagueness goes to the root of the matter, legislative enactment has to be struck down as a whole even if some of its provisions are unexceptionable in themselves".

121. It is submitted that, a constitution bench of this Hon'ble Court in ***A.K. Roy v. Union of India*, (1982) 1 SCC 271,** held as under :

> "61. In making these submissions counsel seem to us to have overstated their case by adopting an unrealistic attitude. It is true that the vagueness and the consequent uncertainty of a law of preventive detention bears upon the unreasonableness of that law as much as the uncertainty of a punitive law like the Penal Code does. A person cannot be deprived of his liberty by a law which is nebulous and uncertain in its definition and application. But in considering the question whether the expressions aforesaid which are used in Section 3 of the Act are of that character, we must have regard to the consideration whether the concepts embodied in those expressions are at all capable of a precise definition. The fact that some definition or the other can be formulated of an expression does not mean that the definition can necessarily give certainty to that expression. The British Parliament has defined the term 'terrorism' in Section 28 of the Act of 1973 to mean "the use of violence for political ends", which, by definition, includes "any use of violence for the purpose of putting the public or any section of the public in fear". The phrase 'political ends' is itself of an uncertain character and comprehends within its scope a variety of nebulous situations. Similarly, the definitions contained in Section 8(3) of the Jammu & Kashmir Act of 1978 themselves depend upon the meaning of concepts like "overawe the government". The formulation of definitions cannot be a panacea to the evil of vagueness and uncertainty. We do not, of course, suggest that the legislature should not attempt to define or at least to indicate the contours of expressions, by the use of which people are sought to be deprived of their liberty. The impossibility of framing a definition with mathematical precision cannot either justify the use of vague expressions or the total failure to frame any definition at all which can furnish, by its inclusiveness at least, a safe guideline for understanding the meaning of the expressions used by the legislature. But the point to note is that there are expressions which inherently comprehend such an infinite variety of situations that definitions, instead of lending to them a definite meaning, can only succeed either in robbing them of their intended amplitude or in making it necessary to frame further definitions of the terms defined. Acts prejudicial to the 'defence of India', 'security of India', 'security of the State', and 'relations of India with foreign powers' are concepts of that nature which are difficult to encase within the strait-jacket of a definition. If it is permissible to the legislature to enact laws of preventive detention, a certain amount of minimal latitude has to be conceded to it in order to make those laws effective. That we consider to be a realistic approach to the situation. An administrator acting bona fide, or a court faced with the question as to whether certain acts fall within the mischief of the aforesaid expressions used in Section 3, will be able to find an acceptable answer either way. In other words, though an expression may appear in

cold print to be vague and uncertain, it may not be difficult to apply it to life's practical realities. This process undoubtedly involves the possibility of error but then, there is hardly any area of adjudicative process which does not involve that possibility.

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67. We do not, however, propose to strike down the power given to detain persons under Section 3(2) on the ground that they are acting in any manner prejudicial to the maintenance of supplies and services essential to the community. The reason for this is that it is vitally necessary to ensure a steady flow of supplies and services which are essential to the community, and if the State has the power to detain persons on the grounds mentioned in Section 3(1) and the other grounds mentioned in Section 3(2), it must also have the power to pass orders of detention on this particular ground. What we propose to do is to hold that no person can be detained with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies and services essential to the community unless, by a law, order or notification made or published fairly in advance, the supplies and services, the maintenance of which is regarded as essential to the community and in respect of which the order of detention is proposed to be passed, are made known appropriately, to the public."

122. It is submitted that this Hon'ble Court in ***K.A. Abbas v. Union of India*, (1970) 2 SCC 780**, held as under :

"46. The real rule is that if a law is vague or appears to be so, the court must try to construe it, as far as may be, and language permitting, the construction sought to be placed on it, must be in accordance with the intention of the Legislature. Thus if the law is open to diverse construction, that construction which accords best with the intention of the Legislature and advances the purpose of legislation, is to be preferred. Where however the law admits of no such construction and the persons applying it are in a boundless sea of uncertainty and the law prima facie takes away a guaranteed freedom, the law must be held to offend the Constitution as was done in the case of the Goonda Act. This is not application of the doctrine of due process. The invalidity arises from the probability of the misuse of the law to the detriment of the individual. If possible, the Court instead of striking down the law may itself draw the line of demarcation where possible but this effort should be sparingly made and only in the clearest of cases."

123. It is submitted that the said doctrine is far too well settled in Indian constitutional law as is evident from the judgment in ***People's Union for Civil Liberties v. Union of India*, (2004) 9 SCC 580**. The relevant portion of the same is quoted as under :

"22. Another issue that the petitioners have raised at the threshold is the alleged misuse of TADA and the large number of acquittals of the accused charged under TADA. Here we would like to point out that this Court cannot go into and examine the "need" of POTA. It is a matter of policy. Once legislation is passed the Government has an obligation to exercise all available options to prevent terrorism within the bounds of the Constitution. Moreover, we would like to point out that this Court has repeatedly held that mere possibility of abuse cannot be counted as a ground for denying the vesting of powers or for declaring a statute unconstitutional. (See State of Rajasthan v. Union of India [(1977) 3 SCC 592 : (1978) 1 SCR 1] , Collector of Customs v. Nathella Sampathu Chetty [AIR 1962 SC 316 : (1962) 1 Cri LJ 364]

, Kesavananda Bharati v. State of Kerala [(1973) 4 SCC 225] and Mafatlal Industries Ltd. v. Union of India [(1997) 5 SCC 536] etc.)"

124. It is further submitted that it is settled law that the Hon'ble Courts ought to adopt a purposive interpretation while judging the validity of the statutes.

LEGITIMATE STATE INTEREST AND THE BALANCING WITH "RIGHT TO KNOW"

125. It cannot be disputed that the reduction of black money inflow into elections is a ***legitimate state aim***. This aim could be achieved only if the informal cash economy were to be converted into a digital payments-based economy. However, to convince citizens to make this transition, it was necessary to incentivise the same. The anonymity requirement of the Scheme is that incentive and it certainly has a rational relation with the goal of encouraging people to use banking channels and thereby reducing black money. As for concerns relating to "funnelling" black money, the same is dealt with by allowing investigation agencies to demand funding details in case any criminal investigation relating to the electoral bond funds is done.

The requirement of necessity is also satisfied in the present case. The old system of cash money donations was entirely opaque and the money was untreacable. An entire parallel economy based on black money had arisen, as has been pointed out earlier. In 2014 alone, 200 crores worth of cash was seized by the Election Commission[20]. Therefore, it became necessary to change the system of campaign financing. However, in making the Scheme, it was necessary to strike the correct balance between the donor right to privacy and the right to know.

126. It is submitted that in the context of triumvirate of rights under Article 14, 19 and 21, the presence of a "***legitimate state interest***" has been highlighted on numerous occasions. It is submitted that the in the present case, it is undeniable that the attempt to bring in a policy which seek to shift from cash driven, unregulated and unaccounted cash based political donations to a regulated, digital and legal political donations – is a legitimate state interest per ***K.S. Puttaswamy v. Union of India (Privacy-9 J.)*, (2017) 10 SCC 1.**

127. It is submitted that as far as the "***right to know***" is concerned, it is a right undoubtedly within the contours of Article 19(1)(a). It is further submitted that obviously the said right would have its own limitations. It is further that an aspect which the Petitioner has failed to establish that in the present case as it can only operate against information in the possession or in the knowledge of the State. The right to know or even the right to information under the

[20] Election Commission, Retrieved from: https://eci.gov.in/general-election/search-seizure-ge2014/

RTI Act [which is not in issue as of now], cannot operate for seeking information not in the knowledge or possession of the State.

128. At the moment, the Petitioner is not just seeking third party information but seeking third party information which is not even disclosed to the Government. It is submitted that right to Information and transparency cannot be pressed against non-state actors for information which is not even in the knowledge of the State. In ***Supreme Court of India v. Subhash Chandra Agarwal*, (2020) 5 SCC 481**, a constitution bench of this Hon'ble Court, in the context of Right to Information Act, held as under :

> "294. In common law countries, public interest has always been understood to operate as an interest independent to that of the State. Public interest operates equally against the State as it does against non-State actors. **This is of significance in the context of the RTI Act as the right to information seeks to bring about disclosure of information previously held exclusively by the State.** Public interest therefore operates as a standalone viewpoint independent of whether the interest of the State favours disclosure or non-disclosure. At its core, the objective test for "public interest" is far broader than democratic decision-making and takes into consideration both shared conceptions of the common good in society at any given point and yet recognises that such conceptions are always the product of contestation and disagreement, necessitating a robust set of viewpoints to facilitate the self-fulfilment of the individual and the search for truth."

129. It is submitted that the assertion of the Petitioner in this regard that because the State Bank of India in some manner may know the information therefore, by extension, the Government in power may know the information, is wholly illusionary, based on conjectures as the Scheme clearly provides at Clause 7(4) that "*The information furnished by the buyer* ***shall be treated confidential*** *by the authorised bank and* ***shall not be disclosed to any authority for any purposes***".

130. It is submitted that specifically the judgments in ***People's Union for Civil Liberties (PUCL)* [(2003) 4 SCC 399** and ***Assn. for Democratic Reforms* [(2002) 5 SCC 294]**, sought disclosure of information which was already in the knowledge and possession of the State authorities. In the present situation the confidentiality requirements operate against the State as well and therefore, the corollary disclosure requirements do not come in to play.

131. It is submitted that further the confidentiality requirements, apart from eminently being in policy interest being closely linked to the operational realties of the policy, are also in larger public interest. It is submitted that the confidentiality ensures that donations can even be made to parties not in power without there be fear of backlash or reprisals. It is submitted that further the said requirements further public interest, ensure free and fair elections and balance the right to know with competing requirements. In Hon'ble Court, in ***Supreme Court of India v. Subhash Chandra Agarwal*, (2020) 5 SCC 481**, held as under :

"84. Most jurists would accept that absolute transparency in all facets of Government is neither feasible nor desirable, [Michael Schudson, "The Right to Know v. the Need for Secrecy : The US Experience", The Conversation (May 2015) <https://theconversation.com/the-right-to-know-vs-the-need-for-secrecy-the-us-experience-40948>; Eric R. Boot, "The Feasibility of a Public Interest Defense for Whistleblowing", Law and Philosophy (2019). See generally Michael Schudson, The Rise of the Right to Know : Politics and the Culture of Transparency, 1945-1975 [Cambridge (MA) : Harvard University Press 2015].] for there are several limitations on complete disclosure of governmental information, especially in matters relating to national security, diplomatic relations, internal security or sensitive diplomatic correspondence. There is also a need to accept and trust the Government's decision-makers, which they have to also earn, when they plead that confidentiality in their meetings and exchange of views is needed to have a free flow of views on sensitive, vexatious and pestilent issues in which there can be divergent views. This is, however, not to state that there are no dangers in maintaining secrecy even on aspects that relate to national security, diplomatic relations, internal security or sensitive diplomatic correspondence. Confidentiality may have some bearing and importance in ensuring honest and fair appraisals, though it could work the other way around also and, therefore, what should be disclosed would depend on authentic enquiry relating to the public interest, that is, whether the right to access and the right to know outweighs the possible public interest in protecting privacy or outweighs the harm and injury to third parties when the information relates to such third parties or the information is confidential in nature.

H. The right to privacy and the right to know

251. The third referral question to be answered by this Court is: "Whether the information sought for is exempt under Section 8(1)(j) of the RTI Act." The question requires this Court to determine whether and under what circumstances the information sought by the applicant should be disclosed under the provisions of the RTI Act. This Court is cognizant that in interpreting the statutory scheme of the RTI Act, the constitutional right to know and the constitutional right to privacy of citizens are also implicated. In answering the question, it is necessary to analyse the scheme of the RTI Act, the role of the exemptions under Section 8, the interface between the statutory rights and duties under Section 8(1)(j) and the constitutional rights under Part III of the Constitution.

269. Parliament enacted the RTI Act in pursuance of the State's positive obligation to provide citizens with information about the functioning of Government. It is a statute to operationalise the right of citizens to access information, otherwise only held by the Government, under the "right to know" or "right to information" as protected by Article 19(1)(a). In requesting for information under the provisions of the RTI Act, a citizen engages certain statutory rights and duties under its provisions, but simultaneously also engages the "right to know" under Article 19(1)(a) of the Constitution. The "right to know" is not absolute. The RTI Act envisages certain restrictions on the "right to know" in the form of exemptions enumerated in clause (1) to Section 8. Crucially, restrictions on the disclosure of information under the RTI Act also constitute restrictions on the information applicant's "right to know" which is protected under Article 19(1)(a) of the Constitution. The constitutional permissibility of the statutory restrictions on disclosure contained within the RTI Act is not in challenge before this Court. But it is trite to state that any restrictions on the disclosure of information would necessarily need to comport

with the existing law on the protection of the "right to know" as a facet of the freedom of expression.

273. The right to privacy is a constitutional right emanating from the right to life and personal liberty in Article 21 of the Constitution and from the facets of freedom and dignity embodied in Part III of the Constitution. Any restriction on the right to privacy by the State must be provided for by law, pursue a legitimate aim of the State and satisfy the test of proportionality. The requirement of proportionality is satisfied when the nature and extent of the abridgement of the right is proportionate to the legitimate aim being pursued by the State. The constitutional protection of privacy encompasses not merely personal intimacies but also extends to decisional and informational autonomy. An individual has a constitutionally protected right to control the dissemination of personal information. The unauthorised use of information abridges a citizen's right to privacy.

274. The information disclosed under the RTI Act may include personal information relating to individuals. The RTI Act does not contain any restrictions on the end-use of the information disclosed under its provisions. The information disclosed by an Information Officer of the State pursuant to a right to information application may subsequently be widely disseminated. Clause (j) of sub-section (1) of Section 8 provides that, in certain situations, even personal information of an individual may be disclosed under the RTI Act. Where the RTI Act contemplates the disclosure of "personal information", the right to privacy of the individual is engaged. The Act recognises that the absolute or unwarranted disclosure of an individual's personal information under the RTI Act would constitute an "unwarranted invasion of the right to privacy" under the statutory provisions of the RTI Act and also abridge the individual's constitutional right to privacy. However, the RTI Act has various checks and balances to guard against the unadulterated disclosure of personal information under the RTI Act.

275. The constitutional validity of the RTI Act as a measure abridging the right to privacy is not in question before this Court. But it is trite to say that the RTI Act satisfies the test of legality (by virtue of being a legislation) and also pursues a legitimate State aim of ensuring transparency and accountability of Government and an informed electorate. By requiring the Information Officer to balance the public interest in disclosure against the privacy harm caused, clause (j) creates a legislatively mandated measure of proportionality to ensure that the harm to the individual's right to privacy is not disproportionate to the aim of securing transparency and accountability.

A balancing of interests

276. The RTI Act is a legislative enactment which contains a finely tuned balancing of interests between the privacy right of individuals whose information may be disclosed and the broader public interest in ensuring transparency, accountability and an informed electorate. Both these interests have significant implications as they engage constitutional rights under Part III. The overarching scheme of the RTI Act, and in particular Sections 3, 4 and 7 constitutes a mandate to fulfil the positive content of the "right to information" as a facet of Article 19(1)(a) of the Constitution. The privacy interest protected by clause (j) to sub-section (1) of Section 8 engages the principle of informational privacy as a facet of the constitutional privacy as recognised by this Court in K.S. Puttaswamy [K.S. Puttaswamy (Privacy-9 J.) v. Union of India, (2017) 10 SCC 1] . Neither the "right to information" as a facet of Article 19(1)(a) nor the right to

> informational privacy as a facet to the right to privacy are absolute. The rights under Article 19(1)(a) may be restricted on the grounds enumerated in clause (2) of Article 19. The right to privacy and its numerous facets may be permissibly restricted where the abridgement is provided by law, pursues a legitimate State objective and complies with the principle of proportionality.
>
> xxx
>
> Balancing interests in disclosure with privacy interests
> 306. We have adverted to the substantive content of "personal information" and "public interest" as distinct factors to be considered by the Information Officer when arriving at a determination under clause (j) of sub-section (1) of Section 8. In the present case, the information sought by the respondent raises both considerations of "public interest" and "personal information". The text of clause (j) requires the Information Officer to make a determination whether the "larger public interest justifies the disclosure" of personal information sought. The Information Officer must conduct balancing or weighing of interests in making a determination in favour of disclosure or non-disclosure. The Information Officer must be cognizant that any determination under clause (j) of sub-section (1) of Section 8 implicates the right to information and the right to privacy as constitutional rights. **Reason forms the heart of the law and the decision of the Information Officer must provide cogent and articulate reasons for the factors considered and conclusions arrived at in balancing the two interests. In answering the third referral question in its entirety, this Court would be remiss in not setting out the analytical approach to be applied by the Information Officer in balancing the interests in disclosure with the countervailing privacy interests**. S.C. Agrawal, J. speaking for a Constitution Bench of this Court in S.N. Mukherjee v. Union of India [S.N. Mukherjee v. Union of India, (1990) 4 SCC 594 : 1990 SCC (Cri) 669 : 1991 SCC (L&S) 242] observed : (SCC p. 614, para 39)
>
> > "39. The object underlying the rules of natural justice "is to prevent miscarriage of justice" and secure "fair play in action". As pointed out earlier the requirement about recording of reasons for its decision by an administrative authority exercising quasi-judicial functions achieves this object by excluding chances of arbitrariness and ensuring a degree of fairness in the process of decision-making. Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules."
> > (emphasis supplied)

132. Therefore, it is submitted that while the statutory scheme is not before the Court, even the statutory scheme clearly has public interest exceptions and requirements balancing of competing interests and rights.

133. Without prejudice, the right of a citizen to know how political parties are being funded must be balanced against the right of persons to maintain privacy of their political affiliations. It is submitted that no right can be absolute and unqualified and the right to know is no different. It is submitted that the right to know would be required to be balanced against the equally fundamental right to privacy. Political self-expression, either through voting or

donations to one's preferred party or candidate lies at the heart of the zone of privacy which the government is constitutionally obligated to respect. Therefore, any inroad into this private zone could be made only upon some compelling interest being demonstrated. The necessity of balancing these competing rights has been commented on by the Hon'ble Supreme Court in ***Supreme Court Advocates-on-Record Assn. v. Union of India,*** **(2016) 5 SCC 1** in the following words:

> **953. The balance between transparency and confidentiality is very delicate and if some sensitive information about a particular person is made public, it can have a far-reaching impact on his/her reputation and dignity.** The 99th Constitution Amendment Act and the NJAC Act have not taken note of the privacy concerns of an individual. This is important because it was submitted by the learned Attorney General that the proceedings of NJAC will be completely transparent and any one can have access to information that is available with NJAC. This is a rather sweeping generalisation which obviously does not take into account the privacy of a person who has been recommended for appointment, particularly as a Judge of the High Court or in the first instance as a Judge of the Supreme Court. **The right to know is not a fundamental right but at best it is an implicit fundamental right and it is hedged in with the implicit fundamental right to privacy that all people enjoy. The balance between the two implied fundamental rights is difficult to maintain, but the 99th Constitution Amendment Act and the NJAC Act do not even attempt to consider, let alone achieve that balance."**

134. It is submitted that in ***Supreme Court of India vs Subash Chandra Agrawal*** **(2020) 5 SCC 481,** it has been held as follows:

> **47. If one's right to know is absolute, then the same may invade another's right to privacy and breach confidentiality, and, therefore, the former right has to be harmonised with the need for personal privacy, confidentiality of information and effective governance**. The RTI Act captures this interplay of the competing rights under clause (*j*) to Section 8(1) and Section 11. While clause (*j*) to Section 8(1) refers to personal information as distinct from information relating to public activity or interest and seeks to exempt disclosure of such information, as well as such information which, if disclosed, would cause unwarranted invasion of privacy of an individual, unless public interest warrants its disclosure, Section 11 exempts the disclosure of "information or record … which relates to or has been supplied by a third party and has been treated as confidential by that third party". By differently wording and inditing the challenge that privacy and confidentiality throw to information rights, the RTI Act also recognises the interconnectedness, yet distinctiveness between the breach of confidentiality and invasion of privacy, as the former is broader than the latter, as will be noticed below.
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> 49. While previously information that could be considered personal would have been protected only if it were exchanged in a confidential relationship or considered confidential by nature, significant developments in jurisprudence since the 1990's have posited the acceptance of privacy as a separate right and something worthy of protection on its own as opposed to being protected under an actionable claim for breach of confidentiality. **A claim to protect privacy is, in a sense, a claim for the preservation of confidentiality of personal information. With progression of the right to privacy, the underlying values of the law that protects personal information came to be seen differently as the courts recognised that unlike law of confidentiality that is based upon duty of good faith, right to privacy focuses on the protection of human autonomy**

and dignity by granting the right to control the dissemination of information about one's private life and the right to the esteem and respect of other people (see Sedley, L.J. in Douglas v. Hello! Ltd. [Douglas v. Hello! Ltd., 2001 QB 967 : (2001) 2 WLR 992 (CA)]). In PJS v. News Group Newspapers Ltd. [PJS v. News Group Newspapers Ltd., (2016) 2 WLR 1253 : 2016 UKSC 26] , the Supreme Court of the United Kingdom had drawn a distinction between the right to respect private and family life or privacy and claims based upon confidentiality by observing that the law extends greater protection to privacy rights than rights in relation to confidential matters. In the former case, the claim for misuse of private information can survive even when information is in the public domain as its repetitive use itself leads to violation of the said right. The right to privacy gets the benefit of both the quantitative and the qualitative protection. The former refers to the disclosure already made and what is yet undisclosed, whereas the latter refers to the privateness of the material, invasion of which is an illegal intrusion into the right to privacy. Claim for confidentiality would generally fail when the information is in public domain. **The law of privacy is, therefore, not solely concerned with the information, but more concerned with the intrusion and violation of private rights**. Citing an instance of how publishing of defamatory material can be remedied by a trial establishing the falsity of such material and award of damages, whereas invasion of privacy cannot be similarly redressed, the Court had highlighted the reason why truth or falsity of an allegation or information may be irrelevant when it comes to invasion of privacy. Therefore, claims for protection against invasion of private and family life do not depend upon confidentiality alone. This distinction is important to understand the protection given to two different rights vide Sections 8(1)(j) and 11 of the RTI Act.

54. Privacy and confidentiality encompass a bundle of rights including the right to protect identity and anonymity. Anonymity is where an individual seeks freedom from identification, even when and despite being in a public space. In *K.S. Puttaswamy* [*K.S. Puttaswamy (Privacy-9 J.)* v. *Union of India*, (2017) 10 SCC 1] reference is made to *Matthew David Spencer* v. *R.* [*Matthew David Spencer* v. *R.*, 2014 SCC OnLine Can SC 34 : (2014) 2 SCR 212 : 2014 SCC 43] which had set out three key elements of informational privacy : privacy as secrecy, privacy as control, and privacy as anonymity, to observe : (*K.S. Puttaswamy case* [*K.S. Puttaswamy (Privacy-9 J.)* v. *Union of India*, (2017) 10 SCC 1] , SCC p. 459, para 214)

"*214.* […] 'anonymity may, depending on the totality of the circumstances, be the foundation of a privacy interest that engages constitutional protection against unreasonable search and seizure.

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[…] The disclosure of this information will often amount to the identification of a user with intimate or sensitive activities being carried out online, usually on the understanding that these activities would be anonymous. A request by a police officer that an ISP voluntarily disclose such information amounts to a search.' (*Matthew David case* [*Matthew David Spencer* v. *R.*, 2014 SCC OnLine Can SC 34 : (2014) 2 SCR 212 : 2014 SCC 43] , SCC OnLine paras 48 & 66)"

Privacy and confidentiality, therefore, include information about one's identity.

84. Most jurists would accept that absolute transparency in all facets of Government is neither feasible nor desirable, [Michael Schudson, "The Right to Know v. the Need for Secrecy : The US Experience", The Conversation (May 2015) <https://theconversation.com/the-right-to-know-vs-the-need-for-secrecy-the-us-experience-40948>; Eric R. Boot, "The Feasibility of a Public Interest Defense for

> Whistleblowing", Law and Philosophy (2019). See generally Michael Schudson, *The Rise of the Right to Know : Politics and the Culture of Transparency, 1945-1975* [Cambridge (MA) : Harvard University Press 2015].] for there are several limitations on complete disclosure of governmental information, especially in matters relating to national security, diplomatic relations, internal security or sensitive diplomatic correspondence. There is also a need to accept and trust the Government's decision-makers, which they have to also earn, when they plead that confidentiality in their meetings and exchange of views is needed to have a free flow of views on sensitive, vexatious and pestilent issues in which there can be divergent views. This is, however, not to state that there are no dangers in maintaining secrecy even on aspects that relate to national security, diplomatic relations, internal security or sensitive diplomatic correspondence. Confidentiality may have some bearing and importance in ensuring honest and fair appraisals, though it could work the other way around also and, **therefore, what should be disclosed would depend on authentic enquiry relating to the public interest, that is, whether the right to access and the right to know outweighs the possible public interest in protecting privacy or outweighs the harm and injury to third parties when the information relates to such third parties or the information is confidential in nature."**

135. It is submitted that in ***Ram Jethmalani vs Union of India*** **(2011) 8 SCC 1** it has been held:

> **"88. The revelation of details of bank accounts of individuals, without establishment of prima facie grounds to accuse them of wrongdoing, would be a violation of their rights to privacy. Details of bank accounts can be used by those who want to harass, or otherwise cause damage, to individuals. We cannot remain blind to such possibilities, and indeed experience reveals that public dissemination of banking details, or availability to unauthorised persons, has led to abuse. The mere fact that a citizen has a bank account in a bank located in a particular jurisdiction cannot be a ground for revelation of details of his or her account that the State has acquired. Innocent citizens, including those actively working towards the betterment of the society and the nation, could fall prey to the machinations of those who might wish to damage the prospects of smooth functioning of society. Whether the State itself can access details of citizens' bank accounts is a separate matter.** However, the State cannot compel citizens to reveal, or itself reveal details of their bank accounts to the public at large, either to receive benefits from the State or to facilitate investigations, and prosecutions of such individuals, unless the State itself has, through properly conducted investigations, within the four corners of constitutional permissibility, been able to establish prima facie grounds to accuse the individuals of wrongdoing. **It is only after the State has been able to arrive at a prima facie conclusion of wrongdoing, based on material evidence, would the rights of others in the nation to be informed, enter the picture. In the event citizens, other persons and entities have credible information that a wrongdoing could be associated with a bank account, it is needless to state that they have the right, and in fact the moral duty, to inform the State, and consequently the State would have the obligation to investigate the same, within the boundaries of constitutional permissibility. If the State fails to do so, the appropriate courts can always intervene."**

136. In addition to the constitutional duty of protecting privacy rights, the scheme also incentivises the use of banking channels for routing cash donations to political parties. This is a clear improvement over the pre-2018 system of direct and usually untreacable, cash

donations. The old system had encouraged the growth of a parallel economy driven by black money and this had become a major impediment in cleansing the system of illicit money. For instance, in 2014, the Election Commission had seized over 217 crores in cash, which was intended to be spent on elections.[21] The problem was not confined to cash alone and the black money economy was being used to fund an entire ecosystem of illegal freebies. For instance, the State Assembly polls of Punjab in 2017 saw seizures of drugs, alcohol and gold worth Rs 67 crore[22].

137. It is submitted that what was therefore required was a shift from a cash-based system to a digital donation system where there would be improved accountability as well as traceability for the donations made. However, in order to encourage such a shift, it was necessary to offer incentives. The anonymity requirement of the scheme must be seen in that context. In the absence of that requirement, there would be no factor to convince donors to transition from cash to digital payments and the scheme would have been stillborn. The anonymity requirement of the scheme should be seen in its true sense, as a protective feature. It is submitted that political affiliations of a citizen are required to be kept confidential in order to avoid the possibility of harassment based on political opinions. Under the present scheme, even the incumbent government is not entitled to know for instance, where a particular purchaser has bought bonds to donate to them or to the political parties in opposition. This only strengthens democracy by ensuring that a citizen can give full expression to his political choice without any fear of retaliation based on his political beliefs. In ***K.S. Puttaswamy vs Union of India*** **(2019) 1 SCC 1** it has been held:

> **"1325. Privacy and proportionality are two interlocking themes that recur consistently in the above judgments. Privacy, also construed as "informational self-determination", is a fundamental value. There is a consistent emphasis on the impact on personal dignity if private information is widely available and individuals are not able to decide upon its disclosure and use**. This right of controlling the extent of the availability and use of one's personal data is seen as a building block of data protection—especially in an environment where the state of technology facilitates ease of collection, analysis and dissemination of information."

138. It is further submitted that the jurisprudence of this Court on the right to know has primarily dealt with the right of the voter to know antecedents as against the right to privacy of the candidate. It is submitted that the balancing exercise being conducted in those cases was qualitatively different than that required in the present case because the present case

[21] Singh, S, Black Money and Elections: Who Will Bell the Cat?, The Hindu Centre for Politics and Public Policy, The Hindu, April 30, 2014, Retrieved from: https://www.thehinducentre.com/verdict/commentary/black-money-and-elections-who-will-bell-the-cat/article64936364.ece

[22] Punjab Elections 2017: Drugs, Liquor, Gold Worth 67 Crores Seized, NDTV, February 06, 2017, Retrieved from: https://www.ndtv.com/india-news/punjab-elections-2017-drugs-liquor-gold-worth-67-crores-seized-1656611

deals not with candidates but with donors. In its past judgements, the court was dealing with the information of the candidates themselves. Candidates who stand for elections by definition become public figures. As such, they must reasonably expect that their right to privacy would have to yield to the right of the public to know their antecedents. However, supporters of political parties who donate to them do not stand on the same footing as candidates of those parties. Unlike the candidates, the donors would not become public figures in and of themselves. Therefore, their threshold for breaching their right to privacy would be higher than in the case of candidates.

139. Therefore, when two rights come into an apparent conflict, it is the duty of the Government to balance them by developing an appropriate mechanism. The present is an attempt to balance the same whilst achieving the objectives of change in manner of political donations. It is submitted that the high ideal of the legitimate state interest must balance against the purported right to know – apart from the clear and obvious right to privacy of stakeholders involved.

140. It is submitted that further 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 criminal antecedents. It is submitted that the "*right to know*" that is sought to be canvassed in the present case is ***qualitatively different*** from the one mentioned in the above cases. It is submitted that further, the right to know has to be legitimately balanced with policy considerations and the expanse of the problem. Further, the right to know is also to be balanced with conflicting rights of privacy, speech and legitimate state interests connected therewith.

141. It is submitted that such an approach of balancing two conflicting rights has been recognised a legitimate method of resolving the issue between conflict of rights. Reference may be made to the judgement in ***Subramanian Swamy v. Union of India*****, (2016) 7 SCC 221:**

> **"**193. Recently, the Constitution Bench in Modern Dental College & Research Centre v. State of M.P. [Modern Dental College & Research Centre v. State of M.P., (2016) 7 SCC 353 : (2016) 4 Scale 478] , explaining the doctrine of proportionality has emphasised that when the Court is called upon to decide whether a statutory provision or a rule amounts to unreasonable restriction, the exercise that is required to be undertaken is the balancing of fundamental rights on the one hand and the restrictions imposed on the other**. The emphasis is on recognition of affirmative constitutional rights along with its limitations. Limitations, save certain interests and especially public or social interests. Social interest takes in its sweep to confer protection to rights of the others to have social harmony founded on social values. To treat a restriction constitutionally permissible it is necessary to scrutinise whether the restriction or imposition of limitation is excessive or not. The proportionality doctrine recognises balancing of**

competing rights and the said hypothesis gains validity if it subserves the purpose it is meant for.

...

194. **Needless to emphasise that when a law limits a constitutional right which many laws do, such limitation is constitutional if it is proportional. The law imposing restriction is proportional if it is meant to achieve a proper purpose, and if the measures taken to achieve such a purpose are rationally connected to the purpose, and such measures are necessary. Such limitations should not be arbitrary or of an excessive nature beyond what is required in the interest of the public. Reasonableness is judged with reference to the objective which the legislation seeks to achieve, and must not be in excess of that objective** (see P.P. Enterprises v. Union of India [P.P. Enterprises v. Union of India, (1982) 2 SCC 33 : 1982 SCC (Cri) 341]). Further, the reasonableness is examined in an objective manner from the standpoint of the interest of the general public and not from the point of view of the person upon whom the restrictions are imposed or abstract considerations (see Mohd. Hanif Quareshi v. State of Bihar [Mohd. Hanif Quareshi v. State of Bihar, AIR 1958 SC 731]). The judgment refers to and approves guidelines propounded in M.R.F. Ltd. v. State of Kerala [M.R.F. Ltd. v. State of Kerala, (1998) 8 SCC 227 : 1999 SCC (L&S) 1] for examining reasonableness of a statutory provision. In the said decision the Constitution Bench [Modern Dental College & Research Centre v. State of M.P., (2016) 7 SCC 353 : (2016) 4 Scale 478] while discussing about the doctrine of proportionality has observed : (Modern Dental College case [Modern Dental College & Research Centre v. State of M.P., (2016) 7 SCC 353 : (2016) 4 Scale 478] , SCC p. 413, paras 61-62)

...

"61. Modern theory of constitutional rights draws a fundamental distinction between the scope of the constitutional rights, and the extent of its protection. Insofar as the scope of constitutional rights is concerned, it marks the outer boundaries of the said rights and defines its contents. The extent of its protection prescribes the limitations on the exercises of the rights within its scope. In that sense, it defines the justification for limitations that can be imposed on such a right.

...

62. **It is now almost accepted that there are no absolute constitutional rights and all such rights are related. As per the analysis of Aharon Barak [Aharon Barak, Proportionality : Constitutional Rights and Their Limitation (Cambridge University Press, 2012).] , two key elements in developing the modern constitutional theory of recognising positive constitutional rights along with its limitations are the notions of democracy and the rule of law. Thus, the requirement of proportional limitations of constitutional rights by a sub-constitutional law i.e. the statute, is derived from an interpretation of the notion of democracy itself. Insofar as the Indian Constitution is concerned, democracy is treated as the basic feature of the Constitution and is specifically accorded a constitutional status that is recognised in the Preamble of the Constitution itself. It is also unerringly accepted that this notion of democracy includes human rights which is the cornerstone of Indian democracy. Once we accept the aforesaid theory (and there cannot be any denial thereof), as a fortiori, it has also to be accepted that democracy is based on a balance between constitutional rights and the public interests. In fact, such a provision in Article 19 itself on the one hand guarantees some certain freedoms in clause (1) of Article 19 and at the same time empowers the State to impose reasonable restrictions on those freedoms in public interest. This notion accepts the modern constitutional theory that the constitutional rights are related."**

142. It must be noted that the Hon'ble Supreme Court has in the past refused to stay sale of electoral bonds by rejecting arguments of anonymity, which are substantially the same as those which the petitioners are presently raising. In its order dated 26.03.2021 refusing a stay on sale of Electoral Bonds, the Supreme Court had held as follows:

> "We do not know at this stage as to how far the allegation that under the Scheme, there would be complete anonymity in the financing of political parties by corporate houses, both in India and abroad, is sustainable. If the purchase of the bonds as well as their encashment could happen only through banking channels and purchase of bonds are allowed only to customers who fulfill KYC norms, the information about the purchaser will certainly be available with the SBI which alone is authorised to issue and encash the bonds as per the Scheme. Moreover, any expenditure incurred by anyone in purchasing the bonds through banking channels, will have to be accounted as an expenditure in his books of accounts. The trial balance, cash flow statement, profit and loss account and balance sheet of companies which purchase Electoral 16 Bonds will have to necessarily reflect the amount spent by way of expenditure in the purchase of Electoral Bonds."

143. It is further submitted, that in fact the safeguards provided in the current scheme more effectively protect the right to know than the old system which existed before the scheme came into force. Prior to the scheme, Individuals and Companies could donate to political parties and simply bypass their obligation to show the donations on paper, because the same was done in cash and was generally untraceable. In that regard the scheme represents a significant, though incremental improvement. This is because the near-total opacity of the cash donation system has now been replaced by the relatively far more transparent regime of electoral bonds. This important balancing mechanism was noted by the court in the 26.03.2021 order as follows:

> "Despite the fact that the Scheme provides anonymity, the Scheme is intended to ensure that everything happens only through banking channels. While the identity of the purchaser of the bond is withheld, it is ensured that unidentified/ unidentifiable persons cannot purchase the bonds and give it to the political parties. Under clause 7 of the Scheme, buyers have to apply in the prescribed form, either physically or online disclosing the particulars specified therein. Though the information furnished by the buyer shall be treated confidential by the authorised bank and shall not be disclosed to any authority for any purposes, it is subject to one exception namely when demanded by a competent court or upon registration of criminal case by any law enforcement agency. A non-KYC compliant application or an application not meeting the requirements of the scheme shall be rejected."

144. It is submitted that the political affiliation of any person is part of the "zone of privacy" where the person concerned can claim a right against unwarranted intrusion. This principle has been well recognised in ***Puttaswamy*** **supra** wherein the *Max Planck Encylopedia of Constitutional Law* was cited with approval as stating that political affiliation among other aspects forms part of the "inner core of a person's private life".

145. It is submitted that given the sensitivity involved in expression one's political affiliation, there certainly lies a *legitimate state interest* in protecting the same and in providing reassurance to citizens that lawful expressions of such political affiliation would remain protected and the person concerned would have their privacy respected. Naturally, this duty of the state to protect the privacy of political affiliations is required to be balanced against the duty of ensuring that the right of citizens to know how political parties function. It is this balance which is sought to be achieved by the impugned scheme.

146. It is submitted that the entirety of the donations process is required to be routed through formal banking channels and in case of companies, accounts of expenditure are required to be kept which would show how much has been spent by a company on electoral bonds. In fact, in the order of the Hon'ble Supreme Court dated 12.04.2019, the details of electoral bonds had been required to be kept with the Commission. This would indicate that the involvement if an impartial and objective third party such as the Commission would go a long way toward balancing the competing claims of anonymity and transparency.

MISPLACED CLAIMS REGARDING "UNEVEN PLAYING FIELD"

147. The Petitioner seems to suggest that the principle of fairness implies that donations to all parties must be equal or near equal. Respectfully, the idea of "fairness to all parties" cannot be interpreted in this manner. "Unevenness", to use the words of the petitioner would always exist as part of the electoral landscape. Merely because one party receives substantially more support through donations than another would not by itself become a ground to challenge the validity of the Scheme. Unless some underlying illegality is shown to exist in the funding, the mere fact of unevenness where certain parties receive more funding than others cannot be used to assail the Scheme

148. The petitioner states that corporate funding under the Electoral Bond Scheme "severs the link between the voter and the representative" as the representative would act in pursuance of the interests of the donor and not the voter. It is submitted that this argument fundamentally misunderstands the nature of the Scheme.

149. It is submitted that the so called "severing of the link" which the petitioner has not occurred at all. Any donation discovered to be made in pursuance of an illegal quid pro quo would be duly investigated as per law and the anonymity requirement would have to give way in face of the criminal investigation. Furthermore, the right of the voters "to see for themselves" who is funding political parties remains even under the present scheme.

Corporate entities are required to disclose the amounts donated under the Scheme and the same can be matched against the records of funds received by political parties.

150. Furthermore, the arguments of "structural distortion" and "incumbent bias" in the scheme are entirely baseless. The SBI is under no obligation at all to disclose to the government the details of funding received by parties through electoral bonds. This information is held by the bank in its fiduciary capacity, and the bank is duty-bound to maintain its confidentiality. Therefore, to suggest that the Central Government would in some manner extract this confidential information from the SBI is an argument without any foundation in law whatsoever.

151. The petitioner claims that there is an "incumbent bias" as larger amounts of money go to the ruling party. It is submitted that whether such an "incumbent bias" exists and if it does, what its extent would be, is a question wholly irrelevant to determining the constitutionality of the scheme. It is reiterated that merely because a party is receiving larger shares of donations, that itself cannot be the ground on which the scheme is challenged. Furthermore, even assuming that such an "incumbent bias" exists, this existence is not a consequence or feature of the Scheme, rather a preexisting part of the electoral landscape. There may be a host of factors which govern the choice of an individual to donate to the incumbent, whether or not the Electoral Bonds Scheme is in place. These factors are the result of the individual judgement exercised by the donors. They cannot be attributed to the Scheme.

152. It is submitted that the Scheme does not give "greater value" to corporate donors in comparison to individuals as claimed by the petitioners. The Scheme is open to persons as well as corporations. The anonymity of individuals is protected, not just of corporations. This creates an environment where political choice can be exercised without fear of privacy violations by the State. Further it is entirely incorrect to state that the Scheme equates corporate entities with citizens of India and allows them to interfere in elections. This submission completely overlooks the fact that irrespective of the Scheme, funding by corporate entities through electoral trusts is permitted. Companies may donate with or without going through the electoral bond route. Therefore, to say that the scheme permits corporates to influence elections when in fact their ability to donate is independent of the Scheme is not correct.

SECRET BALLOT AND CONFIDENTIALITY IS CONSTITUTIONALLY PERMISSIBLE

153. It is submitted that it has been consistently recognised by this Hon'ble Court and various international covenants and constitutional courts that the concept of "secret ballot",

especially in case of direct elections, is an essential postulate of democracy. It is submitted that secret ballot enables the free and fair exercise of vote by a voter or a person and furthers his/her right to make the choice without having any fear of retaliation or victimisation by the stakeholders. It is submitted that it is for this reason, this Hon'ble Court has on numerous occasions recognised the said principle.

154. In *AMERICAN JURISPRUDENCE*, 2d, Vol. 26, p. 166, paras 347 and 348, it is stated as under:

> "As an incident of the secret ballot system and in order to preserve the purity and independence of the exercise of the elective franchise, the rule is well established that a legal and honest voter is privileged from testifying as to the candidate for whom he cast his vote . . . the privilege of a legal voter to refuse to testify for whom he cast his ballot may be waived by the voter but since the privilege is personal to the voter, it may be waived only by him."

155. It is submitted that Universal Declaration of Human Rights, through Article 21 provides as under:

> "(1) Everyone has the right to take part in the Government of his country, directly or through freely chosen representatives.
> (2) Everyone has the right of equal access to public service in his country.
> (3) The will of the people shall be the basis of the authority of Government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and **shall be held by secret vote or by equivalent free voting procedures**."

156. The International Convention on Civil and Political Rights (ICCPR), in its Article 25 provides as under:

> "Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions:
> (a) to take part in the conduct of public affairs, directly or through freely chosen representatives;
> (b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and **shall be held by secret ballot, guaranteeing the free expression of the will of the electors**;
> (c) to have access, on general terms of equality, to public service in his country."

157. In ***Arikala Narasa Reddy v. Venkata Ram Reddy Reddygari*, (2014) 5 SCC 312**, it was held as under :

> **"17. The secrecy of a ballot is to be preserved in view of the statutory provision contained in Section 94 of the Act. Secrecy of ballot has always been treated as sacrosanct and indispensable adjunct of free and fair election. Such principle of secrecy is based on public policy aimed to ensure that voter may vote without fear or favour and is free from any apprehension of its disclosure against his will**. In S. Raghbir Singh Gill v. S. Gurcharan Singh Tohra [S. Raghbir Singh Gill v. S. Gurcharan Singh Tohra, 1980 Supp SCC 53 : AIR 1980 SC 1362] , a Constitution Bench (sic two-Judge Bench) of this Court considered the aspect of secrecy of vote and held that such policy is for the benefit of the voters to enable them to cast their vote freely. However, where a benefit, even though based on public policy, is granted to a person, it is open for that person

and no one else to waive of such benefit. The very concept of privilege inheres a right to waive it. (See also Kuldip Nayar v. Union of India [(2006) 7 SCC 1 : AIR 2006 SC 3127] and People's Union for Civil Liberties v. Union of India [(2013) 10 SCC 1 : (2013) 4 SCC (Civ) 587 : (2013) 3 SCC (Cri) 769] .)"

158. Further, in ***Shradha Devi* v. *Krishna Chandra Pant*** **[(1982) 3 SCC 389 (2)]** this Hon'ble Court considered the provisions of Rule 73(2)(*d*) of the Rules and held as under :

"14. ... a ballot paper shall be invalid on which there is any mark or writing by which the elector can be identified. Section 94 of the 1951 Act ensures secrecy of ballot and it cannot be infringed because no witness or other person shall be required to state for whom he has voted at an election. Section 94 was interpreted by this Court in Raghbir Singh Gill [S. Raghbir Singh Gill v. S. Gurcharan Singh Tohra, 1980 Supp SCC 53 : AIR 1980 SC 1362] , to confer a privilege upon the voter not to be compelled to disclose how and for whom he voted. To ensure free and fair election which is pivotal for setting up a parliamentary democracy, this vital principle was enacted in Section 94 to ensure that a voter would be able to vote uninhibited by any fear or any undesirable consequence of disclosure of how he voted. As a corollary it is provided that if there is any mark or writing on the ballot paper which enables the elector to be identified the ballot paper would be rejected as invalid. But the mark or writing must be such as would unerringly lead to the identity of the voter."

159. More recently, in ***Laxmi Singh v. Rekha Singh*, (2020) 6 SCC 812**, it was held as under:

"**14.** It is to be observed that one of the fundamental principles of election law pertains to the maintenance of free and fair elections, ensuring the purity of elections. The principle of secrecy of the ballots is an important postulate of constitutional democracy whose aim is the achievement of this goal."

160. It is submitted that the US Supreme Court judgement(s) highlight the importance of anonymity introduced in the US ballot system, often called the Australian ballot owing to its origin. The case ***Burson v. Freeman*, 504 U.S. 191 (1992)** arose as one Mr. Freeman, a Tennessee political campaign treasurer, challenged the constitutionality of the Tennessee Code forbidding the solicitation of votes and the display or distribution of campaign materials within 100 feet of entrances to polling facilities. On appeal from a lower court's dismissal, the Tennessee Supreme Court reversed, finding that the 100-foot ban was unconstitutional. The Supreme Court granted Burson certiorari. It was held as under :

"Wishing to gain influence, political parties began to produce their own ballots for voters. These ballots were often printed with flamboyant colors, distinctive designs, and emblems so that they could be recognized at a distance. State attempts to standardize the ballots were easily thwarted—the vote buyer could simply place a ballot in the hands of the bribed voter and watch until he placed it in the polling box. Thus, the evils associated with the earlier viva voce system reinfected the election process; the failure of the law to secure secrecy opened the door to bribery and intimidation."

xxx

"The problems with voter intimidation and election fraud that the United States was experiencing were not unique. Several other countries were attempting to work out

satisfactory solutions to these same problems. Some Australian provinces adopted a series of reforms intended to secure the secrecy of an elector's vote. The most famous feature of the Australian system was its provision for an official ballot, encompassing all candidates of all parties on the same ticket. But this was not the only measure adopted to preserve the secrecy of the ballot. The Australian system also provided for the erection of polling booths (containing several voting compartments) open only to election officials, two "scrutinees" for each candidate, and electors about to vote. See J. Wigmore, The Australian Ballot System as Embodied in the Legislation of Various Countries 69, 71, 78, 79 (1889) (Wig- more) (excerpting provisions adopted by South Australia and Queensland). See generally Albright 23; Evans 17; Rusk 23–24."

xxxx

The success achieved through these reforms was immediately noticed and widely praised. See generally Evans 21–24; Rusk 26–31, 42–43. One commentator remarked of the New York law of 1888:

> "We have secured secrecy; and intimidation by employers, party bosses, police officers, saloonkeepers and others has come to an end.
>
> "In earlier times our polling places were frequently, to quote the litany, 'scenes of battle, murder, and sudden death.' This also has come to an end, and until night- fall, when the jubilation begins, our election days are now as peaceful as our Sabbaths.
>
> "The new legislation has also rendered impossible the old methods of frank, hardy, straightforward and shame- less bribery of voters at the polls." W. Ivins, The Elec- toral System of the State of New York, Proceedings of the 29th Annual Meeting of the New York State Bar Association 316 (1906).

xxx

"In sum, an examination of the history of election regulation in this country reveals a persistent battle against two evils: voter intimidation and election fraud. After an unsuccessful experiment with an unofficial ballot system, all 50 States, together with numerous other Western democracies, settled on the same solution: a secret ballot secured in part by a restricted zone around the voting compartments. We find that this wide spread and time tested consensus demonstrates that some restricted zone is necessary in order to serve the States' compelling interest in preventing voter intimidation and election fraud."

xxx

"Finally, the dissent argues that we confuse history with necessity. Yet the dissent concedes that a secret ballot was necessary to cure electoral abuses. Contrary to the dissent's contention, the link between ballot secrecy and some restricted zone surrounding the voting area is not merely timing — it is common sense. The only way to preserve the secrecy of the ballot is to limit access to the area around the voter. Accordingly, we hold that *some* restricted zone around the voting area is necessary to secure the State's compelling interest."

161. In ***Doe v. Reed,*** **561 U.S. 186 (2010)**, the U.S. Supreme Court, upheld a Washington state law that required the disclosure of referendum petition signers and ruled that such a law on its face does not violate the First Amendment. It was held as under :

> "It was precisely discontent over the nonsecret nature of ballot voting, and the abuses that produced, which led to the States' adoption of the Australian secret ballot. New York and Massachusetts began that movement in 1888, and almost 90 percent of the States had followed suit by 1896. Burson, 504 U. S., at 203–205. But I am aware of no

> contention that the Australian system was required by the First Amendment (or the state counterparts). That would have been utterly implausible, since the inhabitants of the Colonies, the States, and the United States had found public voting entirely compatible with "the freedom of speech" for several centuries."

162. It is submitted that therefore, once it is established that secret ballot is a part of *free and fair elections*, it is clear that maintaining anonymity even in donations, subject to some exceptions as provided in Clause 7(4), would be a part of concept of *secret ballot*.

163. It is submitted that in ***Arizona Free Enterprise Club's Freedom Club PAC et al v. Bennett, Secretary of State of Arizonal, et al*, 2011 SCC OnLine US SC 81**, the Supreme Court of United States of America while dealing with the issue that whether equalizing donations of privately and publicly funded candidates conflict with the First Amendment, held as follows:

> "We have said that governments "may engage in public financing of election campaigns" and that doing so can further "significant governmental interest[s]," such as the state interest in preventing corruption. Buckley, 424 U. S., at 57, n. 65, 92-93, 96. But the goal of creating a viable public financing scheme can only be pursued in a manner consistent with the First Amendment. The dissent criticizes the Court for standing in the way of what the people of Arizona want. Post, at 2-3, 31-32. But the whole point of the First Amendment is to protect speakers against unjustified government restrictions on speech, even when those restrictions reflect the will of the majority. When it comes to protected speech, the speaker is sovereign.
>
> Arizona's program gives money to a candidate in direct response to the campaign speech of an opposing candidate or an independent group. It does this when the opposing candidate has chosen not to accept public financing, and has engaged in political speech above a level set by the State. The professed purpose of the state law is to cause a sufficient number of candidates to sign up for public financing, see post, at 5, which subjects them to the various restrictions on speech that go along with that program. This goes too far; Arizona's matching funds provision substantially burdens the speech of privately financed candidates and independent expenditure groups without serving a compelling state interest.
>
> "[T]here is practically universal agreement that a major purpose of" the First Amendment "was to protect the free discussion of governmental affairs," "includ[ing] discussions of candidates." Buckley, 424 U. S., at 14 (internal quotation marks omitted; second alteration in original). That agreement "reflects our 'profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.'" Ibid. (quoting New York Times Co. v. Sullivan, 376 U. S. 254, 270 (1964)). True when we said it and true today. Laws like Arizona's matching funds provision that inhibit robust and wide-open political debate without sufficient justification cannot stand.

164. It is submitted that in the case of ***Mccutcheon Et Al v. Federal Election Commission*, 2014 SCC OnLine US SC 100**, wherein the Supreme Court of United States of America while

dealing with the issue that whether the Federal Election Campaign Act of 1971 (FECA) as amended by the Bipartisan Campaign Reform Act of 2002 (BCRA) imposed limits restricting the amount of money a donor may contribute to a particular candidate or committee and restricting the aggregate money an individual can give to all candidates or committees violate First Amendment protections of free speech and association, held that such restrictions interfere with violate First Amendment. It was held as under :

> "For the past 40 years, our campaign finance jurisprudence has focused on the need to preserve authority for the Government to combat corruption, without at the same time compromising the political responsiveness at the heart of the democratic process, or allowing the Government to favor some participants in that process over others. As Edmund Burke explained in his famous speech to the electors of Bristol, a representative owes constituents the exercise of his "mature judgment," but judgment informed by "the strictest union, the closest correspondence, and the most unreserved communication with his constituents." The Speeches of the Right Hon. Edmund Burke 129-130 (J. Burke ed. 1867). Constituents have the right to support candidates who share their views and concerns. Representatives are not to follow constituent orders, but can be expected to be cognizant of and responsive to those concerns. Such responsiveness is key to the very concept of self-governance through elected officials. The Government has a strong interest, no less critical to our democratic system, in combating corruption and its appearance. We have, however, held that this interest must be limited to a specific kind of corruption—*quid pro quo* corruption—in order to ensure that the Government's efforts do not have the effect of restricting the First Amendment right of citizens to choose who shall govern them. For the reasons set forth, we conclude that the aggregate limits on contributions do not further the only governmental interest this Court accepted as legitimate in *Buckley.* They instead intrude without justification on a citizen's ability to exercise "the most fundamental First Amendment activities." *Buckley,* 424 US 1 (1976).

165. It is submitted that a conjoint reading of the principle of secret ballot and the right to privacy under Article 21, clearly postulate that there exists a claim on part of the doners to make donations without fear of reprisal. It is submitted that such right would obviously not be absolute and would have to be counter balanced with public interest and concepts of *free and fair elections* and further optimised with policy interest of bringing in the first step of shift from cash to banking channel in political donations.

It is submitted that the balancing element in the present policy is Clause 7(4) of the Electoral Bond Scheme clearly provides for disclosure in case of appropriate proceeding before competent court or in criminal proceedings. It is submitted that the same a sufficient tailoring and balancing of clearly competing interests in the present case.

166. It is submitted that admittedly the judgment in ***S. Raghbir Singh Gill v. S. Gurcharan Singh Tohra*** **[1980 Supp SCC 53]**, postulates that in case of a conflict between concepts of "free and fair elections" and "secret ballot", the latter would have to be modulated as per the former – however, it is submitted that the said situation does not arise in the present case. It

is submitted that the concept of "free and fair elections" in the present case is actually furthered by the maintaining of confidentiality and "secret ballot". It is submitted that the concept of "free and fair elections" is the first causality in case the status quo ante is restored and the pre-existing situation re-emerges. It is submitted that further, the concept of "free and fair elections" is furthered by allowing the persons to make donations without having to be worried about censures, reprimands or retaliation by the stakeholders. It is submitted that in fact, the requirement of confidentiality is necessary to naturally, organically and progressively move the cash driven political donations to electronic means.

167. Further, the judgment in ***S. Raghbir* supra**, was specifically in context of a fraud on the ballot and therefore larger requirements of criminal law were invoked. It is submitted that as per the Scheme, under Clause 7(4) the said requirement is taken care of.

168. It is submitted that the reliance of the Petitioner on ***Ted W. Brown V. Socialist Workers '74 Campaign Committee (Ohio)*, 1982 SCC Online US SC 214**, is wholly misplaced. In the said case, the Supreme Court of the United States was posed with the question of whether certain disclosure requirements of the Ohio Campaign Expense Reporting Law, including the mandate of every political party to report the names and addresses of campaign contributes and recipients of campaign disbursements, could be constitutionally applied to a minor political party. The issue gained increasing pertinence especially since the party in question had historically been the object of harassment by Government officials and private parties.

The USSC, holding the provision under challenge as being unconstitutional, was pleased to observe that the First Amendment prohibits a state from compelling disclosures by a minor party that will subject those persons identified to the reasonable probability of threats, harassment or reprisals. Such disclosures would infringe the First Amendment rights of the party, its members and supporters. The relevant portions of the aforementioned judgment are extracted hereinbelow:

> "5. **The Constitution protects against the compelled disclosure of political associations and beliefs. Such disclosures "can seriously infringe on privacy of association and belief guaranteed by the First Amendment**." Buckley v. Valeo, supra, 424 U.S., at 64, 96 S.Ct., at 656, citing Gibson v. Florida Legislative Comm., 372 U.S. 539, 83 S.Ct. 889, 9 L.Ed.2d 929 (1963); NAACP v. Button, 371 U.S. 415, 83 S.Ct. 328, 9 L.Ed.2d 405 (1963); Shelton v. Tucker, 364 U.S. 479, 81 S.Ct. 247, 5 L.Ed.2d 231 (1960); Bates v. Little Rock, 361 U.S. 516, 80 S.Ct. 412, 4 L.Ed.2d 480 (1960); NAACP v. Alabama, 357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958). **"Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs**." NAACP v. Alabama, supra, 357 U.S., at 462, 78 S.Ct., at 1172. **The right to privacy in one's political associations and beliefs will yield only to a "subordinating interest of the State [that is] compelling,"** NAACP v. Alabama, supra, 357 U.S., at 463, 78 S.Ct., at 1172 (quoting Sweezy v. New Hampshire, 354 U.S. 234, 265, 77 S.Ct. 1203, 1219, 1 L.Ed.2d 1311 (1957) (concurring opinion)), **and then only**

if there is a "substantial relation between the information sought and [an] overriding and compelling state interest." Gibson v. Florida Legislative Comm., supra, 372 U.S., at 546, 83 S.Ct., at 893.

6. In Buckley v. Valeo this Court upheld against a First Amendment challenge the reporting and disclosure requirements imposed on political parties by the Federal Election Campaign Act of 1971. 2 U.S.C. § 431 et seq. (1976). 424 U.S., at 60-74, 96 S.Ct., at 654-661. The Court found three government interests sufficient in general to justify requiring disclosure of information concerning campaign contributions and expenditures: enhancement of voters' knowledge about a candidate's possible allegiances and interests, deterrence of corruption, and the enforcement of contribution limitations. The Court stressed, however, that in certain circumstances the balance of interests requires exempting minor political parties from compelled disclosures. **The government's interests in compelling disclosures are "diminished" in the case of minor parties.** Id., at 70, 96 S.Ct., at 659. Minor party candidates "usually represent definite and publicized viewpoints" well known to the public, and the improbability of their winning reduces the dangers of corruption and vote-buying. Ibid. At the same time, the potential for impairing First Amendment interests is substantially greater: "We are not unmindful that the damage done by disclosure to the associational interests of the minor parties and their members and to supporters of independents could be significant. These movements are less likely to have a sound financial base and thus are more vulnerable to falloffs in contributions. **In some instances fears of reprisals may deter contributions to the point where the movement cannot survive. The public interest also suffers if that result comes to pass, for there is a consequent reduction in the free circulation of ideas both within and without the political arena**." Id., at 71, 96 S.Ct., at 659 (footnotes omitted).

14. **Although appellants contend that requiring disclosure of recipients of disbursements is necessary to prevent corruption, this Court recognized in Buckley that this concededly legitimate government interest has less force in the context of minor parties. The federal law considered in Buckley, like the Ohio law at issue here, required campaign committees to identify both campaign contributors and recipients of campaign disbursements.** 2 U.S.C. §§ 432(c) and (d), and 434(a) and (b). We stated that "by exposing large contributions and expenditures to the light of publicity," disclosure requirements "ten[d] to 'prevent the corrupt use of money to affect elections.' " Id., at 67, 96 S.Ct., at 657 (emphasis added), quoting Burroughs v. United States, 290 U.S. 534, 548, 54 S.Ct. 287, 291, 78 L.Ed. 484 (1934). We concluded, however, that because minor party candidates are unlikely to win elections, the government's general interest in "deterring the 'buying' of elections" is "reduced" in the case of minor parties. 424 U.S., at 70, 96 S.Ct., at 659.

16. **We hold, therefore, that the test announced in Buckley for safeguarding the First Amendment interests of minor parties and their members and supporters applies not only to the compelled disclosure of campaign contributors but also to the compelled disclosure of recipients of campaign disbursements**.

20. **The First Amendment prohibits a state from compelling disclosures by a minor party that will subject those persons identified to the reasonable probability of threats, harassment or reprisals. Such disclosures would infringe the First Amendment rights of the party and its members and supporters.** In light of the substantial evidence of past

> and present hostility from private persons and government officials against the SWP, Ohio's campaign disclosure requirements cannot be constitutionally applied to the Ohio SWP."

169. It is submitted that therefore, in fact the said judgment protects anonymity of doners of political parties in certain cases. It is submitted that further the said judgment concerns reprimands and reprisal of the political parties and not the doners.

170. It is submitted that further, the caps on expenditure of the candidates under Section 77 of the RP Act, 1951 read with Rules of the Conduct of Election Rules still subsists. Further, the Section 123 of the RP Act, 1951, bars any corrupt practice and the Impugned policy does not tinker with either of the above requirements in any manner. Therefore, the question of Impugned policy affecting level playing field does not arise.

171. It is submitted that the said change from cash driven political donations to electronic means would be an important first step in the reform process which would continue thereafter. It is submitted that however, if the element of confidentiality is taken out of the policy at this juncture, it would cripple the incentivisation based structure of the policy and make it un-implementable and de-facto take the situation back to *status quo ante* which was cash driven, illegal means of political donations.

FINANCIAL POLICY AND LIMITS OF JUDICIAL REVIEW

Economic policy decision

172. It is submitted that it has been consistent jurisprudence and judicial policy of this Hon'ble Court, and in fact, Court across the world, to exercise heightened judicial restraint and deference in matter concerning legislative economic policy. It is submitted that the judicial branches have consistently recognised the pre-eminence and primary role of the Legislature and the Executive in matters concerning economic policy and the same is exhibited through various judgments of the Court.

173. It is submitted that one of the earliest pronouncements on the subject came from this Court in ***Rustom Cavasjee Cooper* v. *Union of India*** **[(1970) 1 SCC 248]** (commonly known as "*Bank Nationalisation case*") wherein this Court held that it is not the forum where conflicting policy claims may be debated; it is only required to adjudicate the legality of a measure which has little to do with relative merits of different political and economic theories. This hon'ble Court observed as under:

> "63. <u>This Court is not the forum in which these conflicting claims may be debated. Whether there is a genuine need for banking facility in the rural sector, whether certain classes of the community are deprived of the benefit of the resources of the banking</u>

> industry, whether administration by the Government of the commercial banking sector will not prove beneficial to the community and will lead to rigidity in the administration, whether the Government administration will eschew the profit-motive, and even if it be eschewed, there will accrue substantial benefits to the public, whether an undue accent on banking as a means of social regeneration, especially in the backward areas, is a doctrinaire approach to a rational order of priorities for attaining the national objectives enshrined in our Constitution, and whether the policy followed by the Government in office or the policy propounded by its opponents may reasonably attain the national objectives are matters which have little relevance in determining the legality of the measure. It is again not for this Court to consider the relative merits of the different political theories or economic policies. Parliament has under List I Entry 45 the power to legislate in respect of banking and other commercial activities of the named banks necessarily incidental thereto: it has the power to legislate for acquiring the undertaking of the named banks under List III Entry 42. Whether by the exercise of the power vested in the Reserve Bank under the pre-existing laws, results could be achieved which it is the object of the Act to achieve, is, in our judgment, not relevant in considering whether the Act amounts to abuse of legislative power. This Court has the power to strike down a law on the ground of want of authority, but the Court will not sit in appeal over the policy of Parliament in enacting a law. The Court cannot find fault with the Act merely on the ground that it is inadvisable to take over the undertaking of banks which, it is said by the petitioner, by thrift and efficient management had set up an impressive and efficient business organisation serving large sectors of industry."

174. In ***R.K. Garg v. Union of India,*** **[(1981) 4 SCC 675]** this Hon'ble Court even observed that greater judicial deference must be shown towards a law relating to economic activities due to the complexity of economic problems and their fulfilment through a methodology of trial and error. As noted above, it was also clarified that the fact that an economic legislation may be troubled by crudities, inequities, uncertainties or the possibility of abuse cannot be the basis for striking it down. The following observations which refer to a couple of American Supreme Court decisions are a limpid enunciation on the subject:

> "8. Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc. It has been said by no less a person than Holmes, J. that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or straitjacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. The court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved. Nowhere has this admonition been more felicitously expressed than in Morey v. Doud [1 L Ed 2d 1485 : 354 US 457 (1957)] where Frankfurter, J. said in his inimitable style:
>
> > 'In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the

> power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the Judges have been overruled by events—self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability.'"

175. Similarly in ***Premium Granites* v. *State of T.N.*** **[(1994) 2 SCC 691]** this Hon'ble Court clarified that it is the validity of a law and not its *efficacy* that can be challenged. This Hon'ble court, noted as under :

> "54. It is not the domain of the court to embark upon unchartered ocean of public policy in an exercise to consider as to whether a particular public policy is wise or a better public policy can be evolved. Such exercise must be left to the discretion of the executive and legislative authorities as the case may be. The court is called upon to consider the validity of a public policy only when a challenge is made that such policy decision infringes fundamental rights guaranteed by the Constitution of India or any other statutory right."

176. In ***Delhi Science Forum* v. *Union of India*** **[(1996) 2 SCC 405]** a Bench of three learned Judges of this Court, while rejecting a claim against the opening up of the telecom sector reiterated that the forum for debate and discourse over the merits and demerits of a policy is Parliament. It restated that the services of this Hon'ble Court are not sought till the legality of the policy is disputed, and further, that no direction can be given or be expected from the courts, unless while implementing such policies, there is violation or infringement of any of the constitutional or statutory provisions. It held as under :

> "7. What has been said in respect of legislations is applicable even in respect of policies which have been adopted by Parliament. They cannot be tested in court of law. The courts cannot express their opinion as to whether at a particular juncture or under a particular situation prevailing in the country any such national policy should have been adopted or not. There may be views and views, opinions and opinions which may be shared and believed by citizens of the country including the representatives of the people in Parliament. But that has to be sorted out in Parliament which has to approve such policies."

177. In ***BALCO Employees' Union* v. *Union of India*** **[(2002) 2 SCC 333]** this Court further pointed out that the Court ought to stay away from judicial review of efficacy of policy matters, not only because the same is beyond its jurisdiction, but also because it lacks the necessary expertise required for such a task. Affirming the previous views of this Court, the Court observed that while dealing with economic legislations, the Court, while not jettisoning its jurisdiction to curb arbitrary action or unconstitutional legislation, should interfere only in those cases where the view reflected in the legislation is not possible to be taken at all. The Court went on to emphasise that unless the economic decision, based on economic expediencies, is demonstrated to be so violative of constitutional or legal limits on power or

so abhorrent to reason, that the courts would decline to interfere. In ***BALCO*** **supra**, this Hon'ble Court took notice of the judgment in ***Peerless General Finance and Investment Co. Ltd.*** **v.** ***RBI*** **[(1992) 2 SCC 343]** and observed that some matters like price fixation are based on such uncertainties and dynamics that even experts face difficulty in making correct projections, making it all the more necessary for this Hon'ble Court to exercise non-interference:

> "31. The function of the court is to see that lawful authority is not abused but not to appropriate to itself the task entrusted to that authority. It is well settled that a public body invested with statutory powers must take care not to exceed or abuse its power. It must keep within the limits of the authority committed to it. It must act in good faith and it must act reasonably. Courts are not to interfere with economic policy which is the function of experts. It is not the function of the courts to sit in judgment over matters of economic policy and it must necessarily be left to the expert bodies. In such matters even experts can seriously and doubtlessly differ. Courts cannot be expected to decide them without even the aid of experts."

178. On an environmental issue, this Hon'ble Court in ***State of M.P.*** **v.** ***Narmada Bachao Andolan*** **[(2011) 7 SCC 639]**, held that the judiciary cannot engage in an exercise of comparative analysis over the fairness, logical or scientific basis, or wisdom of a policy. It specifically held as under:

> "36. The Court cannot strike down a policy decision taken by the Government merely because it feels that another decision would have been fairer or more scientific or logical or wiser. The wisdom and advisability of the policies are ordinarily not amenable to judicial review unless the policies are contrary to statutory or constitutional provisions or arbitrary or irrational or an abuse of power."

179. It is submitted that therefore, merely because as a matter of policy the Petitioners feel that the impugned amendments may affect their operations to a limited extent, the same would not be a ground for unconstitutionality of the provision.

180. It is submitted that more recently, the question of power of the Legislature to make policy decision was elaborately discussed by this Hon'ble Court in ***Vinay Narayan Sharma v. Union of India & Ors.*** **2023 SCC OnLine SC 1**, case wherein it was held that:

> "The Court has held that it is not permissible for a Court to advise in matters relating to financial and economic policies for which bodies like Reserve Bank are fully competent. It has been held that it would be risky and hazardous for the courts to tread an unknown path and should leave such task to the expert bodies.
>
> **215.** The law with regard to scope of judicial review has been very well crystalized in the case of Tata Cellular (supra). In the said case, it has been held by this Court that the duty of the court is to confine itself to the question of legality. Its concern should be whether a decision-making authority exceeded its powers, committed an error of law, committed a breach of the rules of natural justice, reached a decision which no reasonable tribunal would have reached or abused its powers. The Court held that it is not for the court to

determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken.

216. After referring to various pronouncements on the scope of judicial review, the Court has summed-up thus:

"94. The principles deducible from the above are:

(1) The modern trend points to judicial restraint in administrative action.

(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

Based on these principles we will examine the facts of this case since they commend to us as the correct principles.

223. Recently, this Court in the case of Small Scale Industrial Manufactures Association (Registered) v. Union of India had an occasion to consider the issue with regard to scope of judicial review of economic and fiscal regulatory measures. This Court observed thus:

"69. What is best in the national economy and in what manner and to what extent the financial reliefs/packages be formulated, offered and implemented is ultimately to be decided by the Government and RBI on the aid and advice of the experts. The same is a matter for decision exclusively within the province of the Central Government. Such matters do not ordinarily attract the power of judicial review. Merely because some class/sector may not be agreeable and/or satisfied with such packages/policy decisions, the courts, in exercise of the power of judicial review, do not ordinarily interfere with the policy decisions, unless such policy could be faulted on the ground of mala fides, arbitrariness, unfairness, etc.

70. There are matters regarding which the Judges and the lawyers of the courts can hardly be expected to have much knowledge by reasons of their training and expertise. Economic and fiscal regulatory measures are a field where Judges should encroach upon very warily as Judges are not experts in these matters.

71. The correctness of the reasons which prompted the Government in decision taking one course of action instead of another is not a matter of concern in judicial review and the court is not the appropriate forum for such investigation. The policy decision must be left to the Government as it alone can adopt which policy should be adopted

> after considering of the points from different angles. In assessing the propriety of the decision of the Government the court cannot interfere even if a second view is possible from that of the Government.
> 72. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review. The scope of judicial review of the governmental policy is now well defined. The courts do not and cannot act as an appellate authority examining the correctness, stability and appropriateness of a policy, nor are the courts advisers to the executives on matters of policy which the executives are entitled to formulate."

> **224.** This Court observed that the Court would not interfere with any opinion formed by the government if it is based on the relevant facts and circumstances or based on expert's advice. The Court would be entitled to interfere only when it is found that the action of the executive is arbitrary and violative of any constitutional, statutory or other provisions of law. It has been held that when the government forms its policy, it is based on a number of circumstances and it is also based on expert's opinion, which must not be interfered with, except on the ground of palpable arbitrariness. It is more than settled that the Court gives a large leeway to the executive and the legislature in matters of economic policy. A reference in this respect could be made to the judgments of this Court in the cases of P.T.R. Exports (Madras) Pvt. Ltd. v. Union of India[67] and Bajaj Hindustan Limited v. Sir Shadi Lal Enterprises Limited (supra).
>
> **225.** It is not the function of this Court or of any other Court to sit in judgment over such matters of economic policy and they must necessarily be left to the Government of the day to decide since in such matters with regard to the prediction of ultimate results, even the experts can seriously err and doubtlessly differ. The Courts can certainly not be expected to decide them without even the aid of experts."

American judgment on economic policy – the four horsemen

181. It is submitted that it may be relevant to note the dictum from the American Supreme Court, during what is now termed as the *Lochner* era, wherein the said constitutional court regularly held state and federal statutes regulating economic activity unconstitutionally impaired the substantive due process rights of citizens by interfering with their liberty of contract, citing ***Lochner v. New York,* 198 U.S. 45, 56–58, 25 S.Ct. 539, 49 L.Ed. 937**. The judges who championed this are also known as the "Four Horsemen" consisting of Justices Pierce Butler, James Clark McReynolds, George Sutherland, and Willis Van Devanter. As per a "standard estimate" it is said that the Court invalidated 197 state and federal statutes pursuant to the Due Process Clause between 1899 and 1937)

182. In ***New State Ice Co. v. Liebmann,* 285 U.S. 262, 52 S.Ct. 371, 76 L.Ed. 747 (1932)**, for example, the Court invalidated a state law prohibiting a person from manufacturing ice without a permit. The majority wrote as under :

> "a regulation which has the effect of denying or unreasonably curtailing the common right to engage in a lawful private business, such as that under review, cannot be upheld consistent with the Fourteenth Amendment."

The Court further observed that

> "nothing is more clearly settled than that it is beyond the power of a state, under the guise of protecting the public, arbitrarily to interfere with private business or prohibit lawful occupations."

183. In Liebmann *supra*, the minority opinion of J. Brandies, is extremely relevant. The Learned judge noted as under :

> "The discoveries in physical science, the triumphs in invention, attest the value of the process of trial and error. In large measure, these advances have been due to experimentation. In those fields experimentation has, for two centuries, been not only free but encouraged. Some people assert that our present plight is due, in part, to the limitations set by courts upon experimentation in the fields of social and economic science; and to the discouragement to which proposals for betterment there have been subjected otherwise. There must be power in the states and the nation to remould, through experimentation, our economic practices and institutions to meet changing social and economic needs. I cannot believe that the framers of the Fourteenth Amendment, or the states which ratified it, intended to deprive us of the power to correct the evils of technological unemployment and excess productive capacity which have attended progress in the useful arts.
> To stay experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the nation. It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country. This Court has the power to prevent an experiment. We may strike down the statute which embodies it on the ground that, in our opinion, the measure is arbitrary, capricious, or unreasonable. We have power to do this, because the due process clause has been held by the Court applicable to matters of substantive law as well as to matters of procedure. But, in the exercise of this high power, we must be ever on our guard, lest we erect our prejudices into legal principles. If we would guide by the light of reason, we must let our minds be bold."

184. Fundamentally recalibrating the balance between private liberty and public power in ***West Coast Hotel v. Parrish,* 300 U.S. 379, 57 S.Ct. 578, 81 L.Ed. 703 (1937)**, the Court held that the liberty protected by the Fourteenth Amendment was not an unfettered freedom of contract, but one bound up in the social contract:

> "The Constitution does not speak of freedom of contract. It speaks of liberty and prohibits the deprivation of liberty without due process of law. In prohibiting that deprivation, the Constitution does not recognize an absolute and uncontrollable liberty. Liberty in each of its phases has its history and connotation. But the liberty safeguarded is liberty in a social organization which requires the protection of law against the evils which menace the health, safety, morals, and welfare of the people. Liberty under the Constitution is thus necessarily subject to the restraints of due process, and regulation which is reasonable in relation to its subject and is adopted in the interests of the community is due process."

185. It is submitted that extending its holding the next year in ***United States v. Carolene Products Co.*, 304 U.S. 144, 58 S.Ct. 778, 82 L.Ed. 1234 (1938)**, the Court wrote that "*regulatory legislation affecting ordinary commercial transactions is not to be pronounced unconstitutional unless in the light of the facts made known or generally assumed it is of such a character as to preclude the assumption that it rests upon some rational basis within the knowledge and experience of the legislators*".

186. It is submitted that J. Frankfurter in ***Am. Fed'n of Labor, Ariz State Fed'n of Labor v. Am. Sash & Door Co*, 335 U.S. 538, 553–57, 69 S. Ct. 260, 265–67, 93 L. Ed. 222 (1949)**, held as under:

> "Even where the social undesirability of a law may be convincingly urged, invalidation of the law by a court debilitates popular democratic government. Most laws dealing with economic and social problems are matters of trial and error.[10] That which before trial appears to be demonstrably bad may belie prophecy in actual operation. It may not prove good, but it may prove innocuous. But even if a law is found wanting on trial, it is better that its defects should be demonstrated and removed than that the law should be aborted by judicial fiat. Such an assertion of judicial power deflects responsibility from those on whom in a democratic society it ultimately rests—the people. If the proponents of union-security agreements have confidence in the arguments addressed to the Court in their 'economic brief,' they should address those arguments to the electorate. Its endorsement would be a vindication that the mandate of this Court could never give. That such vindication *554 is not a vain hope has been **266 recently demonstrated by the voters of Maine, Massachusetts, and New Mexico.[11] And although several States in addition to those at bar now have such laws,[12] the legislatures of as many other States have, sometimes repeatedly, rejected them.[13] What one State can refuse to do, another can undo.
>
> But there is reason for judicial restraint in matters of policy deeper than the value of experiment: it is fonded on a recognition of the gulf of difference between sustaining and nullifying legislation. This difference is theoretical in that the function of legislating is for legislatures who have also taken oaths to support the Constitution, while the function of courts, when legislation is challenged, is merely to make sure that the legislature has exercised an allowable judgment, and not to exercise their own judgment, whether a policy is within or without 'the vague contours' of due process. Theory is reinforced by the notorious fact that lawyers predominate in American legislatures.[14] In practice also the difference is wide. In the day-to-day working of our democracy it is vital that the power of the non-democratic organ of our Government be exercised with rigorous self-restraint. Because the powers exercised by this Court are inherently oligarchic, Jefferson all of his life thought of the Court as 'an irresponsible body'[15] and 'independent of the nation itself.'[16] The Court is not saved from being oligarchic *556 because it professes **267 to act in the service of humane ends. As history amply proves, the judiciary is prone to misconceive the public good by confounding private notions with constitutional requirements, and such misconceptions are not subject to legitimate displacement by the will of the people except at too slow a pace.[17] Judges appointed for life whose decisions run counter to prevailing opinion cannot be voted out of office and supplanted by men of views more consonant with it. They are even farther removed from democratic pressures by the fact that their deliberations are in secret and remain beyond disclosure either by periodic

> reports or by such a modern device for securing responsibility to the electorate as the 'press conference.' But a democracy need not rely on the courts to save it from its own unwisdom. If it is alert—and without alertness by the people there can be no enduring democracy—unwise or unfair legislation can readily be removed from the statute books. It is by such vigilance over its representatives that democracy proves itself.
> Our right to pass on the validity of legislation is now too much part of our constitutional system to be brought *557 into question. But the implications of that right and the conditions for its exercise must constantly be kept in mind and vigorously observed. Because the Court is without power to shape measures for dealing with the problems of society but has merely the power of negation over measures shaped by others, the indispensable judicial requisite is intellectual humility, and such humility presupposes complete disinterestedness. And so, in the end, it is right that the Court should be indifferent to public temper and popular wishes. Mr. Dooley's 'th' Supreme Coort follows th' iliction returns' expressed the wit of cynicism, not the demand of principle. A court which yields to the popular will thereby licenses itself to practice despotism, for there can be no assurance that it will not on another occasion indulge its own will. Courts can fulfill their responsibility in a democratic society only to the extent that they succeed in shaping their judgments by rational standards, and rational standards are both impersonal and communicable. Matters of policy, however, are by definition matters which demand the resolution of conflicts of value, and the elements of conflicting values are largely imponderable. Assessment of their competing worth involves differences of feeling; it is also an exercise in prophecy. Obviously the proper forum for mediating a clash of feelings and rendering a prophetic judgment is the body chosen for those purposes by the people. Its functions can be assumed by this Court only in disregard of the historic limits of the Constitution."

187. The Lochner doctrine was finally discarded in ***Ferguson v. Skrupa*, 372 U.S. 726, 728–33, 83 S. Ct. 1028, 1030–32, 10 L. Ed. 2d 93 (1963)**, where the American Supreme Court held as under:

> "Both the District Court in the present case and the Pennsylvania court in Stone adopted the philosophy of Adams v. Tanner, and cases like it, that it is the province of courts to draw on their own views as to the morality, *729 legitimacy, and usefulness of a particular business in order to decide whether a statute bears too heavily upon that business and by so doing violates due process. Under the system of government created by our Constitution, it is up to legislatures, not courts, to decide on the wisdom and utility of legislation. There was a time when the Due Process Clause was used by this Court to strike down laws which were thought unreasonable, that is, unwise or incompatible with some particular economic or social philosophy. In this manner the Due Process Clause was used, for example, to nullify laws prescribing maximum hours for work in bakeries, Lochner v. New York, 198 U.S. 45, 25 S.Ct. 539, 49 L.Ed. 937 (1905), outlawing 'yellow dog' contracts, Coppage v. Kansas, 236 U.S. 1, 35 S.Ct. 240, 59 L.Ed. 441 (1915), setting minimum wages for women, Adkins v. Children's Hospital, 261 U.S. 525, 43 S.Ct. 394, 67 L.Ed. 785 (1923), and fixing the weight of loaves of bread, Jay Burns Baking Co. v. Bryan, 264 U.S. 504, 44 S.Ct. 412, 68 L.Ed. 813 (1924). This intrusion by the judiciary into the realm of legislative value judgments was strongly objected to at the time, particularly by Mr. Justice Holmes and Mr. Justice Brandeis. Dissenting from the Court's invalidating a state statute which regulated the resale price of **1031 theatre and other tickets, Mr. Justice Holmes said,

'I think the proper course is to recognize that a state Legislature can do whatever it sees fit to do unless it is restrained by some express prohibition in the Constitution of the United States or of the State, and that Courts should be careful not to extend such prohibitions beyond their obvious meaning by reading into them conceptions of public policy that the particular Court may happen to entertain.'[4]

*730 And in an earlier case he had emphasized that, 'The criterion of constitutionality is not whether we believe the law to be for the public good.'[5]

The doctrine that prevailed in Lochner, Coppage, Adkins, Burns, and like cases—that due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely—has long since been discarded. We have returned to the original constitutional proposition that courts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws. As this Court stated in a unanimous opinion in 1941, 'We are not concerned * * * with the wisdom, need, or appropriateness of the legislation.'[6] Legislative bodies have broad scope to experiment with economic problems, and this Court does not sit to 'subject the state to an intolerable supervision hostile to the basic principles of our government and wholly beyond the protection which the general clause of the Fourteenth Amendment was intended to secure.'[7] It is now settled that States 'have power to legislate against what are found to be injurious practices in their internal commercial and business affairs, so long as their laws do *731 not run afoul of some specific federal constitutional prohibition, or of some valid federal law.'[8]

In the face of our abandonment of the use of the 'vague contours'[9] of the Due Process Clause to nullify laws which a majority of the Court believed to be economically unwise, reliance on Adams v. Tanner is as mistaken as would be adherence to Adkins v. Children's Hospital, overruled by West Coast Hotel Co. v. Parrish, 300 U.S. 379, 57 S.Ct. 578, 81 L.Ed. 703 (1937). Not only has the philosophy of Adams been abandoned, but also this Court almost 15 years ago expressly pointed to another opinion of this Court as having 'clearly undermined' Adams.[10] We conclude that the Kansas Legislature was free to decide for itself that legislation was needed to deal with the business of debt adjusting. Unquestionably, there are arguments showing that the business of debt adjusting has social utility, but such arguments are properly addressed to the legislature, not to us. We refuse to sit as a 'superlegislature to weigh the wisdom of legislation,'[11] and we emphatically refuse to go back to the time when courts used the Due Process Clause 'to strike down state laws, regulatory of business and industrial conditions, because they may be unwise, improvident, or out of harmony with a particular school of thought.'[12] Nor are we able or willing to draw lines by calling a law 'prohibitory' or 'regulatory.' Whether the legislature takes for its textbook Adam Smith, Herbert Spencer, Lord Keynes, or some other is no concern of ours.[13] The Kansas debt adjusting statute may be wise or unwise. But relief, if any be needed, lies not with us but with the body constituted to pass laws for the State of Kansas.[14]

Nor is the statute's exception of lawyers a denial of equal protection of the laws to nonlawyers. Statutes create many classifications which do not deny equal protection; it is only 'invidious discrimination' which offends the Constitution.[15] The business of debt adjusting gives rise to a relationship of trust in which the debt adjuster will, in a situation of insolvency, be marshalling assets in the manner of a proceeding in bankruptcy. The debt adjuster's client may need advice as to the legality of the various claims against him remedies existing under state laws governing debtor-creditor relationships, or provisions of the Bankruptcy Act—advice which a nonlawyer cannot lawfully give him. If the State of Kansas wants to limit debt adjusting to lawyers,[16] the Equal Protection Clause does not forbid it. We also find no merit in the contention that

> the Fourteenth Amendment is violated by the failure of the Kansas statute's title to be as specific as appellee thinks it ought to be under the Kansas Constitution."

188. Therefore, the doctrine that prevailed in *Lochner* that due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely—has long since been discarded. The American Supreme Court has returned to the original constitutional proposition that courts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws.

189. It is submitted that the said position on economic legislation has been accepted by this Hon'ble Court in ***Swiss Ribbons (P) Ltd. v. Union of India*, (2019) 4 SCC 17**. It is the submitted that same represents a long line of decisions from the Supreme Court of India.

Legislative policy in general

190. It is submitted that the limitation on judicial review and second guessing of legislative policy have been dealt with by various pronouncements in India. In ***Union of India v. Indian Radiological & Imaging Assn.*, (2018) 5 SCC 773**, this Hon'ble Court held as under :

> "16. Parliament which has the unquestioned authority and legislative competence to frame the law considered it necessary to empower the Central Government to frame rules to govern the qualifications of persons employed in genetic counselling centres, laboratories and clinics. **The wisdom of the legislature in adopting the policy cannot be substituted by the court in the exercise of the power of judicial review. Prima facie the judgment of the Delhi High Court has trenched upon an area of legislative policy**. Judicial review cannot extend to reappreciating the efficacy of a legislative policy adopted in a law which has been enacted by the competent legislature. Both the Indian Medical Council Act, 1956 and the PCPNDT Act are enacted by Parliament. Parliament has the legislative competence to do so. The Training Rules, 2014 were made by the Central Government in exercise of the power conferred by Parliament. Prima facie, the Rules are neither ultra vires the parent legislation nor do they suffer from manifest arbitrariness."

191. It is submitted that this Hon'ble Court in ***State of H.P. v. Satpal Saini*, (2017) 11 SCC 42**, held as under :

> "6. The grievance, in our view, has a sound constitutional foundation. The High Court has while issuing the above directions acted in a manner contrary to settled limitations on the power of judicial review under Article 226 of the Constitution. A direction, it is well settled, cannot be issued to the legislature to enact a law. The power to enact legislation is a plenary constitutional power which is vested in Parliament and the State Legislatures under Articles 245 and 246 of the Constitution. The legislature as the repository of the sovereign legislative power is vested with the authority to determine whether a law should be enacted. The doctrine of separation of powers entrusts to the court the constitutional function of deciding upon the validity of a law enacted by the legislature, where a challenge is brought before the High Court under Article 226 (or this Court under Article 32) on the ground that the law lacks in legislative

competence or has been enacted in violation of a constitutional provision. But judicial review cannot encroach upon the basic constitutional function which is entrusted to the legislature to determine whether a law should be enacted. **Whether a provision of law as enacted subserves the object of the law or should be amended is a matter of legislative policy.** The court cannot direct the legislature either to enact a law or to amend a law which it has enacted for the simple reason that this constitutional function lies in the exclusive domain of the legislature. For the Court to mandate an amendment of a law — as did the Himachal Pradesh High Court — is a plain usurpation of a power entrusted to another arm of the State. There can be no manner of doubt that the High Court has transgressed the limitations imposed upon the power of judicial review under Article 226 by issuing the above directions to the State Legislature to amend the law. The Government owes a collective responsibility to the State Legislature. The State Legislature is comprised of elected representatives. The law enacting body is entrusted with the power to enact such legislation as it considers necessary to deal with the problems faced by society and to resolve issues of concern. The courts do not sit in judgment over legislative expediency or upon legislative policy. This position is well settled. Since the High Court has failed to notice it, we will briefly recapitulate the principles which emerge from the precedent on the subject."

192. It is submitted that this Hon'ble Court in ***Ravindra Ramchandra Waghmare v. Indore Municipal Corpn.*, (2017) 1 SCC 667**, held as under :

"46. In Union of India v. Deoki Nandan Aggarwal, this Court has laid down that courts cannot supply omissions to a statute and a court cannot invoke the principle of affirmative action to avoid discrimination so as to modify the **legislative policy**. In Padma Sundara Rao v. State of T.N., this Court held when casus omissus cannot be supplied by the Court. Reliance has also been placed upon the decisions in Jones v. Wrotham Park Settled Estates, Inco Europe Ltd. v. First Choice Distribution and Singareni Collieries Co. Ltd. v. Vemuganti Ramakrishan Rao which are the cases in which the Court has supplied omissions, the same is based upon the principle of true intent of the legislature and in order to give effect to the said intent, the courts can supply words which appear to be accidentally omitted or if the literal construction would in fact do violence to the legislative objective. For that, three conditions must be satisfied before this course can be adopted:

(i) that the intended purpose of the statute is not being achieved by literal construction of the statute;

(ii) that by inadvertence the draftsmen and Parliament failed to give effect to that purpose in the provision; and

(iii) the substance of the provision Parliament would have made an (sic can) be known with precision, though not in exact language, had the error in the Bill been noticed.

There is no dispute with the principles laid down by this Court in the aforesaid dictums. However the language of Section 305 is plain, simple and clear. In our opinion there is no defect in the phraseology used. The exigencies when the notice can be issued including the vesting part and deeming fiction are very clear. In view of aforesaid discussion, we do not find any deficiency in the phraseology used in Section 305 of the 1956 Act, as such we do not venture to add, subtract, amend or by construction make up the deficiencies. We find that there is no omission or lacunae, much less casus omissus as submitted, in the provisions contained in Section 305 of the 1956 Act."

193. It is submitted that this Hon'ble Court in ***State of H.P. v. H.P. Nizi Vyavsayik Prishikshan Kendra Sangh*, (2011) 6 SCC 597**, held as under :

> "21. The High Court has lost sight of the fact that education is a dynamic system and courses/subjects have to keep changing with regard to market demand, employability potential, availability of infrastructure, etc. No institute can have a legitimate right or expectation to run a particular course forever and it is the pervasive power and authority vested in the Government to frame policy and guidelines for progressive and legitimate growth of the society and create balances in the arena inclusive of imparting technical education from time to time. Inasmuch as the institutions found fit were allowed to run other courses except the three mentioned above, the doctrine of legitimate expectation was not disregarded by the State. Inasmuch as ultimately it is the responsibility of the State to provide good education, training and employment, it is best suited to frame a policy or either modify/alter a decision depending on the circumstance based on relevant and acceptable materials. **The courts do not substitute their views in the decision of the State Government with regard to policy matters**. In fact, the court must refuse to sit as appellate authority or super legislature to weigh the wisdom of legislation or policy decision of the Government unless it runs counter to the mandate of the Constitution."

194. It is submitted that the question of the need to frame a law with regard with regard to the present subject matter within a country is solely within the domain of Parliament elected by the people. It is submitted that the question of policy efficacy or the requirement of the law is based on factors which clearly fall outside the judicial realm. It is submitted that such decision are based on factors which not justiciable and merely because as per the limited understanding of the Petitioners, the Impugned policy does seem appropriate in the private judgment of the Petitioners, the same does not become a ground for unconstitutionality.

195. It is submitted that this Hon'ble Court, in a recent judgment in ***Dr. Ashwani Kumar v. Union of India and Anr.*, (2020) 13 SCC 585**, in the context of a similar prayer, has held as under :

> **"25. Legislating or law-making involves a choice to prioritise certain political, moral and social values over the others from a wide range of choices that exist before the legislature. It is a balancing and integrating exercise to give expression/meaning to diverse and alternative values and blend it in a manner that it is representative of several viewpoints so that it garners support from other elected representatives to pass institutional muster and acceptance. Legislation, in the form of an enactment or laws, lays down broad and general principles. It is the source of law which the judges are called upon to apply. Judges, when they apply the law, are constrained by the rules of language and by well identified background presumptions as to the manner in which the legislature intended the law to be read. Application of law by the judges is not synonymous with the enactment of law by the legislature. Judges have the power to spell out how precisely the statute would apply in a particular case. In this manner, they complete the law formulated by the legislature by applying it. This power of interpretation or the power of judicial review is exercised post the enactment of law, which is then made subject matter of interpretation or challenge before the courts.**

26. Legislature, as an institution and a wing of the Government, is a microcosm of the bigger social community possessing qualities of a democratic institution in terms of composition, diversity and accountability. Legislature uses in-built procedures carefully designed and adopted to bring a plenitude of representations and resources as they have access to information, skills, expertise and knowledge of the people working within the institution and outside in the form of executive.[31] Process and method of legislation and judicial adjudication are entirely distinct. Judicial adjudication involves applying rules of interpretation and law of precedents and notwithstanding deep understanding, knowledge and wisdom of an individual judge or the bench, it cannot be equated with law making in a democratic society by legislators given their wider and broader diverse polity. The Constitution states that legislature is supreme and has a final say in matters of legislation when it reflects on alternatives and choices with inputs from different quarters, with a check in the form of democratic accountability and a further check by the courts which exercise the power of judicial review. It is not for the judges to seek to develop new all-embracing principles of law in a way that reflects the stance and opinion of the individual judges when the society/legislators as a whole are unclear and substantially divided on the relevant issues[32]. In Bhim Singh v. Union of India[33], while observing that the Constitution does not strictly prohibit overlapping of functions as this is inevitable in the modern parliamentary democracy, the Constitution prohibits exercise of functions of another branch which results in wresting away of the regime of constitutional accountability. Only when accountability is preserved, there will be no violation of principle of separation of powers. Constitution not only requires and mandates that there should be right decisions that govern us, but equal care has to be taken that the right decisions are made by the right body and the institution. This is what gives legitimacy, be it a legislation, a policy decision or a court adjudication.

27. It is sometimes contended with force that unpopular and difficult decisions are more easily grasped and taken by the judges rather than by the other two wings. Indeed, such suggestions were indirectly made. This reasoning is predicated on the belief that the judges are not directly accountable to the electorate and, therefore, enjoy the relative freedom from questions of the moment, which enables them to take a detached, fair and just view.[34] The position that judges are not elected and accountable is correct, but this would not justify an order by a court in the nature of judicial legislation for it will run afoul of the constitutional supremacy and invalidate and subvert the democratic process by which legislations are enacted. For the reasons stated above, this reasoning is constitutionally unacceptable and untenable."

Beneficial economic legislations – all forms of benefits

196. It is submitted that in ***Swiss Ribbons* supra**, another aspect of economic legislation was highlighted which is worth noting. It is submitted that the judgment noted that economic beneficial legislations are not just ones which are understood in the classical sense, but could also be "beneficial legislations" for specified purposes. It is submitted that in the instant case the present Impugned policy is beneficial for the entire macro-economic health of the country and a step in the right direction for strengthening of the democratic health of the country. Specifically, it is beneficial for the democracy as it seeks to shift from an unregulated, unaccounted and often illegal cash based political funded to regulated, clean and regulated

political donations. It is submitted that the observations in ***Swiss Ribbons* supra**, are worth noting :

> **"28.** It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. **The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters/those who are in management.** Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests. The moratorium imposed by Section 14 is in the interest of the corporate debtor itself, thereby preserving the assets of the corporate debtor during the resolution process. The timelines within which the resolution process is to take place again protects the corporate debtor's assets from further dilution, and also protects all its creditors and workers by seeing that the resolution process goes through as fast as possible so that another management can, through its entrepreneurial skills, resuscitate the corporate debtor to achieve all these ends."

197. In ***Edukanti Kistamma v. S. Venkatareddy*, (2010) 1 SCC 756**, it was held as under :

> **"26. The 1950 Act being the beneficial legislation requires interpretation to advance social and economic justice and enforce the constitutional directives and not to deprive a person of his right to property. The statutory provisions should not be construed in favour of such deprivation. Interpretation of a beneficial legislation with a narrow pedantic approach is not justified. In case there is any doubt, the court should interpret a beneficial legislation in favour of the beneficiaries and not otherwise as it would be against the legislative intent. For the purpose of interpretation of a statute, the Act is to be read in its entirety. The purport and object of the Act must be given its full effect by applying the principles of purposive construction. The court must be strong against any construction which tends to reduce a statute's utility. The provisions of the statute must be construed so as to make it effective and operative and to further the ends of justice and not to frustrate the same. The court has the duty to construe the statute to promote the object of the statute and serve the purpose for which it has been enacted and should not efface its very purpose.** (Vide S.P. Jain v. Krishna Mohan Gupta [(1987) 1 SCC 191 : AIR 1987 SC 222] , RBI v. Peerless General Finance and Investment Co. Ltd.[(1987) 1 SCC 424 : AIR 1987 SC 1023] , Haryana SEB v. Suresh [(1999) 3 SCC 601 : 1999 SCC (L&S) 765 : AIR 1999 SC 1160] , Gayatri Devi Pansari v. State of Orissa [(2000) 4 SCC 221 : AIR 2000 SC 1531] , High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat [(2003) 4 SCC 712 : 2003 SCC (L&S) 565 : AIR 2003 SC 1201] , Indian Handicrafts Emporium v. Union of India [(2003) 7 SCC 589 : AIR 2003 SC 3240] , Ashok Leyland Ltd. v. State of T.N. [(2004) 3 SCC 1] , Ameer Trading Corpn. Ltd. v. Shapoorji Data Processing Ltd. [(2004) 1 SCC 702 : AIR 2004 SC 355] , Deepal Girishbhai Soni v. United Insurance Co. Ltd. [(2004) 5 SCC 385 : 2004 SCC (Cri) 1623 : AIR 2004 SC 2107] , Maruti Udyog Ltd. v. Ram Lal[(2005) 2 SCC 638 : 2005 SCC (L&S) 308 : AIR 2005 SC 851] , Oriental Insurance Co. Ltd. v. Brij Mohan [(2007) 7 SCC 56 : (2007) 3 SCC (Cri) 304 : AIR 2007 SC 1971] and Karnataka State Financial Corpn. v. N. Narasimahaiah [(2008) 5 SCC 176 : AIR 2008 SC 1797] .)"

198. In ***Narendra v. State of U.P.*, (2017) 9 SCC 426**, it was held as under :

> **8.** The purpose and objective behind the aforesaid provision is salutary in nature. It is kept in mind that those landowners who are agriculturist in most of the cases, and

whose land is acquired for public purpose should get fair compensation. Once a particular rate of compensation is judicially determined, which becomes a fair compensation, benefit thereof is to be given even to those who could not approach the court. It is with this aim the aforesaid provision is incorporated by the legislature. Once we keep the aforesaid purpose in mind, the mere fact that the compensation which was claimed by some of the villagers was at lesser rate than the compensation which is ultimately determined to be fair compensation, should not be a ground to deny such persons appropriate and fair compensation on the ground that they claimed compensation at a lesser rate. In such cases, strict rule of pleadings are not be made applicable and rendering substantial justice to the parties has to be the paramount consideration. It is to be kept in mind that in the matter of compulsory acquisition of lands by the Government, the villagers whose land gets acquired are not willing parties. It was not their voluntary act to sell off their land. They were compelled to give the land to the State for public purpose. For this purpose, the consideration which is to be paid to them is also not of their choice. On the contrary, as per the scheme of the Act, the rate at which compensation should be paid to the persons divested of their land is determined by the Land Acquisition Collector. The Scheme further provides that his determination is subject to judicial scrutiny in the form of reference to the District Judge and appeal to the High Court, etc. In order to ensure that the landowners are given proper compensation, the Act provides for "fair compensation". Once such a fair compensation is determined judicially, all landowners whose land was taken away by the same notification should become the beneficiary thereof. Not only it is an aspect of good governance, failing to do so would also amount to discrimination by giving different treatment to the persons though identically situated. On technical grounds, like the one adopted by the High Court in the impugned judgment, this fair treatment cannot be denied to them.

9. No doubt the judicial system that prevails is based on adversarial form of adjudication. At the same time, recognising the demerits and limitations of adversarial litigation, elements of social context adjudication are brought into the decision-making process, particularly, when it comes to administering justice to the marginalised section of the society.

10. History demonstrates that various forms of conflict resolution have been institutionalised from time to time. Presently, in almost all civil societies, disputes are resolved through courts, though the judicial system may be different in different jurisdictions. Traditionally, our justice delivery system is adversarial in nature. Of late, capabilities and method of this adversarial justice system are questioned and a feeling of disillusionment and frustration is witnessed among the people. After all, what is the purpose of having a judicial mechanism — it is to advance justice. Warren Burger once said:

> "The obligation of the legal profession is… to serve as healers of human conflict…(we) should provide mechanisms that can produce an acceptable result in shortest possible time, with the least possible expense and with a minimum of stress on the participants. That is what justice is all about."

11. Prof (Dr) N.R. Madhava Menon explains the meaning and contour of social justice adjudication as the application of equality jurisprudence evolved by Parliament and the Supreme Court in myriad situations presented before courts where unequal parties are pitted in adversarial proceedings and where courts are called upon to dispense equal justice. Apart from the socio-economic inequalities accentuating the disabilities of the poor in an unequal fight, the adversarial process itself operates to the disadvantage of the weaker party. In such a situation, the court has to be not only

sensitive to the inequalities of parties involved but also positively inclined to the weaker party if the imbalance were not to result in miscarriage of justice. The courts, in such situations, generally invoke the principle of fairness and equality which are essential for dispensing justice. **Purposive interpretation is given to subserve the ends of justice particularly when the cases of vulnerable groups are decided. The court has to keep in mind the "problem solving approach" by adopting therapeutic approaches to the maximum extent the law permits rather than "just deciding" cases, thereby bridging the gap between law and life, between law and justice. The notion of access to justice is to be taken in a broader sense. The objective is to render justice to the needy and that means fair solutions to the conflict thereby providing real access to "justice".**

12. Justice is a core value of any judicial system. It is the ultimate aim in the decision-making process. In post-traditional liberal democratic theories of justice, the background assumption is that all humans have equal value and should, therefore, be treated as equal, as well as by equal laws. This can be described as "Reflective Equilibrium". The method of Reflective Equilibrium was first introduced by Nelson Goodman in "Fact, Fiction and Forecast" (1955). However, it is John Rawls who elaborated this method of Reflective Equilibrium by introducing the concept of "Justice as Fairness". While on the one hand, we have the doctrine of 'justice as fairness', as propounded by John Rawls and elaborated by various jurists thereafter in the field of law and political philosophy, we also have the notion of "Distributive Justice" propounded by Hume which aims at achieving a society producing maximum happiness or net satisfaction. When we combine Rawls's notion of "Justice as Fairness" with the notions of "Distributive Justice", to which Noble Laureate Prof Amartya Sen has also subscribed, we get jurisprudential basis for achieving just results for doing justice to the weaker section of the society.

13. From the human rights perspective, persons belonging to the weaker sections are disadvantaged people who are unable to acquire and use their rights because of poverty, social or other constraints. They are not in a position to approach the courts even when their rights are violated; they are victimised or deprived of their legitimate due. Here lies the importance of access to justice for socially and economically disadvantaged people. When such people are denied the basic right of survival and access to justice, it further aggravates their poverty. Therefore, even in order to eliminate poverty, access to justice to the poor sections of the society becomes imperative. In the instant case, it is the poverty which compelled the appellants to restrict the claim to Rs 115 per square yard, as they were not in a position to pay the court fee on a higher amount."

199. In ***Revanasiddappa v. Mallikarjun*, (2011) 11 SCC 1**, it was held as under :

"30. **With changing social norms of legitimacy in every society, including ours, what was illegitimate in the past may be legitimate today. The concept of legitimacy stems from social consensus, in the shaping of which various social groups play a vital role.** Very often a dominant group loses its primacy over other groups in view of ever changing socio-economic scenario and the consequential vicissitudes in human relationship. Law takes its own time to articulate such social changes through a process of amendment. That is why in a changing society law cannot afford to remain static. If one looks at the history of development of Hindu Law it will be clear that it was never static and has changed from time to time to meet the challenges of the changing social pattern in different times.

40. It is well known that this Court cannot interpret a socially beneficial legislation on the basis as if the words therein are cast in stone. Such legislation must be given a

purposive interpretation to further and not to frustrate the eminently desirable social purpose of removing the stigma on such children. In doing so, the Court must have regard to the equity of the statute and the principles voiced under Part IV of the Constitution, namely, the directive principles of State policy. In our view this flows from the mandate of Article 37 which provides that it is the duty of the State to apply the principles enshrined in Chapter IV in making laws. It is no longer in dispute that today the State would include the higher judiciary in this country."

200. In ***D.C.M. v. Paramjit Singh*, (1990) 4 SCC 723**

"7. On the other hand, a classification with reference to economic realities was upheld by this Court in Kerala Hotel & Restaurant Association v. State of Kerala[(1990) 2 SCC 502 : 1990 SCC (Tax) 309 : JT (1990) 1 SC 324] . This Court stated (SCC p. 517, para 31) "... those who can afford the costlier cooked food, being more affluent, would find the burden lighter. This object cannot be faulted on principle and is, indeed, laudable." Though that principle was stated in a different context, significantly this Court accepted a classification based on financial capacity.

9. The object of the enactment in question is undoubtedly to protect the weaker section of tenants from unreasonable eviction and unfair rent. The legislature, at the same time, did not desire to discourage persons from constructing buildings. The twin legislative objects is the protection of economically weaker tenants and encouragement of construction of buildings. While protection is thus afforded to deserving tenants, construction of new buildings is encouraged by exempting buildings occupied by richer classes of tenants from the provisions of the Act. While a building is covered by the Act when occupied by a tenant whose annual net income is less than the specified amount, the protection is withheld when the same building is occupied by a richer tenant whose annual net income is higher than the specified amount. Where a building is occupied by more than one tenant, the applicability of the Act to each of them would depend upon his net income. It is the tenant that the legislature intends to protect and not the landlord or his building. The test adopted by the legislature for this purpose is with reference to the tenant's net income, whether accruing inside or outside the State, as on the date of the landlord's application for eviction as well as on the date of the decree for eviction. The legislative object is, therefore, to protect tenants who are economically weaker in comparison to those affluent tenants falling outside the specified limit of income, and at the same time to encourage construction of new buildings which will result in better availability of accommodation, employment opportunity and economic prosperity. This is a reasonable classification which does not suffer from the vice of being too vague or broad. Classification based on income is well known to law. Such classification has a reasonable relation to the twin legislative objects mentioned above. We see nothing unreasonable or irrational or unworkable or vague or unfair or unjust in the classification adopted by the impugned provision.

10. Nor is there lack of clarity in the concept of "income" or "net income". Income is money or other benefit periodically received. It is profit or revenue and not capital. It is a gain derived from capital or labour or both. Net income is income obtained after deducting all expenses incurred for the purpose of earning the income. It is income minus operating expenses. The concept of net income is what it is ordinarily understood to be in common parlance, and not necessarily limited by the technicalities of any fiscal enactment. See in this connection the observation of the Jammu and Kashmir High Court in Benarsi Das v. Jagdish Raj Kohli [AIR 1960 J & K 5] .

11. The legislature in its wisdom is presumed to understand and appreciate correctly the problems of the State and the needs of the people made manifest by

> experience. Absent blatant disregard of constitutional provisions, legislative innovation by social and economic experimentation must be permitted to continue without judicial interference."

201. Therefore, in light of the above, it is apposite to state that the power to make policy decisions rests with the Government and the same should not be interfered with by this Hon'ble Court as the same would open floodgates of litigation challenging each and every policy-decision.

Purported breach of Article 14

202. It is submitted that the assertions of the Petitioners with regard to the breach of Article 14 are misconceived. It is submitted that apart from a generic claim of "arbitrariness", the Petitioner has wholly failed to show any arbitrary classification or any arbitrary consequences of the Impugned actions.

203. It is respectfully submitted that equal protection of the laws guaranteed by Article 14 of the Constitution does not mean that all laws must be general in character and universal in application and that the legislature no longer has the power of distinguishing and classifying persons or things for the purposes of legislation. It is humbly submitted that the only requirement prior to making a particular classification or a special legislation is that the legislative classification must not be based on any arbitrary classification and should be based on an intelligible differentia having a reasonable relation to the object which the legislature seeks to attain. It is submitted that if the classification on which the legislation is founded fulfils the above said requirement, then the differentiation which the legislation makes between the class of persons or things to which it applies and other persons or things left outside the purview of the subject matter of legislation cannot be regarded as a denial of the equal protection of the law.

204. It is submitted that even after the authoritative pronouncement in ***Shayara Bano v. Union of India*** reported in **2017 (9) SCC 1** (Para 101), the "*twin test of classification*", would be applicable in matters of classification. It is submitted that the presence of "*twin test of classification*" would give content to the otherwise untrammelled expanse of "*manifest arbitrariness*". It is submitted that the "*twin test of classification*" was laid down by bench of higher combinations than ***Shayara Bano*** *supra*. The "*twin test of classification*" states that Article 14 forbids class legislation but does not forbid classification. It is submitted that it postulates that permissible classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and the differentia must have a rational relation to the object sought to be achieved by the

statute in question. It is submitted that the jurisprudence laid down in the initial years by this Hon'ble Court, still holds the field on the subject and the 'doctrine of manifest arbitrariness' cannot exist outside the law settled by numerous constitution benches of this Hon'ble Court.

205. It is submitted that the law on the same can be succinctly summarised by a decision of seven Hon'ble Judges in ***Special Courts Bill, 1978, In re*, (1979) 1 SCC 380**. In the said decision, it was held as under :

> **"71.** There are numerous cases which deal with different facets of problems arising under Article 14 and which set out principles applicable to questions which commonly arise under that article. Among those may be mentioned the decisions in Budhan Choudhry v. State of Bihar [AIR 1955 SC 191 : (1955) 1 SCR 1045] , Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar [AIR 1958 SC 538 : 1959 SCR 279] , C.I. Emden v. State of U.P. [AIR 1960 SC 548 : (1960) 2 SCR 592] , Kangsari Haldar v. State of West Bengal [AIR 1960 SC 457 : (1960) 2 SCR 646] , Jyoti Pershad v. Administrator for Union Territory of Delhi [AIR 1961 SC 1602 : (1962) 2 SCR 125] and State of Gujarat v. Shri Ambica Mills Ltd., Ahmedabad [(1974) 4 SCC 656 : (1974) 3 SCR 760] . **But, as observed by Mathew, J., in the last mentioned case, "it would be an idle parade of familiar learning to review the multitudinous cases in which the constitutional assurance of equality before the law has been applied".** We have, therefore, confined our attention to those cases only in which special tribunals or courts were set up or Special Judges were appointed for trying offences or classes of offences or cases or classes of cases. The survey which we have made of those cases may be sufficient to give a fair idea of the principles which ought to be followed in determining the validity of classification in such cases and the reasonableness of special procedure prescribed for the trial of offenders alleged to constitute a separate or distinct class.
>
> **72.** As long back as in 1960, it was said by this Court in Kangsari Haldar that the propositions applicable to cases arising under Article 14 "have been repeated so many times during the past few years that they now sound almost platitudinous". What was considered to be platitudinous some 18 years ago has, in the natural course of events, become even more platitudinous today, especially in view of the avalanche of cases which have flooded this Court. Many a learned Judge of this Court has said that it is not in the formulation of principles under Article 14 but in their application to concrete cases that difficulties generally arise. But, considering that we are sitting in a larger Bench than some which decided similar cases under Article 14, and in view of the peculiar importance of the questions arising in this reference, though the questions themselves are not without a precedent, we propose, though undoubtedly at the cost of some repetition, to state the propositions which emerge from the judgments of this Court insofar as they are relevant to the decision of the points which arise for our consideration. Those propositions may be stated thus:
>
> "(1) The first part of Article 14, which was adopted from the Irish Constitution, is a declaration of equality of the civil rights of all persons within the territories of India. It enshrines a basic principle of republicanism. The second part, which is a corollary of the first and is based on the last clause of the first section of the Fourteenth Amendment of the American Constitution, enjoins that equal protection shall be secured to all such persons in the enjoyment of their rights and liberties without discrimination of favouritism. It is a pledge of the protection of equal laws, that is, laws that operate alike on all persons under like circumstances.
>
> **(2) The State, in the exercise of its governmental power, has of necessity to make laws operating differently on different groups or classes of persons within**

its territory to attain particular ends in giving effect to its policies, and it must possess for that purpose large powers of distinguishing and classifying persons or things to be subjected to such laws.

(3) The constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or things. The courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.

(4) The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same.

(5) By the process of classification, the State has the power of determining who should be regarded as a class for purposes of legislation and in relation to a law enacted on a particular subject. This power, no doubt, in some degree is likely to produce some inequality; but if a law deals with the liberties of a number of well defined classes, it is not open to the charge of denial of equal protection on the ground that it has no application to other persons. Classification thus means segregation in classes which have a systematic relation, usually found in common properties and characteristics. It postulates a rational basis and does not mean herding together of certain persons and classes arbitrarily.

(6) The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognise even degree of evil, but the classification should never be arbitrary, artificial or evasive.

(7) The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act.

(8) The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while Article 14 forbids class discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liabilities proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense abovementioned.

(9) If the legislative policy is clear and definite and as an effective method of carrying out that policy a discretion is vested by the statute upon a body of administrators or officers to make selective application of the law to certain classes or groups of persons, the statute itself cannot be condemned as a piece of

discriminatory legislation. In such cases, the power given to the executive body would import a duty on it to classify the subject-matter of legislation in accordance with the objective indicated in the statute. If the administrative body proceeds to classify persons or things on a basis which has no rational relation to the objective of the legislature, its action can be annulled as offending against the equal protection clause. On the other hand, if the statute itself does not disclose a definite policy or objective and it confers authority on another to make selection at its pleasure, the statute would be held on the face of it to be discriminatory, irrespective of the way in which it is applied.

(10) Whether a law conferring discretionary powers on an administrative authority is constitutionally valid or not should not be determined on the assumption that such authority will act in an arbitrary manner in exercising the discretion committed to it. Abuse of power given by law does occur; but the validity of the law cannot be contested because of such an apprehension. Discretionary power is not necessarily a discriminatory power.

(11) Classification necessarily implies the making of a distinction or discrimination between persons classified and those who are not members of that class. It is the essence of a classification that upon the class are cast duties and burdens different from those resting upon the general public. Indeed, the very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality.

(12) Whether an enactment providing for special procedure for the trial of certain offences is or is not discriminatory and violative of Article 14 must be determined in each case as it arises, for, no general rule applicable to all cases can safely be laid down. A practical assessment of the operation of the law in the particular circumstances is necessary.

(13) A rule of procedure laid down by law comes as much within the purview of Article 14 as any rule of substantive law and it is necessary that all litigants, who are similarly situated, are able to avail themselves of the same procedural rights for relief and for defence with like protection and without discrimination."

206. It is submitted that the other principles reiterated in the said judgment are as under:

> that a law may be constitutional even though it relates to a single individual if on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;

> that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

> that it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;

> that the legislature is free to recognize degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;

> that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and

> that while good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the fact of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation.

207. It is submitted that differential treatment does not per se constitute violation of Article 14. Thus, the legal position aforementioned clearly establishes that any legislation may withstand challenge on the ground of discrimination and violation of Art. 14 of the Constitution, in case the classification created by it is founded on any intelligible differentia which distinguishes persons or things that are grouped together from others and has a rational relation to the object sought to be achieved by the statute in question.

Classifications are not perfect and may give birth to special treatment or singling out – this may not involve breach of Article 14

208. It is submitted that while the said arguments may be relevant for the policy purpose, the same cannot be a matter of constitutionality challenge. It is submitted that the submissions of the Petitioners on the classification not be clear on based on unintelligible factors is misconceived. It is settled law that a 'mathematical nicety' or 'perfect equality' are not required as per Article 14. Further, the constitutionality of a statute cannot be questioned on the basis of fortuitous circumstances arising out of peculiar situations. The Respondent seeks to rely on the following cases for the said purpose:

A. ***Kedar Nath Bajoria v. State of W.B.*****, (1953) 2 SCC 142 [5JB – J. Patanjali Sastri]**

> "**7.** Now it is well settled that the equal protection of the laws guaranteed by Article 14 of the Constitution does not mean that all laws must be general in character and universal in application and that the State is no longer to have the power of distinguishing and classifying persons or things for the purposes of legislation. To put it simply all that is required in class or special legislation is that the legislative classification must not be arbitrary but should be based on an intelligible principle having a reasonable relation to the object which the legislature seeks to attain. If the classification on which the legislation is founded fulfils this requirement, then the differentiation which the legislation makes between the class of persons or things to which it applies and other persons or things left outside the purview of the legislation cannot be regarded as a denial of the equal protection of the law, for, if the legislation

were all-embracing in its scope, no question could arise of classification being based on intelligible differentia having a reasonable relation to the legislative purpose. The real issue, therefore, is whether having regard to the underlying purpose and policy of the Act as disclosed by its title, preamble and provisions as summarised above, the classification of the offences, for the trial of which the Special Court is set up and a special procedure is laid down, can be said to be unreasonable or arbitrary and therefore, violative of the equal protection clause.

...

9. Mr Chatterjee argues that the offences listed in the schedule do not necessarily involve the accrual of any pecuniary gain to the offender or the acquisition of other property by him or any loss to any Government, and that the classification cannot, therefore, be said to be based on that consideration. Counsel referred in particular to the offences included in the fifth paragraph, namely, forgery, making and possessing counterfeit seals, falsification of accounts, etc., as instances in point. It may, however, be observed that Section 9(1), which makes it obligatory on the Special Court to impose on persons tried and convicted by it an additional compensatory fine of the kind mentioned above, indicates that only those offences, which, either by themselves or in combination with others mentioned in the schedule, are suspected to "have resulted in such pecuniary gain or other advantage and, therefore, to merit the compensatory fine, are to be allotted to a Special Court for trial. It is well known that acts which constitute the offences mentioned in para 5 are often done to facilitate the perpetration of the other offences specified in the schedule, and they may well have been included as ancillary offences. **Article 14 does not insist that legislative classification should be scientifically perfect or logically complete and we cannot accept the suggestion that the classification made in the Act is based on no intelligible principle and is, therefore, arbitrary.**"

B. *Ganga Ram v. Union of India,* (1970) 1 SCC 377 [6JB – J. I.D. Dua]

"2. The right of equality is guaranteed by Articles 14 to 16 of our Constitution. The petitioners rely on Articles 14 and 16(1). Article 14 is an injunction to both the legislative and the executive organs of the State and other subordinate authorities not to deny to any person equality before the law or the equal protection of the laws. Article 16 is only an instance of the general rule of equality laid in Article 14. Sub-article (1) of Article 16 guarantees to every citizen equality of opportunity in matters of public employment thereby serving to give effect to the equality before the law guaranteed by Article 14. The equality of opportunity in the matter of services undoubtedly takes within its fold all stages of service from initial appointment to its termination including promotion but it does not prohibit the prescription of reasonable rules for selection and promotion, applicable to all members of a classified group. **Mere production of inequality is not enough to attract the constitutional inhibition because every classification is likely in some degree to produce some inequality. The State is legitimately empowered to frame rules of classification for securing the requisite standard of efficiency in services and the classification need not be scientifically perfect or logically complete.** In applying the wide language of Articles 14 and 16 to concrete cases a doctrinaire approach should be avoided and the **matter considered in a practical way,** of course, without whittling down the equality clauses. The classification, in order to be outside the vice of inequality, must, however, be founded on an intelligible differentia which on rational grounds distinguishes persons grouped together from those left out. The differences which warrant a classification must be real and substantial and must bear a just and reasonable relation to the object sought to be achieved. If this test is satisfied then the

classification cannot be hit by the vice of inequality. It is in the background of this broad principle that the petitioners' grievance is to be considered."

C. ***Anant Mills Co. Ltd. v. State of Gujarat*, (1975) 2 SCC 175**

"24. Apart from the above, we are of the opinion that classification by treating decided cases as belonging to one category and pending cases as belonging to another category is reasonable and not per se offensive to Article 14.

25. It is well-established that Article 14 forbids class legislation but does not forbid classification. Permissible classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and the differentia must have a rational relation to the object sought to be achieved by the statute in question. **In permissible classification mathematical nicety and perfect equality are not required. Similarity, not identity of treatment, is enough. If there is equality and uniformity within each group, the law will not be condemned as discriminative, though due to some fortuitous circumstances arising out of a peculiar situation some included in a class get an advantage over others, so long as they are not singled out for special treatment.** Taxation law is not an exception to this doctrine. **But, in the application of the principles, the courts, in view of the inherent complexity of fiscal adjustment of diverse elements, permit a larger discretion to the Legislature in the matter of classification so long as it adheres to the fundamental principles underlying the said doctrine. The power of the Legislature to classify is of wide range and flexibility so that it can adjust its system of taxation in all proper and reasonable ways** (see Ram Krishna Dalmia v. Justice S.R. Tendolkar [AIR 1958 SC 538 : 1959 SCR 279] and Khandige Sham Bhat v. Agricultural Income Tax Officer, Kasaragod [AIR 1963 SC 591 : (1963) 3 SCR 809 : (1963) 48 ITR 21]) Keeping the above principles in view, we find no violation of Article 14 in treating pending cases as a class different from decided cases. It cannot be disputed that so far as the pending cases covered by clause (i) are concerned, they have been all treated alike. …."

D. ***Mohan Kumar Singhania v. Union of India*, 1992 Supp (1) SCC 594 [3JB – J. Ratnavel Pandian]**

"127. We shall now bestow our judicious thought over this matter and carefully examine the rival contentions of the parties in the light of the guiding principles, lucidly laid down by this Court in a series of decisions, a few of which we have already referred to hereinbefore. The selections for IAS, IFS and IPS Group 'A' services and Group 'B' service are made by a combined competitive examination and viva voce test. There cannot be any dispute that each service is a distinct and separate cadre, having its separate field of operation, with different status, prospects, pay scales, the nature of duties, the responsibilities to the post and conditions of service etc. Therefore, once a candidate is selected and appointed to a particular cadre, he cannot be allowed to say that he is at par with the others on the ground that all of them appeared and were selected by a combined competitive examination and viva voce test and that the qualifications prescribed are comparable. In our considered view, the classification of the present case is not based on artificial inequalities but is hedged within the salient features and truly founded on substantial differences. Judged from this point of view, it seems to us impossible to accept the submission that the classification rests on an unreal and unreasonable basis and that it is arbitrary or absurd.

130. Article 14 declares that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. The cherished

principle underlying the above article is that there should be no discrimination between one person and another if as regards the subject matter of the legislation, their position is the same. (vide Chiranjit Lal Chowdhuri v. Union of India [1950 SCR 869 : AIR 1951 SC 41] or in other words its action must not be arbitrary, but must be based on some valid principle, which in itself must not be irrational or discriminatory (vide Kasturi Lal Lakshmi Reddy v. State of J&K [(1980) 4 SCC 1] . As ruled by this Court in Ameerunissa Begum v. Mahboob Begum [1953 SCR 404 : AIR 1953 SC 91] and Gopi Chand v. Delhi Administration [AIR 1959 SC 609 : 1959 Supp 2 SCR 87] that differential treatment does not per se constitute violation of Article 14 and it denies equal protection only when there is no rational or reasonable basis for the differentiation. **Thus Article 14 condemns discrimination and forbids class legislation but permits classification founded on intelligible differentia having a rational relationship with the object sought to be achieved by the Act/Rule/Regulation in question. The government is legitimately empowered to frame rules of classification for securing the requisite standard of efficiency in services and the classification need not scientifically be perfect or logically complete. As observed by this Court more than once, every classification is likely in some degree to produce some inequality."**

E. *Venkateshwara Theatre v. State of A.P.*, (1993) 3 SCC 677 [2JB – S.C. Agrawal]

"**20.** Article 14 enjoins the State not to deny to any person equality before the law or the equal protection of the laws. The phrase "equality before the law" contains the declaration of equality of the civil rights of all persons within the territories of India. It is a basic principle of republicanism. The phrase "equal protection of laws" is adopted from the Fourteenth Amendment to the U.S. Constitution. The right conferred by Article 14 postulates that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Since the State, in exercise of its governmental power, has, of necessity, to make laws operating differently on different groups of persons within its territory to attain particular ends in giving effect to its policies, it is recognised that the State must possess the power of distinguishing and classifying persons or things to be subjected to such laws. It is, however, required that the classification must satisfy two conditions, namely, (i) it is founded on an intelligible differentia which distinguishes those that are grouped together from others; and (ii) the differentia must have a rational relation to the object sought to be achieved by the Act. **It is not the requirement that the classification should be scientifically perfect or logically complete. Classification would be justified if it is not palpably arbitrary**. (See : Re, Special Courts Bill, 1978[(1979) 1 SCC 380 : (1979) 2 SCR 476, 534-36] .) If there is equality and uniformity within each group, the law will not be condemned as discriminative, though due to some fortuitous circumstance arising out of a peculiar situation some included in a class get an advantage over others, so long as they are not singled out for special treatment. (See : Khandige Sham Bhat v. Agricultural I.T.O. [(1963) 3 SCR 809, 817 : AIR 1963 SC 591 : (1963) 48 ITR 21])

21. **Since in the present case we are dealing with a taxation measure it is necessary to point out that in the field of taxation the decisions of this Court have permitted the legislature to exercise an extremely wide discretion in classifying items for tax purposes, so long as it refrains from clear and hostile discrimination against particular persons or classes.** (See: East India Tobacco Co. v. State of A.P.[(1963) 1 SCR 404, 411 : AIR 1962 SC 1733 : (1962) 13 STC 529] , P.M. Ashwathanarayana Shetty v. State of Karnataka [1989 Supp (1) SCC 696 : 1988 Supp (3) SCR 155, 188] , Federation of Hotel & Restaurant Association of India v. Union of India [(1989) 3 SCC 634 : (1989) 2 SCR 918, 949] , Kerala Hotel & Restaurant Association v. State of Kerala [(1990) 2 SCC 502 : 1990 SCC (Tax) 309

: (1990) 1 SCR 516, 530] and Gannon Dunkerley and Co. v. State of Rajasthan[(1993) 1 SCC 364, 397] .)

22. Reference, in this context, may also be made to the decision of the U.S. Supreme Court in San Antonio Independent School District v. Rodriguez [411 US 1, 41 : 36 L Ed 2d 16 (1973)] wherein Justice Stewart, speaking for the majority has observed:

"No scheme of taxation, whether the tax is imposed on property, income or purchases of goods and services, has yet been devised which is free of all discriminatory impact. In such a complex arena in which no perfect alternatives exist, the Court does well not to impose too rigorous a standard of scrutiny lest all local fiscal schemes become subjects of criticism under the Equal Protection Clause."

23. Just as a difference in the treatment of persons similarly situate leads to discrimination, so also discrimination can arise if persons who are unequals, i.e. differently placed, are treated similarly. In such a case failure on the part of the legislature to classify the persons who are dissimilar in separate categories and applying the same law, irrespective of the differences, brings about the same consequence as in a case where the law makes a distinction between persons who are similarly placed. A law providing for equal treatment of unequal objects, transactions or persons would be condemned as discriminatory if there is absence of rational relation to the object intended to be achieved by the law.

29. In the instant case, we find that the legislature has prescribed different rates of tax by classifying theatres into different classes, namely, air-conditioned, air-cooled, ordinary (other than air-conditioned and air-cooled), permanent and semi-permanent and touring and temporary. The theatres have further been categorised on the basis of the type of the local area in which they are situate. It cannot, therefore, be said that there has been no attempt on the part of the legislature to classify the cinema theatres taking into consideration the differentiating circumstances for the purpose of imposition of tax. The grievance of the appellants is that the classification is not perfect. What they want is that there should have been further classification amongst the theatres falling in the same class on the basis of the location of the theatre in each local area. We do not think that such a contention is well founded.

F. *Ombalika Das v. Hulisa Shaw*, (2002) 4 SCC 539 [2JB – J. R.C. Lahoti]

"11. It is well settled that classification for the purpose of legislation cannot be done with mathematical precision. The legislature enjoys considerable latitude while exercising its wisdom taking into consideration myriad circumstances, enriched by its experience and strengthened by people's will. So long as the classification can withstand the test of Article 14 of the Constitution, it cannot be questioned why one subject was included and the other left out and why one was given more benefit than the other."

G. *Dharam Dutt v. Union of India*, (2004) 1 SCC 712 [2JB – J. R.C. Lahoti]

"56. Article 14 of the Constitution prohibits class legislation and not reasonable classification for the purpose of legislation. The requirements of the validity of legislation by reference to Article 14 of the Constitution are: that the subject-matter of legislation should be a well-defined class founded on an intelligible differentia which distinguishes that subject-matter from the others left out, and such differentia must have a rational relation with the object sought to be achieved by the legislation. The laying down of intelligible differentia does not, however, mean that the legislative classification should be scientifically perfect or logically complete."

209. It is submitted that scope for judicial review under Article 13, would always be curtailed by the interpretation postulated. However, at this juncture, it is necessary to clarify that *vague notions* ought not to be the basis of judicial review of legislation or a basis for exercise of power under public interest jurisdiction by the Hon'ble Courts. However, it is submitted that it is settled law, judicial review is to be conducted on the basis of the provisions of the Constitution and not on the "*what the assumed spirit of the Constitution*" states or based upon the subjective view of the petitioner. It is submitted that in a case of some antiquity, a seven judge bench of this Hon'ble Court, in ***Keshavan Madhava Menon v. State of Bombay*, 1951 SCC 16**, held as under:

> **"7.** The learned counsel appearing in support of this appeal urged that the Indian Press (Emergency Powers) Act, 1931, was one of the many repressive laws enacted by an alien Government with a view to stifle the liberty of the Indian subjects and particularly of the Indian Press; that, with the advent of independence the people of India began to breathe freely and by the Constitution which they gave unto themselves they took care to guarantee to themselves the fundamental rights of free citizens of a democratic republic and that Article 13(1) of that Constitution brushed aside all vestiges of subordination which the tyranny of the alien rulers had imposed upon them and declared all laws inconsistent with the fundamental rights to be void as if they had never been passed and had never existed. It was, therefore, against the spirit of the Constitution, argued the learned counsel, that a free citizen of India should still continue to be persecuted under such a retrograde law which, being inconsistent with the fundamental rights, must be declared to be void.
>
> **8.** The learned counsel urged that it was not necessary for him to contend that such inconsistent laws became void ab initio or that all past and closed transactions could be reopened but he contended that on and from January 26, 1950, when the Constitution came into force such inconsistent laws which became void could not be looked at for any purpose and far less could they be utilised for the purpose of framing a charge or punishing a free citizen. As the void law cannot be utilised any longer, the pending prosecutions, according to learned counsel, must fall to the ground. To permit pending proceedings under a law which, after the commencement of the Constitution had become void, to proceed further, after the Constitution has taken effect, is to prolong the efficacy of the law notwithstanding that it has become void on and from the date the Constitution came into force and that is against the spirit of the Constitution.
>
> **9.** An argument founded on what is claimed to be the spirit of the Constitution is always attractive, for it has a powerful appeal to sentiment and emotion; but a court of law has to gather the spirit of the Constitution from the language of the Constitution. What one may believe or think to be the spirit of the Constitution cannot prevail if the language of the Constitution does not support that view.
>
> **10.** Article 372(2) gives power to the President to adapt and modify existing laws by way of repeal or amendment. There is nothing to prevent the President, in exercise of the powers conferred on him by that article, from repealing, say the whole or any part of the Indian Press (Emergency Powers) Act, 1931. If the President does so, then such repeal will at once attract Section 6 of the General Clauses Act. In such a situation all prosecutions under the Indian Press (Emergency Powers) Act, 1931, which were pending at the date of its repeal by the President would be saved and must be proceeded with notwithstanding

the repeal of that Act unless an express provision was otherwise made in the repealing Act.

11. It is therefore clear that the idea of the preservation of past inchoate rights or liabilities and pending proceedings to enforce the same is not foreign or abhorrent to the Constitution of India. We are, therefore, unable to accept the contention about the spirit of the Constitution as invoked by the learned counsel in aid of his plea that pending proceedings under a law which has become void cannot be proceeded with. Further, if it is against the spirit of the Constitution to continue the pending prosecutions under such a void law, surely it should be equally repugnant to that spirit that men who have already been convicted under such repressive law before the Constitution of India came into force should continue to rot in jail. **It is, therefore, quite clear that the court should construe the language of Article 13(1) according to the established rules of interpretation and arrive at its true meaning uninfluenced by any assumed spirit of the Constitution."**

210. That in view of the above, it is humbly submitted that the introduction of electoral bonds is to curb the menace of black money donations of elections in India and accordingly provide for fair elections, which is the very edifice on which the democratic structure of this country rests and which has been recognised as part of the basic structure of the constitution by this Hon'ble Court.

It is submitted that no grounds of arbitrariness, invidious or arbitrary discrimination, or violation of any fundamental right of the Petitioner has been made out by the Petitioner in the present case. Therefore, as the power of judicial review in economic matters is limited and courts do not interfere with policy decisions, unless grave and arbitrary violations, are explicitly found, this Hon'ble Court must, therefore, be pleased to dismiss the present Writ Petition as being without any merit and being unsustainable in law.

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Date: 24-01-2017

Analysis of Sources of Funding of National and Regional Parties of India FY 2004-05 to 2014-15 (11 years)

Political Parties play a key role in democracies as they contest elections, form governments, formulate policies and are responsible for providing governance and improve the lot of the common man. Political parties need access to money in order to reach out to the electorate, explain their goals/policies and receive inputs from people. But where do they collect their funds from? An analysis of their Income Tax returns and statements filed with the Election Commission of India (ECI) shows that the **sources remain largely unknown**. At present, political parties are not required to reveal the name of individuals or organizations giving less than Rs. 20,000. As a result, **over two-thirds of the funds cannot be traced and are from 'unknown' sources**. This becomes very relevant in the light of recent events when demonetization was announced so as to weed out black money from the society. While the National Political Parties were brought under the RTI Act by the CIC ruling in June 2013, they have still not complied with the decision. Full transparency is, unfortunately, not possible under the current laws, and it is only the RTI that can keep citizens informed.

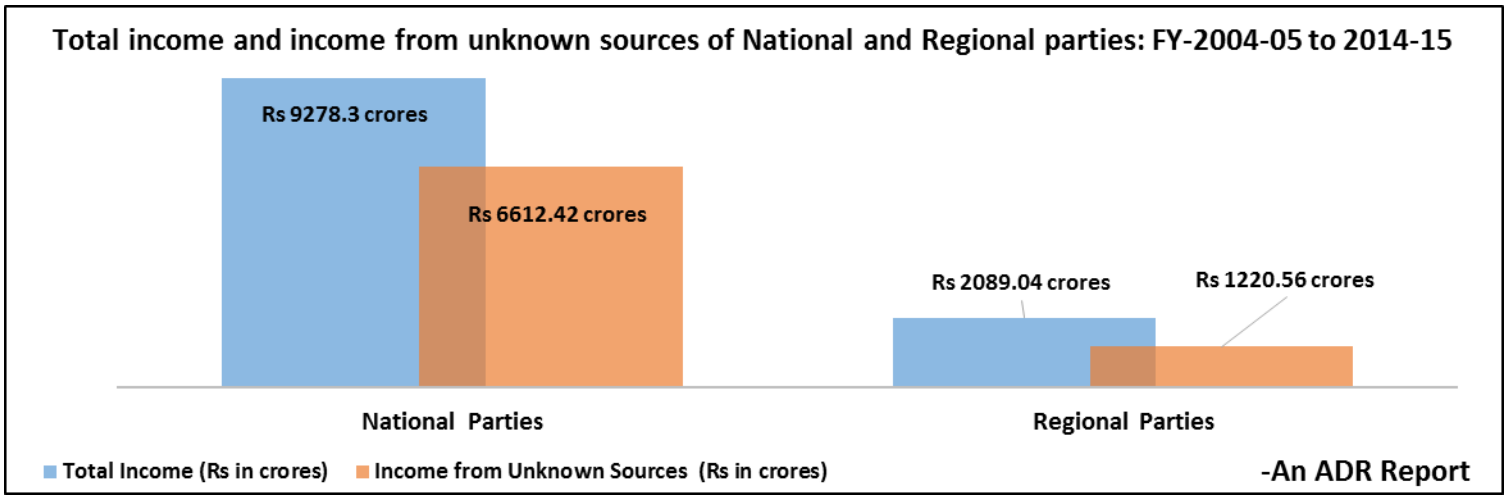
Highlights

Income of Political Parties from Known and Unknown sources

- The contribution statements, submitted by the political parties declaring names and other details of donors who contribute above Rs 20,000, are the only **known sources** of income of political parties.
- The **unknown sources** are income declared in the IT returns but **without giving source of income for donations below Rs. 20,000**. Such unknown sources include 'sale of coupons', 'Aajiwan Sahayog Nidhi', 'relief fund', 'miscellaneous income', 'voluntary contributions', 'contribution from meetings/ morchas' etc. The details of donors of such voluntary contributions are not available in the public domain.
- **Other known sources** of income include sale of moveable & immoveable assets, old newspapers, membership fees, delegate fee, bank interest, sale of publications and levy whose details would be available in the books of accounts maintained by political parties.

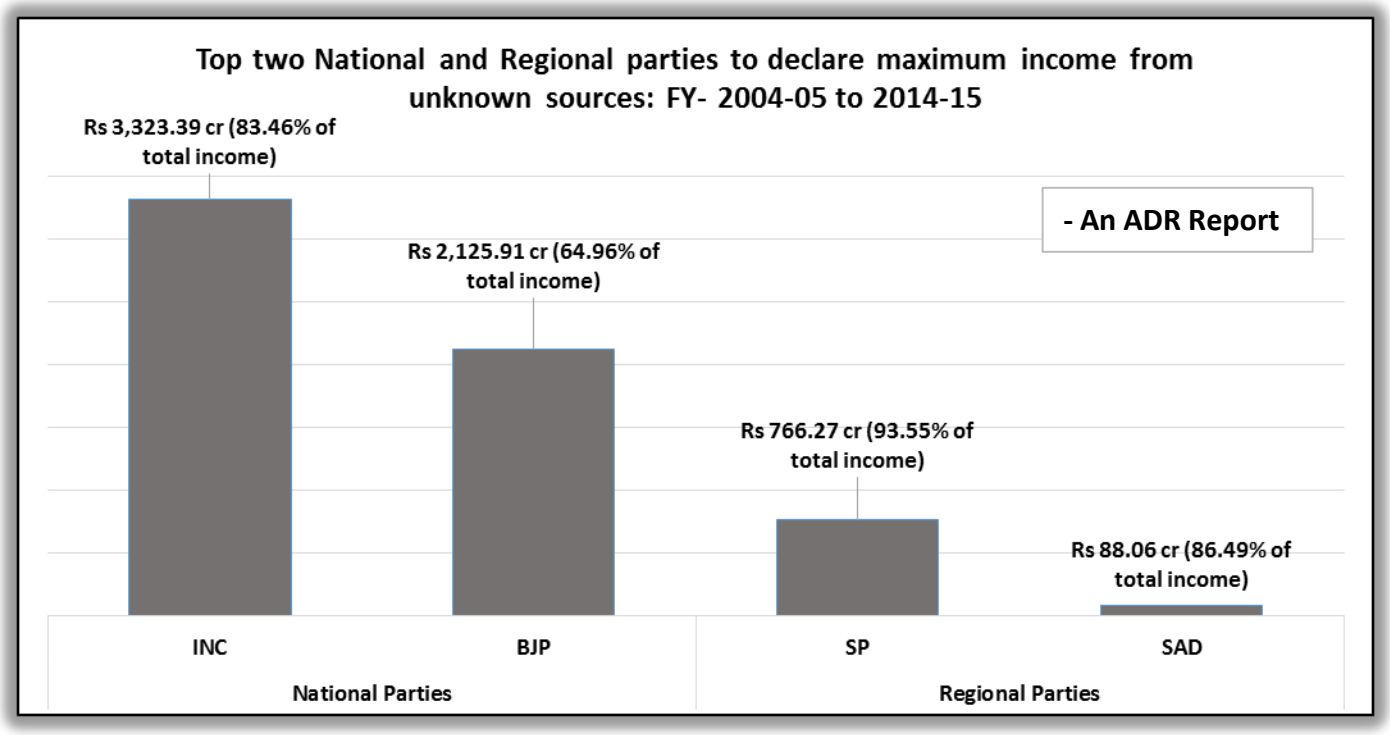
- 6 National parties (INC, BJP, BSP, NCP, CPI and CPM) and 51 Regional recognised were considered for this analysis, including AITC which was declared a National Party only in September, 2016.
- Currently there are 48 Regional recognised parties: HJC-BL and MSCP merged with INC during FY 2014-15 and MPP was de-recognised in 2013.
- **Total income of National and Regional political parties** between FY 2004-05 and 2014-15: **Rs 11,367.34 cr.**
- **Total income of political parties from known donors** (details of donors as available from contribution report submitted by parties to Election Commission)**: Rs 1,835.63 cr**, which is **16%** of the total income of the parties.
- **Total income of political parties from other known sources** (e.g., sale of assets, membership fees, bank interest, sale of publications, party levy etc.)**: Rs 1,698.73 cr**, or **15%** of total income.
- **Total income of political parties from unknown sources** (income specified in the IT Returns whose sources are unknown)**: Rs 7,832.98 crores**, which is **69%** of the total income of the parties.

Sources of income of National and Regional Political Parties between FY 2004-05 and 2014-15				
Political Parties	**Income from unknown sources**	**Income from known sources**	**Income from other known sources**	**Total Income**
National Parties	**Rs 6,612.42 cr** (~71% of total declared income)	**Rs 1405.19 cr** (~15% of total declared income)	**Rs 1260.69 cr** (~14% of total declared income)	**Rs 9,278.30 cr**
Regional Parties	**Rs 1,220.56 cr** (~58% of total declared income)	**Rs 430.44 cr** (~21% of total declared income)	**Rs 438.04 cr** (~21% of total declared income)	**Rs 2,089.04 cr**
Total	**Rs 7,832.98 cr** (~69% of total declared income)	**Rs 1,835.63 cr** (~ 16% of total declared income)	**Rs 1,698.73 cr** (~ Rs 15% of total declared income)	**Rs 11,367.34 cr**



Political Parties with maximum income from unknown sources

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



Observations and Recommendations of ADR

Observations of ADR

- Of the 51 regional political parties considered for this report, **45 parties have not submitted** their donations statements to the ECI for at least one financial year.
- The 12 regional parties which have **never filed their contributions report since FY 2004-05** are: J&K PDP, AJSU, NPP, RSP, MPC, KC-M, SKM, AINRC, PDA, MSCP, HSPDP and PPA.
- The income tax returns/ audit reports of National and Regional parties were obtained by filing RTI applications with the Income Tax departments. The income tax returns of **42 out of the 51 regional parties** analysed were unavailable for at least one financial year. The information was either **denied by the IT departments**/ the parties had **not filed their returns** for the financial year/ the departments were **unable to trace** the audit reports/ **incomplete information** was provided. Where possible, copies of audit reports were procured from the ECI.
- The income of **National Parties** from **unknown sources increased by 313%**, from **Rs 274.13 cr** during FY 2004-05 to **Rs 1130.92 cr** during FY 2014-15.
- The income of **Regional Parties** from **unknown sources increased by 652%** from **Rs 37.393 cr** during FY 2004-05 to **Rs 281.01 cr** during FY 2014-15.
- Among all the National and Regional parties considered, **BSP is the only party** to consistently declare receiving **NIL donations above Rs 20,000** between FY 2004-05 and 2014-15 thus **100%** of the party's donations came from unknown sources. The total income of the party increased by **2057%** from **Rs 5.19 cr** during FY 2004-05 to **Rs 111.96 cr** during FY 2014-15**.**

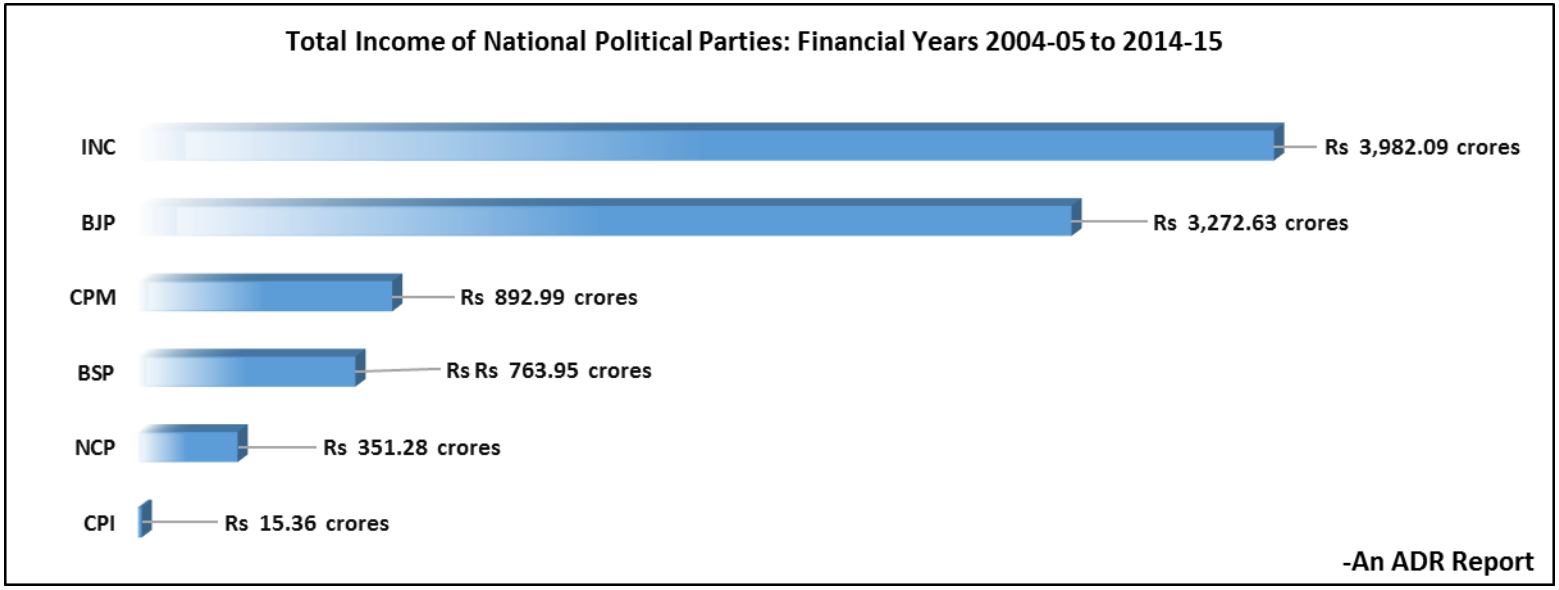
Recommendations of ADR

- Since a very large percent of the income of political parties cannot be traced to the original donor, full details of all donors should be made available for public scrutiny under the RTI. Some countries where this is done include Bhutan, Nepal, Germany, France, Italy, Brazil, Bulgaria, the US and Japan. In none of these countries is it possible for almost 75% of the source of funds to be unknown, but at present it is so in India.
- Any organization that receives foreign funding should not be allowed to support or campaign for any candidate or political party.
- Recently, the ECI has recommended that tax exemption be awarded only to those political parties which contest and win seats in Lok Sabha/ Assembly elections. The Commission has also recommended that details of all donors who donate above Rs 2,000 be declared in public domain. ADR supports ECI for its strong stand to enforce reforms in funding of political parties and hopes that these reforms are proactively taken up by the Government for implementation.
- Scrutiny of financial documents submitted by the political parties should be conducted annually by a body approved by CAG and ECI so as to enhance transparency and accountability of political parties with respect to their funding.
- **The National and other political parties must provide all information under the Right to Information Act.** This will only strengthen political parties, elections and democracy.

Detailed Report

Total income of National Parties of India (FY 2004-05 to 2014-15)

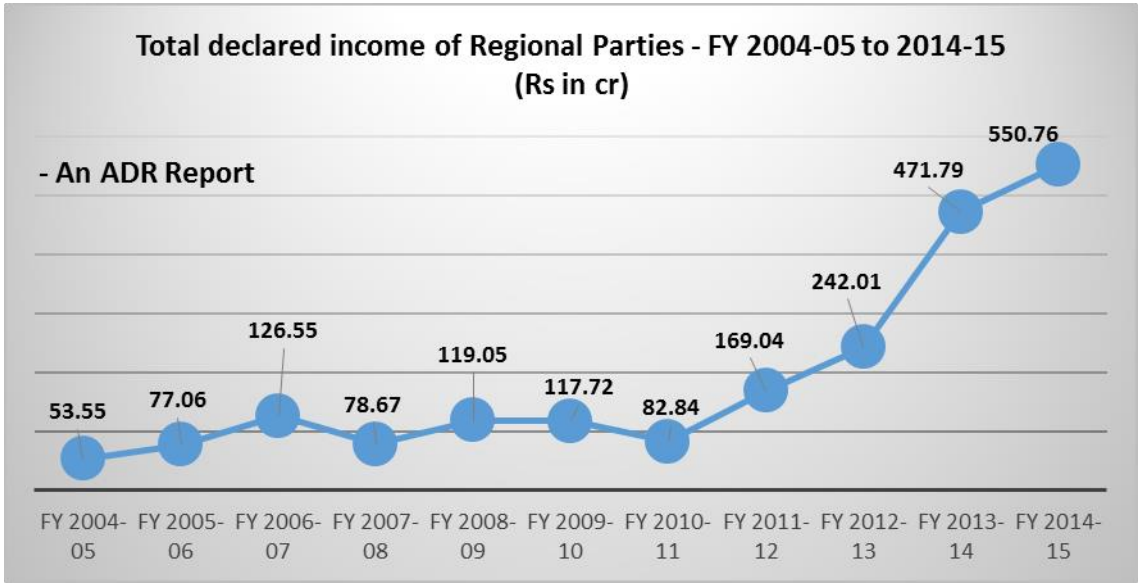
- The income of Political Parties during FY 2004-05 to 2014-15 are calculated from their IT returns filed annually with the Income Tax Department a copy of which is also submitted with the Election Commission of India.
- The six National Parties of India considered for this report are Bharatiya Janata Party (**BJP**), Indian National Congress (**INC**), Bahujan Samaj Party (**BSP**), Nationalist Congress Party (**NCP**), Communist Party of India (**CPI**) and Communist Party of India (Marxist) (**CPM**).
- **INC** has the **highest total income** of **Rs 3,982.09 cr** between FY 2004-05 and 2014-15, this is **42.92%** of the total income of the 6 parties during the same time.
- **BJP** has the **second highest income** of **Rs 3,272.63 cr** which is **35.27%** of the total income of the **6 National parties.**
- **CPM** declared third highest Income of **Rs 892.99 cr** which is **9.62%** of the total income of the **6 National parties.**

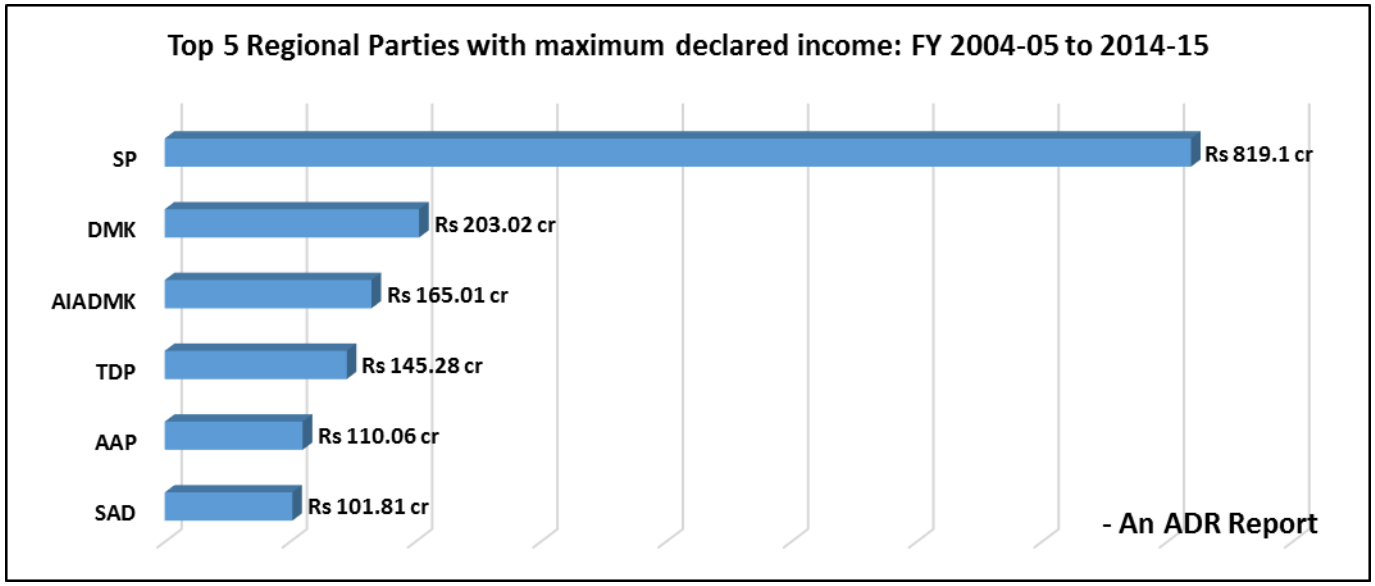


Political Party	Total Income of the National Parties between FY 2004-05 and FY 20114-15 (Rs. In crores)											
	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	Total Income (Rs in crores)
	National Party											
BJP	104.12	38.33	82.49	123.79	220.02	258.01	168.01	309.45	324.16	673.82	970.43	**3,272.63**
INC	222.07	124.93	169.37	220.83	496.88	467.58	307.09	356.28	425.69	598.06	593.31	**3,982.09**
BSP	5.19	11.74	45.89	70.92	182.02	56.98	115.70	9.01	87.63	66.91	111.96	**763.95**
NCP	12.10	7.37	15.79	17.39	40.01	44.85	23.31	40.82	26.57	55.42	67.65	**351.28**
CPI	0.66	1.23	0.75	1.24	1.16	1.29	2.12	1.56	1.07	2.44	1.84	**15.36**
CPM	39.88	41.60	63.40	59.70	62.83	73.28	76.57	103.85	126.09	121.87	123.92	**892.99**
Total Income	**Rs 384.02 crores**	**Rs 225.20 crores**	**Rs 377.69 crores**	**Rs 493.87 crores**	**Rs 1,002.92 crores**	**Rs 901.99 crores**	**Rs 692.80 crores**	**Rs 820.97 crores**	**Rs 991.21 crores**	**Rs 1,518.52 crores**	**Rs 1,869.11 crores**	**Rs 9,278.30 crores**

Total income of Regional Parties of India (FY 2004-05 to 2014-15)

- The total declared income of **Regional Parties** between FY 2004-05 and 2014-15 was **Rs 2,089.04 cr.**
- **SP** has the **highest total income** of **Rs 819.1 cr** between FY 2004-05 and 2014-15 followed by **DMK** with **Rs 203.02 cr** and **AIADMK** with **Rs 165.01 cr.**





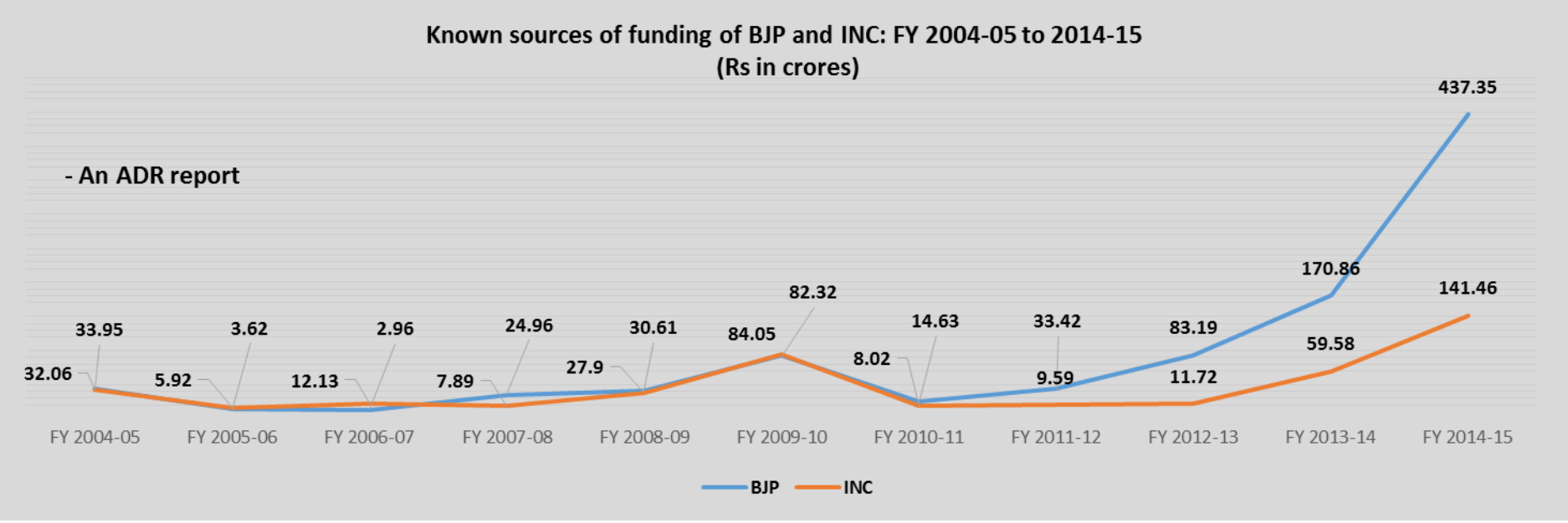
Regional Recognized Party	Regional Political parties total incomes Between FY 2004-05 and FY 2014-15 (Rs. In crores)											
	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	Total Income (Rs. In crores)
SP	28.54	48.35	87.05	32.30	39.00	28.10	15.21	52.88	146.09	159.70	181.88	**Rs 819.10 crores**
DMK	2.15	4.16	2.67	16.82	12.06	6.64	6.43	12.19	41.52	88.205	10.18	**Rs 203.02 crores**
AIADMK	1.18	12.95	6.4	3	12.50	9.74	14.203	21.984	9.43	38.48	35.14	**Rs 165.01 crores**
TDP	7.43	2.19	8.924	4.99	12.30	11.92	6.15	3.68	2.1	3.997	81.6	**Rs 145.28 crores**
AAP	**Party founded in 2013**								**2.355**	52.444	**55.26**	**Rs 110.06 crores**
SAD	**NA**	0.196	9.52	8.03	1.56	6.37	0.90	30.76	10.055	21.87	12.55	**Rs 101.81 crores**
SHS	8.21	1.83	**NA**		2.71	13.475	3.124	3.36	4.27	5.69	37.37	**Rs 80.03 crores**
JDU	0.51	1.34	0.545	0.22	9.31	11.33	3.42	4.29	10.31	5.26	7.586	**Rs 54.12 crores**
AITC	1.09	0.675	0.69	0.69	1.017	1.96	6.16	10.567	4.688	12.45	12.32	**Rs 52.31 crores**
BJD	**NA**	**0.148**	**NA**			**NA**	**0.19**	**NA**	0.66	**15.58**	**22.26**	**Rs 38.84 crores**
TRS	0.16	0.418	0.37	0.875	1.836	2.97	3.74	0.957	**NA**	**NA**	24.59	**Rs 35.92 crores**
J&K NC	**NA**		1.138	3.31	11.71	5.43	6.8	**NA**	**NA**	3.05	**2.43**	**Rs 33.87 crores**
MNS	**Party founded in 2006**		2.215	0.31	0.89	5.057	2.07	6.197	**NA**	3.844	10.26	**Rs 30.84 crores**
DMDK	**Party founded in 2006**	1.24	1.894	0.74	1.36	2.023	0.793	12.85	0.79	5.954	0.90	**Rs 28.55 crores**
YSR Congress	**Party founded in 2011**						0.01	**NA**	1.584	14.434	7.44	**Rs 23.47 crores**
RLD	**NA**		2.484	3.425	2.18	1.594	2.77	3.1	3.61	2.73	1.41	**Rs 23.30 crores**
RJD	3.676	2.554	1.19	2.15	4.05	4.446	3.11	0.26	1.08	**NA**	**NA**	**Rs 22.52 crores**

Regional Recognized Party	Regional Political parties total incomes Between FY 2004-05 and FY 2014-15 (Rs. In crores)											
	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	Total Income (Rs. In crores)
INLD	NA					2.515	NA			5.26	10.944	Rs 18.72 crores
JDS	NA			NA	2.765	NA	0.233	0.47	0.61	9.3	0.94	Rs 14.32 crores
SDF	NA						0.925	0.64	0.67	6.78	4.215	Rs 13.23 crores
JMM	NA						0.316	0.6	NA	0.93	10.555	Rs 12.40 crores
JVM-P	Party founded in 2007			0.46	0.72	1.244	0.94	0.68	NA	3.74	4.536	Rs 12.32 crores
PMK	NA									4.656	4.33	Rs 8.99 crores
LJP	NA		0.784	NA	0.65	0.94	1.4	0	0	1.27	1.69	Rs 6.73 crores
HJC-BL	NA						0.0063	0.35	0.35	3.054	1.95	Rs 5.71 crores
AIUDF	Party founded in 2006	0.57	0.13	0.5	0.59	0.314	1.19	0.13	NA	0.86	0.48	Rs 4.76 crores
BPF	Party founded in 2008				0.69	0.156	1.175	0.285	NA	0.134	1.77	Rs 4.21 crores
J&K PDP	0.37	0.16	N.A.	0.29	0.42	0.34	0.275	0.15	NA	0.387	1.52	Rs 3.91 crores
AJSU	NA				0.113	0.54	0.45	0.793	0.88	NA	NA	Rs 2.78 crores
AIMIM	NA										2.47	Rs 2.47 crores
AIFB	NA		0.21	0.2	0.23	0.34	0.17	0.29	0.3	0.34	0.19	Rs 2.27 crores
MGP	0.03	0	0.01	0.21	0.009	0.12	0.117	1.335	0.01	0.026	0.32	Rs 2.20 crores
AGP	0.03	0.043	0.044	0.03	0.06	0.11	0.5	0.205	NA	0.054	0.24	Rs 1.32 crores
NPF	0.026	0.03	0.03	0.03	0.034	0.035	0.036	NA		0.21	0.806	Rs 1.24 crores
NPP	NA								0.50	0.26	0.02	Rs 0.78 crores
MNF-ZNP	0.14	0.142	0.15	0.06	0.06	NA				0.12	0.095	Rs 0.77 crores
RSP	NA	0.055	0.07	NA	0.2	NA				0.15	0.09	Rs 0.57 crores
MPC	0.01	0.01	0.03	0.033	0.02	0.014	0.02	NA	0.13	0.12	0.05	Rs 0.44 crores
Kerala Congress(M)	NA									0.11	0.19	Rs 0.30 crores
SKM	Party founded in 2013									0.18	NA	Rs 0.18 crores
AINRC	Party founded in 2011							NA		0.07	0.10	Rs 0.17 crores
PDA	NA						0.008	NA	0.02	0.016	0.024	Rs 0.07 crores
IUML	NA									0.07	0.03	Rs 0.10 crores
MSCP	NA							0.03	NA		NA	Rs 0.03 crores
HSPDP	NA									0.0074	0.0093	Rs 0.02 crores
PPA	NA										0.016	Rs 0.016 crores
KJP	Party founded in 2012									NA	NA	-
RLSP	Party founded in 2013										NA	-
MPP	NA										NA	-
UDP	NA									NA	NA	-
J&K NPP	NA										NA	-
Total Income (Rs in cr)	Rs 53.55 crores	Rs 77.06 crores	Rs 126.55 crores	Rs 78.67 crores	119.05 crores	Rs 117.72 crores	Rs 82.84 crores	Rs 169.04 crores	Rs 242.01 crores	Rs 471.79 crores	Rs 550.76 crores	Rs 2,089.04 crores

NA: Information on the parties' income tax returns not available with ADR

Total income of the National Parties from Known Sources (FY 2004-05 to 2014-15)

- The total amount of donations received above Rs 20,000 by Political Parties, between FY 2004-05 and 2014-15, is calculated from the donations report submitted to the Election Commission, annually.
- The total amount of donations above Rs 20,000 declared by the 6 National Parties was **Rs.1405.19 cr.**
- **BJP tops the list** and has declared a total of **Rs 917.86 cr** as received via voluntary contributions above Rs 20,000. The donations declared by BJP is **more than twice the donations declared by the INC** during the same period.
- **INC** declared donations of **Rs 400.32 cr,** received between FY 2004-05 and FY 2014-15.
- **BSP declared that the party did not receive any donations above Rs 20,000** in the past 11 Financial Years.
- **NCP** has **not submitted its donations report to the ECI** between FY 2004-05 and 2006-07.



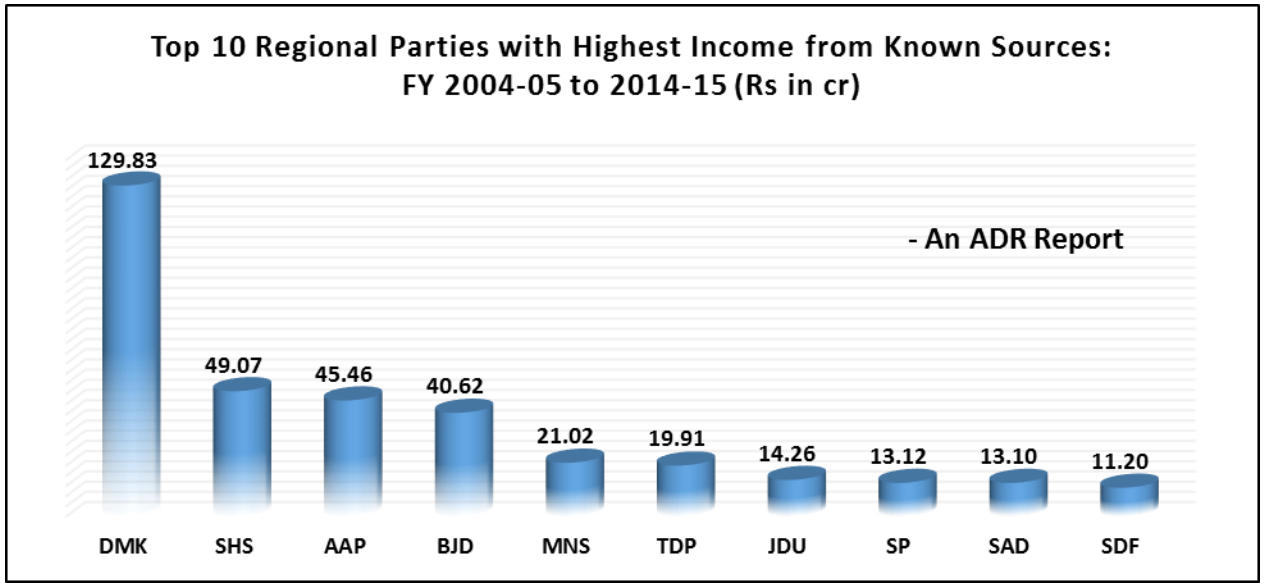
National Party	Donations above Rs 20,000 of National Parties: Between FY 2004-05 and FY 2014-15											
	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	Total Donation
BJP	339,521,289	36,156,111	29,550,672	249,623,653	306,057,231	823,220,133	146,253,279	334,194,113	831,924,462	1,708,636,182	4,373,506,898	**Rs 917.86 crores**
INC	320,555,643	59,212,492	121,273,513	78,873,451	279,018,460	840,521,238	80,205,884	95,910,664	117,166,225	595,837,728	1,414,610,950	**Rs 400.32 crores**
BSP	**Did not receive any donation above Rs. 20,000, as per donations report**											**Rs 0**
NCP	Not submitted to ECI			10,225,000	56,091,000	30,300,000	1,355,000	25,500,000	504,000	140,200,000	388,236,419	**Rs 65.24 crores**
CPI	630,000	3,988,690	1,229,400	4,125,800	2,585,000	8,667,852	10,811,465	5,982,675	3,695,449	12,281,544	13,346,675	**Rs 6.73 crores**
CPM	896,355	550,000	1,124,719	7,226,116	4,155,000	3,962,049	15,357,072	23,838,657	38,139,996	20,974,666	34,197,498	**Rs 15.04 crores**
Total	**Rs 66.16 crores**	**Rs 9.99 crores**	**Rs 15.32 crores**	**Rs 35.01 crores**	**Rs 64.79 crores**	**Rs 170.66 crores**	**Rs 25.40 crores**	**Rs 48.54 crores**	**Rs 99.14 crores**	**Rs 247.79 crores**	**Rs 622.39 crores**	**Rs 1,405.19 crores**

Total income of the Regional Parties from Known Sources (FY 2004-05 to 2014-15)

- The total amount of donations above Rs 20,000 declared by the Regional Parties was **Rs.430.42 cr.**
- **DMK tops the list** and has declared a total of **Rs 129.83 cr** as received via voluntary contributions above Rs 20,000 but the party has not filed its donations report for FY 2004-05 and 2005-06.
- **Shiv Sena** declared the second highest donations of **Rs 49.07 cr,** received between FY 2004-05 and FY 2014-15 while **AAP** has declared the third highest donations above Rs 20,000 amounting to **Rs 45.46 cr**.
- **BJD,** with total donations of **Rs 40.62 cr** (above Rs 20,000) has not filed its donations report for the period between **FY 2004-05 and 2008-09** and has declared **NIL donations** above Rs 20,000 between **FY 2010-11 and 2012-13.**

Political Parties	Known Sources of Income- Between FY 2004-05 and FY 2014-15 (Rs. In crores)											
	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	Total Donations
DMK	**NA**	**NA**	0	12.46	1.65	4.950	4.86	0.255	25.765	78.80	1.09	**Rs 129.83 crores**
SHS	4.09	0.06	0.02	0.43	0.76	7.393	1.264	0.576	0.363	1.82	32.29	**Rs 49.07 crores**
AAP	**Party founded in 2013**								0.74	9.42	35.295	**Rs 45.46 crores**
BJD	**NA**	**NA**	**NA**	**NA**	**NA**	5	0	0	0	13.82	21.8	**Rs 40.62 crores**
MNS	**Party founded in 2006**		**NA**	**NA**	0.864	4.956	1.91	6.055	0.23	0.92	6.08	**Rs 21.02 crores**
TDP	1.534	0.067	0.18	0.62	1.55	5.96	0.726	0.21	0.755	0.74	7.57	**Rs 19.91 crores**
JDU	0.317	0.047	0.005	0.21	4.54	0.955	0.81	1.78	0.587	2.175	2.837	**Rs 14.26 crores**
SP	1.13	0.03	0.065	0.11	0.395	1.94	**NA**	3.57	2.24	1.69	1.95	**Rs 13.12 crores**
SAD	**NA**	**NA**	**NA**	**NA**	0.684	1.25	0	3.194	1.815	3.144	3.01	**Rs 13.10 crores**
SDF	**NA**	**NA**	**NA**	**NA**	0	2.41	0.66	0.02	0	5.035	3.0706	**Rs 11.20 crores**
TRS	**NA**	**NA**	**NA**	0.094	0.36	**NA**	0.873	0.06	0.05	**NA**	8.69	**Rs 10.13 crores**
AITC	**NA**	**NA**	**NA**	**NA**	**NA**	0.02	**NA**	0.13	0	1.40	8.316	**Rs 9.86 crores**
YSRC	**Party founded in 2011**						0.01	0.77	0.337	**NA**	7.06	**Rs 8.18 crores**
JDS	**NA**	**NA**	**NA**	**NA**	**NA**	1.1	0	0	0	5.485	0.45	**Rs 7.03 crores**
RJD	**NA**	**NA**	**NA**	**NA**	1.00	3.94	0.30	0.00	0.00	1.01	**NA**	**Rs 6.25 crores**
RLD	**NA**	**NA**	0	0	0.86	0.92	**NA**	0.69	1.09	1.47	0.285	**Rs 5.32 crores**
HJC-BL	**NA**	**NA**	**NA**	**NA**	**NA**	0	0	0	0.145	2.896	1.95	**Rs 4.99 crores**
AIADMK	0.057	0.055	0.10	0.01	0.21	0.05	2.52	0.62	0	1.034	0	**Rs 4.66 crores**
PMK	**NA**	**NA**	**NA**	**NA**	**NA**	**NA**	**NA**	**NA**	**NA**	3.44	0.75	**Rs 4.19 crores**
JMM	**NA**	**NA**	0	0	0.1	0.15	0.02	0	**NA**	0.065	2.637	**Rs 2.97 crores**
AIUDF	**Party founded in 2006**	0.01	0.006	0.217	**NA**	0.26	0.705	0.056	0.046	0.675	0.278	**Rs 2.25 crores**
LJP	**NA**	**NA**	**NA**	**NA**	0.26	0.5	0	0	0	0	1	**Rs 1.76 crores**
IUML	**NA**	**NA**	**NA**	**NA**	**NA**	**NA**	**NA**	**NA**	0.203	0.593	0.857	**Rs 1.65 crores**
DMDK	**Party founded in 2006**	0.036	0.03	0	0.165	0	0	0.355	0.005	0.5	0.07	**Rs 1.16 crores**
NPF	**NA**	**NA**	**NA**	**NA**	**NA**	**NA**	**NA**	**NA**	**NA**	**NA**	0.84	**Rs 0.84 crores**
BPF	**Party founded in 2008**				**NA**	**NA**	0.30	0	0	0	0.48	**Rs 0.78 crores**
JVM (P)	**Party founded in 2007**			0.00	**NA**	0.31	0.05	0.00	**NA**	0.01	**NA**	**Rs 0.37 crores**
AGP	**NA**	**NA**	**NA**	**NA**	**NA**	**NA**	0.1	0.1	**NA**	**NA**	**NA**	**Rs 0.20 crores**
MGP	**NA**	**NA**	**NA**	**NA**	**NA**	**NA**	**NA**	**NA**	**NA**	**NA**	0.16	**Rs 0.16 crores**
MNF-ZNP	**NA**	**NA**	**NA**	**NA**	0.02	0.02	0.02	0.039	**NA**	**NA**	**NA**	**Rs 0.10 crores**

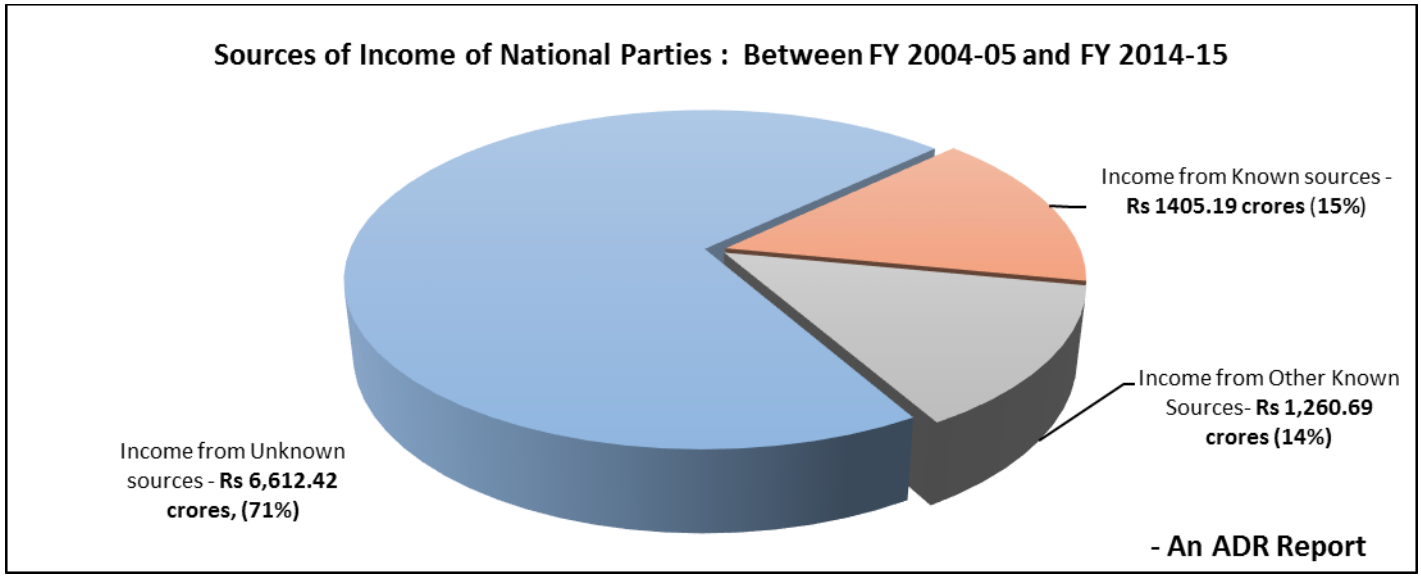
Political Parties	Known Sources of Income- Between FY 2004-05 and FY 2014-15 (Rs. In crores)											
	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	Total Donations
AIFB	NA	NA	NA	NA	NA	NA	NA	0.01	NA	NA	NA	Rs 0.01 crores
J&K NC	NA	NA	NA	NA	NA	NA	NA	0	0	0	NA	Rs 0
AIMIM	NA	NA	NA	NA	NA	NA	NA	NA	0	0	0	Rs 0
INLD	NA	NA	NA	NA	NA	NA	NA	0	NA	NA	NA	Rs 0
J&KPDP	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	Rs 0
AJSU	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	Rs 0
NPP	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	Rs 0
RSP	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	Rs 0
MPC	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	Rs 0
KC-M	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	Rs 0
SKM	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	Rs 0
AINRC	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	Rs 0
PDA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	Rs 0
MSCP	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	Rs 0
HSPDP	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	Rs 0
PPA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	Rs 0
Total	Rs 7.13 crores	Rs 0.30 crores	Rs 0.40 crores	Rs 14.15 crores	Rs 13.42 crores	42.08 crores	15.13 crores	Rs 18.49 crores	Rs 34.37 crores	Rs 136.14 crores	Rs 148.81 crores	Rs 430.42 crores



Income of Political Parties from unknown, known and other sources: FY 2004-05 to 2014-15

National Parties

Unknown, known and other known sources of income- Between FY 2004-05 and FY 2014-15				
National Political Parties	Unknown Source (Rs in crores)	Known Source (Rs in crores)	Other Known Source (Rs in crores)	Total Income (Rs in crores)
BJP	2,125.91	917.86	228.86	Rs 3,272.63 crores
INC	3,323.39	400.32	258.38	Rs 3,982.09 crores
BSP	448.71	0.00	315.24	Rs 763.95 crores
NCP	243.03	65.24	43.02	Rs 351.28 crores
CPI	0.23	6.73	8.40	Rs 15.36 crores
CPM	471.15	15.04	406.79	Rs 892.98 crores
Total	Rs 6,612.42 crores	Rs 1405.19 crores	Rs 1260.69 crores	Rs 9,278.30 crores

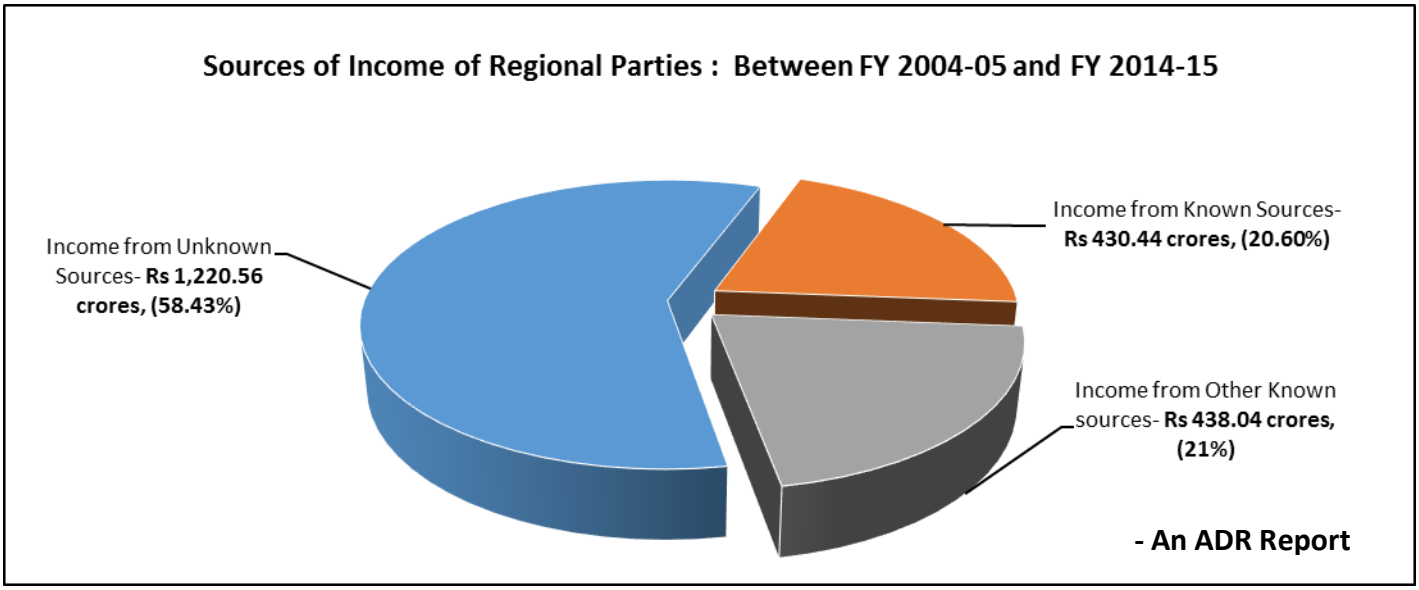


Regional Parties

Regional Political Parties	Unknown Source (Rs in crores)	Known Source (Rs in crores)	Other Known Source (Rs in crores)	Total Income
SP	766.27	13.12	39.706	Rs 819.10 crores
DMK	18.96	129.83	54.226	Rs 203.02 crores
AIADMK	0.95	4.66	159.40	Rs 165.01 crores
TDP	45.47	19.91	79.90	Rs 145.28 crores
AAP	62.82	45.46	1.78	Rs 110.06 crores
SAD	88.06	13.10	0.65	Rs 101.81 crores
SHS	18.64	49.07	12.318	Rs 80.03 crores
JDU	38.78	14.26	1.08	Rs 54.12 crores
AITC	23.54	9.86	18.907	Rs 52.31 crores
TRS	25.21	10.13	0.58	Rs 35.92 crores
JKNC	22.76	0.00	11.106	Rs 33.87 crores
MNS	9.53	21.02	0.29	Rs 30.84 crores
DMDK	6.15	1.16	21.24	Rs 28.55 crores
YSRC	13.81	8.18	1.48	Rs 23.47 crores
RLD	4.41	5.32	13.567	Rs 23.30 crores
RJD	5.80	6.25	10.466	Rs 22.52 crores

Regional Political Parties	Unknown Source (Rs in crores)	Known Source (Rs in crores)	Other Known Source (Rs in crores)	Total Income
INLD	12.95	0.00	5.765	**Rs 18.72 crores**
JMM	8.51	2.97	0.92	**Rs 12.40 crores**
JVM-P	11.95	0.36	0.01	**Rs 12.32 crores**
PMK	1.21	4.19	3.59	**Rs 8.99 crores**
LJP	4.87	1.76	0.10	**Rs 6.73 crores**
HJC-BL	0.71	4.99	0.01	**Rs 5.71 crores**
AIUDF	1.80	2.25	0.71	**Rs 4.76 crores**
BPF	2.97	0.78	0.46	**Rs 4.21 crores**
JKPDP	2.21	0.00	1.70	**Rs 3.91 crores**
AJSU	2.78	0.00	0	**Rs 2.78 crores**
AIMIM	1.17	0.00	1.3	**Rs 2.47 crores**
AIFB	0.51	0.01	1.75	**Rs 2.27 crores**
AGP	0.77	0.20	0.35	**Rs 1.32 crores**
NPF	0.40	0.84	0	**Rs 1.24 crores**
NPP	0.78	0.00	0	**Rs 0.78 crores**
RSP	0.56	0.00	0.01	**Rs 0.57 crores**
MPC	0.42	0.00	0.02	**Rs 0.44 crores**
KC-M	0.21	0.00	0.09	**Rs 0.30 crores**
SKM	0.18	0.00	0	**Rs 0.18 crores**
AINRC	0.17	0.00	0	**Rs 0.17 crores**
PDA	0.027	0.00	0.04	**Rs 0.07 crores**
MSCP	0.03	0.00	0	**Rs 0.03 crores**
HSPDP	0.01	0.00	0.01	**Rs 0.02 crores**
PPA	0.016	0.00	0	**Rs 0.016 crores**
BJD*	1.09	40.62	-2.87	**Rs 38.84 crores**
JDS*	7.93	7.03	-0.64	**Rs 14.32 crores**
SDF*	2.11	11.20	-0.08	**Rs 13.23 crores**
MGP*	2.24	0.16	-0.2	**Rs 2.20 crores**
MNF-ZNP*	0.72	0.10	-0.05	**Rs 0.77 crores**
IUML*	0.10	1.65	-1.65	**Rs 0.10 crores**
Total	**Rs 1,220.56 crores**	**Rs 430.44 crores**	**Rs 438.04 crores**	**Rs 2,089.04 crores**

* - The total income of the party is taken from the declarations made in the party's IT Returns. The voluntary contributions declared above Rs 20,000 is subtracted from the total income and the remaining sources are segregated into unknown and other known sources of funding. Details of donations above Rs 20,000 given by BJD, JDS, SDF, MGP, MNF-ZNP and IUML in their statements to the ECI is more than the total donations declared in the IT Returns of the party.



Disclaimer

Source for the data used in the report are the Audited accounts Contribution Statements submitted by the political parties to the Income Tax Department and the Election Commission of India. These can be accessed from myneta.info/party and http://eci.nic.in/eci_main1/PolPar/ContributionReports.aspx

While all effort has been made to ensure that the information is in keeping with what is mentioned in the statements submitted by the political parties, in case of discrepancy between information in this report and that given in their statements, the information reported by the political parties should be treated as correct. Association for Democratic Reforms, National Election Watch and their volunteers are not responsible or liable for any damage arising directly or indirectly from the publication of this report.

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Annexure: Party name and corresponding code

Party Name	Party Code
National Parties	
Bharatiya Janata Party	BJP
Bahujan Samaj Party	BSP
Communist Party of India	CPI
Communist Party of India (Marxist)	CPM
Indian National Congress	INC
Nationalist Congress Party	NCP
Regional Parties	
Aam Aadmi Party	AAP
Asom Gana Parishad	AGP
All India Anna dravida Munnetra Kazhagam	AIADMK
All India Forward Block	AIFB
All India Majlis-e-Ittehadul Muslimeen	AIMIM
All India NR Congress	AINRC
All India Trinamool Congress	AITC
All India United Democratic Front	AIUDF
All Jharkhand Students' Union Party	AJSU
Biju Janata Dal	BJD
Bodo People's Front	BPF
Desiya Murpokku Dravida Khazhagam	DMDK
Dravida Munnetra Kazhagam	DMK
Haryana Janhit Congress – BL	HJC-BL
Hill State People's Democratic Party	HSPDP
Indian National Lok Dal	INLD
Indian Union Muslim League	IUML/ MUL
Janata Dal Secular	JDS
Janata Dal United	JDU
Jammu Kashmir National Conference	JKNC
Jammu Kashmir National Panthers' Party	JKNPP
Jammu Kashmir People's Democratic Party	JKPDP
Jharkhand Mukti Morcha	JMM
Jharkhand Vikas Morcha - Prajatantrik	JVM-P
Karnataka Janta Paksh	KJP
Kerala Congress (Merger)	KEC(M)
Lok Jan Shakti Party	LJP
Maharashtrawadi Gomantak	MGP
Mizo National Front	MNF
Manipur Peoples' Party	MPP
Manipur State Congress Party	MSCP
Mizoram Peoples Conference	MPC
Naga People's Front	NPF
National People's Party	NPP
Pattali Makkal Katchi	PMK
Rashtriya Janata Dal	RJD
Rashtriya Lok Dal	RLD
Rashtriya Lok Samata Party	RLSP
Revolutionary Socialist Party	RSP
Shiromani Akali Dal	SAD
Sikkim Democratic Front	SDF
Shiv Sena	SHS
Sikkim Krantikari Morcha	SKM
Samajwadi Party	SP
Telugu Desam Party	TDP
Telangana Rashtra Samiti	TRS
United Democratic Party	UDP
Zoram Nationalist Party	ZNP

ANNEXURE B

3

Budget 2017-2018

Speech of

Arun Jaitley

Minister of Finance

February 1, 2017

Madam Speaker,

On this auspicious day of *Vasant Panchami*, I rise to present the Budget for 2017-18. Spring is a season of optimism. I extend my warm greetings to everyone on this occasion.

2. **Madam Speaker**, our Government was elected amidst huge expectations of the people. The underlying theme of countless expectations was good governance. The expectations included burning issues like inflation and price rise, corruption in day to day transactions and crony capitalism. There was also expectation for a major change in the way the country's natural resources were allocated, processed and deployed.

3. In the last two and half years, it has been our mission to bring a Transformative Shift in the way our country is governed. We have moved

- from a discretionary administration to a policy and system based administration;
- from favouritism to transparency and objectivity in decision making;
- from blanket and loose entitlements to targeted delivery; and
- from informal economy to formal economy.

Inflation, which was in double digits, has been controlled; sluggish growth has been replaced by high growth; and a massive war against black money has been launched. We have worked tirelessly on all these fronts and feel encouraged by the unstinted support of the people to our initiatives. The Government is now seen as a trusted custodian of public money. I take this opportunity to express our gratitude to the people of India for their strong support.

4. We shall continue to undertake many more measures to ensure that the fruits of growth reach the farmers, the workers, the poor, the scheduled

159. In order to incentivise domestic value addition and to promote Make in India, I propose to make changes in Customs & Central Excise duties in respect of certain items which are given in the **Annex III** of this speech. Some of these proposals are also for addressing duty inversion.

Promoting Digital Economy

160. There is a scheme of presumptive income tax for small and medium tax payers whose turnover is upto ₹ 2 crores. At present, 8% of their turnover is counted as presumptive income. I propose to make this 6% in respect of turnover which is received by non-cash means. This benefit will be applicable for transactions undertaken in the current year also.

161. I propose to limit the cash expenditure allowable as deduction, both for revenue as well as capital expenditure, to ₹ 10,000. Similarly, the limit of cash donation which can be received by a charitable trust is being reduced from ₹ 10,000/- to ₹ 2000/-.

162. The Special Investigation Team (SIT) set up by the Government for black money has suggested that no transaction above ₹ 3 lakh should be permitted in cash. The Government has decided to accept this proposal. Suitable amendment to the Income-tax Act is proposed in the Finance Bill for enforcing this decision.

163. To promote cashless transactions, I propose to exempt BCD, Excise/CV duty and SAD on miniaturised POS card reader for m-POS, micro ATM standards version 1.5.1, Finger Print Readers/Scanners and Iris Scanners. Simultaneously, I also propose to exempt parts and components for manufacture of such devices, so as to encourage domestic manufacturing of these devices.

Transparency in Electoral Funding

164. India is the world's largest democracy. Political parties are an essential ingredient of a multi-party Parliamentary democracy. Even 70 years after Independence, the country has not been able to evolve a transparent method of funding political parties which is vital to the system of free and fair elections. An attempt was made in the past by amending the provisions of the Representation of Peoples Act, the Companies Act and the Income Tax Act to incentivise donations by individuals, partnership firms, HUFs and companies to political parties. Both the donor and the donee were granted exemption from payment of tax if the accounts were transparently maintained and returns were filed with the competent authorities. Additionally, a list of donors who contributed more than ₹20,000/- to any party in cash or cheque is required to be maintained. The

situation has only marginally improved since these provisions were brought into force. Political parties continue to receive most of their funds through anonymous donations which are shown in cash.

165. An effort, therefore, requires to be made to cleanse the system of political funding in India. Donors have also expressed reluctance in donating by cheque or other transparent methods as it would disclose their identity and entail adverse consequences. I, therefore, propose the following scheme as an effort to cleanse the system of funding of political parties:

a) In accordance with the suggestion made by the Election Commission, the maximum amount of cash donation that a political party can receive will be ₹2000/- from one person.

b) Political parties will be entitled to receive donations by cheque or digital mode from their donors.

c) As an additional step, an amendment is being proposed to the Reserve Bank of India Act to enable the issuance of electoral bonds in accordance with a scheme that the Government of India would frame in this regard. Under this scheme, a donor could purchase bonds from authorised banks against cheque and digital payments only. They shall be redeemable only in the designated account of a registered political party. These bonds will be redeemable within the prescribed time limit from issuance of bond.

d) Every political party would have to file its return within the time prescribed in accordance with the provision of the Income-tax Act.

Needless to say that the existing exemption to the political parties from payment of income-tax would be available only subject to the fulfilment of these conditions. This reform will bring about greater transparency and accountability in political funding, while preventing future generation of black money.

Ease of Doing Business

166. As an anti-avoidance measure, the provision of domestic transfer pricing in respect of related entities was brought in the Finance Act of 2012. Since then the number of entities being covered under domestic pricing has gone up substantially necessitating a longer scrutiny, which causes hardship to domestic companies. In order to reduce the compliance burden due to domestic transfer pricing provisions, I propose to restrict the scope of domestic transfer pricing only if one of the entities involved in related party transaction enjoys specified profit-linked deduction.

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(English Version)

Thirteenth Session
(Sixteenth Lok Sabha)

(Vol. XXVIII contains Nos. 1 to 10)

LOK SABHA SECRETARIAT
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[Dr. Prabhas Kumar Singh]

but we See a large number of monuments are coming under vandalism attacks, public are entering everywhere and destroying the monuments. Who is the competent authority to check all this? We should fix responsibility. The Archaeological Survey of India is ultimately the custodian of these monuments but the work of the competent authority should be clearly defined. The responsibility should be fixed on a particular designated person so that if vandalism takes place, orders should be given and that person should be held responsible.

With these words, I oppose this Bill.

Thank you.

15.04 hrs.

STATEMENTS BY MINISTERS ... *Contd.*

(v) Introduction of the Scheme of Electoral Bonds

[English]

THE MINISTER OF FINANCE AND MINISTER OF CORPORATE AFFAIRS (SHRI ARUN JAITLEY): Sir, I had announced in the Budget Speech of 2017-18 to bring in a scheme of Electoral Bonds to clean the system of political funding in the country.

The Government has now finalised the Scheme of Electoral Bonds. The Scheme will be notified today.

The broad contours of the Scheme are:

- The electoral bond would be a bearer instrument in the nature of a Promissory Note and an interest-free banking instrument. A citizen of India or a body incorporated in India will be eligible to purchase the bond.
- The electoral bond would be issued/ 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.
- The purchaser would be allowed to buy electoral bond(s) only on due fulfilment of all the extant KYC norms and by making payment from a bank account. It will not carry the name of the payee.
- Electoral Bonds would have a life of only 15 days during which it can be used for making donations only to the political parties registered under section 29A of the Representation of Peoples Act, 1951 (43 of 1951) and which secured not less than one per cent of the votes polled in the last general election to the House of the People or a Legislative Assembly.
- The bonds under the Scheme shall be available for purchase for a period of ten days each in the months of January, April, July and October, as may be specified by the Central Government. An additional period of 30 days shall be specified by the Central Government in the year of the general election to the House of People.
- The bond shall be encashed by an eligible political party only through a designated bank account with the authorised bank.

...(Interruptions)

HON. DEPUTY SPEAKER: Shri Shrirang Appa Barne.

...(Interruptions)

HON. DEPUTY SPEAKER: I have already called the next speaker.

...(Interruptions)

SHRI MALIKARJUN KHARGE (Gulbarga): Sir, I have one clarification. *...(Interruptions)* This is a very dangerous thing. You will have to give me one minute. *...(Interruptions)*

HON. DEPUTY SPEAKER: What clarification you would like to have?

SHRI MALIKARJUN KHARGE: The hon. Minister has stated that the names of the political parties cannot be disclosed. What is the purpose of not disclosing the names? As of today, when the political parties file return to the Election Commission, they have to give all the details like how and from where the donation has come. What is the purpose of this donation when you are not going to disclose it? What is the benefit of this?

SHRI ARUN JAITLEY: Let me clear the misconception, if there is any, because we have gone

through this debate at the time of the Finance Bill itself. This announcement was a part of the General Budget itself. I had announced in the Budget speech itself that political funding in India needs to be cleaned up. Today, the system is, and this is no secret to any political party or to the world outside, that donations coming to political parties are coming otherwise than through banking instruments. The names of the donors, quantum and the source of the money are not known.

Electoral bonds substantially Seek to cleanse that system. Any person *See*king to donate money to a political party during that specified period can buy electoral bonds from the specified branch of the State Bank of India. Those bonds can be given only to a registered political party and only such parties, so that fake parties are not registered, which secured at least one per cent vote in the last election. Those parties will have to announce one designated account, that is the Congress or the BJP or the BJD will have one account given to the Election Commission in advance. These bonds can be encashed within 15 days of purchase by the donor to the political party.

Now, the element of transparency is that the donors buy these bonds. Obviously, their balance sheets will reflect that they have bought a certain amount of bonds. Political parties will file their returns and collectively also say that this is the extent of electoral bonds that they have received. And, therefore, this will be the cleaner money coming from the donor, cleaner money coming into the hands of a political party who would have cleansed substantially the whole process.

There would be a significant amount of transparency. Today, there is nil transparency. When the cash is given, the source of the money, the donor and where it is spent is not known. Therefore, at least now it will be known. The donor will be having an account of how many bonds he has purchased. The political party will be filing returns to the Election Commission, thereby indicating the total bonds it has received and which donor gave to which political party.

It is in order to ensure that the transformation into clean money takes place smoothly and people are incentivised to give that. That is the only factor which will not be known. So, there will be clean money, and a substantial, significant amount of transparency as against the present system of unclean money and no transparency. *...(Interruptions)*

15.11 hrs.

(SHRI RAMEN DEKA *in the Chair)*

[Translation]

15.11½ hrs.

ANCIENT MONUMENTS AND ARCHAEOLOGICAL SITES AND REMAINS (AMENDMENT) BILL, 2017- *Contd*.

SHRI SHRIRANG APPA BARNE (Maval): Hon. Deputy Speaker Sir, Ancient Monuments and Archaeological Sites and Remains (Amendment) Bill, 2017 has been presented in the House. I congratulate the Hon. Minister of Tourism and Culture, Dr. Mahesh Sharma and support this Bill. *...(Interruptions)* There are a number of archaeological sites in the country. *...(Interruptions)* A number of tourists visit these archaeological sites, but till date no public work could be undertaken in 100 meters area around any archaeological site. But, now visitors will be provided various facilities under the provision of this Bill. The Department of Archaeological Survey is a Government of India Organization and a number of public representatives and local MP's put forth their suggestions so as to bring reform in MPLADS, but the officers-employees of the Department do not extend their cooperation to them. This Department functions under the Government of India. When various State Governments offer to provide funds to repair these sites then hurdles are created. There are a number of archaeological sites with the State Governments and their Government would also like to carry out repair work there. A number of archaeological sites are located in cities where Municipal Corporation can contribute in carrying out repair work. There should be a provision in the Bill in this regard.

I would like to raise the issue of Maharashtra. There are many such sites of archaeological importance in my Parliamentary Constituency. Ajanta-Ellora caves in Mahrashtra are a major attraction for the tourists from the country and abroad. Elephenta caves in my Parliamentary Constituency is a heritage site. Karla, Bhaja caves are